

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Decision Maker:</b>	Executive Member for Countryside, Culture and Communities.
<b>Date:</b>	15 September 2022
<b>Title:</b>	Trading Standards update
<b>Report From:</b>	Director of Culture, Communities and Business Services

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### Purpose of this Report

1. The purpose of this report is to provide an update on Trading Standards (TS) following its restructure in 2021/22. The report seeks endorsement of its updated enforcement policy and its communications strategy.

### Recommendation(s)

2. The Executive Member is asked to acknowledge or approve the following recommendations:
3. Note the strategic priorities for Trading Standards and their alignment with the County Council's four Strategic Aims as set out in Appendix 1.
4. Approve the revised Enforcement Policy for Trading Standards.
5. Endorse a proactive external communications strategy to increase public awareness of risks, facilitate community protection and deter criminality. This approach will augment the impact of direct service delivery, mitigating resource pressures and promoting the benefits of partnership working.
6. Note plans to conduct a review of all commercial activity over the next 12 months, with the intention of bringing a commercial strategy for the service to the Executive Member in 2023.

## Executive Summary

7. This report seeks to highlight changes to Trading Standards' operating model that have been implemented to support the new structure which came into effect in January 2022. The new structure delivered £300,000 savings to the Council's SP23 programme through a 22% FTE reduction. This necessitated new ways of working, which have been developed and piloted this year.
8. The strategic priorities for the service (Appendix 1) provide the framework within which all TS activity is undertaken. The revised Enforcement Policy (Appendix 2) provides the framework for ways in which the service can seek to achieve compliance and is also presented here for approval.
9. Operational changes to the service that were driven by the new structure, for example in relation to its triaging of complaints / referrals, have been successfully piloted this year.
10. As skills and knowledge increase there will be further opportunities for service development and continuous improvement. Through apprenticeships and training the service will continue to develop its workforce. It will also seek to exploit digital efficiencies and improve its use of intelligence through the implementation of the new database system called Cx, and use of corporate digital applications.
11. Looking forward, the service has strategic aspirations to drive further process efficiencies from the Buy With Confidence (BWC) Scheme; maximise its grant funding opportunities through closer working with regulatory bodies such as the Office for Product Standards and Safety (OPSS); develop a commercial strategy and maximise its reach and impact through a higher profile communications strategy.

## Contextual information

12. **Legislative context:** Trading Standards has a statutory duty to enforce over 250 pieces of legislation. The duty to enforce legislation requires the ability to investigate and prosecute cases of criminality. The service is legally required to appoint specific roles such as a Chief Inspector of Weights and Measures, a Public Analyst for Food and an Agricultural Analyst for Animal Feed. The County Council holds statutory roles for which Trading Standards is the delivery mechanism. These include HCC being the Petroleum Enforcement Authority, the Food Authority and the Local Authority in relation to the prevention and control of animal disease in farmed animals. The service also delivers some statutory duties on behalf of neighbouring Authorities where it is strategically valuable and/or commercially beneficial to do so.

13. **Restructure** - The new structure implemented in January was intended to:
  - a) deliver efficiencies
  - b) bring greater consistency across grades
  - c) devolve responsibility to lower levels, especially in relation to line management, thus giving staff development opportunities
  - d) facilitate a more agile workforce that can more easily be deployed to areas of greatest demand through a matrix working model
  - e) provide clearer development pathways with a focus on talent development and succession planning, including introducing apprenticeship roles in response to a national skills shortage and an ageing workforce profile.
  
14. These objectives have been achieved, although it should be noted that staff development and the training of apprentices is a long-term commitment, with qualifications taking 18 months to 3 years to achieve.
  
15. **Revised operating model** – In response to reduced resources and changes to the skills profile of different teams, the service has had to revise several areas of its operating model to ensure workload can be managed and resources directed to areas of greatest need. An example of this is contact management i.e. how the service is accessed and how it responds to the complaints, referrals, enquiries and notifications it receives.
  
