

Report to: **Scrutiny Committee for Economy, Transport and Environment**
 Date: **19 June 2013**
 Report By: **Director of Economy, Transport and Environment**
 Title of Report: **Modernisation of the Trading Standards Service – a New Approach**
 Purpose of Report: **To consult Scrutiny Committee about recent changes in the Trading Standards Service and a proposed new approach to meeting the needs of residents and businesses in the County.**

RECOMMENDATION: Scrutiny Committee is recommended to consider and comment on the report.

1. Financial Appraisal

1.1 The Trading Standards Service (TS) has re-structured and modernised in response to the Reconciling Policy, Performance and Resources (RPPR) 3-year savings requirements of £277,000. This afforded an opportunity to re-focus resources and deliver the Service in a different way and the savings have been met in full, effective from the current year. The base budget for the service for the 3-year period is now £815,800 p.a.

2. Supporting Information

2.1 In March 2013, the Economy, Transport and Environment Scrutiny Committee, as part of its commentary under RPPR considered that the Trading Standards Service was a 'jewel in the crown' amongst County Council services. However, it expressed concerns that the proposed savings for 2013 and beyond might mean ceasing programmes, such as 'No Cold Calling' zones, which support the most vulnerable. The Committee wished to understand more about the 'risk based approach' being put forward.

2.2 The draft TS Business Plan for 2013/14 is attached to this paper at Appendix 1 and the draft Cold Calling Strategy is at Appendix 2.

3. Comments/Appraisal

3.1 Having made the savings identified above, we are confident that we can still continue to be an effective and efficient service delivering against our priorities, taking account of modern industry techniques and initiatives.

3.2 The Trading Standards Service contributes directly to the achievement of the following priority areas for the County Council, namely to: *help make East Sussex prosperous and safe; to support the most vulnerable people; and to encourage personal and community responsibility.*

3.3 Specifically, our policy steer is to, 'Promote informed successful businesses in a fair and safe trading environment and protect vulnerable consumers.' This remains our vision and focus, and our proposed priority areas are set out below.

3.4 Doorstep Crime causes significant personal, financial and emotional detriment to victims. East Sussex has a high demographic of elderly and vulnerable residents who are potentially at risk from door step crime. TS will continue to make this a priority by using both proactive and reactive techniques to deter doorstep crime and protect East Sussex residents. Our Rapid Action Team (RAT) intervenes and interrupts rogue trading on the doorstep. This team will carry out more proactive work in identified hotspots of doorstep crime or vulnerability.

3.5 We are proposing to change the way we deliver **No Cold Calling Zones (NCCZ)**. Technically, NCCZ have never been legally binding so we are proposing to introduce the use of **Super Stickers**. If cold callers ignore the sticker on a resident's door, they can be prosecuted under consumer regulations. Residents will now be better empowered to say, "No" to cold callers wherever they live, whether they are in a zone or not. A toolkit has been prepared for Sussex Police, Neighbourhood Watch and residents' groups who still wish to set up NCCZs without using TS resources. The draft new strategy that explains this is included at appendix 2.

3.6 Protecting the vulnerable. East Sussex has a significant older population with nearly 12% of the population aged 75+ compared to around 8% regionally and nationally. Protecting vulnerable consumers is

now a key part of the 'day job' for TS officers. We work hard to make people aware of their rights, protect them and prevent abuse. We are proposing to stop providing routine consumer advice to residents who are able to help themselves so that we can concentrate resources on helping more vulnerable residents. We are proposing to stop giving general consumer education talks and instead concentrate on those most in need and those who protect the vulnerable, such as carers groups or the police. Residents who are not vulnerable can still access consumer advice through our partner, Citizens Advice, which runs a national consumer advice service.

3.7 Economic Development. Supporting local businesses to develop and grow is key to the economic wellbeing of East Sussex. Trading Standards will be supporting local businesses using a range of methods including business advice, trader visits, sampling programmes and projects such as our **Buy with Confidence** and **Support with Confidence** approved trader schemes.

3.8 The Service is increasing its intelligence led approach and so is able to direct resources where there is most need. We are proposing to continue with core work such as High Risk inspections to business premises. However, numbers of these have reduced. We now use local intelligence and our own knowledge to visit businesses only when there is a real risk. We have already advised the Food Standards Agency and DEFRA Animal Health of this new approach. By doing this, we can 'free-up' resources to provide training to specific business sectors on trading standards law. This will be particularly helpful to start-up businesses to help them 'get it right first time.'

3.9 Under the proposed business plan we would:

- Change our approach to **Animal Health** by concentrating our support to farmers to get disease control right, and on other big issues such as tuberculosis controls;
- Increase our work in relation to **illegal landings at ports** to ensure Great Britain remains rabies free;
- Continue to prioritise our work on **illicit tobacco** and **illicit alcohol** as we are keen to protect legitimate traders; and
- Undertake our **under-age sales** work in a targeted and intelligence led way rather than conduct routine visits which are not always effective.

3.10 Predatory marketing. Each year mass marketing scams cause approximately £3.5¹ billion worth of detriment to UK consumers². Scams are often targeted specifically at vulnerable or disadvantaged consumers, such as those already in debt. Trading Standards are working in partnership with Sussex Police using both proactive and reactive techniques to intervene, enforce and educate in this area and protect residents.

3.11 Financial capability. The economic and social environment in which people take financial decisions has changed – and this change is set to continue. People have to take increasing individual responsibility for their financial affairs. Trading Standards have made this a priority so that we empower people with the knowledge to make better financial choices; and ultimately to help make them more capable and informed consumers.

4. Conclusion and Reason for Recommendation

4.1 It is believed that the draft Business Plan is fit for the future and more responsive to the needs of businesses and consumers in East Sussex. It takes account of modern practices that have been successfully applied elsewhere. Members of the Committee are invited to comment prior to a wider consultation with other stakeholders. Trading Standards believe that this new approach will provide better outcomes for businesses and residents, which will be delivered in an efficient and cost effective manner.

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BACKGROUND DOCUMENTS

Home Office Statistics 2012

¹ This year's Annual Fraud Indicator has put the loss to the UK Economy from fraud at £73 billion

² Home Office stats 2012 <http://homeoffice.gov.uk/publications/agencies-public-bodies/nfa/annual-fraud-indicator/annual-fraud-indicator-2012?view=Binary>

TRADING STANDARDS BUSINESS PLAN 2013/14

Our Trading Standards team also have an important role to play in supporting the local economy and a safe and fair trading environment. Supporting local businesses to develop and grow is key to the economic wellbeing of East Sussex. This benefits not only the businesses themselves, but residents and visitors who will have access to a wider range of services and an improved local economy in which to live and work. East Sussex Trading Standards will support local businesses to develop and grow using a range of methods including business advice, particularly to start-up companies in East Sussex, sampling programmes and projects such as our Buy with Confidence and Support with Confidence approved trader schemes.

