



## ENVIRONMENT AND SUSTAINABILITY SCRUTINY COMMITTEE - 25TH JUNE 2019

**SUBJECT: PUBLIC PROTECTION ENFORCEMENT, UNDERAGE SALES ACTIVITY,  
& CONSUMER ADVICE ANNUAL REPORT 2018/19**

**REPORT BY: INTERIM CORPORATE DIRECTOR, COMMUNITIES**

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### 1. PURPOSE OF REPORT

1.1 To 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 2018/19.
- 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 2018/19.

### **3. RECOMMENDATIONS**

- 3.1 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.

### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 To provide Members with an opportunity to note the annual review of enforcement activity in accordance with the Public Protection Enforcement Policy.
- 4.2 To appraise members of activities undertaken in this area aimed at preventing access to all age restricted products.
- 4.3 To ensure that the Authority complies with its legal obligation to annually review its approach in relation to tobacco and spray paints.
- 4.4 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.
- 4.5 To ensure the Public Open Space CCTV system remains necessary, proportionate and effective.

### **5. THE REPORT**

- 5.1 Public Protection services have 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.
- 5.2 The Committee will also be aware that prosecution details are published on the Council website and in Newslines.
- 5.3 In order to ensure a fair and consistent approach to enforcement responsibilities the Council has adopted a Public Protection Enforcement Policy which requires an annual review of activity.
- 5.4 The information in Appendix 1 provides a broad picture of the range and number of formal enforcement actions initiated during 2018/19 (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.
- 5.5 The Public Open Space CCTV system comprises 150+ cameras covering 28 town and village centres. Cameras in Blackwood, Caerphilly and Bargoed town centres 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 to be necessary, proportionate and effective.
- 5.6 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 484 warnings were given for out of hours access to Council depots, Amenity sites and schools, in some cases police response was required. 76 calls were received from the Storennet system to deal with suspected shoplifters. Police asked for assistance in monitoring 81 threats of suicide.

## 5.7 Regulation of Investigatory Powers Act 2000 Authorisations

5.7.1 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)

5.7.2 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 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.

5.7.3 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.

5.7.4 Once applications are Authorised, Officers must then apply to the Magistrates Courts and obtain Judicial Approval to carry out the activity. During 2018/19, Trading Standards obtained RIPA Authorisations as below:-

Directed Surveillance-	2
Covert Human Intelligence Sources-	1
Communications Data-	0

5.7.5 The Directed Surveillance Authorisations consisted of one under age test purchase operation for alcohol and one for alcohol and e-cigarette liquid.

5.7.6 With regard to the Covert Human Intelligence Source Authorisation, this related to the Authorisation of an officer to undertake a covert operation to establish if a premise within the borough was selling New Psychoactive Substances, specifically Nitrous Oxide, which is increasingly being abused, especially by children and young adults.

## 5.8 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 2018/2019 the Trading Standards Service received:

- 6 complaints about tobacco sales
- 12 complaints about “on” licence alcohol sales
- 18 complaints about “off” licence alcohol sales
- 1 complaint about premises selling both tobacco and alcohol
- 1 complaint about alcohol sales from members clubs
- 1 complaint about butane lighter fuel sales
- 1 complaint about fireworks

There were no complaints in relation to other age restricted products such as, knives or e cigarettes

5.8.1 Test purchases operations are undertaken for alcohol, tobacco and knives. These products 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. 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. During 2018/19 retailers who sold knives were targeted in an exercise, to highlight the increase in knife crime along with off licenses in a specific area suffering from serious alcohol related anti-social behaviour.

YEAR	18/19	18/19	17/18	16/17
Product	Sales/ Attempts	% Sales	% Sales	% Sales
Alcohol On	3/4	75%	0%	83.3%
Alcohol Off	14/79	17.7%	0%	31.6%
Tobacco	0/2	0%	0%	0%
knives	0/10	0%	20%	-
E - Cigarettes	4/18	22.2%	-	-

## 5.9 Legislation and Penalties

5.9.1 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

5.9.2 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. In relation to other age restricted products, there is no provision for penalty notices and all sales are investigated, unless they were “fact finding” test purchases.

