

EXECUTIVE BUSINESS MEETING: 30 APRIL 2009

CONSUMER PROTECTION DELEGATIONS (SCAMBUSTERS)

REPORT OF CORPORATE DIRECTOR (ENVIRONMENT)

AGENDA ITEM: 4

PORTFOLIO: COMMUNITIES, HOUSING & SOCIAL JUSTICE

Reason for this Report

1. To request that authority be delegated to the Chief Strategic Planning and Environment Officer and Operational Manager (Consumer Protection), in consultation with the City and County Solicitor, to enter into an agreement with Newport City Council pursuant to Section 19 of the Local Government Act 2000, Regulations 7 and 10 of the Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002, and Section 101 of the Local Government Act 1972, to authorise Newport City Council and Officers of the Wales Scambusters Unit, to investigate illegal trading activities in the County Council area in relation to the legislation appended to the associated protocol; and, if instructed by the Operational Manager (Consumer Protection), to institute proceedings.
2. This agreement will allow officers of the regional Scambusters team to carry out investigations on behalf of the Council, or support Council investigations, where deemed appropriate, and enhance the Council's ability to tackle large scale consumer scams.

Background

3. As the scale of consumer frauds increases, officers from Cardiff Trading Standards have been involved in investigations that reveal breaches of consumer protection law, not only in Cardiff, but also in other parts of Great Britain. These cross border investigations are resource intensive and often undermine other service activities.
4. The Wales Heads of Trading Standards (WHOTS) have been successful in a bid to the department for Business, Enterprise and regulatory Reform (BERR) for a grant of £760,935 to establish a regional Trading Standards Scambusters team. The funding covers a 3 year period with no further funding commitment yet being made at the end of the 3 year period. BERR has made the money available following successful pilots in other parts of the UK. The Team will be set up to deal with rogue

traders that engage in doorstep crime across Welsh Local Authority boundaries and other cross border scams.

Issues

5. The Scambusters project will be managed by Newport City Council and have officers based in Newport and in Conwy. WHOTS have set up a governance board to monitor the operation of the team and will provide periodic performance reports to local authorities.
6. Newport City Council needs the agreement of Local Authorities in Wales to allow the Scambusters team to operate legally throughout Wales. The officers require delegated authority to enforce legislation relating to the activities of rogue traders and perpetrators of scams (Appendix A).
7. Nothing in the agreement excludes the continuation of the exercise of enforcement powers by the Council.
8. The appropriate legal mechanism to support the Scambusters project is to arrange for the discharge of function(s) by another local authority. This reflects the arrangements put in place for Cardiff Council to operate the Wales Illegal Money Lending Unit.
9. A detailed operational protocol (Appendix B) outlines the proposed agreement between Newport and the Council and covers the conduct of investigations and associated working practices when operating in Cardiff.

Reasons for Recommendations

10. The Wales Scambusters Team has a principal objective to reduce the impact of rogue trading in Wales by decreasing consumer detriment and ensuring that the effects of such activities, in terms of health and well being, are diminished, particularly in relation to those members of society who are most vulnerable and at risk. Such activity will assist in the maintenance of a Welsh economy where the rogues and criminals do not undermine good, compliant businesses.
11. The Team will investigate certain types of trading standards offences that have a regional effect on the economy such as rogue home improvement traders. Such traders travel from one urban conurbation to the next, seeking out their next victim; making enforcement by local trading standards teams very difficult and impractical. This is an extra resource that can support the activities of our Trading Standards Service subject to the requirement that the activity under investigation goes across local authority boundaries and Scambusters having the capacity to take on an investigation.

Legal Implications

12. Such an agreement is permitted under Sections 101 of the Local Government Act 1972 and 19 of the Local Government Act 2000, and

Regulations made thereunder, whereby a local authority or its Executive may arrange for the discharge of any of their functions by any other local authority.

Financial Implications

13. The funding for the Scambusters project is via a specific grant from the Department for Business, Enterprise and Regulatory Reform (BERR). An amount of £760,000 has been confirmed for the 3-year period 2008/9 to 2010-11.
14. It is not anticipated that the recommendations will result in any additional costs being borne by the Council.

