



## HEALTH SOCIAL CARE AND WELLBEING SCRUTINY COMMITTEE - 21ST JUNE 2016

**SUBJECT: PUBLIC PROTECTION ENFORCEMENT, UNDERAGE SALES ACTIVITY,  
AND CONSUMER ADVICE – 2015/16**

**REPORT BY: CORPORATE DIRECTOR, SOCIAL SERVICES**

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### 1. PURPOSE OF REPORT

1.1 The purpose of this report is to:

- To provide information on formal enforcement activities within the Public Protection Division including outcomes of investigations undertaken under the auspices of the Regulation of Investigatory Powers Act.
- To consider, in accordance with the Surveillance Camera Commissioner's Code of Practice, the Council's CCTV surveillance camera system to ensure that it remains necessary, proportionate and effective.
- To consider the enforcement programme in respect of under age sales of tobacco and activity regarding the under-age sales of aerosol spray paints.
- To provide information to Members on the nature of Consumer Advice complaints dealt with by the Trading Standards Service.

### 2. SUMMARY

- 2.1 The Public Protection Division consists of a wide range of protective and regulatory functions, which seek to protect, promote and improve the health, safety and economic well being of our communities, as well as regulate trade, commerce and the environment. In compliance with the Public Protection Enforcement Policy the report provides an overview of the formal enforcement activity undertaken including outcomes of investigations undertaken under the auspices of the Regulation of Investigatory Powers Act.
- 2.2 The Surveillance Camera Commissioner's Code of Practice states that the local authority should consider, on an annual basis, its surveillance camera system to ensure that it remains necessary, proportionate and effective. This report considers the Public Open Space CCTV system.
- 2.3 The report details the nature and number of complaints received concerning under-age sales of alcohol, tobacco, e cigarettes, butane lighter refills and lottery tickets over the previous financial year. An overview of test purchasing activity is provided including the results of enforcement action and the penalties that may be applied. The Authority is required by law to annually review its approach to tackling under-age sales of tobacco and spray paints.
- 2.4 The report provides information to Members on the number and nature of complaints dealt with by the Consumer Advice function of Trading Standards in 2015/2016.

### **3. LINKS TO STRATEGY**

- 3.1 Enforcing public protection legislation is a statutory duty and this activity, together with the assistance provided to Caerphilly residents with consumer problems, also contributes to the Healthier Caerphilly, Greener Caerphilly, Prosperous Caerphilly, and Safer Caerphilly priorities within the Caerphilly Local Service Board single integrated plan, Caerphilly Delivers, and Objective 1 of the Council's Strategic Equality Plan 2016-20.
- 3.2 Public Protection Enforcement activity also contributes to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:
- A resilient Wales
  - A prosperous Wales
  - A healthier Wales
  - A more equal Wales
  - A Wales of cohesive communities
  - A Wales of vibrant culture and thriving Welsh language

### **4. THE REPORT**

- 4.1 The Public Protection Division has a major role in protecting, promoting and improving the health, safety and economic well being of our communities. This role includes the enforcement of numerous statutes, many of which include criminal sanctions on those who infringe the law.
- 4.2 The Committee will also be aware that prosecution details are published on the Council website and in Newslines.
- 4.3 In order to ensure a fair and consistent approach to enforcement responsibilities the Public Protection Division has an Enforcement Policy, which was updated in April 2015 to reflect changes in legislation. The Policy requires an annual review of activity.
- 4.4 The information in Appendix 1 provides a broad picture of the range and number of formal enforcement actions initiated during 2015/16 (some prosecutions may still be awaiting hearing). In addition to the formal interventions detailed, hundreds of other informal warnings and cautions (both written and verbal) are issued every year. The table also includes activity of the CCTV Control unit for the last financial year.
- 4.5 The Public Open Space CCTV system comprises 152 cameras covering 28 town and village centres. Cameras in Blackwood, Caerphilly and Bargoed town centres are used to monitor the highest number of incidents followed by Rhymney, Risca and Ystrad Mynach cameras respectively. While cameras in villages tend to be used to monitor less incidents they are regarded as providing a deterrent effect and help in maintaining community reassurance. The location and number of permanently fixed cameras is considered as necessary, proportionate and effective.
- 4.6 The CCTV Control Room refers incidents and suspicious behaviour directly to the Police for their action. Descriptions provided by the Control Room can result in arrests being made at the time of the incident and in some cases Control Room Operators are able to guide Police Officers to offenders as a result of on-going monitoring after an incident. The Control Room will store the relevant footage for use by the Police as evidence in the course of their criminal investigations. This substantially reduces the amount of time Police Officers need to spend investigating offences, provides best evidence of a perpetrator committing offences, reduces the need for victims to give evidence in Court and assists the Courts to sentence appropriate to the gravity of the offence. The CCTV Control Room monitors other activity. During the year 165 warnings were given for out of hours access to Council depots, Amenity sites and schools, in some cases police response was required. 158 calls were received from the Storennet system to deal with suspected shoplifters. Police asked for assistance in monitoring 55 threats of suicide.

