

**Cabinet Member for Crime and Stronger Communities**

Report of the Assistant Director for Housing and Community Safety

**Scambuster and eCrime Enforcement Policy**

**Summary**

1. The purpose of this report is:
  - To seek the approval of the Cabinet Member for an enforcement policy statement for investigations carried out by the grant funded specialist trading standards teams hosted by City of York Council on behalf of the National Trading Standards Board.
  - To seek the approval of the Cabinet Member for new arrangements for the repayment of monies received under the Home Office's Asset Recovery Incentivisation Scheme (ARIS) for proceedings taken under the Proceeds of Crime Act 2002 by these grant funded specialist teams.

**Background**

2. City of York Council host two specialist trading standards enforcement teams on behalf of the National Trading Standards Board. These teams are the Yorkshire and the Humber regional trading standards Scambuster Team and the National Trading Standards eCrime Centre (the Scambuster and eCrime teams).
3. The Scambuster and eCrime teams are grant funded until 31<sup>st</sup> March 2013 and 31<sup>st</sup> March 2015 respectively by the National Trading Standards Board (NTSB). NTSB (which consists of regional senior trading standards representatives and a professional chair) has been tasked by the Department of Business Innovation and Skills with delivery of a number of high profile trading standards enforcement projects including Scambusters and eCrime.
4. The Scambuster team is responsible for investigating cases of rogue trading that impact on a number of local authorities and their residents/businesses. These are known as 'Level 2' (Regional) or 'Level 3' (National) cases.

Level 2 cases are those matters that are tasked to the Scambuster team from a regional tasking group of representatives from local authority trading standards services in the Yorkshire and the Humber Region. Level 3 cases are a recent development brought about by the government's decision to 'delegate' consumer protection enforcement previously undertaken by the Office of Fair Trading to local authority trading standards services. Level 3 cases are now tasked to Scambuster teams from a national trading standards tactical tasking and coordinating group (NTTCG). NTTCG comprises of representatives from NTSB.

5. The eCrime team is responsible for investigating rogue trading that takes place 'on-line' over the internet. eCrime cases are tasked to the team from a National Coordination Manager.
6. Investigations carried out by the Scambuster and eCrime teams are usually complex involving significant number of (often vulnerable) victims. Where prosecutions are taken the cases invariably are pursued in the Crown Court and often result in lengthy trials with multiple defendants. In the last 15 months cases prosecuted by the York based teams have resulted in 14 defendants being sentenced to a total of over 28 years in prison for conspiring to defraud their customers and related offences. These cases all involved York victims and as a consequence legal proceedings were commenced at York Magistrates Court.

### **Enforcement Policy**

7. Legal proceedings have been instituted for Scambuster and eCrime cases in accordance with the City of York Council Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services Enforcement Policies. The most recent version of this policy being approved by the Cabinet Member for Crime and Community Safety in February 2012 (the CYC TS Policy).
8. The CYC TS Policy approved in February 2012 deals with several areas of regulatory work, including trading standards, but it is primarily intended to deal with locally based matters where a progressive approach to enforcement is appropriate through a series of actions; advice, informal warning, formal warning and ultimately prosecution. Prosecution is only considered in the first instance in a limited number of circumstances.
9. Cases referred to the Scambuster and eCrime teams can be very different to those matters dealt with by the council's trading standards service. These referred cases are often ones where local authorities have tried a progressive approach to enforcement and failed or where the illegal activity is clearly fraudulent.

10. Following the first Level 3 referral from NTTCCG officers sought Counsel's opinion on the 'fitness for purpose' of the CYC TS Policy to encompass the investigations and legal proceedings of cases dealt with by the Scambuster and eCrime teams. Her advice was that consideration should be given to drafting a separate policy for the Scambuster and eCrime teams where prosecution was a likely action to be taken.
11. The importance of having a suitable enforcement policy has been highlighted in a number of recent local authority trading standards prosecutions. In cases taken 'outside the scope' of the relevant policy the court has ruled that the local authority has acted unlawfully.
12. A suggested separate enforcement policy statement for the Scambuster and eCrime teams was drafted. This was amended as a result of the consultation outlined in paragraph 15. The final draft policy statement is attached as Annex A.