RECOMMENDATION

The Executive is recommended to agree that the following addition to the Scheme of Delegations be approved:-

That authority be delegated to the Chief Strategic Planning and Environment Officer and Operational Manager (Consumer Protection), in consultation with the City and County Solicitor, to enter into an agreement with Newport City Council pursuant to Section 19 of the Local Government Act 2000, Regulations 7 and 10 of the Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002, and Section 101 of the Local Government Act 1972, to authorise Newport City Council and Officers of the Wales Scambusters Unit, to investigate illegal trading activities in the County Council area in relation to the legislation appended to the associated protocol; and, if instructed by the Operational Manager (Consumer Protection), to institute proceedings.

STEVEN PHILLIPS

Corporate Director
24 April 2009

The following appendices are attached:

Appendix A – Legislation to be discharged
Appendix B – Operating protocol

Legislation to be the subject of a discharge of functions to Newport City Council for the purposes of the Scambusters project

Consumer Protection

AUTHORISED UNDER THE FOLLOWING LEGISLATION	RESTRICTIONS
<p>To take necessary steps for the enforcement of the consumer protection and trading standards matters listed below, and any modification or re-enactment to the foregoing, relevant to the Council's statutory functions, or powers, and any future orders or regulations assigned to the Council of a consumer protection nature including the serving of any notices* required in the following enactments:-</p> <ul style="list-style-type: none"> ▪ Agricultural (Miscellaneous Provision) Act 1968 ▪ Agriculture Act 1970 ▪ Animal Health Act 1981 ▪ Animal Welfare Act 2006 ▪ Clean Air Act 1993 ▪ Clean Neighbourhoods and Environment Act 2005 ▪ Consumer Credit Act 1974 & 2006 ▪ Consumer Protection Act 1987 ▪ Copyright Designs and Patents Act 1988 ▪ Energy Conservation Act 1981 ▪ Enterprise Act 2002 ▪ Estate Agents Act 1979 ▪ Explosives Act 1875 ▪ Fair Trading Act 1973 ▪ Food Safety Act 1990 ▪ Hallmarking Act 1973 ▪ Health and Safety at Work etc. Act 1974 ▪ Housing Act 2004 ▪ Local Government (Miscellaneous Provisions) Acts 1976 & 1982 ▪ Medicines Act 1968 ▪ Mock Auctions Act 1961 ▪ Poisons Act 1972 ▪ Prices Act 1974 & 1975 ▪ Property Misdescriptions Act 1991 ▪ Public Health Act 1961 (Section 73) ▪ Road Traffic (Foreign Vehicles) Act 1972 ▪ Road Traffic Act 1988 ▪ Solicitors Act 1974 ▪ Timeshare Act 1992 ▪ Tobacco Advertising and Promotion Act 2002 ▪ Trade Descriptions Act 1968 ▪ Trade Marks Act 1994 ▪ Vehicle Crime Act 2001 ▪ Video Recordings Act 1984 <ul style="list-style-type: none"> ○ Advanced Television Services Regulations 2003 ○ Animals and Animal Products (Import & Export)(Wales) Regulations 2006 ○ Animal By-Products Regulations 2003 ○ Biofuel (Labelling) Regulations 2004 ○ Boiler (Efficiency) Regulations 1993 ○ BSE Monitoring (Wales) Regulations 2001 ○ Business Protection from Misleading Marketing Regulations 2008 ○ Cattle Identification (Wales) Regulations 2007 ○ Common Agricultural Policy (Wine) Regulations 1996 	<p>* The service of notices does not extend to the following notices which may only be issued with the consent of the Chief Strategic Planning and Environment Officer or the Operational Manager, Consumer Protection: -</p> <p>Improvement Notices under the Health and Safety at Work Act, 1974</p> <p>Prohibition Notices under the Health and Safety at Work Act, 1974</p> <p>Suspension Notices under Section 14 of the Consumer Protection Act, 1987</p>