- 5.9.3 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.
- 5.9.4 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.
- 5.9.5 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>
Failed test purchases	17	4
Education/warnings/re test	13	3
Prosecutions	1	1
cautions	1	0
£100 Fixed Penalty Notices for Disorder	2	n/a

## 5.10 **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.

- 5.10.1 The table below gives the top 10 products/services and the monetary value involved that were complained about during 2018/2019:

	<b>Product/Service</b>	<b>Number</b>	<b>% of Total</b>	<b>Value (£)</b>
<b>1</b>	Used vehicles	295	20	1,115,685.00
<b>2</b>	Home maintenance and improvements	146	10	618,363.24
<b>3</b>	Motor vehicle repairs and servicing	78	5	52,121.12
<b>4</b>	Furniture	51	3	40,581.00
<b>5</b>	Clothing and footwear	48	3	1,807.49
<b>6</b>	Media devices, accessories and hardware	40	3	8,498.00
<b>7</b>	Tobacco and related products	39	3	175.00
<b>8</b>	Pets and veterinarian products	36	2	14,460.00
<b>9</b>	Core communications services	31	2	920.00
<b>10</b>	Other personal goods and services	28	2	959.00

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

- 5.10.2 The total value of all goods and services dealt with by the Council's advice service for the financial year was £2,919,977 and the total value of all goods and services where Caerphilly consumers sought advice either directly from the service or through Citizens Advice Consumer Service was £9,612,525. These figures exclude high value complaints regarding financial advice and prize draws.
- 5.10.3 A quarterly satisfaction survey is sent to all users of the service. This year's results show that 98.7% 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.

## **6. ASSUMPTIONS**

- 6.1 There are no assumptions associated with this report, as it is a factual statement of enforcement activity.

## **7. LINKS TO RELEVANT COUNCIL POLICIES**

- 7.1 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 Caerphilly Public Service Board's Wellbeing Plan, The Caerphilly We Want 2018 – 2023; and Objective 1 of the Council's Strategic Equality Plan 2016-2020.
- 7.2 The work also supports the following Corporate Well-being Objectives, identified within the Council's Corporate Plan 2018-23:
- WBO 5: Creating a county borough that supports a healthy lifestyle in accordance with the Sustainable Development Principle within the Well-being of Future Generations (Wales) Act 2015
  - WBO 6: Support citizens to remain independent and improve their well-being.

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

- 8.1 The Wellbeing of Future Generation (Wales) Act 2015 is about improving the social, economic, environmental and cultural wellbeing of Wales. It requires public bodies to think more about the long-term, working with people and communities, looking to prevent problems and take a more joined up approach. This will create a Wales that we all want to live in, now and in the future. Public Protection enforcement activity contributes to the following Well-being Goals within the Act:
- 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
- 8.2 The Well-being of Future Generations (Wales) Act 2015 sets out the sustainable development principle against which all public bodies in Wales should assess their decision-making. The aim of the legislation is to ensure the well-being of future generations through maximising the contribution public bodies make towards the well-being goals. In using the sustainable development principle it is incumbent that the authority considers the whole of the population it serves and considers the effect of its actions on future generations. The principle, also known as the five ways of working is assessed as below:

LONG TERM – we aim to sustain our enforcement programmes over the long term and whilst we will always prioritise high risk issues we will endeavour to address low, medium, and unrated risks to ensure that issues do not worsen over time.

INVOLVEMENT-.we rely on information and intelligence to inform both our programmed and reactive activities. We seek feedback from those that we regulate and work to promote compliance through information and awareness raising. We undertook consultation on the Public Protection Enforcement Policy.

PREVENTION -.Public Protection enforcement activity promotes compliance with legislation and promotes and protects public health and safety, thereby preventing harm from occurring. There is an emphasis on prevention as processes ensure that a number of checks and safeguards are in place before an activity is permitted or licenced.

COLLABORATION – Public Protection services collaborate extensively with partner agencies including Gwent Police, Natural Resources Wales, the Food Standards Agency, and the Health and Safety Executive.