16. Moving away from a reactive response process, the service now records all information received for intelligence purposes and uses this to inform its proactive service planning, including projects and investigations. This means the service can ensure it focusses effort on the products, issues or businesses that are causing persistent and serious harm to consumers, legitimate traders, or the wider Hampshire economy. This approach brings the service into alignment with other comparator TS services in the South-East, such as West Sussex, Buckinghamshire and Surrey, and Kent.
  
17. The service has implemented a single point of contact to assess all contacts consistently, irrespective of the source of the contact. The tools used to triage all contacts have been revised to determine those to which the service would provide an immediate (within 10 working days) response (Appendix 3). Further assessment tools can be applied to contacts where there are concerns but where the outcome may not fall into the criteria for immediate response.
  
18. This enables the service to target resource at areas of greatest impact or highest risk, taking account of the level of criminality involved. Over time, it will enable TS to best serve all Hampshire residents proactively and fairly, whilst avoiding resources being drawn to those who are most able to advocate for themselves. Individual complaints will not receive any response

unless they meet the criteria for immediate response, but they will all be used to inform our overall intelligence picture.

19. Thematic and statistical data will also be shared with partner agencies, regulatory bodies, and other TS services where appropriate, to inform regional and national intelligence profiling and to enable us to draw down funding where applicable.
20. **Achieving compliance** – TS is a regulatory service and its core ethos is to advise and support businesses to achieve compliance, in order to protect the public and ensure a fair trading environment. Consequently, our enforcement policy reflects this approach. The Enforcement Policy has been updated to reflect changes to the service operating model.
21. The service continues to maintain the recognised 4 E's approach to promoting compliance: Engage, Explain, Encourage and Enforce. In this model, enforcement activity is generally a last resort, with the focus remaining on achieving compliance through deploying a broad and creative range of approaches with which to work with businesses.
22. Enforcement activity is only taken where there is a clearly evidenced case, the enforcement is proportionate, in the public interest and deemed the most appropriate and effective way to achieve a positive outcome.
23. Within the range of enforcement activity the service undertakes, litigation is a last resort. However, TS has a duty to prosecute persistent and serious criminality and the service has a 100% prosecution success rate. Whilst litigation is taken in the public interest, the service also brings a financial benefit to the department through its financial investigations which have facilitated asset recovery. Last year asset recovery from enforcement delivered £54,000 and in 2022/23 it is forecast to deliver in the region of £200,000.
24. Asset recovery income can be used for (i) future asset recovery work (ii) crime reduction and (iii) community projects, and to this end it is used to contribute to the costs of the team that carry out litigation work as well as covering external legal costs and other relevant aspects of service delivery.
25. **Communications** – The service structure has a new Business and Commercial team whose remit includes internal and external communications. As part of the new operating model, a proactive communication strategy is essential. There is a greater need to have effective external communications to raise awareness of TS activity, engaging the public, facilitating community protection, providing reassurance to residents and businesses, and deterring criminality. The communications strategy objectives are set out in Appendix 4.

## Finance

26. For 2022/23 the service budget is £1.8M, of which £400,000 will be income, leaving a net cash limit of £1.4M. The cash limit has reduced over the past three years and income has remained stable despite Covid restrictions creating a challenging operating environment during 2020 and 2021.
27. It should be noted that the Trusted Trader scheme, Buy With Confidence, generates the largest share of income. This is followed by OPSS funding for our product safety work at the ports and borders. Grant funding for other activities such as feed controls inspections and food standards initiatives has also been notable in 21/22 but these streams can vary year on year subject to new legislation or regulatory body priorities.
28. Other commercial income opportunities are more limited, but we propose to conduct a commercial review later in 2022/23.

