

# **TYNE AND WEAR TRADING STANDARDS JOINT COMMITTEE AGENDA**

**Thursday, 7 November 2019 at 10.00 am in the Whickham Room - Civic Centre**

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From the Chief Executive, Sheena Ramsey

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Item	Business
<b>1</b>	<b>Apologies for Absence</b>
<b>2</b>	<b>Minutes</b> (Pages 3 - 6)  The Joint Committee is asked to approve as a correct record the minutes of the previous meeting.
<b>3</b>	<b>Report and Statistical Return for the Quarter Ending September 2019</b> (Pages 7 - 10)  Report of the Service Director, Communities and Environment, Gateshead Council
<b>4</b>	<b>Projected Outturn as at 30 September 2019</b> (Pages 11 - 14)  Report of the Strategic Director, Resources and Digital, Gateshead Council
<b>5</b>	<b>Regulation of Property Agents Working Group Final Report July 2019</b> (Pages 15 - 18)  Report of the Service Director, Communities and Environment, Gateshead Council
<b>6</b>	<b>Update on Response to Rogue Door to Door Fish Sellers</b> (Pages 19 - 22)  Report of the Service Director, Communities and Environment, Gateshead Council
<b>7</b>	<b>Nicotine Inhaling Products</b> (Pages 23 - 24)  Report of the Service Director, Communities and Environment, Gateshead Council
<b>8</b>	<b>Response on the Consultation of the Post Implementation Review of Tobacco Legislation</b> (Pages 25 - 30)  Report of the Service Director, Communities and Environment, Gateshead Council

**9 Exclusion of the Press and Public**

The Committee may wish to pass a resolution to exclude the press and public from the meeting during consideration of the following item on the grounds indicated:-

<b>Item No</b>	<b>Paragraph of Schedule 12 A to the Local Government Act 1972</b>
<b>10</b>	<b>3</b>

**10 Met Lab Update**

Report of the Service Director, Communities and Environment (Report to Follow)

**GATESHEAD METROPOLITAN BOROUGH COUNCIL**  
**TYNE AND WEAR TRADING STANDARDS JOINT COMMITTEE MEETING**

**Thursday, 27 June 2019**

**PRESENT:** Councillor K Dodds (Chair)  
  
Councillors T Graham and I Patterson - Gateshead Council  
Councillors J Perry and S Dean - South Tyneside,  
Councillors J Blackburn, J Fletcher, D Waller and A Wilson -  
Sunderland City Council  
Councillors Nick Kemp, M Lawson and P Lovatt – Newcastle  
City Council  
Councillors C Burdis, J Hunter and J O’Shea – North  
Tyneside Council

**APOLOGIES:** Councillor M Foy (Gateshead)  
Councillors C Johnson, S Graham and J Stirling (North  
Tyneside)  
Councillor T Dixon (South Tyneside)

**TW1 APPOINTMENT OF CHAIR**

RESOLVED – That Councillor K Dodds be appointed Chair of the  
Joint Committee for the 2019/20 municipal year.

**TW2 APPOINTMENT OF VICE-CHAIR**

RESOLVED – That Councillor J Fletcher be appointed Vice Chair of the  
Joint Committee for the 2019/20 municipal year.

**TW3 CONSTITUTION OF THE COMMITTEE**

RESOLVED - That the constitution of the Joint Committee for the  
2019/20 municipal year be noted.

**TW4 APOLOGIES FOR ABSENCE**

Apologies for absence were received from:

Councillor M Foy - Gateshead Council  
Councillor S Graham - North Tyneside  
Councillor C Johnson - North Tyneside  
Councillor J Stirling - North Tyneside  
Councillor T Dixon - South Tyneside

**TW5 MINUTES**

RESOLVED - That the minutes of the meeting held on 14 February 2018 be agreed as a correct record, subject to the inclusion of Councillor N Kemp in the attendance list and Councillor J Fletcher's constituent council being amended to read Sunderland City Council.

**TW6 REPORT AND STATISTICAL RETURN FOR THE PERIOD JANUARY TO JUNE 2019**

The Joint Committee received an update report on the work of the Metrology Laboratory for the period January to June 2019.

RESOLVED - That the information be noted.

**TW7 PROVISIONAL OUTTURN AS AT 31 MARCH 2019**

The Joint Committee received the provisional outturn for 2018/19, subject to the audit of Gateshead Council's Accounts.

RESOLVED - That the details contained in the provisional outturn report for 2018/19 be noted.

**TW8 METROLOGY AND PRODUCT SAFETY BUSINESS PLAN**

The Joint Committee received an update on the initial proposals for the future business plan of the Metrology Laboratory and its use.

The Joint Committee was advised that there had been limited progress with taking forward any of the proposals, mainly due to essential building maintenance work needing to be carried out.

An officer meeting was scheduled to cost out some of the proposals but the preferred options may now need to be put on hold.

Members were concerned at the lack of progress on the business plan and considered that greater detail was required on the scale of opportunity, return on investment and delivery of an economic business case. It was agreed that these issues needed to be addressed for presentation to the next meeting of the Joint Committee.

RESOLVED - That a further report be presented to the Joint Committee at its next meeting addressing the issues set out above.

**TW9 OFFENSIVE WEAPONS ACT 2019**

The Joint Committee received an update on recent legislative changes which affect the sale of knives and corrosive substances.

The Offensive Weapons Act received Royal Assent on 16 May 2019 bringing in tough new measures that strengthen law enforcement's response to violent crime. The Act will make it illegal to possess dangerous weapons in private and will make it a criminal offence to dispatch bladed products sold online without verifying the buyer is over 18.