Trading Standards will make a significant contribution to protecting the residents of East Sussex, particularly the vulnerable. The driver is to make people aware of their rights so that they can make independent informed decisions. Consumer education is a key area here. Mass marketing scams are often targeted at vulnerable or disadvantaged consumers and technological developments enable greater pinpointing of potential victims.

Proactive and reactive techniques will be used to intervene, enforce, educate and protect our residents. The economic and social environment in which people transact with businesses has changed – and this change is set to continue. People have to take increasing individual responsibility for their affairs. Trading Standards have made it a priority to stamp out rogue trading in East Sussex but also empower residents with the knowledge to make better decisions themselves; ultimately to help make them more capable and informed consumers.

Our work has clear link to the Council Promise and the Policy Steer provides a strategic political objective and our plan contains five themes to meet these strategic objectives:

1. Doorstep Crime & Stamping out Rogue Trading
2. Economic Development
3. Predatory Marketing
4. Financial Capability
5. Protecting the Vulnerable

The Council Promise:

'We will, in partnership, make the best use of resources to:

- help make East Sussex prosperous and safe;
- support the most vulnerable people;
- improve and develop roads and infrastructure;
- encourage personal and community responsibility;
- deliver the lowest possible council tax; and
- be a voice for East Sussex, listening and answering to local people.'

Council Policy steer

Promote informed, successful businesses in a fair and safe trading environment and protect vulnerable consumers.

1. Doorstep Crime & Stamping out Rogue Trading

Doorstep crime is an area which causes significant personal, financial and emotional detriment to victims. East Sussex has a high demographic of elderly and vulnerable residents who are potentially at risk from door step crime. East Sussex Trading Standards will continue to make this a priority area by using both proactive and reactive techniques to deter doorstep crime and protect East Sussex residents

1.1 Desired outcomes

- Victims of rogue traders now feel confident in dealing with cold callers following intervention by Trading Standards.
- Residents in hot spot areas are aware of the Trading Standards Service and the Rapid Action Team (RAT) and are empowered to take personal responsibility to say "no" to cold callers.

Actions	Timescales	Lead contact
i. Identify hotspots requiring RAT interventions		Lucy Corrie
ii. Engage with partners and vulnerable groups in those areas with a view to increasing consumer empowerment to say "no" to cold callers.		
iii. Introduction of "Super Stickers" to East Sussex households to better empower residents to say "no" to cold callers		
iv. Pilot project in Rother District with a view to rolling out elsewhere		
Performance measure		2013/14 Target
Ref - Customer satisfaction with Buy With Confidence traders (<i>Council Plan measure</i>)		Establish methodology and baseline to evaluate satisfaction

2. Economic Development

Supporting local businesses to develop and grow is key to the economic wellbeing of East Sussex. This benefits not only the businesses themselves, but also residents and visitors who will have access to a wider range of services and an improved local economy in which to live and work. East Sussex Trading Standards will be supporting local businesses to develop and grow using a range of methods including business advice, trader visits and sampling programmes and projects such as our Buy with Confidence and Support with Confidence schemes.

2.1 Desired outcomes

- The Buy with confidence scheme promotes traders in East Sussex, increase growth in their business and provide the added value of being Trading Standards approved.

Actions	Timescales	Lead contact
i. All staff to actively promote the Buy & Support With Confidence schemes.		
ii. Educate trade sectors about working within the law		
Performance measure		2013/14 Target
Ref - Increase Customer Satisfaction with Buy with Confidence Members		
Ref - Percentage of non-compliant businesses brought into compliance within 3 months of discovery.		100%

2.2 Desired outcomes

- Local businesses in East Sussex are supported and advised by Trading Standards.

Actions	Timescales	Lead contact
i. Develop a training package		
ii. Establish baseline for level of awareness		
iii. Provide free business advice to SMEs in East Sussex		
iv. Maintain the Hastings Community Alcohol Partnership (CAP)		
v. Work with businesses and Public Health to reduce the sale of illicit tobacco in East Sussex		
Performance measure		2013/14 Target
Ref - Deliver bespoke training about Trading Standards legislation to support businesses in East Sussex (<i>Portfolio Plan measure</i>)		Establish baseline data for level of knowledge/satisfaction

2.3 Desired outcomes

- Business satisfaction with Trading Standards is increased providing a more efficient and effective service to businesses in East Sussex.

Actions	Timescales	Lead contact
i.		
ii.		
Performance measure		2013/14 Target
Ref – the percentage of business satisfaction with Trading Standards		Establish baseline data.

2.4 Desired outcomes

- Ensuring legal compliance of products (including food) at premises in East Sussex targeted and according to risk will make East Sussex a safer place to live and work.

Actions	Timescales	Lead contact
i. Develop a "Made in East Sussex" approved producer scheme		
ii. Green Deal - proactive enforcement visits where required		
Performance measure		2013/14 Target
Ref – The percentage of High Risk visits completed when locally risked		100%
Ref – The percentage of businesses brought back into compliance after an intervention by Trading Standards		100%
Ref - The percentage of explosives stores visited		100%

2.5 Desired outcomes

- Ensuring legal compliance of premises holding livestock in East Sussex targeted and according to risk will support the rural economy of East Sussex and control animal disease.

Actions	Timescales	Lead contact
i. Complete a sampling programme that meets all our current priorities		
ii.		
Performance measure		2013/14 Target
Ref – The percentage of High risk visits completed when locally risked (cross ref with 2.4)		100%
Ref – The percentage of livestock businesses brought back into compliance after an intervention by Trading Standards		

2.6 Desired outcomes

- Ensuring the East Sussex targeted sampling programme delivers better outcomes and a safer East Sussex for residents.

Actions	Timescales	Lead contact
i.		
ii.		
iii.		
Performance measure		2013/14 Target
Ref -		
Ref -		

3. Predatory Marketing

Each year mass marketing scams cause approximately £3.51 billion worth of detriment to UK consumers. In addition, the psychological impact of scams can seriously damage individual consumers trust in markets. Scams are often targeted specifically at vulnerable or disadvantaged consumers, such as those already in debt. These consumers can suffer disproportionate levels of harm as a result of mass marketed and other scams. Furthermore, mass marketing of scams continues to increase as technology allows greater pinpointing of potential victims. East Sussex Trading Standards will continue to make this a priority area by using both proactive and reactive techniques to intervene, enforce and educate in this area and protect East Sussex residents.

3.1 Desired outcomes

- ‘Scam victims feel safer in their own homes following support from Trading Standards and are empowered to say "no" to scams. Consumer detriment is reduced.

Actions	Timescales	Lead contact
i. Establish a methodology and baseline to evaluate the effectiveness of out intervention.		
ii. Identify scam victims		
iii. Work in partnership to intervene and shut down UK based scams wherever possible		
Performance measure		2013/14 Target
Ref- Percentage of victims of cold calling rogue traders who now feel confident in dealing with cold callers following intervention by Trading Standards (<i>Portfolio Plan measure</i>)		Establish methodology and baseline to evaluate effectiveness of intervention
Ref - Percentage of scam victims who now feel confident in dealing with predatory marketing following intervention by Trading Standards (<i>Portfolio Plan measure</i>)		Establish methodology and baseline to evaluate effectiveness of intervention

4. Financial Capability

The economic and social environment in which people take financial decisions has changed – and this change is set to continue. People have to take increasing individual responsibility for their financial affairs. East Sussex Trading Standards have made this a priority so they can empower people with the knowledge to make better financial choices; ultimately to help make them more capable and informed consumers

4.1 Desired outcomes

- Ensure East Sussex Residents are better informed about the Welfare Reform Act 2012 and empowered to make better financial choices.