AUTHORISED UNDER THE FOLLOWING LEGISLATION	RESTRICTIONS
<ul style="list-style-type: none"> ○ Construction Products Regulations 1991 ○ Consumer Protection (Cancellation of Contracts Concluded away from Business Premises)(Amendment) Regulations 1998 ○ Consumer Protection from Unfair Trading Regulations 2008 ○ Detergents Regulations 2005 ○ Eggs (Marketing Standards) Regulations 1995 ○ Electromagnetic Compatibility Regulations 2006 ○ Energy Efficiency (Ballasts for Fluorescent Lighting) Regulations 2001 ○ Energy Information (Household Air Conditioners) (No.2) Regulations 2005 ○ Energy Information (Household Electric Ovens) Regulations 2003 ○ Energy Information (Household Refrigerators and Freezers) Regulations 2004 ○ Energy Information (Lamps) Regulations 1999 ○ Energy Information (Tumble Driers) Regulations 1996 ○ Energy Information (Washing Machines) Regulations 1996 ○ Energy Performance of Buildings (Certificates & Inspections)(England & Wales) Regulations 07 ○ Export and Movement Restrictions (Foot and Mouth Disease) (Wales) Regulations 2007 ○ Financial Services (Distance Marketing) Regulations 2004 ○ Food Hygiene (Wales) Regulations 2006 ○ Foot and Mouth Disease (Control of Vaccination)(Wales) Regulations 2006 ○ General Product Safety Regulations 2005 ○ Money Laundering Regulations 2007 ○ Non-automatic Weighing Instruments Regulations 2000 ○ Olive Oil (Marketing Standards) Regulations 2003 ○ Organic Products Regulations 2004 ○ Package Travel, Package Holidays and Package Tours Regulations 1992 ○ Packaging Essential Requirements Regulations 2003 ○ Passenger Car (Fuel Consumption and Co2 Emissions Information) Regulations 2001 ○ Recreational Craft Regulations 2004 ○ Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 	

Protocol for Regional Scam Busters Investigations

Interpretation

For the purposes of this Protocol –

- **“SBT”** means the All Wales Scam Busters Team
- **“Cardiff Trading Standards”** means the Trading Standards Section of the County Council of the City and County of Cardiff.
- **“Tasking Request Form”** means the document used by Cardiff Trading Standards and other local authorities or agencies to request the referral of a case to the SBT
- **“Investigation Method Statement”** means the agreement made between Cardiff Trading Standards, other local authorities or agencies and the SBT to formally assign a case to the SBT
- **“Formal Action Agreement”** means the document used by the SBT, Cardiff Trading Standards and other local authorities or agencies to agree the process of legal proceedings
- **“Commencement Date”** means the date from which the Delegated Power is granted
- **“Term”** means from the date of signing of this protocol to 31 March 2011

1. Application

1.1 This Protocol applies to the DBERR/HM Treasury funded ‘Scam Busters Project’ and covers:

- The conduct of investigations and associated working practices for SBT Officers when conducting investigations or operating in Cardiff.
- The mechanisms whereby Cardiff Trading Standards is updated on the progress of the project and any significant issue relating thereto.
- The exchange of intelligence and information between the SBT and Cardiff Trading Standards
- The institution and conduct of legal proceedings.

2. Agreement

- 2.1 Each officer within the SBT will be authorised by Cardiff Trading Standards. The protocol encourages the exchange of information and a working partnership approach between Cardiff Trading Standards and the SBT particularly in relation to cross-border enforcement of trading standards legislation. It is recognised that this protocol provides to Cardiff Trading Standards an additional resource at its disposal to tackle trading standards criminality operating in its area.
- 2.2 The purpose of this Protocol is to facilitate the delegation of powers to Officers employed by Newport City Council and Conwy County Borough Council within the SBT to enforce the provisions of legislation covering 'rogue trader' activities within the area of Cardiff particularly in relation to cross-border enforcement of trading standards legislation listed in Annex A. However for the avoidance of doubt nothing in this Protocol or delegation shall exclude the continuation of the exercise of these enforcement powers by Cardiff Trading Standards.
- 2.3 This Protocol will come into force on the Commencement Date and terminates at the end of the Term or earlier termination in accordance with Clause 2.3
- 2.4 Notwithstanding the terms and conditions of this Protocol, this Protocol does not prejudice the right of Cardiff Trading Standards to withdraw the authorisation of officers at any time during the Term. However Cardiff Trading Standards undertakes not to withdraw the authorisation of officers unless it considers there is good reason to do so and to consult with the Trading Standards Manager of Newport City Council prior to such withdrawal. The authorisation of officers is not to be unreasonably withdrawn by Cardiff Trading Standards.

