

Title of meeting: Cabinet Member for Environment and Community Safety Decision Meeting.

Date of meeting: 13th July 2017

Subject: Trading Standards Service Delivery Plan 2017 / 2018

Report by: Director of Culture and City Development

Wards affected: All

Key decision: No

Full Council decision: No

1 Purpose of report

- 1.1 The purpose of this report is to inform the Cabinet member as to how Regulatory Services will deliver its Trading Standards functions in 2017 / 2018.
- 1.2 A recent review of the Trading Standards, Environmental Health and Public Protection teams has resulted in an amalgamation of these services into a single Regulatory Services. The driver for this change was the need to deliver agreed savings and provide a foundation for a more flexible and resilient team in the mid to long term.
- 1.3 The loss of key experienced personnel necessitated a review of service functions and the need to devise a consolidated Trading Standards service delivery plan which is both realistic and best serves the residents and businesses of Portsmouth.
- 1.4 Trading Standards has had to make some difficult choices as to the allocation of its limited resources. A number of existing activities will not be pursued or downscaled in 2016 / 2017.

2 Recommendation

- 2.1 That the Cabinet Member for Environment & Community Safety:**
- a. approves the manner in which Regulatory Services proposes to deliver its Trading Standards functions in 2017 / 2018 as set out within this document**
 - b. endorses the comments made in respect to levels of available resource**

c. **acknowledges the range of duties and responsibilities delivered by the service as identified in Appendix 1.**

3 Reasons for recommendations

3.1 Due to the aforementioned restructure, reductions in net full time employees (FTEs) and ongoing budgetary pressures, it is essential to take an appropriate period of time to redesign service delivery priorities.

3.2 The staff resource (£) and funding assigned to Trading Standards in 2017 / 2018 are shown in **Table 1** below:

Table 1

	2016 / 2017	2017 / 2018	% change
	£	£	
Employees	345,100	288,700	-16%
Net Expenditure	261,360	191,800	-27%

3.3 Trading Standards enforces over 50 acts and statutes and has the power to enforce up to 250 articles of legislation, all of which are designed to protect our residents, increase consumer confidence, enhance and safeguard a fair local economy. Although reduced during 2017 / 2018, our enforcement activities will continue to be delivered and statutory obligations will be met.

3.4 Recruitment of a new full time experienced Trading Standards Officer will take place to offset some of the recent reductions in resource and to support the existing newly qualified staff during their continued development.

4 2017 / 2018 service delivery plan objectives

4.1 The purpose of the plan is to:

1. Identify the key service functions, activities, priorities and challenges
2. Map the service against regional & national Trading Standards priorities
3. Identify risk and devise a platform for change

5 Objective 1 - Identify the key service functions, activities, priorities and challenges

5.1 A clear message from the wider service review was that there is a need for a realistic approach to service delivery. With the current level of resource available Trading Standards will find it difficult to sustain the same level of protection, across the same number of areas, as was previously the case. That being the case, there is a need for transparency in respect to service delivery in 2017 / 2018.

5.2 Member approval of a new more realistic approach to Trading Standards during 2017 / 2018 is vital.

5.3 Although many of the functions cut across each other, broadly speaking the key service delivery areas and the abilities of the service to deliver these can be categorised as follows:

- i) Fair trading. This is an extremely diverse area, encapsulating both civil and criminal consumer law, and one where we receive the most consumer complaints and are most proactive.

In previous years funding from portfolio reserves for projects relating to issues such as 'dodgy' builders and letting agents has enabled us to successfully target offenders. In 2017 / 2018 no additional funding is available so as a result such work will cease to be targeted but will remain a priority.

The risk to service is that the volume of complaints received in respect to fair trading issues, and public and partner expectations, will outstrip available resources in this area.

- ii) Rogue Traders. Rogue traders frequently do not only target the vulnerable population they impact upon consumers who are ripped off by misleading or aggressive practices.