Actions	Timescales	Lead contact
i. Update Money makes sense website and proactively promote the site to ensure residents are aware of the new benefit rules under the Welfare Reform Act 2012		
ii. Intelligence led inspections to pay day lenders to ensure they comply with the law		
iii. Work in partnership with the Illegal money Lending Team to stamp out loan sharks in East Sussex		
Performance measure		2013/14 Target
Ref -		
Ref -		

5. Protecting the Vulnerable

East Sussex has a significant older population with nearly 12% of the population aged 75+ compared to around 8% regionally and nationally. It is also worth noting that people living in East Sussex who are aged 85 or over are expected to increase by 5.5% (1,100 more people) by 2013. This is combined with an increasing East Sussex population of young people with a learning disability and complex physical disabilities who are supported by Adult Social Care. In addition, more people with complex disabilities are living into old age. Consequently the population of vulnerable consumers is much higher than average and growing rapidly. We have a duty to protect these people. We also have a duty to educate them about their rights so that they can make independent informed decisions and continue to live independently for longer. The Trading Standards service has a significant contribution to make to the success of safeguarding vulnerable adults. Dealing with, and protecting, vulnerable consumers is now very much a part of the 'day job' for the officers of East Sussex Trading Standards service. Safeguarding is about making people aware of their rights, protecting them and preventing abuse and this will continue to be a priority for this service.

5.1 Desired outcomes

- Improved outcomes for vulnerable residents as more people are trained on the Building Bridges project.

Actions	Timescales	Lead contact
i. Community Champions are proactive in communities sending out Trading Standards consumer education messages		
ii. Engage with Community Champions to identify consumer education messages to protect the vulnerable		
Performance measure		2013/14 Target
Ref - Number of people trained on the building bridges project		
Ref - Increase number of Community Champions		

5.2 Desired outcomes

- Young People in East Sussex are better informed about Trading Standards issues

Actions	Timescales	Lead contact
i. Support and engage with the Young Consumer of the Year Quiz in East Sussex		
ii. Support and engage with "Safety in Action" project		
Performance measure		2013/14 Target
Ref -		
Ref -		

5.3 Desired outcomes

- Young People with learning disabilities in East Sussex are better informed about Trading Standards issues

Actions	Timescales	Lead contact
i. Support and engage with the Consumer Challenge Quiz in East Sussex		
ii.		
iii.		
Performance measure		2013/14 Target
Ref -		
Ref -		

5.4 Desired outcomes

- The Support With Confidence approved trader scheme grows to enable the vulnerable to live in their own homes for longer and be supported by approved traders.

Actions	Timescales	Lead contact
i.		
ii.		
iii.		
Performance measure		2013/14 Target
Ref -		
Ref -		

Summary of performance measures

Performance measure	2013/14 Target
Ref - Customer satisfaction with Buy With Confidence traders (<i>Council Plan measure</i>)	Establish methodology and baseline to evaluate satisfaction
Ref - Increase Customer Satisfaction with Buy with Confidence Members(cross ref)	
Ref - Percentage of non-compliant businesses brought into compliance within 3 months of discovery.	100%
Ref - Deliver bespoke training about Trading Standards legislation to support businesses in East Sussex (<i>Portfolio Plan measure</i>)	i) Develop training packages as appropriate ii) Establish baseline data for level of knowledge/ satisfaction
Ref – the percentage of business satisfaction with Trading Standards	Establish baseline data.
Ref – The percentage of High Risk visits completed when locally risked	100%
Ref – The percentage of businesses brought back into compliance after an intervention by Trading Standards	100%
Ref - The percentage of explosives stores visited	100%
Ref – The percentage of High risk visits completed when locally risked (cross ref)	100%
Ref – The percentage of livestock businesses brought back into compliance after an intervention by Trading Standards	
Ref- Percentage of victims of cold calling rogue traders who now feel confident in dealing with cold callers following intervention by Trading Standards (<i>Portfolio Plan measure</i>)	Establish methodology and baseline to evaluate effectiveness of intervention
Ref - Percentage of scam victims who now feel confident in dealing with predatory marketing following intervention by Trading Standards (<i>Portfolio Plan measure</i>)	Establish methodology and baseline to evaluate effectiveness of intervention
Ref - Number of people trained on the building bridges project	
Ref - Increase number of Community Champions	

Team Risks	Risk Control	Impact	Likelihood	Score	Risk Owner
Failure to deliver benefits for our work relating to: Doorstep Crime & Stamping out Rogue Trading					
Failure to deliver benefits for our work relating to: Economic Development					
Failure to deliver benefits for our work relating to: Predatory Marketing					
Failure to deliver benefits for our work relating to: Financial Capability					
Failure to deliver benefits for our work relating to: Protecting the Vulnerable					

Risk guidance available if any further prompts are needed.

East Sussex County Council Trading Standards Service

Strategy for tackling doorstep crime through the use of No Cold Caller door stickers

Introduction

East Sussex County Council Trading Standards Service (TSS) is committed to tackling the menace of doorstep crime. This work involves both reactive and proactive enforcement and reactive and proactive education and prevention.

A lot of our prevention work involves providing stickers to residents. We have two distinct stickers that we use. There is a general sticker to deter cold callers, which we give out to anyone who wants it and an example is attached at **appendix 1**. There is also a No Cold Calling Zone sticker, which is used only in designated No Cold Calling Zones, and an example can also be seen at **appendix 1**.

This report looks at how we are currently operating our No Cold Calling Zones and suggests a fresh approach.

A No Cold Calling Zone is an area in which residents have stated they do not wish to receive unsolicited visits to their homes (cold calls) from businesses. The zones are set up by East Sussex County Council Trading Standards working with the local Police and usually Neighbourhood Watch and the local Borough or District Councils. The first scheme was run in Dallington and was launched in 2007 and the scheme has developed from there.

The main aim of the zones is to reduce the number of unwanted and uninvited callers to households offering goods and services, which in turn reduces the number of criminal or civil complaints generated in East Sussex.

The aims and objectives of current No Cold Calling Zone are:

- To empower the public so they have the confidence to deal with unsolicited callers.
- To educate the public to deal effectively with unsolicited callers.
- To reduce the number of complaints & criminal offences reported to the Police related to doorstep callers.
- To reduce the number of complaints and criminal offences reported to East Sussex Trading Standards Service related to doorstep callers.
- To reduce the number of distraction burglaries.
- To reduce residents overall level of fear of crime.
- To promote the use of East Sussex Trading Standards approved trader scheme 'Buy With Confidence'.