INTEGRATION – Public Protection enforcement activity makes a contribution to a number of the Well-being Goals within the Well-being of Future Generation (Wales) Act 2015.

## **9. EQUALITIES IMPLICATIONS**

- 9.1 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.
- 9.2 Equality Impact Assessments may be undertaken on specific action plans and projects.

## **10. FINANCIAL IMPLICATIONS**

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

## **11. PERSONNEL IMPLICATIONS**

- 11.1 There are no personnel implications associated with this report.

## **12. CONSULTATIONS**

- 12.1 The consultees listed below have been consulted on this report and their views have been incorporated accordingly.

## **13. STATUTORY POWER**

- 13.1 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, Community & Leisure Services  
Consultees: Councillor Eluned Stenner, Cabinet Member for Environment & Public Protection  
Councillor D. T Davies, Chair of Environment & Sustainability Scrutiny Committee  
Councillor A. Hussey, Vice Chair of Environment & Sustainability Scrutiny Committee  
Mark S. Williams, Interim Corporate Director, Communities  
Jacqui Morgan, Trading Standards & Licensing Manager  
Ceri Edwards, Environmental Health Manager  
Rob Tranter, Head of Legal Services and Monitoring Officer  
Anwen Cullinane, Senior Policy Officer (Equalities & Welsh Language)  
Mike Eedy, Finance Manager  
Shaun Watkins, Human Resources Manager

Background Papers:  
Public Protection Enforcement Policy

Appendices:  
Appendix 1 Public Protection Enforcement Activity 2016-19



Appendix 1 – Public Protection Enforcement Activity 2016-19

Type of Enforcement Activity	16/17	17/18	18/19
<b>Trading Standards and Licensing Legislation</b>			
Significant breaches identified during inspection	133(83%) rectified	114(76%) rectified	223 (93%) rectified
Simple Cautions	25	16	15
Prosecutions	21	15	10 (plus 10 waiting for trial)
Fixed Penalty Notices under Section 146 of the Licensing Act, i.e. underage sales of alcohol (in conjunction with Gwent Police)	7	0	2
Fixed Penalty Notices under Section 6 of the Health Act 2006	2	2	2
<b>Environmental Health Food Safety Legislation</b>			
Written Warnings/Advice	933	952	884
Revisits	271	295	290
Improvement Notices	69	59	46
Remedial Action Notices	2	5	2
Prosecutions	0	0	4
Voluntary Closure	5	4	4
Hygiene Emergency Prohibition	0	0	1
Seizure/Surrender	0	0	1
Simple Cautions	2	0	0
Food Hygiene Rating Scheme Fixed Penalty Notices	1	10	20
<b>Environmental Health - Health and Safety Legislation</b>			
Written Warnings/Advice	190	125	108
Revisits	28	18	23
Improvement Notices	6	17	18
Prohibition Notices	3	2	7
Simple Cautions	0	0	0
Prosecutions	2	0	0

Type of Enforcement Activity	16/17	17/18	18/19
<b>Environmental and Nuisance Legislation</b>			
Warnings for dog fouling	2	7	6
Warnings for litter	51	100	80
Fixed Penalties for Dog Fouling	45	23	55
Fixed Penalties for Litter	172	153	111
Prosecutions for Littering	9	6	8
Prosecutions for Dog Fouling	3	3	4
EPA 1990 – Noise Abatement Notices	5	6	10
EPA 1990 – Statutory Nuisance Notices	10	11	30
Confiscation of noise making equipment	0	0	0
Prosecutions for Statutory Nuisance (Noise)	0	2	0
Stray Dogs Impounded	241	187	157
Prosecutions for Fly tipping	3	13	9
Cautions for Fly Tipping	1	3	1
<b>Community Safety</b>			
Total no. of incidents monitored/dealt with by CCBC CCTV service	4180 including requests detailed below	4608 including requests detailed below	3087 Including requests detailed below
Evidence recorded and provided to Gwent Police	573 DVDs burnt for evidential purposes	744 DVDs burnt for evidential purposes	673 DVDs burnt for evidential purposes
Requests for monitoring from Gwent Police	1301	1137	765