RESOLVED - That the information be noted.

**TW10 SCAMS AWARENESS CAMPAIGN 2019 AND CITIZENS ADVICE SCAMS ACTION PROJECT**

The Joint Committee received an update on the delivery of the Scams Awareness Campaign undertaken in June 2019.

Scams Awareness is a yearly campaign which aims to create a network of confident, alert consumers who know what to do when they see a scam. This year's campaign took place over two weeks in June and came with a slogan, "Stop, report, tell".

The first week looked at the group who have been identified as having the highest detriment from scams (older people), whilst the second week focussed on those who are now targeted by scams in volume (life established ie 40s to 60s).

Across the region all local authority trading standards services engaged with local partners to deliver on the Scams Awareness Campaign.

The Citizens Advice Scams Action Project is an ongoing project which came as a result of the legal action Martin Lewis took against Facebook for publishing scam adverts using his image. Martin Lewis requested that Facebook donate the money to Citizens Advice to deliver a new UK scams action project.

This work will primarily focus on helping people who have been or might become victims of online scams using a range of channels including online with some face to face support.

RESOLVED - That the information be noted.

**TW11 TENANT FEES ACT 2019**

The Joint Committee received an update on the new role of trading standards services under the Tenant Fees Act 2019 which came into force on 1 June 2019.

Under the new Act the only payments that landlords can charge in connection with a tenancy are:

- the rent;
- a refundable tenancy deposit capped at no more than five weeks' rent where the annual rent is less than £50,000, or six weeks' rent where the total annual rent is £50,000 or above;
- a refundable holding deposit (to reserve a property) capped at no more

- than one week's rent;
- payments to change the tenancy when requested by the tenant, capped at £50, or reasonable costs incurred if higher;
  - payments associated with early termination of the tenancy, when requested by the tenant;
  - payments in respect of utilities, communication services, TV licence and council tax; and
  - a default fee for late payment of rent and replacement of a lost key/security device, where required under a tenancy agreement.

If the fee that a landlord is charging is not on this list, it is a prohibited payment and should not be charged for. A prohibited payment is a payment outlawed under the ban.

A breach of the legislation will usually be a civil offence with a financial penalty of up to £5,000, but if a further breach is committed within 5 years of the imposition of a financial penalty or conviction for a previous breach this will be a criminal offence. The penalty for the criminal offence, which is a banning order offence under the Housing and Planning Act 2016, is an unlimited fine.

Where an offence is committed, local authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution. In such a case, local authorities will have discretion whether to prosecute or impose a financial penalty. Where a financial penalty is imposed this does not amount to a criminal conviction.

A breach of the requirement to repay the holding deposit is a civil offence and will be subject to a financial penalty of up to £5,000.

RESOLVED - That the information be noted.

**Chair.....**



**Report to the Tyne and Wear Trading  
Standards Joint Committee**

**7 November 2019**

**Report and Statistical Return for Quarter  
ending September 2019**

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**Anneliese Hutchinson, Service Director, Communities and Environment,  
Gateshead Council**

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**Purpose of the report**

To inform the Committee of the work of the Joint Metrology Laboratory for the quarter and operational duties to present.

**Metrology Laboratory**

**Operational**

1. The laboratory continues to support the five authorities of the Tyne and Wear region offering specialist services, equipment and personnel for various trading standards activities not just metrology.
2. Training in metrology for trading standards candidates was conducted this year as the professional body have changed the qualification and therefore after a year's hiatus the training courses have resumed.
3. There has been an unprecedented demand on the laboratory with all staff working flat out to meet customer's demands and turn-around times have increased as a result.
4. The laboratory continues to be used as a daily collection point by Environmental Health and the Port Authority for delivery to the public analyst.

**Aid and Advice to Industry**

5. Local weighing machine repairers, chemical, pharmaceutical and aeronautical companies continue to submit their test weights, scales and length measures for calibration and equipment hired.
6. Checks have been organised to check the accuracy of the operational fuel dispensers at Park Road and Cowan Road in Gateshead to ensure that stock levels are reported correctly for audit purposes and calibration certificates issued for their equipment.
7. A local company has approached the laboratory with a view to obtaining specialist training to help in the clearance of non-conformances raised by UKAS on their surveillance visit.

## **EC Verifications**

8. During this period, due to the uncertainty created by Brexit the laboratory has not undertaken any EC Verifications. The status of the Tyne & Wear as a Notified Body is an unknown quantity if we leave the EU deal less

## **UKAS Calibrations**

9. Weights continue to be submitted for calibration and issue of UKAS Calibration Certificates.
10. The laboratory underwent its annual audit by UKAS immediately after Christmas. There were minor issues to deal with, which was expected as the quality standard was changed, and this was the first audit against the new version of the standard. There were minor tweaks and adjustment required to be made to the quality management system, but the lab has successfully transitioned to ISO17025: 2017.

## **Toy Safety**

11. Again only a few samples were submitted by the authorities and they were found mainly to be compliant with relevant legislation.
12. Samples have been submitted via the available funding from OPSS to test various consumer products, a number of enquiries have made to the lab include testing a disability scooter and telescopic ladders, neither of which has been tested at our facility before.

## **Electrical Safety**

13. Samples have been submitted by the various authorities and a number of problems have been found.

## **Cigarette Samples**

14. Samples of cigarettes were submitted to the laboratory for reduced ignition propensity testing and were found to be non-compliant with legislation, reports and witness statements were prepared for many authorities outside the Tyne & Wear region. Of the samples submitted very few passed the tests detailed in the Standard which is a concern.
15. One sample from resulted in a successful prosecution for supplying unsafe products, evading duty and possession of a firearm.