The methodology used in setting up a No Cold Calling Zone

- Close liaison between partners such as the Police, Neighbourhood Watch (NHW), and local councils.
- Identification of “Hot Spots” via analysis of Police and Trading Standards Intelligence and statistics.
- Consultation of local residents about joining the scheme. (Target areas may be developed through the existing NHW Schemes.)
- The supply of information packs to householders containing details of the “No Cold Calling Zone” scheme and the supply of a door sticker.
- Contact / visit neighbourhood watch meetings to create awareness.
- The commission and erection of street signs in selected roads advertising the “No Cold Calling Zone, to act as visible deterrents to cold callers and distraction burglars.
- The publicity and promotion of the “No Cold Calling Zone” scheme via local media.
- To promote the use of East Sussex Trading Standards approved trader scheme ‘Buy With Confidence’.
- To mark the beginning of each new zone with a launch day ensuring maximum publicity.
- Attendance by officers to live situations where traders are at a property in the No Cold Calling Zone to effect an intervention.
- Responding to other complaints about traders who ignore the signs and continue to cold call, including the use of ‘cease and desist’ letters.
- To conduct an evaluation survey of participating roads after 6 months

We have a number of zones across East Sussex that vary in size. A full list of the areas and the number of households covered can be found at **Appendix 2**.

The current number of homes in a No Cold Calling Zone is 37,251 which represents 16% of all households in East Sussex.

No Cold Calling Signs

In order for No Cold Calling Zones to be effective they need to be adequately signed. We have used a combination of stickers, for householders to display on their front doors, and road signage to mark out the zones. We have looked to ensure road signs are erected at entry points to zones and at key locations and junctions within each zone. We try to ensure sufficient road signage is used to make it clear to would be callers that they are in a No Cold Calling Zone.

The issue of obtaining permission to erect no cold calling signs has been a long and protracted process that has proved to be very time consuming and frustrating. We have sometimes struggled to get permission to display signs

and this has become even more of a problem as East Sussex has looked to remove over signage and signs that are not required for safe navigation. Recently we have only been able to gain permission for limited numbers of signs, barely sufficient to adequately sign the zones.

Cost/Time

As well as the problem with getting permission for the signs, a zone can take a minimum of 6 months to organise. A consultation exercise needs to be carried out and the No Cold Calling Zone packs and signs need to be ordered, packed and distributed. The cost of this both in resources and officer time can be vast (a full break down of current costs of No Cold Calling Zones is provided on below.)

At present half an officer post is allocated to No Cold Calling Zone work, however, in practice as the number of zones increase the amount of officer time required to establish new zones and maintain existing ones also increases. A No Cold Calling Pack costs approximately £1.58 to put together and the signs cost £100 each. The cost of putting up a sign is £70.00. In some instances the Parish Council or Residents Association has contributed towards such costs. However as budgets get tighter, their ability to contribute has been reduced. This means that either East Sussex Trading Standards bear the full cost of implementing the zone or the zone is not progressed. Again the distribution and packing of the envelopes, to date, has been carried out by Neighbourhood Watch groups, local residents, volunteers and partnership agencies but this can be difficult to organise and cannot always be relied upon.

Even though we consult as widely as possible we do not really know if all homes in an area want to be part of the zone. We also receive trader complaints about the zones and we are aware of traders who ignore the signs and stickers. Very few traders seem to respect the zones and this causes frustration with householders. All the major energy suppliers have just indicated that they will respect No Cold Calling Zones and no cold caller stickers in general. However, this position has only been reached after sustained pressure has been brought to bear on these companies over the past 12 months.

Feedback from recent evaluations suggests that the No Cold Calling Zones have been and continue to be a success. Residents like the zones; they make them feel safe and give them greater confidence when confronted with cold callers.

No Cold Calling Zones are measured by means of a short evaluation questionnaire that is sent to households in the No Cold Calling Zone. We attempt to do the evaluation by electronic means wherever possible; however, we will always send some questionnaires out by post. Evaluations happen initially about 6 months after a zone is established.

The purpose of the evaluation is to monitor the success of the zone and ascertain learning points where things need to be changed or done differently for the future. During this evaluation we also attempt to refresh the zone by providing residents with new no cold calling door stickers and we aim to reinforce the message about not dealing with doorstep callers. The cost of producing and sending out questionnaires by post is approximately 70p per household.

A new approach

No Cold Calling Zones have never been legally enforceable and have relied on the commitment of all the residents to support the scheme and the “goodwill” of businesses to respect the zones. In June 2008 the Consumer Protection from Unfair Trading Regulations (CPR’s) were passed and legal opinion received suggests that these regulations can be used to prosecute cold callers who ignore the stickers on doors.

In the light of these new regulations and the legal opinion, and in response to increasing pressure to reduce costs internally, we are proposing a fresh approach for tackling cold calling. The method that we are proposing is to enable residents to turn their own homes into No Cold Calling Zones by means of a “Super Sticker”. We propose the production of a sticker that we suggest will be legally enforceable and that will empower residents to deal confidently and assertively with doorstep callers.

We will no longer be setting up new No Cold Calling Zones. Instead we will supply interested residents with the new “Super Stickers” that they can display to stop cold calling traders from calling at their homes. This new approach will be far less labour intensive saving money and time as we will no longer be carrying out consultations, we won’t be paying out for the cost of road signs and we won’t have to arrange the mass delivery of No Cold Calling Zone packs as we do at present for new zones. A projection of savings can be found below.

We will also supply groups of residents with a “self-help” toolkit if they do still wish to set up their own No Cold calling Zone without input from Trading Standards.

Legal Opinions that support this new approach

In June 2008 the Consumer Protection from Unfair Trading Regulations came into force. These regulations have been drafted in such a way that they criminalise many aggressive sales practices that would have previously been viewed as unethical but not illegal. The Regulations include a schedule of commercial practices that are banned outright and one of these is described in paragraph 25 of Schedule 1 as:

“Conducting personal visits to the consumer’s home ignoring the consumer’s request to leave or not to return except in circumstances and to the extent justified to enforce a contractual obligation.”

For a while Trading Standards officers have wondered whether a No Cold Calling Zone sticker could constitute a request to leave and not return. Suffolk Trading Standards have recently instructed a barrister to provide a legal opinion on this very point and his opinion is that a carefully worded sticker may be sufficient to constitute a request to leave and not return. Therefore, if a trader knocks on a door with a sticker that is correctly worded and sufficiently prominent they may commit a prima facie criminal offence that Trading Standards can investigate. A copy of the legal opinion can be found at **appendix 3**.

Several Trading Standards Services have started moving towards developing stickers that make it clear that a caller may commit a criminal offence if they ignore the sticker. Although the opinion has not been tested in Court yet, it seems only a matter of time before it is.

It must be emphasised here that the Suffolk opinion only relates to cold callers who are calling to undertake a commercial practice, i.e. buying and selling goods and services. The opinion will have no bearing on Politicians, or religious groups, for example, who cannot commit a criminal offence by failing to comply with the wording on the sticker. Charity fundraisers may, arguably be caught by the signs if they are seeking to get people to commit to giving to charity by regular direct debit as this may be seen as a commercial practice, but we suspect one off door-to-door collections such as Christian Aid Week would be unaffected and some discretion would need to be applied.

