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<b>Title of meeting:</b>	Safety in the Community Portfolio Decision Meeting
<b>Date of meeting:</b>	20 <sup>th</sup> October 2022
<b>Subject:</b>	Trading Standards: 'Threats, Challenges and Solutions' 2022-2024
<b>Report by:</b>	Director of Culture, Leisure, and Regulatory Services
<b>Wards affected:</b>	All
<b>Key decision:</b>	No
<b>Full Council decision:</b>	No

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## 1. Purpose of report

1.1 The purpose of this report is to inform the Cabinet Member for Safety in the Community as to how Regulatory Services (Portsmouth Trading Standards [PTS]) will approach service delivery challenges for 2022-2024.

1.2 Currently, PTS are witnessing increasing levels of consumer vulnerability. The impact of the various and numerous economic and social consequences of the COVID-19 pandemic have caused extenuating circumstances for consumers and business and unfamiliar and uncertain territory in the trade of even the most basic of consumer goods and services.

1.3 PTS role is to protect consumers from adverse transactional experiences. This requires a transparent consumer protection system for businesses, with consumers aware of their rights alongside robust law enforcement. This is increasingly difficult to maintain due to newly emerging and complex markets.

1.4 Businesses also rely on advice from PTS, however, this area of service is under pressure in respect to the enforcement necessary, particularly, to tackle rogue practices in this burgeoning area of unfair business activity as they emerge.

1.5 This paper highlights the current demands, service capacity and identifies the forecasted threats and challenges presented by new burdens.

## 2. Recommendations

2.1 That the Cabinet Member for Safety in the Community:

- i. Acknowledges the increasing duties and pressures facing Portsmouth Trading Standards.

- ii. Acknowledges the level of resourcing currently available to Portsmouth Trading Standards to provide the protections the public should reasonably expect.
- iii. Approves the way Portsmouth trading Standards proposes to mitigate the growing threats as set out within the report.

### **3. Background - a brief overview of Trading Standards functions**

3.1 PST is a consumer protection service that operates across an extremely diverse regulatory (criminal/civil) landscape. The aim of the service is to secure compliance with the legislation for which we are responsible. Whilst this report does not seek to give a comprehensive description, the paragraphs below provide a useful synopsis of the responsibilities.

3.2 In short, trading standards functions are government lead services which seek to that ensure consumers are protected from unfair trading and in doing so support legitimate businesses.

3.3 The definition of unfair trading is wide, concerning both civil and criminal sanctions and applies to businesses in relation to both goods and services. For instance, unfair trading can apply to such distinct (non-exhaustive) issues as: animal welfare in farming, the legal manufacture of feed in the food chain and food standards, the laws on metrology, age restricted products, intellectual property, product safety and regulations governing contracts for estate / letting agents, travel and consumer credit.

3.4 PTS service is almost exclusively intelligence led, meaning it responds to 'complaints' which fall within its remit. Complaints derive from various sources but the vast majority (circa >95%) are referred by Citizens Advice who provide a consumer service (CiTA) and acts as a first-tier centralised consumer complaints and advice hub for the whole UK. On receipt of this intelligence trading standards officers decide on the appropriate courses of action i.e., if investigation is warranted. Citizens Advice will refer cases subject to where the business and consumer concerned are based.

3.5 As stated above, the list of duties is extensive and is getting longer all the time. At the time of writing there are circa 270 pieces of legislation by which PTS either have a statutory 'duty' or a 'power' to enforce. A significant aspect of this paper draws attention to the ever-growing 'burdens' on this service whilst highlighting the financial regime in place.

### **4 Local Demand on Portsmouth Trading Standards Service**

4.1 PTS service received nearly 1,400 complaints via CiTA in both 2020-21 and 2021-22 with an estimated consumer detriment of over £2 million. These figures are heavily suppressed from pre-pandemic figures, however, 2022 Q1 figures suggest that these are on the recovery with 508 complaints via CiTA with a consumer detriment of nearly £1.2m during this period.

## **5 National / Regional influence on Portsmouth Trading Standards**

5.1 In addition to the responding to complaints, PTS is concerned with several pro-active projects that have a regional or national influence. National Trading Standards administers several workstreams on behalf of BEIS such as prevention work around mass marketing scams, the supply of illicit tobacco and rogue letting agents and locally we remain involved with these projects some of which have been the subject of previous cabinet reports.