3. The SBT

- 3.1 The Delegated Power is deemed to provide such authority in so far as identified offences and investigations fall within the boundaries of Cardiff.
- 3.2 The SBT comprises staff directly employed by Newport City Council and Conwy County Borough Council. The SBT Investigations Team Leader will be responsible for the day-to-day operation and supervision of the SBT, its investigations and the conduct of its officers.
- 3.3 The SBT Investigations Team Leader will report directly to the Trading Standards Manager of Newport City Council within Newport City Council who adopts the role of Project Manager.
- 3.4 The SBT will provide a monthly report to the manager of the Trading Standards Section of Cardiff Trading Standards giving details of investigations and developments concerning or affecting the Scam Busters Project in Cardiff. The Trading Standards Manager of Newport City Council is required to submit to BERR on a quarterly basis a national performance report. This report will be distributed to the Wales Heads of Trading Standards.

4 Working Arrangements in the Cardiff Council Area

- 4.1 Cardiff Trading Standards will designate and appoint a Lead Contact Officer (LCO) to act as the principal point of contact for Cardiff Trading Standards.
- 4.2 The SBT Investigations Team Leader will provide a fortnightly briefing to the Cardiff LCO on any intelligence gathered relating to investigations affecting Cardiff and/or its residents. This includes progress of investigations and enquiries being carried out in Cardiff and any changes made or introduced by the Department for BERR concerning the 'Scam Busters Project'.

- 4.3 The SBT will have regular contact with the local Police Service and other enforcement and government agencies. The SBT Investigations Team Leader will consult the Cardiff LCO to identify any local arrangements, investigations and protocols before any investigation is commenced in pursuance of cross-border enforcement of trading standards legislation. The SBT Investigations Team Leader will actively involve the Cardiff LCO and seek to develop close links between those agencies and Cardiff Trading Standards.
- 4.4 All decisions concerning the pursuance of *relevant Scam Busters* investigations shall be taken by Newport City Council and where appropriate there will be consultation with the Cardiff LCO to ensure the views of Cardiff Trading Standards are taken into consideration.
- 4.5 With regards to the institution of criminal and civil proceedings the SBT and the employing authority will not take the lead role. Prior to each investigation an Investigation Method Statement will be made suggesting the method of selecting the 'prosecuting authority'; such a criterion might be the authority in which most consumer/business detriment has occurred or the residing local authority of the offender.
- 4.6 The Investigation Method Statement will include a direction regarding any relevant Financial Investigation and an indication as to the identity of the Financial Investigator.
- 4.7 When the SBT is dealing with local agencies, local government bodies, other Police forces or similar organisations regarding investigations in Cardiff there will be prior notification to the Cardiff LCO.
- 4.8 All publicity will be carried out with the agreement of the SBT and the partner authorities. The general principle will be; for outward facing publicity (local and regional press releases etc), the local authority will take the prominent role, and inward publicity (central and regional government) the SBT will take the prominent role.

- 4.9 Where the SBT Investigations Team Leader and an Operational Manager of the Trading Standards Section of Cardiff Trading Standards agree that a local officer of Cardiff Trading Standards will be actively involved in an investigation, that officer will be directed to provide the SBT Investigations Team Leader with full assistance. Such agreement will be subject to the SBT Investigations Team Leader being satisfied that such involvement will not compromise any investigation or endanger any member of the SBT, supporting staff or witnesses, that the Cardiff Trading Standards officer has the appropriate training and experience to undertake the task; and upon any other terms that the SBT Investigations Team Leader and an Operational Manager of the Trading Standards Section of Cardiff Trading Standards consider necessary and/or appropriate.
- 4.10 Unless there is prior agreement with the SBT Investigations Team Leader for assistance in an investigation, which is accompanied by an official purchase order from Newport City Council or Conwy County Borough Council, no reimbursement will be made for time spent on activities supporting the 'Scam Busters Project' or expenditure incurred by any Cardiff Trading Standards Officer.
- 4.11 The exercise by Newport City Council or Conwy County Borough Council of these arrangements shall be at no cost to Cardiff Trading Standards and furthermore Newport City Council and Conwy County Borough Council undertake to indemnify Cardiff Trading Standards against any claim made against Cardiff Trading Standards arising out of the exercise by Newport City Council or Conwy County Borough Council of powers granted to them under these arrangements.