It has been argued by some that Article 8 of the United Nations Declaration of Human Rights gives people the right to not receive cold calls as it affords everyone a right to privacy in their own homes. However, the right to privacy has to always be balanced against the right to freedom of speech. The Courts have taken the view that common law affords a person an implied license to proceed to the front door of a house and to enquire whether he may be admitted to conduct his lawful business. There is an expectation that you do not have a right to stay on the property once you have been asked to leave, unless of course you are exercising a legal right to be there. At present we are not aware of any legal opinion as to whether a sticker could be seen as a request to leave based on a person's article 8 rights, although, we could see how such an argument may be formed.

Incidentally it has also been argued that a trader might be able to look to Article 8 to support a right to cold call if they are able to demonstrate that the ability to cold call is an intrinsic part of their cultural identity. This argument could possibly, be made by members of the travelling community (see **Appendix 4** Office of Fair Trading legal opinion on the legality of No Cold Calling Zones). However, such traders are still at liberty to post leaflets through the letterbox and it is then up to the householder if they wish to contact the trader to carry out some work without having the pressure of somebody making various statements about the necessity for the "work" to be done.

We feel that we would need to think very carefully before attempting to use Article 8 of the Human Rights Act as a means to enforce our stickers. For one, failure to comply with the request would only allow for the home owner to take action in the civil courts for damages, which in reality if the caller had been sent away with a flea in his ear would be totally negligible. We would not be able to take action for a breach as a service. More importantly, the Council would need to make a decision as to whether they wanted to try to 'ban' cold callers based on human rights as, unlike the CPR's, a "human rights" ban would impinge on all callers including politicians, religious groups, market researchers. Whilst, we would hope, as an organisation we would support someone's right not to speak to anyone at the door (even political canvassers), we are not sure whether we would want to be seen as encouraging people to deter such callers.

Our preferred way forward would be the production of a sticker worded to be enforceable under the CPR's but not under any argument based on Human Rights as we see this as being on a less sound legal footing and also too far reaching.

The Advantages of the "Super Sticker" approach over No Cold Calling Zones

1. The "Super Sticker" is designed to turn an individual house into a No Cold Calling Zone; so doing away with the need to have costly signage, consultation and delivery of packs.
2. The "Super Sticker" will place the decision to make a house a No Cold Calling Zone squarely at the door of the individual resident, hence removing the risk that East Sussex County Council could be criticised for foisting No Cold Calling Zones onto residents who may not want to be in a zone.
3. The "Super Sticker" will enable us to offer residents a means of stopping doorstep callers but as an authority we will no longer be open to criticism as all decisions will be taken by the individual residents and we will not be establishing "no go zones".
4. Residents who choose to display the new "Super Sticker" will hopefully do so because they have strong feelings about wanting to deter cold callers rather than just simply because their house has been included in a zone and they feel compelled to display the sticker.
5. The sticker will potentially be legally enforceable.
6. Some businesses have a policy of ignoring No Cold Calling Zones. It will be far harder for businesses to justify the same stance where a resident has clearly chosen, for themselves, to display a sticker as opposed to us setting up an area as a No Cold Calling Zone.
7. It has always been difficult for businesses to know precisely where No Cold Calling Zones are and for us to ensure that we made it sufficiently clear. The

“Super Sticker” should simply be adhered with wherever it is seen and does not need us to know or indicate locations of houses displaying the sticker.

8. One sticker will be used uniformly as opposed to a sticker for No Cold Calling Zones and a different sticker for everywhere else.

9. In a climate where the Council is striving to make savings whilst improving services this new approach will make cost savings on officer time, on signage and on set up costs of No Cold Calling Zones and we believe offer a better service to East Sussex residents. Below we have set out the cost savings in more detail.

Cost comparison of NCCZs and Super Stickers

Assuming we establish 15000 homes into NCCZ's over the course of a year this would cost:

Officer time 0.5 FTE	£15,000 approx
Signs x 20 (based on £100 per sign and fixings and £70 as average cost to put up a sign)	£3400
15000 Householder Packs including: NCCZ sticker NCCZ printed cover Introductory letter Trading Standards leaflet FAQ's Check them out leaflet BWC Directory (not included in costs as funded by BWC members)	£23700
Evaluation packs (based on 300 being posted per year)	£1920
TOTAL	£44,020 for 15,000 homes

We would be unlikely to be able to establish more than about 15000 homes in any one year due to the time involved.

If you compare this with the Super Stickers estimating distribution of about 50,000 sticker packs a year the estimated costs are as follows:

Officer time 0.25 FTE	£7500 approx.
Sticker packs (50,000) including: Leaflet 2 stickers BWC insert	£7608

Cost of Stuffing leaflets	£1000 approx
Cost of mailing out 1000 stickers (C5 envelope with associated documents up to maximum 100g.)	£310
TOTAL	£16,418 for 50,000 homes

Possible challenges with this new approach

1. The legal opinion that the stickers will be enforceable has not been tested in court yet and ultimately a court may set a precedent that goes against this opinion.
2. Residents in existing No Cold Calling Zones may be concerned by this new approach, particularly if it ultimately results in us removing the road signs.
3. Whilst it is hoped that traders will be pleased that we are moving away from setting up areas of East Sussex as No Cold Calling Zones they are likely to oppose the wording of the sticker which implies a criminal offence will be committed by ignoring it.
4. Any attempt by us to mount a test case prosecution for failing to comply with the sticker is likely to be strongly defended and very expensive.
5. There is a risk that residents expectations may be unreasonably raised by using a sticker that states an offence is committed if it is ignored as residents may expect us to prosecute businesses every time the sticker is ignored.
6. No Cold Calling Zones are becoming more widely recognised by businesses and many businesses do attempt to respect them. This new approach is untested with businesses.

The sticker design

It is important that the new sticker is correctly worded so that it has the desired effect of being, legally enforceable. Coupled with this the sticker must be clear and easy to read and understand for any would be doorstep caller.

In determining the wording for the sticker we have looked at the suggested wording in the Suffolk legal opinion and also the wording being used by Buckinghamshire Trading Standards who have recently adopted this type of sticker.

The wording suggested in the Suffolk legal opinion is:

*“The Consumer Protection from Unfair Trading Regulations 2008
The residents of this property do not want traders to visit this property. Please leave and do not return. If you do not leave and/or if you return, you will commit a criminal offence.”*

The Barrister has attempted to ensure that the wording of the sticker mirrors the wording of the legislation as closely as possible. After consideration we feel that a sticker with this wording would be too wordy and insufficiently clear. It would also need to be quite large to accommodate the wording.

