

ANGUS COUNCIL

ENVIRONMENTAL AND CONSUMER PROTECTION COMMITTEE –13 AUGUST 2002

“STOP NOW” ORDERS – AN UPDATE

REPORT BY DIRECTOR OF ENVIRONMENTAL AND CONSUMER PROTECTION

Abstract

This report updates the Committee on progress with the implementation of the “STOP NOW” Orders legislation (interdicts in the Civil Courts) which is designed to combat unfair trading practices.

1. RECOMMENDATIONS

It is recommended that the Committee note the content of this report for its interest.

2. BACKGROUND

This report updates an earlier Report No 225/01 which relates to the Injunctions Directive “STOP NOW” Orders (an injunction is the English equivalent of a Scottish Interdict).

The above Directive (EC 98/27/C) has now been incorporated into UK law by The Stop Now Order (EC Directive) Regulations 2001 (SI 2001/1422).

These Regulations allow Trading Standards Officers and other bodies, to apply to the civil courts for “STOP NOW” Orders to prevent traders from continuing to infringe or threatening to infringe specified consumer protection legislation, where their actions could harm the collective interests of consumers. Courts will also have the powers to order traders to publish corrective statements to minimise the harm caused to consumers by past infringements.

These powers aim to improve enforcement by providing alternative civil mechanisms to work alongside existing criminal sanctions where these already exist.

3. UPDATE

There have been significant developments since our last report last year:-

- a) In partnership with six neighbouring authorities, within the Sheriffdom of Tayside, Central and Fife, a project co-ordinator (qualified solicitor) has been appointed for a two-year period to co-ordinate this work within the partner authorities. The funding for this post comes from a successful bid for Department of Trade and Industry funding as part of their Trading Standards Modernisation programme.
- b) The Office of Fair Trading (OFT) is establishing a Consumer Regulation Website (CRW) to act as the formal mechanism for reporting and monitoring relevant “STOP NOW” matters across the UK. Angus is one of two Scottish pilot authorities developing the CRW system which should be adopted UK-wide by the end of this year.
- c) The Enterprise Bill, which is currently before the Westminster Parliament, is due to widen the scope of the UK Regulations. As described in Report 225/01, there were initially to be eleven EU Consumer Protection areas covered by “STOP NOW” Orders. The aforementioned Bill seeks to extend the scope to a further 16 or so pieces of mainly UK legislation (including the Trade Descriptions Act) which will greatly increase our role and the implications for our Service.

4. SERVICE IMPLICATIONS

Civil Law remedies may increasingly be sought to deal with unfair trading practices, moving effort away from traditional criminal law reporting to the Procurator Fiscal.

The knock-on implications are a move away from court costs being borne by the Crown (Procurator Fiscal) to costs being borne by the local authority.

This situation is significantly different from the English experience where (prosecution) costs have always been carried by the local authority, and budgeted for accordingly. There will likely be increased demand from consumers for action under these new powers as time goes by.

The powers allow for a measured approach:-

- a) initially an "Informal Assurance" will be sought from an errant trader – normally a signed assurance that a particular course of unfair trading practice will cease (eg failure to supply goods already paid for; or to carry out adequate repairs).
- b) If it becomes necessary to move to a "Formal Undertaking" (eg failure to sign the assurance or failure to abide by an assurance given), this will involve Trading Standards and Legal Services staff preparing formal documents with quasi-judicial status. Failure to abide by the undertaking results in an application to the Sheriff Court (or Court of Session) for a determination that the undertaking has been breached which is regarded as a criminal offence or if a "Formal Undertaking" is not given by the trader, a "STOP NOW" Order is sought via an interdict or interim interdict by a solicitor in Court.

5. DEPARTMENTAL COST IMPLICATIONS

Where an interdict ("STOP NOW" Order) is sought, or there is a breach of a "Formal Undertaking" there will be costs involved, not just for the cost of staff time for Angus Council staff but also in relation to obtaining witness statements and the attendance of witnesses at Court. These witnesses may not reside locally, and may in fact be professional witnesses who require payment of expenses as "experts".

Although there are provisions within the judicial system to make claims for cost against defenders, it could transpire that a trader liquidates his company becomes bankrupt, or is simply well versed in avoiding payment resulting in all costs of the action falling on the pursuer (the Council).

Other cost implications include travel by our Officers to other areas to act as witness, local court action to extend jurisdiction of a case to Scotland for one originally undertaken in England, and costs payable if the Council lost an action it was pursuing.

Advice will sought from the Law and Administration Department in relation to these potential costs, and who would bear them if they arose.

It remains to be seen what impact this extension of the legislation will have on resources, and only experience will tell if current staff resources need to be boosted. To date an additional £6000 has been allocated to Trading Standards by Government for this work, which did not address legal costs and certainly did not take into account the aforementioned increased scope contained within the Enterprise Bill.

It may be that a further report on resource implications will need to be made to Committee in due course.

6. FINANCIAL IMPLICATIONS

There are no financial implications in connection with this report. As already stated, experience will tell if a further report to Committee in the future is necessary to address resource implications.

7. HUMAN RIGHTS

There are no Human rights implications with this report.

8. CONSULTATION

The Chief Executive, Director of Finance and Director of Law and Administration have been consulted on the contents of this report.

9. CONCLUSION

Experience will tell if resources are adequate as the new civil court action system is used.

There are likely to be real implications for staff resources of both this Department and Law and Administration; and for training.

S R Heggie
Director of Environmental and Consumer Protection

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing this report.

JM/FMCI
15.7.02