Our intelligence sources have identified that the majority of complaints received from Portsmouth residents are not because they have been ripped off by what you would call a 'cowboy' builder perhaps taking money but not carrying out the work but rather 'legitimate' limited companies who are carrying out poor workmanship, failing to exercise professional diligence and using misleading and aggressive practices. There are the Rogue's who are also simply 'fraudsters' who hide behind the building profession for example simply to commit fraud and elicit monies from consumers.

Resources will be focused on tackling such practices where there are identified.

- iii) Doorstep crime / rogue traders. Arguably linked to fair trading above, the service currently operates a 'rapid response' to calls for immediate help. The need to protect, particularly the vulnerable, from organised rogue trader activity has historically been a key function.

In 2017 / 2018 this is at risk of being inoperable. Where possible resources will continue to be assigned to this area, however there remains a significant possibility that ongoing services will not be as thorough or effective as those previously provided.

- iv) Scams. This is an area whereby vulnerable people, elderly, socially excluded etc. can be and are repeat victims of scams. Trading Standards offer reassurance visits and register consumers to "opt out schemes" such as Mail and Telephone Preference Services. This area of work will be resourced in 2017 / 2018.

Trading Standards will seek to engage with Adult Social Care, particularly the Safe Guarding of Vulnerable Adults Board, in order to explore how working together may improve the identification and protection of vulnerable adults in Portsmouth.

- v) Product Safety. All consumer goods must be safe - Trading Standards have a statutory duty to enforce a wide range of product safety legislation such as the Consumer Protection Act and the General Product Safety Regulations.

Our response to consumer complaints is particularly important where there is a potential or actual injury. Product testing abilities will be required (at considerable cost) and media interest in dangerous products is almost certain.

- vi) Intellectual property crime. Counterfeit and pirated products impact every corner of society, with new industries and products targeted. It is something which everyone, intentionally or not, comes in contact with more regularly than they might like to believe.

The impact of those occurrences can cause physical harm, as well as harm to the local and national economy. As such this area is linked to Product Safety as counterfeit goods in certain sectors such as electrical, medical and cosmetics are fraught with safety issues.

Tackling such crime is extremely resource intensive and therefore it is likely that only where serious or widespread incidents are reported will such offences be pursued.

- vii) Financial investigations and proceeds of crime. Although not a statutory duty, financial investigations have added enormous value to the investigative work undertaken by Trading Standards. These capabilities are recognised as an essential resource in nearly all investigations to enhance evidence and enable financial confiscation to take place.

Trading Standards is entitled to 37.5% of all paid confiscation orders and 50% of all cash forfeitures obtained. Local Authority financial investigations are applauded by the Home Office for adding significant value to the wider asset recovery agenda. Since 2010 our financial investigations have obtained a number of confiscation orders totalling over £1 million and resulting in significant income for the service. In 2014 / 2015 this income totalled circa £50k.

The development of our abilities to undertake financial investigations is therefore of some considerable importance. This was recognised within the review of Regulatory Services with the Lead Trading Standards officer tasked with devoting at least 50% of his time to this role. A supporting financial investigating was also appointed from existing staff during the review. Although the support role will take time to develop our financial investigation roles will equate to 1.0 FTE in 2017 / 2018.

- viii) Age Restricted Sales. Our statutory duties to enforce legislation extending to tobacco, alcohol, fireworks, DVD's, aerosols, knives, lottery tickets and intoxicating substances are well documented.

In 2016 / 2017 Trading Standards will benefit again from a full time seconded officer, funded by Public Health, to deliver this function in respect of alcohol and tobacco. This funding has been maintained for 2017 / 2018.

- ix) Petroleum and explosive safety. Statutory duties to licence the storage of petroleum, explosives and fireworks remain. Petroleum knowledge is a specialist skill and therefore in 2017 / 2018 we intend to continue to deliver these responsibilities through our service level agreement with Hampshire County Council (also linked with metrology below) at a cost of £5,500 per annum.

Current service resource does not extend to an officer with the relevant qualifications and experiences to administer petroleum licensing. We will continue to deliver our responsibilities in house, in terms of licencing and inspection of fireworks and explosives storage.

