

Decision Session: Executive Member Culture, 28 November 2016
Leisure and Tourism

Report of the Corporate Director – Economy and Place

National Trading Standards Scambuster and eCrime Team Update

Summary

1. To update the Executive Member on the activities of the National Trading Standards Regional Scambuster Team and National Trading Standards eCrime Team hosted by City of York Council (Scambusters).
2. To seek the approval of the Executive Member for an updated enforcement policy for investigations carried out Scambusters.

Background

3. A National Audit Office report published in 2011 identified a 'gap' in the enforcement of consumer protection legislation between the work carried out by local authority trading standards services and the 'national work' carried out by the Office of Fair Trading. The report concluded that there was not enough emphasis on complex investigations of rogue trading activities impacting on two or more local authorities.
4. The Government decided upon a new approach to enforcement and announced that sole responsibility for enforcement of consumer protection legislation would pass to local authorities under a new structure. The Office of Fair Trading was closed in 2013 and its responsibilities reassigned.
5. To oversee this new structure government established the National Trading Standards Board (NTSB). NTSB consists of regional senior trading standards officer representatives and a professional chair, Lord Toby Harris, They are tasked by the Department of Business, Innovation and Skills (now the Department for Business,

Energy & Industrial Strategy) with delivery of a number of high profile trading standards enforcement projects including the operation of regional enforcement teams (Scambusters) and a specialist facility to tackle on-line rogue trading (the National Trading Standards eCrime Team).

6. City of York Council are the host authority for the Yorkshire and the Humber Regional Scambuster Team and the investigation resource of the National Trading Standards eCrime Team (a partnership with North Yorkshire County Council who provide the digital forensic laboratory facility). These teams are grant funded on an annual basis by NTSB.
7. Scambusters are 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 now tasked to Scambuster teams from a national trading standards tactical tasking and coordinating group (NTG). NTG comprises of representatives from NTSB.
8. By their very nature investigations carried out by Scambusters are complex involving significant number of (often vulnerable) victims. Where prosecutions are taken the cases are invariably heard or tried in the Crown Court and often result in lengthy trials with multiple defendants. Annex A to this report provides a summary of cases that have been concluded since 1st April 2014 and those matters listed for trial up to 31st March 2018. A further 11 cases are under investigation. All current cases involve York victims or offences committed in the council's area and as a consequence legal proceedings are commenced at York Magistrates Court.

Proceeds of Crime

9. Scambusters have the capacity to carry out financial investigations under the Proceeds of Crime Act 2002 (POCA). These are either carried out by accredited financial investigators in the team or (in the case of the larger cases) in partnership with the NE Regional Asset Recovery Team based with West Yorkshire Police.

10. Under the terms of the council's grant agreement with NTSB 50% of any POCA receipts have to be returned to NTSB. In accordance with an earlier decision 25% is paid to the regional trading standards group (who support the activities of Scambusters e.g. by funding 1 FTE financial investigator in the team) and 25% is retained by the council for spending on local issues. Since 1st April 2014 the council has received £129K from POCA confiscation hearings relating to Scambuster cases.
11. As part of ongoing cases and investigations, in appropriate circumstances, Scambusters restrain (i.e. freeze) the assets of suspects and defendants pending the outcome of any prosecution and subsequent confiscation proceedings. The value of assets currently 'under restraint' for cases being prosecuted is estimated at over £15m.

Enforcement Policy

12. Cases referred to the Scambusters can be very different to those matters dealt with by the council's trading standards service. 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.
13. Following the first Level 3 referral from NTG officers sought Counsel's opinion on the 'fitness for purpose' of the council's enforcement policy that dealt with trading standards to encompass the investigations and legal proceedings of cases dealt with by Scambusters. Her advice was that consideration should be given to drafting a separate policy for the Scambusters where prosecution was a likely action to be taken.
14. An enforcement policy for Scambusters was approved by the Cabinet Member for Crime and Stronger Communities on 7th June 2013. This policy now requires updating to reflect charges to departmental terminology and a new directorate structure. A suggested updated enforcement policy is at Annex B.

Consultation

15. None.

Options

16.

Option 1

- To note the report and approve the updated enforcement policy in Annex B.

Option 2

- To note the report but not to approve the updated enforcement policy in Annex B.

Analysis

17. Option 1 will reduce the possibility of legal challenge that Scambusters have operated outside the scope of an approved enforcement policy.

18. Option 2 will increase the risk of legal challenge.

Council Plan

19. Scambusters support the council priority of a focus on frontline services. The purpose of the team is to protect residents from harm and reduce the risk of harm through the targeting of enforcement action at the most significant areas of consumer detriment and rogue trading practices seeking to exploit vulnerable consumer groups.

Implications

20.

- **Financial** None

- **Human Resources (HR)** None

- **Equalities** None

- **Legal**

21. Any decision to prosecute or take other enforcement action must be made in accordance with the enforcement policy and having regard to the code for crown prosecutors. A failure to have regard to these documents on a prosecution decisions could lead to the defendant bringing “an abuse of process” application to defeat the prosecution.

22. Under the Council’s Constitution legal proceedings can only be instituted in accordance with an approved enforcement policy or with the approval of the Assistant Director of Governance and ICT.

- **Crime and Disorder** None

- **Information Technology (IT)** None

- **Property** None

- **Other** None

Risk Management

23. There are no corporate risks associated with this report.

Contact Details

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**Report
Approved**

Date 18
November
2016

Specialist Implications Officer(s)

Andrew Docherty, Assistant Director Legal and Governance

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Annexes:

Annex A – Completed and Pending Court Cases

Annex B – Draft Enforcement Policy

Annex C – Scambusters Enforcement Policy

Abbreviations:

National Trading Standards Board (NTSB)

Proceeds of Crime Act (POCA)

National Trading Standards Tactical Tasking and Coordinating Group
(NTG)

North Yorkshire County Council (NYCC)