5. Referral of Information/Intelligence to the Project Team

- 5.1 The SBT will rely on local trading standards services and other partner agencies to provide information and intelligence relating to cross-border

enforcement of trading standards legislation in line with current WHOTS Intelligence Requirements.

- 5.2 Where the SBT are carrying out an investigation Cardiff Trading Standards undertakes to provide the SBT with all relevant information and intelligence upon request.
- 5.3 Information and intelligence will be provided by the Cardiff LCO to the SBT Investigations Team Leader or a person designated by him/her.
- 5.4 The preferred method of case allocation to the SBT will be via the monthly/six weekly meetings of the Tactical Tasking and Coordinating Group (TTCG). Each job to be considered by the SBT will be presented to the group via a Tasking Request Form. It is envisaged that larger scale and complex jobs will be allocated in this way. However it is recognised that situations often develop quickly. If there is a need for the SBT to take on a job prior to the meeting of the TTCG; then the SBT Investigations Team Leader and an Operational Manager of the Trading Standards Section of Cardiff Trading Standards will complete the agreement independently of any TTCG meeting and the agreement will then be reviewed and ratified at the subsequent meeting.
- 5.5 It is recognised that there will be a number of organisations wishing to task the SBT; tasking will be considered from local authorities, police forces, from within the SBT itself following the analysis of intelligence and from third parties such as IP Crime Groups.
- 5.6 SBT and Cardiff Trading Standards agree to process personal data only in accordance with the requirements of the Data Protection Act 1998 and to disclose information in accordance with the requirements of the Enterprise Act 2002 and Freedom of Information Act 2000.

6 Conduct and Control of Investigations

- 6.1 Where a job is accepted by the TTCG an Investigation Method Statement will be produced and agreed by the SBT Investigations Team Leader and an Operational Manager of the Trading Standards Section of Cardiff Trading Standards. The purpose of the Investigation Method Statement is to allow parameters to be set on a case-by-case basis.
- 6.2 The conduct and control of all investigations undertaken by the SBT in Cardiff will be the responsibility of Newport City Council.
- 6.3 Newport City Council will be responsible for all aspects of the investigations and responsibilities under the Criminal Procedure and Investigations Act 1996, the Police and Criminal Evidence Act 1984, the Regulation of Investigatory Powers Act 2000, the Data Protection Act 1998, the Freedom of Information Act 2000 and the Enterprise Act 2002.
- 6.4 Newport City Council will be solely responsible for the Health and Safety of SBT Officers employed by Newport City Council, whilst Conwy County Borough Council will be solely responsible for the Health and Safety of SBT Officers employed by Conwy County Borough Council.
- 6.5 When the SBT begins an investigation all authorities where offences exist, will be briefed and kept up to date with fortnightly progress reports.
- 6.6 Where the SBT believes the investigation should lead to formal civil or criminal action, a Formal Action Agreement will be produced between all relevant authorities outlining which authority will take the lead role for the formal legal proceedings. Officers from the SBT will then make arrangements to produce the 'case file' in a manner that most suits the authority taking this lead role.
- 6.7 The Formal Action Agreement will clarify any arrangements required in relation to the conclusion of any relevant Financial Investigations and subsequent Proceeds of Crime Act 2002 proceedings.

7. Responsibilities and Actions of the Authorities

7.1 Newport City Council and Conwy County Borough Council shall be liable for the actions and competence of the persons they employ within the SBT and shall ensure that the officers of the SBT comply with all legislative requirements and take all reasonable steps to ensure any actions taken are lawful and within the spirit of the protocol.

7.2 Cardiff Trading Standards shall be liable for the actions and competence of persons within its employ and shall take all reasonable steps to ensure the competence of those persons in carrying out their functions and that they comply with legislative requirements and the spirit of this protocol.

7.3 Information/intelligence provided between the SBT and Cardiff Trading Standards shall be used for the purpose intended and shall not be divulged to third parties unless to do so would be lawful and in pursuant of an investigation/enquiry subject to this protocol.

8. The Agreement

It is hereby agreed between Newport City Council and Cardiff Council that both parties shall adhere to the above protocol.

Signed: _____

Name
Position
Authority

Date: _____

Signed: _____

Name

Position
Authority

Date: _____

Commencement Date: _____