- x) New Psychoactive Substances. The Psychoactive Substances Act 2016 makes the possession and supply of such substances illegal. A cabinet paper was approved in March 2016 delegating power to Trading Standards to enforce the legislation where a business or retail premises was concerned with an offence.

A provisional assessment of risk suggests that, as a result of low demand, existing resource will adequately deliver this function in 2017 / 2018.

- xi) Metrology (Weights and Measures). We have a statutory duty to approve and test weighing equipment and check goods are not short measured. Trading Standards currently provides a response through a service level agreement with Hampshire County Council.

A statutory qualification is required to enforce this legislation; currently we have a single officer with the necessary authorisation and therefore our abilities to deliver our statutory responsibilities cannot be considered comprehensive.

- xii) Environmental. Trading Standards has a statutory duty to enforce legislation regarding the following:

- display and testing of energy performance of buildings including air conditioning
- display and testing of energy performance of domestic appliances
- display and testing of electromagnetic compatibility performance of appliances
- enforcement of restrictions placed upon excessive product packaging
- enforcement of the sale and maintenance of vehicles

A provisional assessment of risk suggests that, as a result of low demand, existing resources will adequately deliver this function in 2017 / 2018.

- xiii) Enforcement and Human Rights Act implications. Trading Standards is principally concerned with preventing or reducing crime and disorder. Enforcement activities are determined via an intelligence-led approach and enforcement action is undertaken in accordance with PCC's Enforcement Policy. Enforcement activities occasionally necessitate the use of covert surveillance or access to communications data, as regulated by the Regulation of Investigatory Powers Act 2000 (RIPA). Trading Standards comply with the Act and the PCC's RIPA policy when considering the necessity and proportionality of such activities.
- xiv) Review of primary authority relationships (PAPs). Trading Standards currently has relationships with 10 businesses which are based in Portsmouth. A PAP is a contractual relationship whereby the business pays for regulatory advice and in return deals with only one Local Authority regardless of where they trade in the country. Currently the service generates approximately £70,000 of annual income (based upon officer time) through the administration of PAPs.
- xiv) The full time employment of 2.0 FTE is necessary to deliver these partnerships. This is a significant use of existing staffing resource and necessarily deflects these resources from the statutory obligations of the service. As such, as part of a wider review of Trading Standards services in 2017 / 2018 a comprehensive report in relation to PAPs will be brought before Members for approval.

Based within Portsmouth is the major fulfilment house "Stonebridge". NTS (National Trading Standards) has identified fulfilment houses as a national threat to the safety of consumers since these businesses are a gateway for mass supply of cheap imported goods. As such, there is a continuing pressure upon us to regulate these activities.

We have reviewed our formal relationship with this fulfilment house in terms of the threats it presents, the resources it takes to maintain the relationship and the income generated through the agreement. Our conclusion was that pressure upon staff resources significantly outstrips the levels of income generated and therefore we have formally dissolved this partnership. This relationship will however be kept under review during 2017 / 2018 and communication is likely to continue in respect to arrangements and impact upon NTS, Southampton Trading Standards Port Authority and Stonebridge itself.

- xv) Community talks. Officers regularly deliver talks to community groups, forums etc. upon request in respect to legal practices and scams. This activity will cease.
- xvi) Membership of Trading Standards South East Limited (TSSEL). TSSEL is a partnership of 19 local authority Trading Standards services operated through a limited liability company. As part of TSSEL, TS work together with the other local authorities to achieve maximum efficiency and effectiveness whilst retaining local and democratic accountability across TSSEL Authorities.

xvi) TSSEL provides efficiencies and cost savings to PCC Trading Standards as a result of adopting a coordinated joined up approach, through sharing best practice, avoiding duplication and contracting as one entity. TSSEL's average annual turnover of £2 million delivers efficiencies of up to 30% to help improve front-line local delivery.

6 Objective 2 - The need to map services against regional / national Trading Standards priorities

6.1 NTS developed a National Control Strategy for 2015 / 2016 that had regard to the National Strategic Intelligence Assessment. Its intention was to help inform and direct enforcement priorities & projects and outline local priorities for prevention, intelligence and enforcement activities. Although linking to our own work, NTS have made it clear that national strategy is not designed to require us to undertake similar activities at a local level. NTS is clear that this matter is for local service planning in accordance with our own local priorities.