The Buckinghamshire sticker uses the following wording:

*“Consumer Protection from
Unfair Trading Regulations 2008
WARNING
No cold-callers
PLEASE LEAVE
AND DO NOT
RETURN
Failure to do so is a
criminal offence
Buckinghamshire Trading Standards
Thames Valley Police”*

We prefer this sticker in terms of its brevity, however, we feel that it is not precise enough in its wording. We think this wording could easily be construed as applying to all uninvited callers and not just traders. As mentioned previously a caller will only commit a CPR offence if they are carrying out a commercial practice and this is not borne out by this sticker.

The primary factors that we feel need to be considered in developing the sticker are that it is precisely worded, yet clear and punchy and that the sticker is no bigger than it needs to be. A large sticker is less likely to be displayed by residents who may see it as detracting from the appearance of their home. The Police may also be reluctant to support a sticker that is too large.

The colour and design of the sticker is also key. Our No Cold Calling Zone stickers are red and blue with white writing but this may not necessarily be the best colour. The Police have stated that their current sticker is popular because it is fairly discreet and of neutral colour. A further consideration for colour is the rate at which the sticker will fade and how readable it is in the dark.

We have also considered whether to include logos on the sticker, such as the Police logo or the ESCC logo and/or whether to include the names of Sussex Police and East Sussex County Council Trading Standards Service. In short we feel that logos or names are required as without this it is not clear where the sticker has come from. It will certainly make it more official with reference to Police and Trading Standards. We feel this is more important now that we are implying a criminal offence may be committed if the sticker is ignored.

The wording that we are proposing is as follows:

*“The Consumer Protection from
Unfair Trading Regulations 2008
Warning
We do not want uninvited traders
PLEASE LEAVE AND
DO NOT RETURN
Failure to do so is a
criminal offence
East Sussex Trading Standards
Sussex Police”*

Many of the cold callers that we deal with claim to be illiterate and therefore may not be able to read a sticker. We have considered whether it may be appropriate to include a pictorial message on the sticker so that, it can be understood by all.

We considered the issue of residents who may live in large properties set back from the road and whether a sticker would always be appropriate for these houses as you may not see the sticker until you have walked up to the front door and some people may want to prevent callers entering their property. With this in mind we have considered making larger plaque style signs available to residents for a charge to cover costs; these signs could then be attached to a gate or similar at the entrance to the property.

We will supply this new sticker with a sticker for the inside of the front door that is designed to remind the resident not to deal with cold callers. This internal sticker can prove invaluable, particularly for the elderly and vulnerable.

Suggested designs for the super sticker can be found in **Appendix 5**.

How will this new approach be rolled out

We intend to liaise closely with the ESCC communications team to develop a strategy for delivering this new approach, however, the below recommendations and suggestions for consideration will hopefully help to construct a delivery strategy.

Inevitably there is going to be a period during which we will have traditional No Cold Calling Zones and the new stickers running side by side, however, we believe that in time we will need to move towards a single approach which will probably involve the removal of No Cold Calling Zone signage and the opportunity for residents in existing No Cold Calling Zones to be provided with the new “Super Stickers”. In areas that are not No Cold Calling Zones residents can be provided with the new stickers whenever they are requested.

This new approach will need to be aggressively marketed if it is to have maximum impact. This approach offers us the opportunity to raise the profile of our work and get our message out about doorstep crime. It is suggested that articles be carried in Your County and all of the local borough and district

council publications pushing our message about doorstep crime and encouraging people to contact us to request the new sticker. This could be combined with press releases. It is also suggested that we consider having unmanned stands in places like libraries, council offices, Help Shops and Citizens Advice Bureaux where people can collect stickers to display on their doors.

One problem with door signage has always been that there is not one consistently recognised sticker design. It is proposed that we work with Sussex Police to get a sign agreed with them so that we are both pushing the same sign with the same message, this also means that the sticker can be rolled out through the Police channels. Initial discussions with the Police seem to suggest that they would be willing to support this. We may also need to see if any other organisations supply stickers such as Age UK and look to work with them on the production and roll out of this sticker.

Ensuring that the stickers are distributed as widely as possible throughout East Sussex is going to be key to the success of this approach and it is important to ensure that we identify means of distribution that reach the most people and also the people who are most at risk from doorstep crime. Most requests for stickers will probably come through Citizens Advice Consumer Service or via the ESCC Website (using an e-suite form or dedicated email address), however, we need to consider how we distribute stickers following these requests and how we make stickers available to people who may not access them through these channels. Below are some suggested distribution methods;

Local distribution centres – Stickers could be made available for collection from local distribution centres, which could include libraries, local ESCC area offices, and local Borough and District Council offices. In total this would potentially equate to about 60-70 locations. We could also consider local Police Stations, Citizens Advice Bureaux and Help Shops. In some locations, such as libraries, we could combine this with unmanned displays.

Distribution through third party organisations – If the sticker is agreed with the Police we will be able to tap into the Police distribution network and the sticker will reach far more homes than it would without their involvement. We also suggest that consideration be given to making stickers available to agencies and organisations that go and visit the elderly and vulnerable in their own homes, so that they can give them out when appropriate.

The sticker will need to be given out with some kind of explanatory information and possibly information that promotes initiatives such as Buy With Confidence. The inside door sticker will provide contact details for Consumer Direct and the Police.

We will need to ensure that residents are encouraged to display the sticker in a prominent position so it can be clearly seen by any doorstep callers before they knock at the door. If the sticker is not prominently displayed it may not be enforceable as callers might successfully argue they did not see the sticker.

It is suggested that residents are encouraged to report incidents of cold calling to us and that we continue to send out an amended version of the cease and desist letters that we currently send out when businesses cold call in the No Cold Calling Zones. The Service will also need to consider a policy decision regarding how we attempt to enforce the stickers. Buckinghamshire Trading Standards are providing training for the Police on the CPR's and also providing pro-forma section 9 witness statements to them that they can use when residents report traders ignoring the stickers. We are not going to be able to evaluate the impact of the stickers in the way that we currently evaluate No Cold Calling Zones and it may be appropriate to consider ways in which the impact can be assessed over time.

Conclusions

We believe this suggested new approach will save money and improve our service. Businesses will not be able to criticise us for setting up zones or question the size of zones and they will not have the problems of identifying where zones are. Residents who request a No Cold Calling Zone will be offered a sticker to enable them to make their home a No Cold Calling Zone and hopefully the stickers will be more readily adhered to with the criminal implications for not complying.