## **International Agenda**

14. The laboratory has been asked to provide assistance with the drafting of metrology legislation in Barbados, this is very early in the process.

## **New Functions**

15. The laboratory has applied for an extension to scope for its UKAS activities to cover weighing instruments, calibration of glass contents measures and 50 kg weights. These extensions will enable the lab to offer a wider service and to be able to compete for new contracts. The accommodation is suitable to provide these services.

## **Recommendation**

16. The Committee is recommended to note the report.

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**Report to the Tyne and Wear Trading  
Standards Joint Committee**

**07 November 2019**

**Projected Outturn as at 30 September 2019**

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**Darren Collins, Strategic Director, Resources and Digital, Gateshead Council**

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**Purpose of the Report**

1.1 To advise the Joint Committee of the projected outturn for 2019/20.

**Background**

2.1 From April 2015 onwards, the accounts of the Trading Standards Joint Committee are being reviewed as part of the Gateshead Council's Final Accounts process. The projected revenue outturn for 2019/20, as at 30 September 2019 is set out in Appendix 1.

**Recommendation**

3.1 The Joint Committee is recommended to:

- Note the details of the report at Appendix 1.

## Appendix 1

	Budget 19/20	Actual	Projected Outturn	Notes
	£	£	£	
<b>Income</b>				
Fees & Charges	120,337	65,588	144,120	
S. 11 Stamping Fees	9,000	1,272	5,070	
Levy on Constituent Authorities	218,869	89,603	218,869	
<b>Total Income</b>	<b>348,206</b>	<b>156,463</b>	<b>368,059</b>	
<b>Expenditure</b>				
<i>Employees</i>				
Direct Pay	222,824	118,169	236,375	1 x Senior Officer (L),
Indirect Pay	1,142	0	0	3 x Technical Officers (H),
	223,966	118,169	236,375	1 x Assistant (D),
				1 x Clerical Assistant (B/C)
<i>Premises</i>				
Repairs & Maintenance	7,670	14,210	16,358	
Utilities	14,293	6,136	14,293	
Rates	8,400	0	8,400	
Rent	4,160	2,166	3,094	
	34,523	22,513	42,145	
<i>Transport</i>				
Car Allowances	400	0	0	
Vehicle Running Costs	940	60	930	
	1,340	60	930	
<i>Supplies &amp; Services</i>				
Furniture & Equipment	7,000	8,661	29,764	
UKAS Fees	0	1,597	6,000	
Telephones	0	220	1,328	
Printing & Stationery	1,140	106	212	
Insurance	5,813	0	742	
Postage	800	355	710	
Miscellaneous	33,712	4,438	4,633	
	48,465	15,376	43,388	
<i>Central Admin</i>				
Met Lab Central Admin	38,632	0	34,839	Group Support recharge
	38,632	0	34,839	£14k, Finance £11k, ICT
				£4k, HR £3k & Chief Execs
				£3k
<i>Joint Committee Expenses</i>				
Conference Expenses	0	0	0	
Central Admin	1,280	0	1,280	
	1,280	0	1,280	
<b>Total Revenue Expenditure</b>	<b>348,206</b>	<b>156,118</b>	<b>358,957</b>	

<b>Capital</b>	<u>0</u>	<u>0</u>	<u>0</u>
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<b>Net Expenditure</b>	<b><u>348,206</u></b>	<b><u>156,118</u></b>	<b><u>358,957</u></b>
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<b>Total Income</b>	348,206	156,463	368,059
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<b>Total Expenditure</b>	348,206	156,118	358,957
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<b>Transfer to/(from) Reserve</b>		0	9,102
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Reserve at 1st April 2019			74,575
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Estimated reserve at 31st March 2020			83,677
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**Levy on Constituent Authorities**

Gateshead Contributions			39,663
Sunderland			54,579
Newcastle			55,504
LACB South Tyneside			29,344
LACB North Tyneside			<u>39,779</u>
			<u>218,869</u>

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## Report to the Tyne and Wear Trading Standards Joint Committee

7 November 2019

### Regulation of Property Agents Working Group. Final Report July 2019

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**Anneliese Hutchinson, Service Director, Communities and Environment,  
Gateshead Council**

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#### **Purpose of the report**

To update the Committee on the publication of the Final Report on the Regulation of Property Agents Working Group in July 2019.

#### **Context**

1. On 12 October 2018, the Minister for Housing and Homelessness announced that a working group would be established to help Government develop the details of its proposal for a new approach to the regulation of property agents.
2. The working group, under the leadership of the Chair, Lord Best began meeting in November 2018 and formally met a total of eight times. They have also conducted four sub-group sessions; for each of these we invited oral and written representations from a wide range of stakeholders to allow those not included in their nominal membership to have their say.

#### **Best report**

3. The Government has proposed that property agents be regulated by an independent regulator, with mandatory qualifications and a code of practice. The Best working group in its Final Report, published in July 2019, has agreed that a new approach is needed: regulation will provide the opportunity to prevent bad practice and drive cultural change within the industry. The approach is in several parts, including proposals for:
  - the scope of a new system of regulation
  - a new licensing regime
  - a framework for codes of practice
  - mandatory qualifications
  - transparency and use of leasehold and freehold charges
  - the set-up, functions and relationships of a new regulator
  - assurance and enforcement under the new system

#### **Scope of New Regulation**

4. Taking account of devolutionary matters, a new proposed regulatory framework should cover estate agents across the UK and letting and managing agents in England. It is recommended that all those carrying out property agency work be regulated (including auctioneers, rent-to-rent firms, property guardian providers, international property agents, and online agents).