## 4.7 Regulation of Investigatory Powers Act 2000 Authorisations

4.7.1 The Regulation of Investigatory Powers Act 2000, places safeguards and controls over activities undertaken by Public Bodies, when they use legitimate tools to enforce breaches of the law, which interfere with the Article 8 Rights of individuals under the European Convention on Human Rights. Insofar as Trading Standards are concerned the permitted activities are:-

- Directed Surveillance (the covert surveillance of individuals)
- The use of Covert Human Intelligence Sources (either undercover officers or informants)
- Access to Communications Data (restricted access such as subscriber details and data traffic-not the content of any calls/texts etc, but merely the numbers sent to/received from)

4.7.2 The Act and subordinate legislation sets out strict criteria that must be met, before the activity can be authorised and undertaken. In all cases, the interference must be both proportionate and necessary, and full details of activities and the criminal investigation needs to be set out.

4.7.3 Within Caerphilly Council applications are reviewed by a Senior Manager and if all the criteria are met, the application will be authorised. In the case of Directed Surveillance and Covert Human Intelligence Sources (CHIS), the Authority's Monitoring Officer will also vet the applications, to ensure they are correctly authorised. The Monitoring Officer does not have this responsibility in relation to Communications Data. Communications Data is accessed using the National Anti Fraud Network (NAFN), who have their own internal safeguards.

4.7.4 Once applications are Authorised, Officers must then apply to the Magistrates Courts and obtain Judicial Approval to carry out the activity. During 2015/16, Trading Standards obtained RIPA Authorisations as below:-

Directed Surveillance -	6
Covert Human Intelligence Sources -	0
Communications Data -	1

4.7.5 In relation to the Directed Surveillance Authorisations, 5 related to under age test purchase operations for alcohol held throughout the year. 1 sale took place resulting in the issue of a Penalty Notices for Disorder to the seller. Additionally intelligence gained from one targeted premises, assisted the Police in organising and executing a major operation at a premises, where not only were under age persons being habitually sold alcohol, but also evidence was obtained of the use of controlled drugs. The outcome of this operation was that the premises were closed down. Also a number of offences were discovered under the Licensing Act 2003, resulting in 5 premises being cautioned. The sixth Authorisation related to a serious problem in the Bargoed area involving the use of unlicensed taxis. This operation again proved successful, and currently 8 individuals are under investigation.

4.7.6 With regard to the Communications Data request, this related to an investigation into the supply of food supplements, some of which contained banned and dangerous substances, resulting in a successful prosecution.

## 4.8 Underage Sales

Complaints about premises supplying age-restricted products are received from members of the public, local elected Members, Police Officers, Community Safety Wardens, and other businesses. Complaint data is used to target enforcement activities and also to support authorisations for directed surveillance using covert recording equipment, under the Regulation of Investigatory Powers Act 2000. During the financial year 2015/2016 the Trading Standards Service received:

- 6 complaints about tobacco sales
- 13 complaints about “on” licence alcohol sales
- 14 complaints about “off” licence alcohol sales
- 1 complaint about premises selling both tobacco and alcohol
- 1 complaint about E cigarettes (Nicotine Inhaling Devices, NIDs)
- 1 complaint about the supply of butane lighter refills
- 2 complaints about the supply of lottery tickets

4.8.1 In the previous financial year the service has carried out test purchases for alcohol, tobacco, butane lighter refills and for the first time Nicotine Inhaling Devices (NIDs), commonly known as e-cigarettes. These are prioritised as such products carry risks of anti-social behaviour and health concerns for young people. E-cigarettes were also targeted as a means of educating retailers. Test purchasing is achieved by using young volunteers selected in accordance with national guidelines. The volunteers, who often work in pairs, carry covert recording equipment, which captures sound and images. If a sale is made the recording is used to support enforcement action. Where volunteers are test purchasing in “on” licence premises support is provided by a witnessing team of officers, including officers from Gwent Police, in order to secure the health and safety of the young people in an adult environment. All activities are risk assessed and parental consent is required before a volunteer is allowed to work with the Trading Standards Service. When the law changes, or Trading Standards test for products not previously covered by the law, test purchase operations are used in conjunction with educational visits, and in these situations formal action is usually not taken, but follow up test purchases.

