

AGENDA MANAGEMENT SHEET

Name of Committee	Cabinet
Date of Committee	2nd November 2006
Report Title	The Consumer Advice Policy for Trading Standards
Summary	To consider a revised policy for the delivery of consumer advice by Warwickshire Trading Standards Service in light of the introduction of Consumer Direct West Midlands.
For further information please contact:	Anthea J Davies Assistant Head of Trading Standards 01926 414063 antheadavies@warwickshire.gov.uk
Would the recommended decision be contrary to the Budget and Policy Framework?	No
Background papers	Trading Standards Services National Performance Framework LACORS Guide to Good Practice in Trading Standards for Consumer Advice Equalities Impact Assessment
CONSULTATION ALREADY UNDERTAKEN:-	Details to be specified
Other Committees	<input checked="" type="checkbox"/> Community Protection Overview and Scrutiny Committee 5 th September 2006 (comments incorporated)
Local Member(s)	<input checked="" type="checkbox"/> Not applicable
Other Elected Members	<input checked="" type="checkbox"/> Councillor M Doody Councillor D Shilton Councillor R Chattaway – “The O&S Committee debated this issue in detail and are happy for the Cabinet to consider the report. The Cabinet should note that there are changes in the new policy and confirm they are happy to adopt them.”
Cabinet Member	<input checked="" type="checkbox"/> Councillor R Hobbs – “I approve the report.”

Chief Executive	<input type="checkbox"/>
Legal	<input checked="" type="checkbox"/> Ian Marriott (comments incorporated) Ann Belcher - approved
Finance	<input checked="" type="checkbox"/> Paul Walsh - approved
Other Chief Officers	<input type="checkbox"/>
District Councils	<input type="checkbox"/>
Health Authority	<input type="checkbox"/>
Police	<input type="checkbox"/>
Other Bodies/Individuals	<input type="checkbox"/>
<i>FINAL DECISION</i>	YES

Agenda No

Cabinet - 2 November 2006

The Consumer Advice Policy for Trading Standards

Report of the Strategic Director of Adult , Health & Community Services

Recommendation

That Members endorse the revised approach and formally adopt the policy.

1. Background

The provision of consumer advice to the public forms a very significant part of the work of Trading Standards. Not only do we provide assistance to thousands of consumers by advising them about their consumer problems incurred in a whole variety of transactions including consumer credit agreements, contracts for service, holidays booked, as well as regular and occasional purchases of expensive and everyday items, we also provide pre-shopping advice and help people to avoid problems in their future transactions. To our knowledge, we assist consumers to recover tens of thousands of pounds in redress every year.

In addition to this important civil advice service, we identify any consumer issues that have a criminal element and investigate the circumstances so that we can deal with them appropriately, instituting proceedings in some cases. The public therefore act as our 'eyes and ears' helping to identify where unfair trading is taking place in the county.

In order to manage the delivery of the consumer advice service it is provided in two stages. Firstly, there is initial advice (First Stage), which is usually given by telephone. However, we do offer the same service to personal callers and those who contact us by letter or email. This First Stage involves attempting to identify whether the caller has grounds for a complaint, explaining to them what their legal position is and then suggesting practical steps that they can take to resolve the matter themselves, ie, a 'self help service', giving the consumer sufficient information to help themselves. Secondly, there is a more "in depth" service (Second Stage), which involves negotiation and intervention on behalf of consumers. This level of service may be provided if the initial telephone advice has failed to resolve the problem.

Warwickshire Trading Standards service has delivered the First Stage of the process, for telephone callers only, with the assistance of Warwickshire County Council's Customer Service Centre from its inception. Prior to that, advice was offered as a direct service provided by the Trading Standards service.

Documented procedures are in place to ensure that we meet targets for responding to consumers within pre-determined timeframes. We do not currently have a written policy document that defines the parameters of the consumer advice service.