### **Proceeds of Crime**

13. From 1<sup>st</sup> April 2013 the NTSB grant for Scambusters is subject to certain conditions. One of these conditions is that 50% of any monies received under the Home Office's Asset Recovery Incentivisation Scheme (ARIS) for 'grant funded' prosecutions will be returned to NTSB.
14. The current position regarding ARIS receipts is that 100% of Scambuster receipts will be paid to the Yorkshire and the Humber Trading Standards Group (YAHTSG) regional fund. This policy was approved the Cabinet Member for Crime and Community Safety on 1<sup>st</sup> May 2012.
15. It is proposed that for any future Scambuster or eCrime ARIS receipts 50% is returned to NTSB, 25% is paid into the YAHTSG regional fund and 25% is retained by City of York Council to spend on developing and maintaining the council's capacity to undertake proceeds of crime work and local crime reduction initiatives in line with the policy approved on 1<sup>st</sup> May 2012

### **Consultation**

16. Local authority trading standards heads of service in YAHTSG, representatives of NTSB/NTTCCG, The National Coordination Manager for National Trading Standards eCrime Centre and prosecuting counsel have been consulted on the proposed enforcement policy and appropriate changes made resulting in the draft policy in Annex A.
17. YAHTSG heads of service have been consulted on the proposed allocation of ARIS receipts and are in agreement with the proposed allocations set out in paragraph 15.

## Options

18. Option 1. To approve the enforcement policy statement set out in Annex 1 and the revised allocation of Scambuster team and eCrime ARIS receipts set out in paragraph 15.
19. Option 2. To continue with the current CYC TS Policy and approve the revised allocation of Scambuster team and eCrime ARIS receipts set out in paragraph 15.
20. Option 3. To recommend another course of action in relation to a Scambuster and eCrime enforcement policy and/or ARIS allocations.

## Analysis

21. Option 1 will reduce the risk of a legal challenge to a Scambuster or eCrime prosecution and satisfy the grant conditions of NTSB.
22. Option 2 will satisfy the grant conditions of NTSB but will leave the Scambuster and eCrime teams operating under a generic enforcement policy which will be an unnecessary risk to the council.
23. Option 3 will not be practical if it means that the council is unable to meet the NTSB grant conditions.

## Council Priorities

24. Three council priorities are “Protect jobs and grow the economy”, “Protect vulnerable people” and “Protect the environment”. Many Scambuster cases are taken in support of these priorities.

## Implications

25. The implications arising from this report are:
  - **Financial:** The requirement to return 50% of ARIS receipts to NTSB is a condition of the grant.
  - **Human Resources:** None.
  - **Equalities:** A community impact assessment has been carried out in relation to the proposed enforcement policy. This is attached to this report as Annex B.
  - **Legal:** The adoption of a specialist policy for Scambuster and eCrime team cases will reduce the risk of legal challenge in future cases brought by the Council.

- **Crime and Disorder:** The purpose of enforcement action taken by Scambuster and eCrime teams is to reduce criminal behaviour associated with dishonest trading.
- **Information Technology (IT):** None.
- **Other:** None.

## Risk Management

26. There are no known risks associated with this report.

## Recommendations

27. That the Cabinet Member approves Option 1 to approve the enforcement policy statement set out in Annex 1 and the revised allocation of Scambuster team and eCrime ARIS receipts.

Reason: To provide the City of York Council hosted Trading Standards Scambuster Team and National Trading Standards eCrime Centre an enforcement policy that will reduce the risk of a legal challenge to a prosecution and satisfy the grant conditions of the National Trading Standards Board for repayment of monies received under the Home Office's Asset Recovery Incentivisation Scheme.

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**Report  
Approved**



**Date** 30<sup>th</sup> May 2013

**Specialist Officer Implications: Legal**

All

**Wards Affected:**

**Background Papers:**

Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services Enforcement Policy (February 2012)

Decision Paper - Cabinet Member for Crime & Community Safety 'Proceeds of Crime (1<sup>st</sup> May 2012)

## **Annexes**

Annex A: Trading Standards Scambuster Team and National Trading Standards eCrime Centre Enforcement Policy

Annex B: Community Impact Assessment