5. Regulation should not extend to property portals (e.g. Rightmove) – which do not perform agent functions, the short-let sector (e.g. AirBnB) – which would add complexity to the new regulator as it becomes established, and local authorities acting as letting or managing agents.
6. However, the Report recommends that the legislation required to regulate property agents should allow for future extension to the scope of regulation (e.g. to include at a future point regulation of landlords, freeholders and developers – as well as retirement housing managers and Right to Manage companies).
7. To clarify the functions of a property agent, the Government should create a list of ‘reserved activities’ which can only be performed by a licensed property agent at a regulated firm. The new regulator’s scope should extend to both licensed agents (as individuals) and regulated agencies (as firms).

## **Licensing**

8. To confirm appropriate qualifications and credentials, property agencies and qualifying agents should be required to hold and display a licence to practice from the new regulator. Before granting a licence, the new regulator should check that an agent has fulfilled its legal obligations (such as belonging to a redress scheme and submitting a copy of their annual audited accounts to the new regulator) – and that they have passed a fit-and-proper person test. It is recommended that the new regulator should be able to vary licensing conditions as it sees fit and that it maintains accessible records of licensed property agents.

## **Codes of Practice**

9. Codes of practice set out clear standards of behaviour. The Government has already committed to requiring that letting agents adhere to a code of practice, and it is recommended that all property agents be required to do so. There should be a single, high-level set of principles applicable to all property agents which is set in statute: the ‘overarching’ code. Then, underneath, ‘regulatory’ codes specific to various aspects of property agent practice, binding only on those providing these types of services.
10. Key principles for the ‘overarching’ code should include that agents must act with honesty and integrity; ensure all staff are appropriately qualified; declare conflicts of interest; and have an effective complaints procedure in place. To develop and maintain the ‘regulatory’ codes, the new regulator should establish a working group for each sector of property agency to work up sector-specific detail.

## **Qualifications**

11. Qualifications provide agents with the skills they need, provide a mark of competence to reassure consumers, and require commitment from agents.
12. In the new regime, it is envisaged that every property agency should be responsible for ensuring their staff are trained to the appropriate level and clear oversight arrangements are in place for junior staff. To ensure levels of qualification are appropriate yet proportionate, the working group recommend

that licensed agents should be qualified to a minimum of level 3 of Ofqual's Regulated Qualification Framework; company directors and managing agents should be qualified to a minimum of level 4 in most cases.

13. While there are many roles within property agency businesses, mandatory qualifications should apply only to licensed agents who carry out reserved activities.
14. The new regulator should set and periodically review a modular syllabus for property agent qualifications, to be delivered by separate providers. The new regulator should also work closely with Ofqual to develop a robust system of quality control. Continuing professional development should also be a mandatory requirement for licensed agents.

### **Leasehold and Freehold Charges**

15. The new regulator should be given a statutory duty to ensure transparency of leaseholder and freeholder charges, and should work with the sector (property agents, developers and consumers) to draw up the detail of the regulatory codes to underpin this aim as it applies to property agents. The regulatory code should include standards for transparency; potential conflicts of interest (e.g. mandatory disclosure of commissions and management fee charges); communication and use of service charges; administration charges; permission fees; use of covenants; and protection of client money.
16. It is recommended that the new regulator takes over from the First-tier Tribunal the power to block a landlord's chosen managing agent where the leaseholders have reasonably exercised a veto. It is recommended that the new regulator provides information on managing agent performance to allow landlord freeholders - and where relevant, leaseholders - to make an informed choice of managing agent. As Government considers broader reforms to the leasehold and freehold charges regime, it is also recommended that the new regulator has a role in enforcing compliance with any new requirements that apply to managing agents.
17. The Best working group has also provided suggestions for Government to consider around broader reforms to the leasehold and freehold charges regime. These include introducing a standardised form for service charges; revisions to major works consultations; extending the use of sinking funds and asset management plans to help avoid surprise or large one-off bills for leaseholders; improving transparency and protection of client money; setting a framework around the use of administration and permission fees; and reviewing the process for replacing an under-performing managing agent.

### **The New Regulator**

18. The Best working group does not consider that an existing body could take on the role of the new regulator. Therefore, Government should establish a new public body to undertake this role. The new regulator should be established and run regarding general principles of good governance, including: independence, openness and transparency, accountability, integrity, clarity of purpose and effectiveness. The new regulator, through its board, should be accountable to the Secretary of State for Housing, Communities and Local Government. It

should publish an annual report on its progress in raising standards of property agents, using agreed key performance indicators – including customer satisfaction.

19. The new regulator should be funded by the firms and individuals it regulates – but Government should provide ‘seed corn’ funding to support its creation and help with its operation for an initial period. It is recommended that it should be for the new regulator to determine whether professional bodies could, subject to an approval process, deliver some regulatory functions. No such delegation should be given without firm guarantees as to the professional body’s suitability.
20. It is recommended that the new regulator take over responsibility for the approval of property agent redress and client money protection schemes. The new regulator should have the power to appoint a single ombudsman for property agents, rather than competing redress schemes, if they believe this to be the best way of improving standards.
21. There are numerous potential sources of complaints against property agents (e.g. other agents, whistle blowers, accountants) that have few if any places to go to raise concerns. The new regulator should be able to consider complaints from all sources. Where solicitors, lawyers or other professionals have evidence of possible illegal agent behaviour, they should be obliged to present it to the new regulator.