However, due to limited resources, in practice, the policy to date has been to prioritise First Stage advice. Only where resources permitted has further assistance been made available, ie Second Stage advice, with very occasional support for small claims court action.

2. Consumer Direct

In January 2006 Warwickshire County Council Trading Standards service transferred the First Stage telephone calls to the Government funded initiative Consumer Direct West Midlands (CDWM) based in Coventry. For the residents of Warwickshire this has resulted in better access to First Stage advice, with more consumers being able to 'get through' on the telephone.

CDWM will deal with the majority of First Stage calls. Referrals are made to Trading Standards for a number of reasons:

- to ensure that intelligence is available to inform enforcement work.
- to bring specific criminal infringements to our attention so that we can decide whether or not an investigation is warranted or another course of action is appropriate.
- for further assistance where a civil advice query is complex and remains unresolved.

The majority of referrals from CDWM are complex civil advice issues where the consumer is in need of further assistance ie Second Stage advice and assistance. Already the volume of these calls exceeds our capacity to deal with them so decisions must be made as to which of the referrals get priority. Furthermore, CDWM has not yet been publicly launched, so it is inevitable that the volume of total calls, and hence the volume of referrals, will rise when that launch takes place.

Warwickshire Trading Standards service is working towards intelligence-led enforcement and identifying and targeting rogue traders whilst providing advice and assistance to legitimate businesses. In addition to other criminal statutes, the Enterprise Act is in regular use to curb the activities of persistent offenders. Now that CDWM is dealing with most of the First Stage advice, the Trading Standards service in Warwickshire can direct more resources to identifying those persistent offenders and target enforcement activities

according to areas of greatest need. In addition, officers are now in a position to take up civil issues with traders on a general and specific basis, in order to raise their awareness of their obligations in civil law. This approach should assist in preventing consumer problems; clearly the most effective approach in the longer term.

There is also an obvious demand for Second Stage advice and assistance. We welcome the opportunity to enhance our service for Warwickshire residents by providing this service but, unfortunately, resources do not permit the service to assist everyone who may have a civil case to pursue, so we need to be clear as to how we prioritise cases for assistance. An agreed policy would provide guidance to officers to help them in their work and a clear stance for the consumers of Warwickshire. Most importantly the policy would ensure we achieve the balance between pro-active enforcement and providing assistance for individuals in the face of an unmanageable volume of referrals from CDWM. The policy would also ensure that we maintain an equitable and consistent approach in prioritising the service delivery dependent on available resources.

Furthermore, the National Performance Framework for Trading Standards services, the Best Value Performance Indicator for Trading Standards (BVPI 166) and the LACORS (Local Authorities Coordinators of Regulatory Services) Guide to Good Practice in Trading Standards for Consumer Advice, Information and Education, all recommend that Members should approve the consumer advice policy within the service for which they are responsible.

3. Consumer Advice Policy

The proposed policy is attached as Appendix 1. The intention would be, subject to Member agreement, for the policy to be made public by means of the County Council website and other means and reviewed at least once every two years. Any significant changes to the policy would be subject to Member agreement.

The policy attempts to:

- define a consumer complaint and identify 'First Stage' and 'Second Stage' advice service
- recognise that there are other, more specialised organisations and ombudsmen that are better equipped to deal with very specific complaints about particular goods or services.
- prescribe the limitations of the consumer advice service by prioritising the service to those in greatest need.

There is no legal definition of a consumer complaint. However it is broadly regarded as being an issue concerning a contract between a consumer (a customer who is purchasing goods and/or services for their own private consumption), and a business or trader. This definition automatically

excludes contracts made between two businesses or between two consumers.

There are advice and arbitration organisations who are specialists in their particular fields. We would not attempt to duplicate their work and would refer consumers to such organisations in appropriate circumstances. Signposting in this manner releases resources within Trading Standards that can be better utilised to deal with cases for which there are no recognised ombudsmen or complaint handling bodies and ensures that consumers reach the specialists where appropriate.