<b>YEAR</b>	<b>15/16</b>		<b>14/15</b>	<b>13/14</b>
<b>Product</b>	<b>Sales/ Attempts</b>	<b>% Sales</b>	<b>% Sales</b>	<b>% Sales</b>
Alcohol On	1/8	12.5%	37.5%	50%
Alcohol Off	5/40	12.5%	15%	4.4%
Tobacco	0/1	0%	10%	0%
Butane (lighter refills)	0/1	0%	N/A	N/A
E-Cigarettes (NIDs)	0/12	0%	N/A	N/A

4.8.2 In previous years Trading Standards have dealt with and assisted Gwent Police in tackling complaints about premises believed to be deliberately selling alcohol to local youths or who are not preventing local youths from obtaining alcohol via proxy sales. During 2015/16 the service received 4 complaints about the proxy purchasing of alcohol and associated anti-social behaviour. As this is a Police matter, it is necessary to work in partnership with Gwent Police utilising surveillance via CCTV or covert cameras, and officers with stop and search powers to seize alcohol from youths and establish the dispersal routes away from the premises. Such exercises are complex to set up and also costly in terms of police and local authority resources.

4.8.3 The Children and Families Act 2014 creates a new offence for the Proxy sale of tobacco products. From 1st October 2015. A person aged 18 or over who buys or attempts to buy tobacco or cigarette papers on behalf of an individual aged under 18 commits an offence. Trading Standards have not carried out any Tobacco Proxy sales enforcement activity due to the lack of any reports of such activity.

4.8.4 The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015. These Regulations, made under Part 5 of the Children and Families Act 2014, contain provisions which make it an offence to sell certain nicotine inhaling products to persons aged under 18 and for an adult to purchase nicotine inhaling products on behalf of a person aged under 18 (proxy sales of e-cigs and e-liquids). There is an exemption for products that are licensed as either a medicinal product or a medical device and is sold by prescription.

## 4.9 Legislation and Penalties

4.9.1 The Children and Young Persons (Protection from Tobacco) Act 1991 requires the authority to consider its enforcement programme in respect of underage sales of tobacco on an annual basis. The Clean Neighbourhoods and Environment Act 2005 places a duty on the authority to consider activity regarding the under-age sales of aerosol spray paints.

4.9.2 Where alcohol is sold it is likely that the staff member will receive a £90 on the spot penalty notice issued by a Trading Standards Officer. The owner/seller of the alcohol will be investigated formally and unless the business has an adequate defence it is likely that they will be prosecuted in court. The maximum fine under the Licensing Act 2003 is £5000.

If it is deemed likely that the premises may not improve their systems the licence may be taken to review before the Licensing Committee. The Committee has a number of options open to it: -

- Impose additional conditions
- Remove the designated premises supervisor (responsible person named on the licence)
- Suspend the licence for up to three months.
- Revoke the licence

4.9.3 Where tobacco is sold both the staff member and the business owner may be liable to court action unless there is an adequate defence in place. There are further sanctions for premises found to be repeatedly selling tobacco to underage persons. If a person / business is convicted of selling tobacco to persons under the age of 18 and at least two other offences occurred in the preceding two years relating to the same premises, trading standards can make an application to a Magistrates' Court for a restricted premises order and/or a restricted sales order.

A restricted premises order prohibits the sale from the premises of any tobacco products to any person, by the business or any of its staff for a period of up to one year.

A restricted sales order prohibits a specified person who has been convicted of a tobacco offence from selling any tobacco products to any person and from having any management function related to the sale of tobacco products for a period of up to one year. The maximum fine is £2,500. In the case of Aerosol Spray Paints the maximum penalty is also £2,500 and six months imprisonment.

4.9.4 Results for the preceding 12 months (which may have included cases from the preceding financial year) are shown in the table below.

<b>Type of Enforcement Activity</b>	<b>Alcohol</b>	<b>E Cigarettes</b>	<b>Tobacco</b>	<b>Butane Lighter Refills</b>
Failed test purchases	6	0	0.	0
Prosecutions	0	Not applicable.	Not applicable.	Not applicable
£90 Fixed Penalty Notices for Disorder	2	Not applicable.	Not applicable.	
Reviews of Licence	0	Not applicable.	Not applicable	

4 of the 6 failed test purchases for alcohol were informal intelligence gathering exercises, each was followed up with a formal test purchasing exercise where there was no sale and appropriate advice and guidance was given.

#### 4.10 **Consumer Advice**

Consumer complaints are categorised on the authority's database by trade sector and by product or service. Categorisation of complaints follows the current national scheme and allows the data gathered to be used in planning services and, in particular, intervention against particular problem trade sectors.