### **Assurance and Regulation**

22. The Best working group recommends that the new regulator should have a range of options for enforcement action according to the seriousness of the infringement and how regularly it has occurred. These options should range from agreeing remedial actions and issuing warnings up to the revocation of licences and prosecutions for unlicensed practice. The new regulator should publicise infringements and the enforcement action taken. For those wishing to dispute the new regulator’s decisions or sanctions, there should be a right of appeal through the First-tier Tribunal. Furthermore, the First-tier Tribunal should also be granted in law the power to consider applications for judicial review against the new regulator.
23. The new regulator and other bodies (such as Trading Standards and redress schemes) will need to share information and work together effectively. There should be a system of flexible working between the new regulator and Trading Standards teams, and the new regulator should set out guidance clarifying their own and Trading Standards’ roles with regards to enforcement action to avoid duplication.

### **Recommendation**

24. The Committee is asked to note the information as contained within the report.

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Contact: David Ellerington, City of Newcastle Council on (0191) 2116119 or email: [david.c.ellerington@newcastle.gov.uk](mailto:david.c.ellerington@newcastle.gov.uk)

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**Report to the Tyne and Wear Trading  
Standards Joint Committee**

**7 November 2019**

**Update on the Response to Rogue Door to  
Door Fish Sellers**

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**Anneliese Hutchinson, Service Director, Communities and Environment,  
Gateshead Council**

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**Purpose of the report**

To update the Committee on the regional response to the important issue of Rogue Door to Door Fish Sellers

**Context**

1. One of the most identifiable issues related to doorstep crime for Trading Standards services/Environmental Health services and the Police Services, is the illegal activities of certain rogue individuals, going door to door targeting the most vulnerable and selling quantities of fish.
2. When buying fish from door to door salesmen, the consumer very often has no way of knowing how the fish have been stored and whether they are safe to eat. These types of businesses commonly use non-refrigerated vans, and there may be issues with the labelling, quality and descriptions of the fish.
3. It can also be difficult to know whether door to door traders are registered as a food business operator, which is a legal requirement, or if they are adhering to all food safety and hygiene regulations.
4. There are also concerns that the traders may pressurise residents to buy more than they actually need. The best place to buy fish is from a reputable fishmonger at an established shop or stall or even with a trader with a regular pre-arranged round.
5. Following concerns about these illegal activities both locally and indeed national the Regional Investigations Team hosted by Redcar & Cleveland BC and funded by the National Trading Standards Board continues to undertake a complex investigation into these illegal activities.

**Case Study 1**

6. In April 2019 at Teesside Crown Court, a fish salesman who used high-pressure sales techniques to dump bags of smelly seafood on elderly customers was sent to prison
7. Peter Carroll, 51, preyed on the elderly and vulnerable to sell them "excessive quantities of fish" - enough to fill a 6ft freezer in one case. His firm cold-called old people and charged exorbitant prices for far more produce than they wanted.

8. One customer asked for four pieces of haddock and ended up with two carrier bags full of fish, Teesside Crown Court heard. Another wanted £30 to £40 worth of fish, only to pay for five carrier bags stuffed with surplus seafood. Householders received smelly and slimy fish, two days before the use-by date on one occasion.
9. The company traded around the country as Pete's Plaice, P Carroll's Fisheries and P Carroll's Fresh Fish, cold-calling homes in refrigerated vans.
10. Prosecutor Jonathan Goulding said Carroll targeted the elderly in their homes and sold them unwanted fish. He said Carroll used "exploitative commercial practices" and a "deliberate strategy" for profit.
11. Carroll collected £1,000 orders from Hartlepool Fish Quay and knocked on doors of sheltered housing and bungalows, even where "no cold-callers" signs were displayed. He and salesmen under his "command" went to victims with serious health problems, one an 85-year-old woman with dementia who left the house once a month.
12. The business used high-pressure methods making victims feel uncomfortable and unable to say no. One elderly man felt trapped and intimidated after a seller moved to block his door after giving him a price.
13. Prices were hiked up, with some customers only learning the full inflated amount when a PIN machine was brought into the home. When customers said they did not have space for the food, they were told to get relatives to help out with storage. One seller said he would get the sack if he returned with unsold stock.
14. The Trading Standards investigation identified 27 victims who paid a total of £5,273 in areas including North and West Yorkshire in 2016 to 2017.
15. Customers felt upset, embarrassed, ripped off and anxious answering the door and blaming themselves. One said he "wanted the earth to open up and swallow him".

### **Proceeds of Crime**

16. Victims of a dodgy fish salesman who dumped bags of smelly seafood on elderly customers are to be given compensation.
17. In September 2019 at Teesside Crown Court Peter Carroll was ordered to pay a fraction of his criminal gains to the state, most of which will be used to compensate victims.
18. Carroll appeared back in court, having been released from a one-year prison sentence, to be given the confiscation order under the Proceeds of Crime Act - legislation designed to strip criminals of ill-gotten assets.
19. Lawyers agreed the trader's benefit from crime was £103,182 and it was agreed Carroll, had £7,970 available to pay from his home, cash and two bank accounts. Recorder, Matthew Happold, ordered him to pay the sum in three months, or go to prison for another five months.