No Cold Calling Zone Sticker and general doorstep sticker



Appendix 2

Area	Location	No. of Households	
Eastbourne	Eversley Court - St Annes Road	47	
	Fairfield Lodge - Fairfield Road	59	
	Queens Crescent / Queens Road	160	
	Rodmill	604	
	Shinewater	550	
	Wish Hill	97	
Hastings	Chanctonbury Drive, Ranmore Close, Newlands Close	69	
	Seven Acre Close	109	
	St Helens - Ashford Road, Ashford Way, Park View, Park Creasent, Park Close, Park Drive, Park Avenue	522	
Lewes	Newton Road Sheltered Housing - Lewes	24	
	Reeds Court, Sheltered Housing, Boughey Place, Lewes	24	
	Jubilee Homes, Sheltered Housing, Newfield Road, Newhaven	19	
	Neills Close Sheltered Housing, Newhaven	20	
	Rathan Court Sheltered Housing, Lewes Road, Newhaven	26	
	Newick	1013	
	Arundel Road Sheltered Housing, Peacehaven	22	
	Ashington Gardens, Sheltered Housing, Peacehaven	41	
	Meridian Court Sheltered Housing, Cavell Avenue, Peacehaven	33	
	St Davids Court, Sheltered Housing, Balcombe Road, Peacehaven	35	
	Ringmer Mill Close Sheltered Housing, Mill Road, Ringmer	31	
	Coldstream House, Sheltered Housing, Seaford	22	
	Churchill House, Sheltered Housing, Walmer Road, Seaford	22	
	Seaford House, Sheltered Housing, Seaford	26	
	Seaford	11415	
	Rother	Rectory Way, Chntry Avenue, Church Vale Road, St Peters Creasent, Lychgates Close, St Annes Close, Wychurst Gardens, Portfield Close, Chartres, The Glades	349
		Dallington	146
Fairlight Village		807	
Winchelsea Village		278	
Wealden	Cotchford Lane, Hartfield	29	
	East Dean	1082	
	Harmers Hay - Hailsham	63	
	Manor Park Close, Hailsham	10	
	Old Orchard Place, Hailsham	58	
	Windsor Road, Hailsham	44	
	Park Close, Hailsham	11	
	Solway, Hailsham	67	
	The Stiles, Hailsham	43	
	Heathfield (Inc Broad Oak, Cade Sreet, Old Heathfield, Punnetts Town and Waldron	4529	
	Pevensay / Pevensay Bay	1768	
	Polegate	4177	
	Wadhurst	2179	
	Westham	2521	
	Wannock, Willingdon & Jevington (parish)	3007	
Withyham	1093		
	Total	37251	

IN THE MATTER OF:-

SUFFOLK COUNTY COUNCIL

THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS
2008

OPINION

Mr Alan Gillespie
Head of Legal Services
Endeavour House
8 Russell Road
Ipswich
Suffolk IP1 2BX

Ref: AJG/TQ

IN THE MATTER OF:-

SUFFOLK COUNTY COUNCIL

THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS
2008

OPINION

1. I understand that in certain areas of Suffolk, there is a problem caused by rogue traders who are “cold-calling” at the homes of vulnerable people. Suffolk County Council (SCC) has introduced a system of “No Cold-Calling Zones” (NCCZs) - a noble initiative, but a prohibition which is not legally enforceable.
2. The Consumer Protection from Unfair Trading Regulations 2008 (“the Regulations”) came into force on 26 May 2008. The Regulations contain, in Schedule 1, 31 numbered paragraphs setting out commercial practices which, by regulation 3(4)(d), are deemed unfair. Regulations 3(3), 4, 5, 6 and 7 describe and proscribe further unfair commercial practices.
3. Regulation 8 makes it a criminal offence to engage in the majority of those practices designated unfair by the Regulations. One of the practices amounting

to an offence, identified by my Instructing Solicitor, is described in paragraph 25 of Schedule 1:

“Conducting personal visits to the consumer’s home ignoring the consumer’s request to leave or not to return, except in circumstances and to the extent justified to enforce a contractual obligation.”

Of course, there are within the Regulations various other offences which a trader who comes to the door of a vulnerable person might commit, in the course of dealing with that vulnerable person. But this appears to be the one potential offence which might be committed as soon as the trader even approaches the vulnerable person, provided the request has been made.

4. Thus SCC’s Trading Standards Department has suggested that residents might display a sticker in a prominent position on the front door. The wording suggested is:

“The Consumer Protection from Unfair Trading Regulations 2008. The residents do not welcome doorstep traders/cold-callers. Please leave and do not return. Failure to do so constitutes an offence under the Regulations.”

I am asked whether such traders would be committing a criminal offence if they continued to call at a home where the sticker was displayed - and, if so, whether I have any suggestions on the wording.

5. In my opinion, a trader who approached a resident after having seen a notice of this nature would indeed commit an offence. The Regulations are poorly drafted, but are intended to be as comprehensive as possible. The clear meaning of paragraph 25 is that once a trader is requested to leave or not to return, he commits an offence if he does so. In my opinion, the notice amounts to a request to leave and not return, and any trader who does not do so on sight

of the notice commits the offence.

6. As far as I can ascertain, the ambit of the Regulations has not yet been tested in any higher court - there is, as far as I can see, no reported case on them. If, therefore, SCC were to prosecute a rogue trader who had continued to cold-call, I have no doubt that the trader's lawyers would dream up some creative defence. Let me, therefore, try to anticipate what might be argued.
7. The Regulations themselves provide a defence of due diligence (Regulation 17). It would be for the trader to prove that he took all reasonable precautions and exercised all due diligence to avoid committing the offence. Provided the sticker was prominently displayed and clearly legible, it is difficult to imagine how a trader could satisfy Regulation 17 and establish that statutory defence.
8. It may be argued that the sticker does not amount to "a request". Certainly, the request is not specific to a particular trader; nor is it obviously made by a specific consumer. However, provided the sticker is clear in its terms (I will advise on the wording below), it is difficult to see how it is anything other than a request to all traders not to make any approach to the resident of the property where it is displayed.
9. A more subtle argument would be as follows. The prohibition is on a trader ignoring the request of a consumer. The "consumer" is defined in Regulation 2(1) as:

"any individual who in relation to a commercial practice is acting for purposes which are outside his business".

One could imagine a rogue trader arguing that in order to be a consumer, a resident must be someone who has taken some action in relation to him - in other words, a resident does not become a consumer until there is already some ongoing relationship (albeit short of a concluded contract) in which the trader is acting in the course of business and the consumer is not. This is, of course, pure sophistry, and I very much doubt that the Divisional Court would give it any credence. The answer, surely, is that the vulnerable people who will be displaying these stickers have already identified themselves as potential consumers by the very act of display - and therefore the pre-contractual relationship commences when the trader approaches the door and is requested, by the sticker, to leave and not to return.

10. So I think that a trader who acted in defiance of a request displayed prominently on a sticker, and approached a resident, would commit a criminal offence, and that a prosecution of such a person by SCC would probably be successful (subject of course to proof of the facts, which can create its own difficulties where vulnerable people are involved).

11. May I suggest, however, that the wording of the proposed stickers be amended slightly, so as to reflect more precisely the wording of the Regulations? My suggestion is:

“The Consumer Protection from Unfair Trading Regulations 2008

The residents of this property do not want traders to visit this property.

Please leave and do not return.

If you do not leave and/or if you return, you will commit a **criminal offence.**”

12. I only hope a stern warning of this nature will prevent the problem from arising in the first place. As always, my Instructing Solicitor must not hesitate to telephone me if I can be of any further assistance.