6.2 As a member of TSSEL we will, in 2017 / 2018, ensure coordinated approaches to service delivery; assigning resources to the wider regional and cross boundary initiatives. Through our membership we will:

- identify the key issues which are currently affecting consumers within the region
- be better able to highlight and tackle particularly problematic traders
- identify potential future pressures and issues
- provide recommendations on how to tackle current and future threats

7 Objective 3 - Identify risk and devise a platform for change

7.1 Portsmouth has long abandoned the risk based inspection regime, partly due to efficiency and partly due to the central government view that inspections for inspections sake is an unjustified burden on business. As a result, in nearly all cases, issues are investigated on an intelligence led basis.

7.2 Consumers who wish to complain about a business and obtain advice no longer make contact with Trading Standards directly. Previous reductions to consumer advice posts mean that consumers are directed to the national Citizens Advice Consumer Service (formerly Consumer Direct). This is the first point of contact for all consumers to acquire consumer advice or report a problem to us.

7.3 With the exception of intelligence and complaints received from partners, stake holders and other agencies, nearly all complaints and enquiries involving Portsmouth residents or traders are notified to Trading Standards in this way, with criminal matters and complaints requiring action being specifically identified.

7.4 In order to develop and assign resources appropriately in 2017 / 2018, a complete overhaul of the manner in which we scrutinise, record and assess demand and risk needs to take place in respect to the referrals received from Citizens Advice Consumer Service.

- 7.5 Although a clear picture of what a '*minimum service*' looks like does not exist, the consequences of failing to maintain our statutory functions are:
- potential physical harm (product safety)
 - financial harm to both consumers, residents and businesses (fair trading)
 - vulnerable consumers put at risk physically and financially (rogue traders)
 - scrutiny, criticism & formal complaint resulting in reputational damage and potential legal challenge or judicial review
- 7.6 There are significant risks involved in not supporting the current level of financial investigation or maintaining the PAPs. Trading Standards is critically dependant on income from these sources. These streams, along with those from licensing fees, awarded court costs and training partly enable the delivery of our statutory functions.
- 7.7 Delivering statutory functions comes with major risks in terms of the costs of litigation. This coupled with the fact that increasingly frequently cases are either defended or result in Crown Court hearings, presents the very real risk that, if current funding levels are not positively addressed, the service will not be able to afford to take enforcement action following a successful investigation.
- 7.8 If Trading Standards is forced to concentrate on work which generates cost recovery or income this will skew service provision away from consumers with a genuine need and towards businesses or partners that can pay. If such a decision was made on funding alone, the predicted service provision in 2017 / 2018 of 5.4FTE of which 3 FTE are concentrating solely on the delivery of PAP agreements and financial investigations, may suggest that the balance is currently already being disrupted. If this is the case the service may be open to scrutiny and judicial review.
- 7.9 Despite the challenges in delivering statutory duties, Trading Standards service will, in order to deliver a more effective service in 2018 / 2019, centre its attention on the following in 2017 / 2018:
- Developing a strong and cohesive team by maximising opportunities for integration across the wider Regulatory Service team service, whilst maintaining staff morale, in order to create a high performing and resilient team.
 - Effectively manage income and expenditure to achieve a balanced budget.
 - Reassess all existing PA relationships to ensure income obtained matches resources spent (on the basis of full costs recovery). Identify and develop new income streams and relationships to maximise income generation and funding opportunities for new staff in 2018 / 2019.
 - Explore and take advantage of relevant funding opportunities from national and regional partners to deliver service initiatives and priorities.