## **Case 2**

20. In September 2019 Adam Brown, 30, from Chester-Le-Street, appeared before Newcastle Crown Court.
21. Brown travelled the country selling fish door-to-door, often to the elderly and vulnerable, using a variety of business names, including Shore to Door Fisheries, SSRS Fisheries, Scottish Coast Finest and Scottish Coast Fisheries.
22. Brown would pass off frozen fish as fresh, deliver excessive quantities of fish before charging an extortionately high price, operate an erratic pricing structure to exploit victims' vulnerability, obtain higher payments through a card machine without consumers realising by obscuring the total or tilting the card machine away from the consumer.
23. He was sentenced to a 20-week custodial sentence, suspended for 18 months, at Newcastle Crown Court and ordered to pay £2,624.70 in compensation, which will cover the monies lost by all seven victims involved in the case.
24. Brown has also been issued with a Criminal Behaviour Order that prohibits him from selling fish and making unsolicited calls at people's homes for the next five years. and will have to complete 180 hours unpaid work.
25. Brown earlier pleaded guilty to one count of knowingly or recklessly engaged in commercial practices which contravened the requirements of professional diligence and materially distorted the economic behaviour of his customers.

## **Recommendation**

26. The Committee is asked to note the information as contained within the report.

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**Report to the Tyne and Wear Trading Standards Joint Committee**

**7 November 2019**

**Nicotine Inhaling Products**

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**Anneliese Hutchinson, Service Director, Communities and Environment, Gateshead Council**

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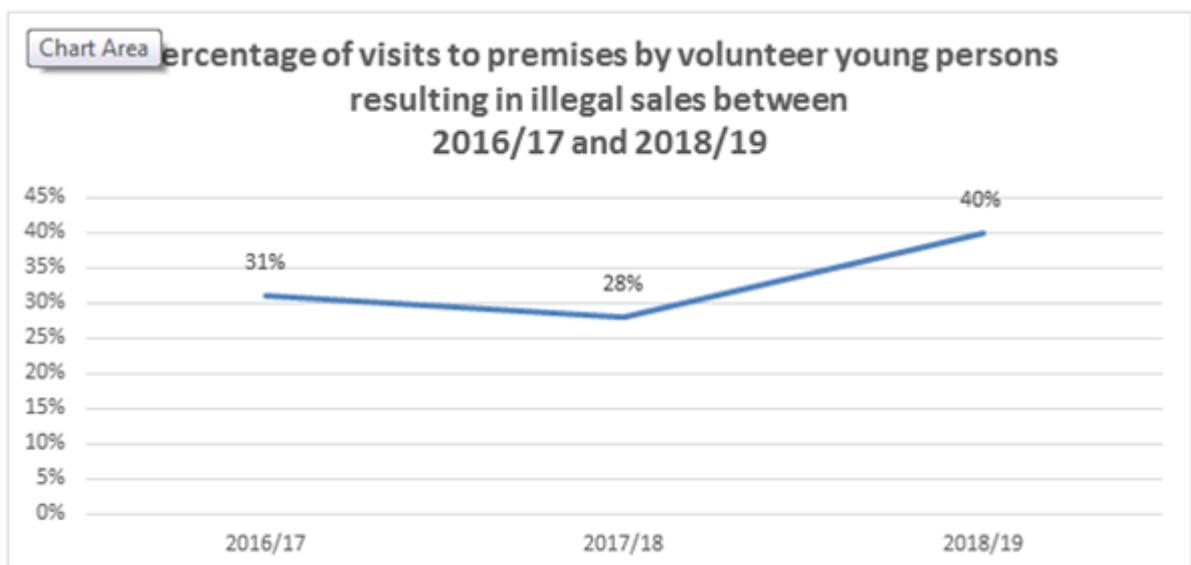
**Purpose of the report**

To update the Committee on a follow up project supported by the Department of Health & Social Care (DHSC), delivered and managed by Chartered Trading Standards Institute (CTSI); the purpose is to assess on-going compliance with the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015.

**Context**

1. These Regulations came into force on the 1st October 2015 and created a new offence for the supply of a nicotine inhaling product (including E cigarettes and associated products such as refills that contain nicotine) to a young person under the age of 18 years.
2. The Tobacco Control Survey 2018-19 reports that compliance is low with a National illegal sale rate of 40%. Specialist E cigarette suppliers and discount shops feature in the top 3 premise types most likely to make an illegal sale. Markets are the other most cited venue for under age sales of the products.

**NOTE: the survey report has not yet been published by CTSI and detail is embargoed until publication later this year.**



3. In the recently published report from Public Health England [PHE]; Vaping in England: Evidence update summary February 2019 it is stated that “whilst regular use of E cigarettes remains low, in England and Great Britain as a

whole, experimentation with the products has steadily increased in recent years“.

4. This is further supported by studies from outside of the UK that “suggest a similar picture, with increasing experimentation and use of E Cigarettes over time among youth. There is evidence from the US that increasing vaping is happening against a backdrop of reducing cigarette smoking.” PHE recommend that “surveillance is needed on purchase sources by young people. “
5. The prevention and detection of illegal sales of nicotine inhaling products to young people remains an area of concern for trading standards and the DHSC hence support for this coordinated enforcement project.

### **The Project**

6. The DHSC has agreed to support each TS Region in the conduct of a total of 50 test purchase attempts – 450 across England.
7. Officers will prioritise businesses that have made illegal sales in the recent past. Regional coordinators have allocated the tests namely 7 per local authority. Any “spares” will be offered to other regions on first come first served basis.
8. Financial support is available at £40 per test. There is no additional funding for the purchase of products. It is acknowledged that the fee does not reflect the complexity of the operation, it is a contribution.
9. Tests will be carried out using a young person under the age of 18 years, preferably aged between 16-17 years. In most cases it is expected that the test purchaser will be able to either select the product themselves OR request it by pointing to a product. If this is not possible, it may be necessary for the purchaser to ask for example “what can I buy for £10? “. If the retailer offers the young person, the opportunity to try the products this will be refused.
10. Products may include the following, disposable E cigarettes, rechargeable E cigarettes, E liquids (Tanks / refills).