Examples of such bodies include:

- Energywatch, the independent watchdog for gas and electricity customers.
- OTELO (Office of the Telecommunications Ombudsman) and CISAS (The Communications and Internet Services Adjudication Scheme), both of which have been approved by the telecommunications regulator OFCOM to resolve complaints about telephony and internet services.
- FOS (Financial Ombudsman Service) that deals with complaints about banks, insurance companies, pensions and investments.

Other key factors are that for Trading Standards to assist the consumer, the case should be based on a contract and the maximum claim for damages must not exceed the financial limit of the Small Claims Court (which is currently £5,000).

The policy also excludes dealing with complaints against the County Council. In exceptional circumstances, officers will assist consumers to prepare court paperwork and attend court.

Paragraph 6 of the policy is of specific significance in developing and agreeing this policy. This paragraph seeks to set out the parameters which may be of relevance in determining the vulnerability of a consumer and hence their priority for the Second Stage advice service. An Equalities Impact Assessment has been carried out and documented for reference.

Graeme Betts
Director
Adult, Health and Community Services

Shire Hall
Warwick
2 October 2006

The Consumer Advice Policy for Trading Standards

1. Warwickshire County Council Trading Standards Service provides a consumer civil advice service to consumers (private individuals) who have purchased goods and/or services for their own private consumption from a business or trader.
2. In order to manage the delivery of the consumer advice service it is provided in two stages. Firstly, there is initial advice (First Stage), which is usually given by telephone. However, we do offer the same service to personal callers and those who contact us by letter or email. This First Stage involves attempting to identify whether the caller has grounds for a complaint, explaining to them what their legal position is and then suggesting practical steps that they can take to resolve the matter themselves, ie, a 'self help service', giving the consumer sufficient information to help themselves. Secondly, there is a more "in depth" service (Second Stage), which involves negotiation and intervention on behalf of consumers. This level of service may be provided if the initial telephone advice has failed to resolve the problem.
3. The First Stage advice service is available to all residents of the county of Warwickshire. The provision of the Second Stage service will be prioritised to ensure that assistance is provided to those in greatest need (see paragraph 6 of this policy). People living outside the county will be signposted to Consumer Direct West Midlands for advice or to their local Trading Standards Service for assistance.
4. The Service seeks to provide advice and assistance to help consumers assert their contractual rights where the maximum claim for damages is no greater than the financial limit of the Small Claims Court (currently set at £5,000). This may include claims for consequential loss arising directly from the breach of contract.
5. The Service will signpost consumers to recognised complaint handling bodies or ombudsmen that exist to deal with specific complaints about particular goods or services where it is recognised that such organisations have expertise in their field.
6. In offering a service beyond initial (First Stage) advice, priority will be given to vulnerable consumers ie those in greatest need of assistance. In making an assessment of "vulnerability and greatest need" some of the following factors might need to be taken into account: language difficulties, age, disability, ethnicity, low-income households, lack of basic skills, mobility and other issues that lead to social exclusion or vulnerability. The availability of other sources of assistance and support will also be of relevance. In general, transactions under £20 will not justify Second Stage advice unless it is appears that a number of consumers were affected.

7. In exceptional circumstances, and subject to available resources, officers may accompany consumers to the Small Claims court.
8. The Trading Standards Service is not able to advise or assist consumers:
 - in claims for un-liquidated damages (damages that are not quantifiable at the time of making the claim by direct reference to monetary loss, eg, claims for mental distress or inconvenience)
 - with claims for personal injury.
 - with claims for negligence.
 - where a solicitor or other agency is already advising the consumer about the same matter.
 - if the complaint is about goods or services provided by Warwickshire County Council except where the supply is discretionary and for a charge. Where advice and assistance is provided, the consumer will be directed to another agency if we have been unable to resolve the problem informally and the consumer wishes to pursue a legal remedy.