42 Bedford Row
London WC1

RICHARD FURNISS
20 August 2009

OFT Opinion

OFFICE OF FAIR TRADING

To: Local Authority Trading Standards
Service

Date 20 February 2008

Direct line (020) 7211 8981
Email nicola.brown@oft.gsi.gov.uk

Cold Calling Control Zones / No Cold Calling Zones

1. The Office of Fair Trading (OFT) has sought advice from leading Counsel on certain issues surrounding the establishment and support of 'No Cold Calling Zones' by local authorities. No Cold Calling Zones are initiatives which purport to prohibit all (or certain categories of) uninvited callers from an area. The advice is subject to Legal Professional Privilege, and the OFT does not intend to share this further than it has already done so.
2. Although ultimately it is for local authorities (or indeed, other bodies involved with No Cold Calling Zones) to determine whether they are acting lawfully in establishing or supporting the establishment of No Cold Calling Zones, the OFT recognises that a number of stakeholders may still have questions about No Cold Calling Zones and therefore we consider it appropriate to set out our view of certain legal issues.
3. This letter sets out the OFT's view on the *legality* of certain aspects of No Cold Calling Zones in England and Wales¹. It also sets out a statement of the OFT's *policy* position in relation to Cold Calling Control Zones and No Cold Calling Zones.

OFT's view of the legal position

4. Paragraphs 5 to 14 below set out our view of certain legal issues. It should be noted that this is not a definitive view of the law. It is for local authorities to consider whether they are acting within their powers and they need to take their own advice in relation to the exercise of their own powers. Only the courts can ultimately decide whether the acts of a local authority are legal.

Vires to establish or support the establishment of No Cold Calling Zones

¹ We are currently considering the position in relation to Scotland



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5. Under Section 2 of the Local Government Act 2000 (LGA 2000), local authorities have the power (the 'promotion of well-being' power) to do anything which they consider is likely to achieve any one or more of the following objectives:
 - (a) the promotion or improvement of the economic well-being of their area;
 - (b) the promotion or improvement of the social well-being of their area, and;
 - (c) the promotion or improvement of the environmental well-being of their area.
6. The OFT considers that acting to establish or support No Cold Calling Zones is likely to fall within these powers, where the local authority considers that its actions will achieve the promotion of the well-being objectives.
7. The promotion of well being power is limited by section 3(1) LGA 2000, which provides that the power in section 2 does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment.
8. There would appear to be no prohibition, restriction or limitation relevant to the establishment of No Cold Calling Zones. In particular, we consider that section 3(1) is not engaged by the licensing provisions of the House to House Collections Act 1939 (and in future, Charities Act 2006), the Gas Act 1986 and Electricity Act 1986 and the certification provisions of the Pedlars Act 1871. These Acts do not create a right for those in possession of a licence or certificate to conduct door to door activities – in other words, the holding of such a certificate or licence is a necessary but not sufficient condition for those activities.

Human Rights Act 1998

9. The Human Rights Act 1998 is potentially engaged by the establishment of No Cold Calling Zones. A public authority is entitled to interfere with certain rights where its actions are prescribed by or in accordance with the law, necessary in a democratic society and pursue a legitimate aim as set out in relation to those Articles of the European Convention on Human Rights engaged by the establishment of No Cold Calling Zones. Any interference must therefore be proportionate.

Proportionality

10. The OFT considers that the issue of proportionality is key to determining whether the acts of local authorities in relation to No Cold Calling Zones are lawful.
11. The following matters will, in our view, go to establishing that a No Cold Calling Zone is a proportionate measure within the meaning of Human Rights law:

- The core objective of the No Cold Calling Zone is crime prevention or reduction (including reducing the fear of crime).
 - There is a real prospect that establishment of the No Cold Calling Zone will assist in achieving the crime reduction objective
 - An identified problem in relation to crime exists – in particular, there is specific intelligence / evidence of high levels doorstep crime in relation to the specific geographic area in question
 - The size of the No Cold Calling Zone is limited and directly corresponds to the geographic scope of the identified problem. No Cold Calling Zones that are very large and are not tailored to the specific problem which has been identified, are unlikely to be defensible as proportionate.
 - Consideration is given to what cold calling activities should be caught by the No Cold Calling Zone, and whether it is possible to target only those activities causing the identified problems.
 - There is a high concentration of consumers who are particularly vulnerable to exploitation (including consumers who have a higher propensity to be misled) within the area.
 - There is consultation with householders within the area of the proposed No Cold Calling Zone
12. The need to maintain specific No Cold Calling Zones should be reviewed on a regular basis to ensure it remains a proportionate measure.

Unfair Commercial Practices Directive (2005/29/EC)

13. Where the **primary** purpose of a No Cold Calling Zone is crime prevention or crime reduction in a general sense, including crimes such as theft and burglary, it is unlikely to be a measure falling within the field approximated by the Unfair Commercial Practices Directive (2005/29 EC). On that basis, the zones are unlikely to offend the Directive's maximum harmonisation principle.

'Enforcement' of zones

14. The establishment of a No Cold Calling Zone does not of itself create any new criminal offence or civil obligations; however, other regulatory provisions may be used in tandem with No Cold Calling Zones to support their aims. In these cases the enforceability of any 'restriction' that is being imposed, and whether these provisions are being used appropriately will depend on the legislation in question,

the factual context in which it is applied, and whether the legal test relating to its application is satisfied. In other words, the use of such powers will be subject to the same conditions and to the same checks and balances as they would be absent the establishment of a No Cold Calling Zone.

15. It should be noted that, even though a No Cold Calling Zone may be established lawfully, the OFT does not necessarily recognise such lawful No Cold Calling Zones as being an appropriate response to doorstep crime. Our policy position in this regard is set out below.

OFT policy

16. The OFT supports initiatives that improve consumer protection, in particular for disadvantaged consumers who may be particularly vulnerable to exploitation, where those initiatives allow legitimate business to operate without hindrance. Examples include Cold Calling Control Zones which focus on consumers being more informed and empowered to deal with doorstep crime, but which do not purport to restrict business activity. We also encourage signposting of consumers to reputable traders through initiatives such as local authority approved trader schemes, and the OFT's Consumer Codes Approval Scheme.
17. We recognise that there may be circumstances in which No Cold Calling Zones, set up in accordance with the legal advice, may be an appropriate response to doorstep crime.
18. Ultimately we seek to encourage TSS to take a risk-based and proportionate approach to implementing measures to benefit consumers – an approach that results in intervention only where there is a clear case for protection. The cost to business through intervention by local authorities should be a factor taken into consideration before intervention. Essentially, the benefits to consumers arising from measures aimed at crime reduction should outweigh the costs to business of having restrictions imposed. This is in line with the Hampton² principles. It is not possible to say definitely at this stage how the Legislative and Regulatory Reform Act 2006 will apply to No Cold Calling Zones but local authorities will be required to have regard to the Hampton principles set out in section 21 and the Regulatory Compliance Code when they come into force (expected to be Spring 2008). It should be noted however, that OFT has no power to enforce compliance with the Hampton principles.

Yours faithfully



Nicola Brown

² Set out in *The Hampton Review – Reducing administrative burdens: effective inspection and enforcement*