### **Time Frame**

11. The tests are to be carried out between October - December 2019. Regional collated data is to be returned to CTSI by 17th January 2020.

### **Recommendation**

12. The Committee is asked to note the information as contained within the report.

## Report to the Tyne and Wear Trading Standards Joint Committee

7 November 2019

### Response on the Consultation on The Post Implementation Review of Tobacco Legislation.

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**Anneliese Hutchinson, Service Director, Communities and Environment, Gateshead Council**

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#### **Purpose of the report**

To update the Committee on the regional response provided to the Department of Health and Social Care's consultation on the Post Implementation Review of Tobacco Legislation. The consultation ran from the 22 July 2019 to the 15 September 2019.

#### **Context**

1. Consultation questions  
Section 1: The Tobacco Advertising and Promotion (Display) (England) Regulations 2010
2. These Regulations apply to the display of tobacco products in small and large shops (display ban) and came into force on 6 April 2012 in larger shops and 6 April 2015 for all other outlets.
3. The Regulations prohibit the display of tobacco products in small and large shops, allowing trading to continue but preventing them from being used as promotional tools. All retailers are required to cover up cigarettes and hide all tobacco products from public view.

#### **Objectives**

- To protect children and young people from health harms of smoking.
- Create a supportive environment for adults who are trying to quit smoking by implementing the prohibition of tobacco products displays.
- The regulations recognise that retailers need to be able to serve customers and restock products, and that staff need to know where products are kept.

#### **Question: Do you think the display ban of tobacco in small and large shops has helped to reduce the number of children and young people smoking?**

4. Yes, we think it has. We have taken the view that legislation is an integral part of comprehensive tobacco control programmes and that it is impossible to separate out the impact of each of the individual pieces of legislation being consulted on. Tobacco control legislation is most effective when all the related Regulations work together, therefore, trying to identify which legislation has had which impact on smoking uptake or quitting, whether among adults or children, is not practicable.

5. So too, is it impossible to separate out the impact of legislative and non-legislative tobacco control activity, for example trying to determine if a reduction in youth smoking is the result of point-of-sale display legislation or the result of media campaigns and public messages that have been in circulation since the various pieces of legislation came into force. In reality it is a combination of all of these factors.
  
6. We would like this context to be applied across each of the answers to the questions in this consultation, with the understanding that the preservation and strengthening of current legislation, plus the introduction of additional legislation as outlined in the February 2019 report from the All Party Parliamentary Group on Smoking and Health on 'Delivering the vision of a 'Smokefree Generation' and suggested throughout this response and will all contribute to the move towards a smoke-free 2030, namely:
  - 'Making the polluter pay'; a charge on the tobacco transnationals
  - Reducing the affordability of tobacco
  - Retail licensing
  - Collection and publication of tobacco manufacturers' sales and marketing data
  - Increased funding for education campaigns
  - Support for innovative regional collaboration
  - Raising the age of sale of tobacco from 18 to 21 years
  - Government mandated pack inserts to support quitting
  - Enhanced guidelines on smoking on screen (film and TV)
  
7. The display ban of tobacco in England in small and large shops has helped to reduce the number of children and young people smoking because it forms an important part of comprehensive tobacco control.

**Question: Do you think the tobacco display ban has encouraged and supported adult smokers to quit?**

8. Yes, we think it has. We have taken the view that the available evidence suggests that the display ban of tobacco in small and large shops has encouraged and supported adult smokers to quit.
  
9. The primary enforcement agency of the point-of-sale Regulations continue to be Trading Standards services. We have taken the view that our services continue to remain vital in both monitoring the legislation being reviewed in this consultation and in the delivery of tobacco control.
  
10. Each of our local authority services as with many others nationally, have had their funding reduced significantly during austerity which has reduced our capacity to conduct and deliver on some of our services. An opportunity for their funding could be through the introduction of a 'polluter pays' charge (fixed levy) on the tobacco companies.

**Question: Is the display ban an effective way to protect children and young people from taking up smoking and supporting those who wish to quit?**

13. Yes, we think it is. The fact that rates are now at an all-time low also reinforces the important message that implementation of legislation works, and that

additional legislation will help to accelerate the decline and increase the likelihood of achieving smoke-free by 2030.

14. The objectives of the legislation remain appropriate and could not be met by other means or less regulation, so we have taken the view that there is no justification for repealing them. However, to support the objective of smoke-free by 2030, as a matter of priority we recommend that the Government explores options for:
- 'Making the polluter pay' by placing a charge on the tobacco transnationals; a levy which 73% of the North East public support (YouGov\*)
  - Increasing the age of sale of tobacco products from 18 to 21 years. 61% of the North East public support this (YouGov\*) along with over half (52%) of retailers in the Fresh-commissioned area.
  - Introducing licensing for tobacco retailers. The majority of the public in the North East (80%) (YouGov, 2019\*) as well as retailers in the 7 Fresh commissioning local authorities (70%) (NEMS 2019\*\*) support such a move.
15. We have taken the view that there is no justification for any relaxation of the Regulations in the light of economic concerns.

## **Section 2: The Tobacco and Advertising (Specialist Tobacconists) (England) Regulations 2010**

16. These Regulations apply to the display of tobacco products in Specialist Tobacconists and came into force on 6 April 2015.
17. These Regulations provide exemptions for specialist tobacconists to the general prohibition of the display of tobacco products. They allow tobacco products to be displayed within specialist tobacconists as long as they are not visible from outside the shops. Additionally, the legislation permits tobacco advertising provided it is in, or fixed to the outside of premises of a specialist tobacconist and complies with prescribed conditions.