- Devise effective recording protocols to better manage and monitor service demand by ensuring that all contacts and actions are recorded appropriately upon the new service database (IDOX) from July / August 2017. Appropriately automate service responses, implement 'channel shift' protocols through the development of IDOX, self-assess and internally develop improved 'system thinking' approaches to all that we do.
- Explore opportunities to share experience and knowledge with other regulators, increase service resilience and deliver improved outcomes for service users in 2018 / 2019.
- Devise and implement robust methodologies to provide an intelligence led focus for investigations.
- Focus upon the gathering of intelligence to monitor legal compliance amongst Portsmouth businesses, with a particular emphasis on businesses involved in food, feed, petroleum, explosives, tobacco and alcohol (particularly underage sales) and those for which weights and measures are business-critical in order to inform and delivery improved regulation of these areas in 2018 / 2019.
- Minimise the regulatory burden on businesses through cost justifications and comply with the UK Government's 'better regulation' agenda, namely transparency, accountability, targeting, consistency and proportionality, whilst continuing to intervene to bring offenders into compliance where issues are found, and impose legal sanctions / commence prosecution as appropriate.
- Continue to work to protect the residents from poor trading practices through intervention activities, criminal prosecutions and the recovery of proceeds of crime.

8 Directors narrative

- 8.1 It is important that members have a good understanding of Trading Standards and what Regulatory Services is able to offer in the future. The impacts of budget reductions on Trading Standards services has not been clearly articulated in previous years and therefore this report has attempted to demonstrate the breadth of services Trading Standards offers. Ironically, it is this diversity of the Trading Standards remit which has perhaps previously led to the service struggling to tell its story coherently.
- 8.2 To enforce the huge range of legislative powers as indicated within **Appendix 1** Trading Standards services must have a certain critical mass to be effective. As a consequence of our diversity, our potential is rarely understood, however once achieved we can provide cost effective solutions to many local problems.
- 8.3 It is not surprising that the most immediate problem that we face is one of resource. While the service has so far been very successful in making

efficiencies, and continues to work hard to tackle priority cases of consumer detriment, we need to improve the resilience of Trading Standards by raising the profile of the consumer protection we deliver and achieving critical mass, allowing officers to spend more time on cost effective preventative activities and to gain the capacity necessary to respond to unexpected events.

- 8.4 The provision of short term funding for specific projects is unlikely to be of assistance as it creates instability and uncertainty, allowing one issue to gain prominence for a short period of time before funding ends. Through the continued amalgamation of Trading Standards into Regulatory Services we hope to begin the adoption of a longer term vision during which we are prepared to consider radical options. Solutions to the challenges we face will only be found if there is firm leadership with support for a sustainable vision.

9 **Equality impact assessment**

- 9.1 A full equality impact assessment is not required as the recommendations do not have a negative impact on any of the protected characteristics as described in the Equality Act 2010. The provisional EIA is attached as **Appendix 2**.

10 **Legal implications**

- 10.1 As mentioned within the report, Trading Standards has more than 250 statutory duties under UK legislation, as well as duties derived from European Union directives such as the Unfair Commercial Practices Directive 2005. Moreover, PCC has to consider the government's list of national enforcement priorities as they are required to do by the Regulatory Enforcement and Sanctions Act 2008.
- 10.2 Within any review of services there are dangers in reducing services to the statutory minimum without proper guidance on what this actually looks like. PCC need to think carefully prior to making any further decisions as to the manner it delivers its Trading Standards responsibilities as the threat of legal challenge for not meeting its statutory requirements is tangible. A further review of how Trading Standards is resourced is recommended within 2018 / 2019 to create a sustainable and resilient service for the future. A failure to resource will by definition lead to potential claims being placed at the door of the Authority based upon a failure to act concomitantly with a Statutory Duty (direct civil claim) or acting as a reasonable Authority would do (potential review of a decision and declaration).

11 **Director of Finance's comments**

The activities summarised within this report will be funded from existing service budgets, as approved by Full Council. The recruitment of a new 1.0 FTE as indicated with section 3.4 has been included with the budgetary provision for 2017 / 2018 and is included within the funding assigned to the service within section 3.2.

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Signed by: Stephen Baily, Director of Culture and City Development

Appendices:

- Appendix 1 - Duties and responsibilities delivered by the Trading Standards**
- Appendix 2 - Equalities Impact Assessment**

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Nil	NIL

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: Councillor Robert New, Cabinet Member for Environment and Community Safety