## **6. Performance**

6.1 The pandemic imposed significant new responsibilities with government mandating that Trading Standards (and Environmental Health) enforce the legal restrictions on businesses and other settings. In collaboration with partner departments such as Police licensing and subcontractors PTS were able to work at pace to deliver the necessary prevention/enforcement work as required. The headline figures throughout the duration were:

- i. Over 10,000 visits to businesses to deliver advice ensure compliance with the continuously evolving requirements.
- ii. 8 prohibition notices
- iii. 12 Fixed Penalty Notices (FPNs)

6.2 The approach, at all times was engage, explain and educate with enforcement again only used when these measures failed and/or when blatant disregard for public safety was evidenced. The relatively low numbers therefore are indicative to our success with delivering soft touch enforcement amidst what were very challenging circumstances

6.3 As stated above the overriding objective governing PTS is ensuring compliance with relevant legislation which of course can take many forms. The city council's enforcement policy dictates that this should be achieved by the least impactful means, dictating that formal actions such as prosecutions should be the last resort, or when no other action is appropriate. Taking this into consideration plus the fact that no two cases can be directly comparable in their size or complexity, it should be highlighted that mere statistics are an overly simplistic measure of illustrating performance. That being said, at the time of writing PTS are actively investigating around 30 criminal matters, eight of which are in the court system at various stages.

6.4 In addition to the above, parallel financial investigations are also undertaken for both PTS matters and for other local authorities/ agencies. In total circa 25 matters are currently in track; the external cases forming part of our traded service offering whereby our expertise is paid for (on an agreed cost recovery model) by the relevant outside agencies.

6.5 Recent PTS enforcement successes include:

Date	Offence(s) type	outcome
August 2021	Rogue Trader- Fraud Act 2006 and Consumer Protection from Unfair Trading Regs 2008	8 months imprisonment (suspended for 2 years), Confiscation Order- Benefit= £91,000. Available- nominal order
September 2021	Illicit Tobacco supplier	24 months imprisonment (suspended for 2 years). 150 hours of unpaid work, 20 rehabilitation days, Confiscation Order- Benefit £42,880 Order = £13,800
Sept 2021	Rogue Trader x 2- Fraud Act 2006 and Consumer Protection from Unfair Trading Regs 2008	1 defendant cautioned 1 defendant 9 years imprisonment, disqualified as a director for 5 years, confiscation pending
September 2021	Rogue Trader	Cautioned- voluntary compensation secured
November 2021	Rogue Trader- CPR only	12 months community order- 10 days rehabilitation, 75 hours of unpaid work and compensation of £2,000/ Criminal behaviour order for 5 years
December 2021	Rogue Trader- Fraudulent trading	32 months imprisonment, Criminal Behaviour Order for 6 years- confiscation- benefit £148,000, nominal order made but voluntary compensation of £15,000 secured*
March 2022	Rogue Trader- Fraud Act 2006 and Consumer Protection from Unfair Trading Regs 2008	9 months imprisonment (suspended for 18 months) 150 hours on unpaid work, disqualification as a director for 3 years, compensation of £20,000
June 2022	illicit Tobacco supplier	9 months imprisonment suspended for 24 months 150 hours of unpaid work. Confiscation pending

6.6 The above is not an exhaustive list and should not be a single measure of success. Most positive outcomes are secured without the necessity for legal proceedings.

6.7 By way of example, recently PTS has been able to step back up its prevention work on protecting victims of mass marketing scams. As a result of this and our engagement with the National Trading Standards Scams team, we have been able to reunite a number of vulnerable residents with monies they had unwittingly sent to fraudsters as a result of entering fake prize draws, lotteries and investment scams. PTS will be seeking further engagement with adult social care to maximise our impact in this area of safeguarding.

6.8 PTS places a great deal of effort, when investigating the above types of cases to try to reunite the victims with their financial losses. In one of the cases (\*) above we were successful in securing an extra £111,000 by working closely with the victim, the national trading standards scams team and the bank with which the victim held accounts.

## 7 Capacity and Competencies challenges

7.1 The current size of the PTS service establishment is 7.6 FTE. This includes staff members that have specific roles including: a solicitor, a full-time financial investigator, and a primary authority/safety specialist. 1 FTE within this team is also currently funded 50% by Public Health (down from 100% in 2021-22) to deliver a programme concerned with the reduction of harm associated with the illegal supply of alcohol and tobacco.