### **Objectives**

- To protect children and young people from the health harms of smoking.
- Create a supportive environment for adults who are trying to quit smoking by implementing the prohibition of tobacco product displays.
- The regulations recognise that retailers need to be able to serve customers and restock products, and that staff need to know where products are kept.

### **Question: Do you think the display ban of tobacco in specialist tobacconists has helped to reduce the number of children and young people smoking?**

18. Yes, we think it has. We have taken the view that as part of the broader legislative package, which are helping to denormalise tobacco use, these Regulations have been effective in reducing smoking among children and young people.

19. Given the exemptions applicable to the small number of specialist tobacco retailers, we have taken the view that the Government should designate specialist tobacco retailers as age-restricted premises in line with the current age of sale for tobacco products.

**Question: Do you think the display ban in specialist tobacconists has encouraged and supported adult smokers to quit?**

20. We think it has. We have taken the view that given that these Regulations have been part of a broader package of effective legislation, we believe they have had a positive impact in encouraging and supporting adult smokers to quit. However, we recommend that the Regulations are strengthened further as described previously.

**Question: Is the display ban in specialist tobacconists an effective way to protect children and young people from taking up smoking and supporting those who wish to quit?**

21. Largely we think it is effective. Because of the exemptions outlined above, we have taken the view that there are still avenues for children to be exposed to tobacco marketing. The display ban would be effective for specialist tobacconists if tobacco retailers were licensed and if there were conditions placed upon this sector that would designate them as age-restricted premises.

**Question: Section 3: The Tobacco and Advertising (Display of Prices) (England) Regulations 2010**

22. These Regulations impose requirements on the display of prices of tobacco products in small and large shops and came into force on 6th April 2015.
23. The regulations permit only three types of tobacco price displays within retailers:
- Poster style lists (up to A3 in size) which can be permanently on show but must not exceed 1,250sq centimetres in size
  - A list including pictures of products, which must not be left on permanent show, but can be shown to any customer aged 18 or over who asks for information on tobacco products sold; and
  - Price labels, which can be placed on shelving, storage units or tobacco jars. One price label is permitted for each product either on the covered shelf where the product is stored or on the front of the storage unit.

### **Objectives**

- To protect children and young people from the harms of smoking
- Create a supportive environment for adults who are trying to quit smoking by ensuring that price lists and labels cannot be exploited as forms of tobacco promotion.
- The Regulations do recognise that shops and businesses need to display necessary information on what tobacco products they sell and for what price.

**Question: Have the restrictions on the display of prices of tobacco products helped reduce the number of children and young people smoking?**

24. Yes, we think they have. We have taken the view that the overall principle of the removal of point-of-sale displays is welcome and should remain in place, as insofar as the Regulations are part of the wider point-of-sale regulations, and insofar as these Regulations in particular have curbed promotional efforts, they will have delivered a significant economic benefit to society without simultaneously placing one on retailers, as identified above.

### **Section 5: The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015**

25. These regulations came into force as of 26 March 2015 for proxy purchasing and 1 October 2015 for all other provisions.

26. The regulations prohibit both the sale of Nicotine Inhaling Products (NIPs) including e-cigarettes to under 18s, as well as the purchase of these products on behalf of a minor (proxy purchasing).

#### **Objectives**

- To limit the sale of nicotine inhaling products (NIPs) such as electronic cigarettes (and related products including refill cartridges and nicotine liquids) to adults only, with only certain limited exceptions for medicinal products.
- Limit the availability of NIPs to under 18's, restricting scope for children and young people to become addicted to nicotine, minimising potential gateway effect into smoking.

#### **Question: Do you think the Nicotine Inhaling Products Regulations have helped to prevent the sale of nicotine inhaling products, including e-cigarettes, to under 18s?**

27. Yes, we think they have. We have taken the view that the Nicotine Inhaling Products Regulations have helped to prevent the sale of nicotine inhaling products, including e-cigarettes, to under-18s.

28. It is clear that there has been much work done locally to develop engagement between local authority Trading Standards services and the vaping sector. Many of our authorities have produced guidance for vape retailers prior to the introduction of the Regulations which was placed on websites and in newsletters.

29. Whilst the implementation of the Regulations has therefore been effective, enforcement and compliance could be improved. As evidenced earlier, this should be understood in the context of substantial cuts to Trading Standards Services (NAO, 2016; Labour Communities & Local Government, 2018), as the primary enforcers of this regulation.

30. We have taken the view that those underage will have benefited the most from these Regulations, given that they are being protected from an addiction to nicotine. Parents have also benefited, knowing that there are laws in place to protect children from getting hold of nicotine inhaling products. Retailers will have benefited from the clear legislation in place around age of sale.

#### **Question: What impact do you think the age restriction and proxy purchasing ban on nicotine inhaling products has had on:**

31. People under 18 have been afforded protection from nicotine inhaling products. However, some young people are still able to purchase nicotine inhaling products directly or through proxy sales where a friend or family member aged over 18 years will purchase on their behalf and this demonstrates the need to ensure that awareness of the Regulations among young people and the general public is increased.

**Please give reason(s) and evidence for your answer.**

32. The primary gain from implementation of this regulation is that it is clear to whom the products can be sold, that is over 18s. It is a good start to the development of a more effective regulatory framework for nicotine which needs to be placed within the broader context of encouraging smokers to quit using tobacco products.

### **Recommendation**

33. The Committee is asked to note the information as contained within the report.