## Performance

29. Against the backdrop of a staff consultation and a restructure that saw the departure of 22% of the workforce, the service succeeded in delivering 94% of its planned inspections for the 21/22 financial year.
30. In terms of our product safety activity conducted at the External Temporary Storage Facilities, in 2021/22 334 consignments were searched and 57% of samples were found to be non-compliant or unsafe. Hampshire TS received the third highest level of referrals from OPSS of all Authorities undertaking product safety at the borders, meaning that we deal with significant volumes of goods that are likely to pose the greatest risk to consumers, including electrical items and children's toys.
31. The service participated in the Food Standards Agency pilot of a new dynamic risk management framework and continues to use this approach pending the release of the pilot outcomes and revised framework which will be deployed nationally in 2023/24.
32. The service secured convictions against criminals undertaking intellectual property fraud to the value of £1.5M. A rogue trader was also convicted of fraud, forgery, counterfeiting and consumer protection from unfair trading, with £6,000 compensation secured for the victims of crime in this case. A successful animal health investigation was undertaken for Southampton City Council, enabling them to secure conviction of a couple illegally importing puppies into the UK.

33. The service coordinated the response to the two outbreaks of avian influenza that took place in January and February 2022, working with the Animal & Plant Health Agency, Emergency Planning and volunteer networks.
34. The service has undertaken benchmarking against its comparator services in the South-East in 2021/22 which has identified that this service has:
- a) the second highest population for which to provide services
  - b) the smallest service per 100,000 of the population (approximately 1/3 lower than the average officer numbers per 100,000 of the population)
  - c) the second lowest cost per head of population based on both its cash limit and total budget
  - d) below average cost per head of population based on its cash limit, against regional comparators
  - e) generated 24% of its revenue budget from income.

### **Consultation and Equalities**

35. An Equalities Impact Assessment has been undertaken and the operational changes developed and piloted this year are anticipated to have potential positive benefits to groups with two protected characteristics, age and disability, due to the move to intelligence-led targeting of resources. In terms of mitigating the impact of not responding to individual complaints, trading standards will:
- Adopt a risk-based approach underpinned by a greater focus on the use of data and intelligence to inform priorities and service delivery.
  - Consider preventative activities such as publicity and communications to increase awareness of consumer risks and issues, signposting to further support and resources online, and ultimately working with local organisations to promote knowledge sharing, community support and self-help.
  - Ensure that where service users are signposted to other sources of advice, information and support this is done in a format most appropriate for their needs e.g. digital resources, provision of telephone numbers for other services, and/or making referrals to other agencies ourselves on behalf of a service user.

### **Conclusions**

36. During 2022 Trading Standards has built on the foundations of its new structure by:
- a) reviewing its operating model to align it to the new structure, and updating its processes and Enforcement Policy accordingly

- b) ensuring all TS activity fits withing the service's four strategic priorities which provide a clear, consistent framework for the service
- c) developing and promoting a cultural shift within the service to focus on compliance in its broadest sense, empowering staff to use creative approaches to do so;
- d) equipping staff for their new roles and responsibilities to facilitate their professional development and flexible deployment aligned to demand pressures.

37. The service is aware of other parts of its operating model that have scope for ongoing development and improvement and is ambitious to exploit these opportunities.

## Appendices

### Appendix 1 – Trading Standards' strategic priorities

#### Strategic Priorities:

- **Increasing public safety**, supporting business to achieve compliance and empowering communities
- **Protecting consumers from financial detriment** through a fair-trading environment
- **Protecting public health**, the environment and local economy by protecting animal health and the food chain
- **Providing commercial services** to support businesses, partners and economic growth

These align with the four Strategic Aims of the County Council:

- Hampshire maintains strong & resilient economic growth & prosperity;
- People in Hampshire live safe, healthy & independent lives;
- People in Hampshire enjoy being part of strong, inclusive, resilient communities; and
- People in Hampshire enjoy a rich & diverse environment.