7.2 To enforce such a diverse spectrum of legislation not only requires significant professionalism which only comes with investment in staff by development of skills and competencies, it also requires a 'minimum critical mass' of staffing resource. Traditionally the Chartered Trading Standards Institute (CTSI) has administered the qualification framework but due to the ten plus years of austerity, rising costs, and lack of investment the uptake has been on a steady decline. This is causing growing concerns over an aging workforce and a growing skills shortage to match the demand for service.

7.3 CTSI 2021 survey data shows that since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period. However, what we also know is that PTS has proven itself as a dynamic and agile service, able to amplify the limited resources it does have. We have seen evidence of this recently during the COVID-19 pandemic with how PTS mobilised to support the communities we serve.

7.4 For several reasons, PTS has not been able to utilise the CTSI qualification framework in order to train new staff, therefore no existing or new member of staff has completed the course for over 15 years.

7.5 Whilst CTSI are in the process of qualification reform, both PTS and the profession has diversified to acquire the skills for an evolving service, however some specialisms such as 'weights and measures' remain particularly sparse.

## 8 Horizon scanning - future threats and challenges

8.1 **The Criminal Justice System:** The pandemic exacerbated ongoing enforcement challenges for all law enforcement agencies with courts not sitting for an extended period. Whilst services strived to maintain progress with investigating complaints, this resulted in a significant backlog of cases nationally, creating even greater delays for victims, witnesses and defendants receiving justice and closure. Perhaps understandably, once in recovery priority was given to the most serious of cases such a violent crime, and as such non-Crown Prosecution Service (CPS) cases like those prosecuted by local authorities are still taking longer to get listed and concluded.

8.2 In recent months the situation has worsened further with industrial strike action being taken by the criminal bar over legal aid funding. Whist again this is affecting all criminal cases, it is now adversely impacting on PTS cases; three of which now face postponements in September and October to dates likely deep into the spring of 2023. It is anticipated this bottle neck will create knock on pressures and further hamper performance into next year.

8.3 **Additional Burdens:** as alluded to above, legislative reforms continue to add, or threaten to add, additional enforcement duties for PTS. Just some examples are listed below which vary widely in both their imminence and their potential impact:

- i. Offensive Weapons Act 2019 which introduces new restrictions on the sale and delivery to under 18's of corrosive substances as well as tightening the law further in relation to under-age sale of knives.
- ii. Changes to the regulations governing energy performance in buildings designed to improve the minimum standards of heating systems and insulation.
- iii. Botulinum Toxin and Cosmetic Fillers (Children) Act.in late 2021 it became an offence for cosmetic fillers (Botox) to be administered to or arranged to be administered to under 18s.
- iv. Reforms banning the use of single use plastics by businesses are on the horizon in keeping with net zero ambitions.
- v. Reforms on the regulation of construction products used in buildings. This is in part driven by the enquiry into the Grenfell disaster.

8.4 'New Burden Funding' is often provided by government departments to facilitate new duties, new powers, and capacity in dealing with such. The key definition of a Burden is a change that could lead to an increase in council tax if it were not additionally funded by central government. Compliance with the New Burdens procedure requires the government to identify specific areas of work which local authorities would stop undertaking to fund the additional work. If this were to occur grant payments may be made to pay for policy changes implemented in respect to trading standards. Where additional expenditure is increased to implement new PTS burdens such funding will be applied to offset such, however, the contribution received is seldom sufficient to offset the actual operational impact of such.

8.5 **New reforms:** Following the Government's 2021 Consultation Paper on potential new consumer protection reforms; *Reforming Competition and Consumer Policy – driving growth and delivering competitive markets that work for consumers*", the Government, on 20 April 2022, announced significant reforms to consumer protection laws in the UK and provided a response to the consultation. The reforms are not yet effective: no draft legislation has been published, and of course, the usual parliamentary approval process will apply before any draft legislation becomes law. Whilst certain sections of the document refer heavily to the Competition and Markets Authority (CMA) and their sole remit, much of it applies to local authority trading standards services including:

- i. Updating consumer rights to reflect the changing markets legislation will be enacted to deal with problems created by online subscriptions which often trap consumers into making ongoing payments involuntarily and / or for goods and services they do not want or need.

- ii. Strengthening of legislation and powers currently available to trading standards to deal with other issues such as 'Fake reviews' and other online behaviour manipulation and package travel products.
- iii. Introduction of a new civil penalty regime for businesses that fail to cooperate with trading standards exercising investigative powers.

