



## HEALTH SOCIAL CARE & WELLBEING SCRUTINY COMMITTEE - 12TH SEPTEMBER 2017

**SUBJECT: PUBLIC PROTECTION ENFORCEMENT, UNDERAGE SALES ACTIVITY,  
& CONSUMER ADVICE – 2016/17**

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

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### 1. PURPOSE OF REPORT

1.1 The purpose of this report is:

- 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 during 2016/17.
- 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 and e cigarettes 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 2016/17.

### **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 2016-2020.
- 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 Newsline.
- 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 October 2016 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 2016/17 (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 156 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 463 warnings were given for out of hours access to Council depots, Amenity sites and schools, in some cases police response was required. 138 calls were received from the Storennet system to deal with suspected shoplifters. Police asked for assistance in monitoring 66 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. The Interim Head of Legal Services & Monitoring Officer is the Council's Senior Responsible Officer in relation to RIPA and updates in relation to the operations undertaken are provided to the Audit Committee on a quarterly basis.

4.7.3 Within Caerphilly Council applications are reviewed and authorised 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 Corporate Solicitor will undertake a gate keeper role, keeping records of all applications and vetting them to ensure they are correctly authorised. The latter 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 2016/17, Trading Standards obtained RIPA Authorisations as below:-

Directed Surveillance-	4
Covert Human Intelligence Sources-	0
Communications Data-	4

4.7.5 In relation to the Directed Surveillance Authorisations, all 4 related to under age test purchase operations for alcohol held throughout the year. 7 sales took place resulting in the issue of a Penalty Notices for Disorder to the sellers.

4.7.6 With regard to the Communications Data request, two related to investigations into the supply of misdescribed cars and one relating to the supply of misdescribed and incorrectly labelled food supplements. These three cases are yet to be heard by the Courts. The final application related to an investigation into an unlicensed dog breeder who had also misdescribed the puppies being sold. This person was successfully prosecuted.

## 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 2016/2017 the Trading Standards Service received:

- complaints about tobacco sales
- 6 complaints about “on” licence alcohol sales
- 10 complaints about “off” licence alcohol sales
- complaints about premises selling both tobacco and alcohol
- 1 complaint about E cigarettes (Nicotine Inhaling Devices, NIDs)
- complaints about alcohol sales from members clubs

There were no complaints in relation to other age restricted products such as fireworks, butane lighter fluid and lottery tickets

4.8.1 In the previous financial year the service has carried out test purchases for alcohol, tobacco, and 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. 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, Trading Standards test for products not previously covered by the law or intelligence gathering operations are carried out, the 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 planned.

YEAR	16/17		15/16	14/15
Product	Sales/ Attempts	% Sales	% Sales	% Sales
Alcohol On	6	83.3%	12.5%	37.5%
Alcohol Off	19	31.6%	12.5%	15%
Tobacco	7	0%	0%	10%
E-Cigarettes (NIDs)	3	0%	0%	N/A

There are legal restrictions on sending volunteers into test Private Members Clubs, who should not be allowing non-members access to the premises. These premises have been targeted in different ways, and pursued for other offences under the Licensing Act 2003.

4.8.2 The Children and Families Act 2014 created a new offence for the Proxy sale of tobacco products. 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.

4.8.3 The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 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 under age 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 £100 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 £20,000.

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.

Type of Enforcement Activity	E		Tobacco
	Alcohol	Cigarettes	
Failed test purchases	11	0	0
Prosecutions	0	0	0
£100 Fixed Penalty Notices for Disorder	7	n/a	
Reviews of Licence	0	n/a	

4 of the 11 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 2016/2017:

	<b>Product/Service</b>	<b>Number</b>	<b>% of Total</b>	<b>Value (£)</b>
1	Used Vehicles	256	16	898,249.50
2	Home maintenance and improvement	149	11	247,838.40
3	Furniture	53	4	62,001.99
4	Clothing and footwear	46	3	717.31
5	Large domestic appliances	38	3	6,123.98
6	Transport	34	3	589.00
7	Communications services	31	2	1,504.17
8	Computers, mobile devices + electronic devices	31	2	5,002.94
9	Glazing products and installation	29	2	49,408.50
10	Gardening products and service	24	2	15,660.99

The analysis is comparable with national data, with second-hand cars and home maintenance being the highest sources of complaints both nationally and locally.

- 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. The National Helpline, run by Citizens Advice, is currently undergoing massive changes in that the call centres were run by a third party business, whose contract has expired and Citizens Advice are now taking the operation “in-house”. The transition period, including the winding down of the previous contract has resulted in further decreases in complaints (in March at times it could take 15 minutes to get through to the call centres). It is believed that when the transition period is over, that numbers will increase again.
- 4.13 The total value of all goods and services dealt with by the Council’s advice service for the financial year was £1,491,629.95 and the total value of all goods and services where Caerphilly consumers sought advice either directly from the service or through CACS was £8,286,585.95. 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 97.5% 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 99% of users had an initial response within one working day.

## **5. WELL-BEING OF FUTURE GENERATIONS**

- 5.1 Public Protection activity is integrated across the Well-being Goals within the Well-being of Future Generations (Wales) Act 2015 described in 3.2 above. Having regard to the five ways of working set out in the sustainable development principle, as defined in the Act our proactive inspection and surveillance programmes are focussed on preventing harm to public health and safety. We enforce legislation to protect consumer and business interests to promote a safe and fair trading environment, but also advise and educate both business and the public; collaborating with them to promote compliance and improve standards over the long term.

## **6. EQUALITIES IMPLICATIONS**

- 6.1 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 2016-2020.
- 6.2 Equality Impact Assessments would be undertaken on specific action plans and projects related to Trading Standards work.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 Whenever prosecutions are taken in the Courts we do seek to recover the reasonable costs of investigation and prosecution.
- 7.2 The income that is generated by the imposition of fixed penalty notices or recovery of court costs is included in the revenue budget.

## **8. PERSONNEL IMPLICATIONS**

- 8.1 There are no personnel issues with regard to this report.

## **9. CONSULTATIONS**

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

## **10. RECOMMENDATIONS**

- 10.1 Members are requested to consider the review of Public Protection enforcement activity, including underage sales, and CCTV provision and to note the activity in relation to Consumer Advice.

## **11. REASONS FOR THE RECOMMENDATIONS**

- 11.1 To provide Members with an opportunity to note the annual review of enforcement activity in accordance with the Public Protection Enforcement Policy.
- 11.2 To apprise members of activities undertaken in this area aimed at preventing access to all age restricted products.
- 11.3 To ensure that the Authority complies with its legal obligation to annually review its approach in relation to tobacco and spray paints.
- 11.4 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.
- 11.5 To ensure the Public Open Space CCTV system remains necessary, proportionate and effective.

## **12. STATUTORY POWER**

- 12.1 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. 1329  
Consultees: Cllr Eluned Stenner, Cabinet Member for Regeneration and Environment  
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  
Anwen Rees, Senior Policy Officer (Equalities and Welsh Language)  
Mike Eedy, Finance Manager  
Shaun Watkins, HR Manager

Appendices:  
Appendix 1 – Public Protection Enforcement Activity 2016-17