## **Appendix 2: Trading Standards Enforcement Policy**

### **1.0 Introduction**

- 1.1 The purpose of Hampshire County Council's Trading Standards enforcement activities is to protect the public, legitimate business, and the environment. This policy sets out what businesses and others being regulated can expect from Hampshire County Council Trading Standards officers.
- 1.2 The Trading Standards Service mission is to be:  
*A modern proactive business designed to keep Hampshire safe.*
- 1.3 In doing this we focus on providing advice and guidance, working with businesses to help them understand and comply with their obligations, to encourage them to develop and grow.
- 1.4 There will be occasions where other action may be necessary to deal with situations where the law (criminal and civil) has been broken (an "offence"). Each case will be considered on its own merits.
- 1.5 This policy is intended to promote effective regulatory inspection and enforcement, improving outcomes without imposing unnecessary burdens on business.

### **2.0 Enforcement policy**

- 2.1 The Service will not respond to individual complaints or address every non-compliance with businesses.
- 2.2 Service demand is managed through a tactical tasking process designed to target resources effectively and focus activity on those businesses who cause the greatest harm to consumers and legitimate business.
- 2.3 Trading Standards follows the principles and objectives of the statutory Code of Practice for Regulators ('the Code') made under the Legislative and Regulatory Reform Act 2006. We believe that all enforcement should be risk based, transparent and proportionate.
- 2.4 In certain instances we may conclude that a provision in the code is either not relevant or is outweighed by another provision. Where we depart from the code, we will ensure that the decision is reasoned, evidenced and

documented.

2.5 Where we intervene in a matter, we will always consider the most justified, appropriate, and proportionate methods for dealing with the issues raised.

2.6 If we exercise any of our enforcement powers such as seizing goods, equipment or documents, we will give written notice to a business explaining the extent of those powers and the nature of any equivalent rights which the business may have.

2.7 A range of sanctions are available to be considered according to the associated risk and seriousness of the matter. Sanctions include:

- Securing an undertaking from a business that they will comply with their legal obligations
- Taking action in the civil courts to seek orders
- Issuing written warnings
- Issuing simple cautions
- Prosecuting offenders in the criminal courts
- Restraint, confiscation, and forfeiture of assets under the Proceeds of Crime Act 2002
- Exercising forfeiture of goods provisions
- Issuing Suspension Notices, Improvement Notices, or other such statutory notices and documents
- Issuing of Penalty Charge Notices
- Revocation or suspension of a licence, registration, or approval
- Instituting a license review (e.g., alcohol sales)
- Seeking a banning order under the Animal Welfare Act
- Having animals removed from their owners/keepers
- Instituting a product recall.

2.8 The aim of any intervention is to:

- Respond proportionately to the nature of the issue and the harm caused
- Protect consumers and legitimate businesses
- Change the behaviour of the offender
- Eliminate any financial gain or benefit from non-compliance
- To secure justice for victims, witnesses, defendants, and the public.

2.9 In any intervention we will consider matters which aggravate or mitigate the seriousness of the offence so that the most appropriate and proportionate method of disposal is chosen.

### **3.0 Aggravating Factors**

- The impact or potential impact of the offence is so serious that prosecution is the only suitable method for disposal.
- Whether the offence continued over a long period of time or involved a series of offences against the same or different victims.
- Degree of pre-planning.
- Age or vulnerability of the victim(s).
- Amount of gain for the offender or the amount of loss to the victim, relative to the victim's status.
- Impact of the crime on the victim.
- Prevalence of the offence and its impact on the community.
- Where there is any evidence of the crime being motivated by hate (hate crimes).
- Any attempt by the offender to conceal their identity, whether directly or indirectly, such that the victim and / or investigating agencies cannot easily identify or trace the person.
- Lack of remorse.
- The offender's history including previous advice, warnings, cautions and convictions.
- There is evidence of significant and / or continuing consumer or public detriment.
- There is risk to public health and safety, animal health and welfare or the environment.
- The offender disregards the needs of animal health disease control legislation.
- The offender has acted fraudulently or is reckless or negligent in their activities.
- An officer was deliberately obstructed.

### **4.0 Mitigating Factors**

- Prompt acknowledgement of guilt.
- Making timely and appropriate compensation to the victim(s).
- Previous good character.
- Age and / or lack of maturity where it affects the responsibility of the offender.