8.6 **e-crime:** In terms of support for online / e-crime issues, the changes to consumer markets that have accelerated during the pandemic and pose enforcement challenges to trading standards locally, regionally, and nationally as more and more commerce is conducted online. Websites and social media are now a feature in almost all consumer protection cases, even where the harm may ultimately occur offline, such as consumers' increasing reliance on the internet when identifying suitable tradespeople.

8.7 **Climate change and Net Zero:** Whilst not necessarily a new phenomenon; Rogue traders' have for some time sought to exploit consumers in domestic solar and roof / wall insulation products often under the auspices of government backed schemes. At one end of the spectrum the exploitation concerns the gross miss-selling of products that are either inappropriate for the consumers' needs or concern false or inflated claims about their performance to close the sale. At the other end, the tactics employed result in criminals extracting large sums of money for products and services that simply never materialise.

8.8 Rapidly increasing costs of gas and electricity will continue to fuel the renewable or 'green energy' sector in both commercial and domestic markets. Mass retrofitting of traditional gas boilers, for instance, will present fresh opportunities for exploitation of vulnerable consumers. This will undoubtedly drive-up service demand for local authority trading standards services to intervene and provide protection to those residents and take enforcement action against the fraudulent businesses.

8.9 **Rising Cost of Living impacts on Consumer vulnerability:** Much like the impact of climate change mentioned above, the cost-of-living crisis will lead to fresh opportunities for rogue traders and fraudsters to immiserate a financially desperate public, especially the most vulnerable. Some of the likely consequences listed by consumer protection experts include an increase in loan shark activities and energy tariff mis-selling by doorstep sellers, alongside other questionable money-saving schemes. It will also, of course inject fresh demand for the more established black / grey markets to provide illicit goods (and services) due to the high costs of legitimate goods becoming unaffordable. It is anticipated therefore that demand for stolen / smuggled and counterfeit tobacco and alcohol products will increase which again will put greater pressure on the trading standards service to provide protection in this area. In a similar vein it is anticipated consumers will be susceptible to purchasing counterfeit and poor / unsafe products based on their lower cost. This again will present increased demand on PTS.

## 9 Mitigation to tackle demand

9.1 **Apprenticeships:** Whilst certainly not an immediate or short-term fix for capacity or competences shortages, PTS have taken the view that utilising levy funded apprenticeships represents the next best thing to 'new money' or 'new staff'.

9.2 During 2021 we have collaborated with the apprenticeship and procurement teams to add the Regulatory Compliance Officer (RCO) level 4 apprenticeship to the available levy funded courses offered at PCC. This has since enabled one junior member of the service to enrol on the 18-month course which will provide valuable new knowledge, skills and behaviours for the officer concerned and compliment the wider service.

9.3 The wider trading standards profession has recognised the successes brought about by the level 4 RCO apprenticeship and amidst the ongoing frustration with the stalled CTSI qualification reform, it recently took the decision to develop its own level 6 Trading Standards apprenticeship. Whilst this is not yet live, it is in the final stages of development. It is estimated that a training provider(s) (yet to be determined) will be able to offer the apprenticeship in the spring of 2023. Once in place the course will provide fresh opportunities for the service to enhance competencies across the full range of functions.

9.4 **Traded services:** Portsmouth Trading Standards, despite the above-mentioned concerns regarding staff capacity and competencies, does have some significant strengths that can be exploited to provide financial options. We are currently engaged with several other external agencies and authorities and private businesses to provide paid for services, some of which are forecasted to provide windfalls within this financial year. This is mainly in the field of financial investigation and primary authority work streams.

9.5 **Grant funding:** Opportunities to secure fresh funding continue to be pursued. A recent example is that PTS has been invited to bid for grant funding from the Home Office. The purpose of the grant will secure us as a single point of contact for local authority financial investigators to access to important investigative tools hosted by the National Crime Agency. The level of funding pitched is £100k per annum on a two / three-year application and with the option to re-bid if the requisite value can be proved. A longer term, more permanent funding solution is built into the proposal process and is considered reasonably viable based on the presumption of delivering the requisite return on investment.

9.6 This funding is significant within the context of the current PTS budget and could alleviate some significant service delivery issues and provide a degree of budgetary resilience for the mid to long term.

## 10 Reasons for recommendations

10.1 Effective and appropriate regulation has a positive impact on consumer confidence and in turn provides the fertile environment for businesses to thrive and economies to flourish. It is also long established that such prosperity attracts investment in infrastructure, creates jobs and improves standards of living improves public health, and opportunities for young people. Safeguarding consumer protection is therefore analogous to the Council Plan 2021.