- 4.11 The table below gives the top 10 products/services and the monetary value involved that were complained about during 2015/2016:

	<b>Product/Service</b>	<b>Number</b>	<b>% of Total</b>	<b>Value £000</b>
1.	<b><i>Second-hand cars</i></b>	<b>213</b>	<b>12</b>	<b>619</b>
2.	<b><i>Home maintenance and Improvements</i></b>	<b>185</b>	<b>10</b>	<b>518</b>
3.	<b><i>Furniture</i></b>	<b>69</b>	<b>4</b>	<b>43</b>
4.	<b><i>Other Professional Services</i></b>	<b>62</b>	<b>3</b>	<b>34</b>
5.	<b><i>Telecommunications (including mobiles)</i></b>	<b>57</b>	<b>3</b>	<b>3</b>
6.	<b><i>Vehicle Repairs and Servicing</i></b>	<b>56</b>	<b>3</b>	<b>32</b>
7.	<b><i>Road, rail, air and sea travel</i></b>	<b>39</b>	<b>2</b>	<b>5</b>
8.	<b><i>Toiletries and Beauty articles</i></b>	<b>39</b>	<b>2</b>	<b>3</b>
9.	<b><i>Tobacco products</i></b>	<b>38</b>	<b>2</b>	<b>1</b>
10.	<b><i>Large White Goods</i></b>	<b>34</b>	<b>2</b>	<b>7</b>

The analysis is comparable with national data, with second-hand cars and home maintenance being the highest sources of complaints both nationally and locally. The variance in the number and value of the most complained about goods and services over the last four years is presented in Appendix 2.

- 4.12 Referrals to Caerphilly Trading Standards have decreased slightly, and the number of complaints to the National helpline from Caerphilly residents has similarly slightly decreased. However, the numbers of complaints requiring intervention, which are of a more complex nature, have continued to increase. In the current economic climate complaint resolution is significantly harder to achieve with many businesses less willing to offer consumers redress where it is due to them. As such the complexity of cases and the time taken to bring them to resolution has increased significantly. Additionally the new Consumer Rights Act, although strengthening the rights of consumers, has not persuaded traders to comply with the law, whilst at the same time consumer expectation has risen.
- 4.13 The total value of all goods and services dealt with by the Council's advice service for the financial year was £2,095,892.15 and the total value of all goods and services where Caerphilly consumers sought advice either directly from the service or through CACS was £7,432,078.24. These figures exclude high value complaints regarding financial advice and prize draws.
- 4.14 A monthly quarterly satisfaction survey is sent to all users of the service. This year's results show that 90% of users were either very or fairly satisfied with the service provided. The service users who were not satisfied, described the root of their dissatisfaction as the failure of businesses to respond to intervention, as opposed to the quality of service provided. Response time indicators show that 98% of users had an initial response within one working day.

#### **5. EQUALITIES IMPLICATIONS**

- 5.1 There are no potential equalities implications of this report and its recommendations on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan.

5.2 Equalities Impact Assessments would be undertaken on specific action plans and projects related to Trading Standards work.

## **6. FINANCIAL IMPLICATIONS**

6.1 Whenever prosecutions are taken in the Courts we do seek to recover the reasonable costs of investigation and prosecution.

6.2 The income that is generated by the imposition of fixed penalty notices or recovery of court costs is included in the revenue budget.

## **7. PERSONNEL IMPLICATIONS**

7.1 There are no personnel issues with regard to this report

## **8. CONSULTATIONS**

8.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report.

## **9. RECOMMENDATIONS**

9.1 Members are requested to consider the review of Public Protection enforcement activity and CCTV provision.

## **10. REASONS FOR THE RECOMMENDATIONS**

10.1 To provide Members with an opportunity to note the annual review of enforcement activity in accordance with the Public Protection Enforcement Policy.

10.2 To apprise members of activities undertaken in this area aimed at preventing access to all age restricted products.

10.3 To ensure that the Authority complies with its legal obligation to annually review its approach in relation to tobacco and spray paints.

10.4 To keep members informed of the type and level of complaint activity within the county borough and the assistance provided by the Consumer Advice service.

10.5 To ensure the Public Open Space CCTV system remains necessary, proportionate and effective.

## **11. STATUTORY POWER**

11.1 Officers within Public Protection enforce a large number of Acts of Parliament which are listed in part 3 of the constitution, Responsibility for Functions.

Author: Rob Hartshorn, Head of Public Protection – Ext. 5316  
Consultees: Cllr. Nigel George, Cabinet Member for Community and Leisure Services  
Dave Street, Corporate Director, Social Services  
Ceri Edwards, Environmental Health Manager  
Jacqui Morgan, Trading Standards & Licensing Manager  
Gail Williams, Interim Head of Legal Services and Monitoring Officer  
David A. Thomas, Senior Policy Officer (Equalities and Welsh Language)  
Mike Eedy, Finance Manager  
Shaun Watkins, HR Manager

Appendices:

Appendix 1 – Public Protection Enforcement Activity 2015-16

Appendix 2 – Consumer Advice Service Requests 2012-2016