- Lesser degree of culpability.
- Any other factor which, considered objectively in relation to the offence, tends to diminish the seriousness of the crime even though it does not provide a defence to it.

## **5.0 Action that Can be Taken**

5.0.1 The options for appropriate methods of disposal of any matter are not sequential. The most appropriate method will be identified and adopted.

## **5.1 Prosecution**

5.1.1 The Trading Standards Service recognises that a prosecution has serious implications for all involved and have developed this policy so that we can make fair and consistent decisions in all cases.

5.1.2 We will have regard for this policy and the Code for Crown Prosecutors, in particular:

- Is there is sufficient evidence that a criminal offence has been committed and there is a realistic prospect of conviction?
- Is a prosecution in the public interest?

5.1.3 Consideration will also be given to the Code made under the Legislative and Regulatory Reform Act 2006.

5.1.4 In some cases prosecutions may be taken concurrently with civil proceedings.

## **5.2 Simple caution**

5.2.1 Where there is sufficient evidence to provide a realistic prospect of conviction (if the offender were to be prosecuted), and the offender admits their guilt, consideration may be given to dealing with the case by way of a caution.

5.2.2 If a simple caution is rejected the Service reserves the right to consider instigating prosecution proceedings.

## **5.3 Fixed penalty notice, or a penalty notice for disorder**

5.3.1 Where there is sufficient evidence to provide a realistic prospect of conviction (if the offender were to be prosecuted) and / or the offender

recognises the offence, if available, the offender may be offered a fixed penalty notice or penalty notice for disorder.

- 5.3.2 If a fixed penalty notice or a penalty notice for disorder is rejected the Service reserves the right to consider instigating prosecution proceedings.

#### **5.4 Financial investigations under the Proceeds of Crime Act 2002**

5.4.1 The Trading Standards Service will consider whether it is appropriate to utilise powers under the Proceeds of Crime Act 2002 (POCA), to ensure the defendant is deprived of the proceeds of their criminal conduct. Where investigations identify money laundering offences, we will consider prosecuting for those offences.

5.4.2 The Trading Standards Service will consider using restraint powers under POCA to prevent the dissipation of assets from satisfying a confiscation order (from which compensation may be ordered to be paid).

#### **5.5 Undertaking**

5.5.1 The Trading Standards Service takes a staged approach to civil redress.

5.5.2 Unless the matters investigated are serious enough to justify immediate civil or criminal proceedings, a formal undertaking may be sought from the offender within the meaning of the Enterprise Act 2002 to stop or continue doing the matters complained of, where the offender is willing to enter into an undertaking.

5.5.3 A breach of the undertaking can result in proceedings being issued.

#### **5.6 Injunctions**

5.6.1 Where an individual or business operates in such a way that it harms consumers, an application may be made to the civil courts for an injunction to stop the detrimental activities.

5.6.2 An application will not be made unless the detrimental activities have been explained (or attempted to be explained) to offenders with advice on how to operate legitimately, unless the detrimental practices create a threat to human safety, when an urgent application may be made.

#### **5.7 Written warnings**

5.7.1 If the particulars of a case considered in conjunction with this enforcement policy suggest that future compliance can be achieved without resorting to legal proceedings, this Service will consider issuing a written warning and / or specific instructions as appropriate.

5.7.2 No written warning will be entertained unless there is reliable evidence to support an assertion of offending.

5.7.3 Written warnings can be considered in the event of any future offences.

## **5.8 Suspending goods from sale**

5.8.1 Where it is necessary to protect the public, goods suspected of being unsafe or non-compliant with safety legislation will be suspended from sale.

## **5.9 Seeking a banning order under the Animal Welfare Act**

5.9.1 Where an owner/keeper of an animal has subjected it to unnecessary suffering and this behaviour is likely to continue, we will consider applying for a banning order preventing that individual from keeping animals, or animals of a particular type or number.