10.2 It is appropriate for the relevant Cabinet Member to understand the challenges and threats facing a service within their portfolio and approve significant strategic decisions.

## **11 Integrated impact assessment**

The functions of trading standards are considered neutral in relation to those people who have one or more protected characteristics. However, people recognised as being more vulnerable to predatory or exploitive practises such as older people and those with disabilities will continue to be regarded as a priority during investigative processes. It is not envisaged that the report impacts negatively on any environmental factors relevant to the integrated impact assessment.

## **12 Legal implications**

12.1 Much of the consumer protection laws referred to in this report place a legal duty on the City Council to provide enforcement remedies for our residents. Failure to do so will not only mean increasing financial and other detriment for our residents but potentially both reputational and legal consequences should we be seen to be failing.

12.2 It is therefore essential that a sufficient trading standards resource is maintained for capacity and competencies to keep pace with the increasing size and complexity of consumer markets.

## **13 Director of Finance's comments**

13.1 The proposals within the report do not require increased spending from or place a greater pressure on existing budgets. However, it must be stated that supporting service from grant funding needs to include an exit strategy so that future pressures do not come to bear on cash limits.

## **14 Service Director's remarks**

14.1 As is evidenced within this report PTS service is obliged to provide statutory functions across a diverse range of regulatory themes. This requires a great deal of knowledge and technical skill. The team's work is central to ensuring robust consumer protections are available to our residents and especially the most vulnerable. It is therefore crucial that sufficient investment is secured if we are to maintain sufficient consumer protections and confidence, whilst enabling the necessary capacity to adapt, at pace to fast changing markets and the challenges they present.

14.2 Trading standards enforcement remit is increasing and in the last two years a diverse range of new responsibilities, in addition to those already stated above, have been added with the ban on microbeads in cosmetics; the sale of materials for wood burning stoves; the proposed ban on plastic straws, drink stirrers and cotton buds; the ban on tenant fees; the requirement for electrical safety certificates for privately rented homes; a ban on energy drinks; the introduction of calorie labelling in restaurant chains, the sale of knives and acids and the administering of botulinum toxin. The COVID-19 pandemic also brought about new requirements on trading standards to enforce business closures, track and trace and private testing requirements.

14.3 The PTS lead officers report the need to ‘raise the threshold’ on the cases they can take. This necessarily creates a lower standard of accepted business behaviour with all the inherent risks to increased consumer detriment this implies. We see this as a direct risk to consumers in Portsmouth, with trading standards services unable to adequately serve the communities within which they sit.

14.4 In order to secure additional funding, National Trading Standards need to be pro-actively aligning their service delivery plans to meet current government priorities such as ‘Build Back Better’, ‘Net Zero’ and reducing organised crime, particularly where there are time limited additional resources which can be claimed to support these objectives.

14.5 The CTSI Chief Executive, John Herriman, has stated: "The cost-of-living crisis risks a significant rise in consumer detriment that the UK has not seen for decades. The COVID-19 pandemic warned us about the depths some will sink to through the scams that emerged out of it. For the unscrupulous, crises are opportunities to make a dishonest profit from the most vulnerable. Local trading standards services, working in partnership with other agencies, have continually risen to the challenges of protecting consumers, but this has become increasingly difficult after funding cuts of 50% over the past decade. Gaps in consumer protection are emerging, and whilst trading standards professionals are doing their utmost to protect the public, we are worried about the potential for significantly increased levels of harm. CTSI is in an ongoing dialogue with the UK Government and other stakeholders about how best to protect consumers. These concerns illustrate the need for a consumer protection strategy that recognises these deep impacts and that will mitigate them as effectively as possible".

14.6 Local authority infrastructure is however crucial for the delivery of trading standards and the local knowledge, links with other local authority services and democratic accountability is important if the recent successes of the PTS are to be maintained to protect the vulnerable and tackle criminality. I believe this is what our residents want and is very much in line with our council's vision for a prosperous City.

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Signed by: Stephen Baily, Director of Culture, Leisure, and Regulatory Services

**Appendices:** Integrated 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
<i>"Reforming Competition and Consumer Policy – driving growth and delivering</i>	<a href="#">Reforming Competition and Consumer Policy - Hansard - UK Parliament</a>

<i>competitive markets that work for consumers”.</i>	
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The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

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Signed by: Councillor Jason Fazackarley, Cabinet Member for Safety in the Community