## **5.10 Having animals removed from their owners/keepers**

5.10.1 We will consider removing animals from their owners/keepers where –

- They are illegally landed in the UK and are required to be quarantined
- On the grounds of welfare

## **5.11 Refusal, termination, or variation of a licence/registration**

5.11.1 The refusal, revocation or variation of a licence or registration will be considered where the conditions attached to a licence or registration, or the legal requirements to hold such a licence, registration or approval have not been met.

## **5.12 Dealing with offences at licenced premises**

5.12.1 In the case of offences committed at a licensed premises, including the illegal sale of age restricted products, consideration will be given to instituting a review of the premises licence.

5.12.2 The Service reserves the right to consider other enforcement options.

## **6.0 Partnership working**

- 6.1 Wherever practicable we will endeavour to liaise with other relevant agencies with a joint or complementary enforcement role to ensure a consistent and coordinated approach.
- 6.2 Before instigating formal action, the Trading Standards Service will liaise with all relevant agencies where a joint or complementary enforcement role is identified. We subscribe to the principles of the Primary Authority Principle under the Regulatory Enforcement and Sanctions Act 2008.
- 6.3 We will share intelligence with other enforcement agencies where this is practicable, beneficial and cost effective (subject to restrictions under the Data Protection Act, and other Trading Standards legislation).
- 6.4 Data sharing will be conducted through appropriate information gateways.

## **7.0 Complaints procedure**

- 7.1 The Trading Standards Service adheres to the County Council's complaints policy which can be found [here](#).

### Appendix 3 – Criteria for immediate response by Trading Standards

Priority	Issue Types	Actions
<p><b>High:</b> Requires immediate response (10 working days)</p>	<ul style="list-style-type: none"> <li>• High risk of death or serious injury</li> <li>• Serious threat to public health</li> <li>• Animal disease outbreak</li> <li>• Serious threat of animal disease outbreak</li> <li>• Animal welfare issues (under current investigation or where there is history)</li> <li>• Fraud or deception against vulnerable people, specifically targeted because of their vulnerability</li> <li>• Request for chargeable business advice</li> <li>• MP or Councillor contact</li> </ul>	<p>Complete a filter and task matrix.</p>

### Appendix 4 – Trading Standards’ communications strategy objectives

- a) Increase the impact of direct service delivery i.e. by deterring wider criminality and by raising consumer and business awareness. Maximising efficiency and value for money through this approach.
- b) Protect Hampshire residents by signposting to sources of trusted information and guidance, to facilitate informed decision-making and reduce the risk of exploitation by rogue traders
- c) Support the strategic direction of the service to be more proactive than reactive, and actively managing the messages around TS initiatives
- d) Reinforce partnership working, by crediting work done by Hampshire TS in conjunction with partner agencies
- e) Elevate Hampshire TS to a level playing field with other LA TS services who are already well established in delivering proactive public-facing communications strategies

## REQUIRED CORPORATE AND LEGAL INFORMATION:

### Links to the Strategic Plan

<b>Hampshire maintains strong and sustainable economic growth and prosperity:</b>	yes
<b>People in Hampshire live safe, healthy and independent lives:</b>	yes
<b>People in Hampshire enjoy a rich and diverse environment:</b>	yes
<b>People in Hampshire enjoy being part of strong, inclusive communities:</b>	yes

## EQUALITIES IMPACT ASSESSMENT:

### 1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

## 2. **Equalities Impact Assessment:**

An Equalities Impact assessment has been completed and is published with this report. In most instances changes to the Trading Standards operating model are not anticipated to impact on groups with protected characteristics. In the case of age and disability, the changes are anticipated to have a potentially positive impact because the use of intelligence to inform proactive service planning will target resource at areas of greatest need which historically has included service users in older age groups or service users with disabilities.

## 3. **Climate Change Impact Assessment**

Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience impacts of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.

**Climate Change Adaptation – not applicable**

**Carbon Mitigation – not applicable**

The carbon mitigation tool and climate change adaptation tool were not applicable because the operating model changes are strategically aligned to the new service structure and/or relate to administrative and procedural changes.