

REPORT TO: Executive Board Sub Committee

DATE: 25 September 2008

REPORTING OFFICER: Strategic Director, Health and Community

SUBJECT: Amendments to Standing Orders Relating to Duties of Proper Officers and Delegation to Officers

WARDS: Boroughwide

1.0 PURPOSE OF THE REPORT

1.1 To request that amendments be made to standing orders relating to duties of proper officers and delegation to officers, in the light of changes to the system of home office style cautions (used by a number of the Council's officers as an enforcement tool) and to add Acts of Parliament to / delete Acts of Parliament from the list of Acts enforced by officers of the Consumer Protection Service.

2.0 RECOMMENDATION: That Council be recommended to amend Standing Orders relating to duties of proper officers and delegation to officers, as follows:

- (1) references to "formal cautions" in paragraphs 152 and 172 of these standing orders be replaced with references to "simple cautions"**
- (2) the list of Acts included as Appendix B to these standing orders be amended by the addition of the Fraud Act 2006, the Licensing Act 2003 and the Protection of Children (Tobacco) Act 1986, and by the deletion of the Mock Auctions Act 1961 and the Trading Representations (Disabled Persons) Act 1958**

3.0 SUPPORTING INFORMATION

Changes to the issuing of cautions as an enforcement tool

3.1 For some years the criminal justice system provided for a system of Home Office style "formal cautions", which were available for use by enforcers as an alternative to instituting criminal Court proceedings, under particular circumstances. Earlier in the year this system of cautioning changed and "formal cautions" were replaced with "simple cautions" and "conditional cautions". Presently, only the Police may

issue the latter. It is therefore necessary to replace any references to “formal cautions” in the Council’s Constitution, with the new reference of “simple cautions”.

Additions to list of Acts enforced by officers of the Consumer Protection Service

- 3.2 **The Fraud Act 2006** addresses certain offences previously covered by the Theft Acts (which are included in the Constitution). Fraud Act offences include false representation; failure to disclose information when there is a legal duty to do so and abuse of position. The Act also creates new offences of possession and making or supplying articles for use in frauds. The offence of fraudulent trading (Section 458 of the Companies Act 1985) will apply to sole traders and obtaining services by deception is replaced by a new offence of obtaining services dishonestly.
- 3.3 **The Licensing Act 2003** places a duty on the Local Weights and Measures Authority to enforce the sale of alcohol to under age children.
- 3.4 **The Protection of Children (Tobacco) Act 1986** was an amending Act, the definitions of which are now required in the course of tobacco enforcement undertaken by the Consumer Protection Service.

Deletions from the list of Acts enforced by officers of the Consumer Protection Service

- 3.5 Both the **Mock Auctions Act 1961** and the **Trading Representations (Disabled Persons) Act 1958** may be deleted from the Constitution, as these Acts were repealed by the Consumer Protection from Unfair Trading Regulations 2008. These Regulations were made under the European Communities Act 1972, which is covered in the Constitution. Note that the Theft Acts are not being deleted at this time, just in case any pre 2006 Theft Act offences present themselves in the next year or so.

4.0 POLICY IMPLICATIONS

- 4.1 The matters addressed in this report conform with existing Council policy.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The recommended changes to Standing Orders are financially and resource neutral.

6.0 OTHER IMPLICATIONS

- 6.1 Whilst the Licensing Act 2003 places a duty on the Authority, we have

been enforcing the sale of alcohol to children for some time so there is no additional work associated with this change. The other recommended changes do not add or remove duties falling to be undertaken by officers of the Consumer Protection Service.

7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

7.1 Children and Young People in Halton

None directly as there are no material changes to work already undertaken by officers of the Consumer Protection team.

7.2 Employment, Learning and Skills in Halton

None directly as there are no material changes to work already undertaken by officers of the Consumer Protection team.

7.3 A Healthy Halton

None directly as there are no material changes to work already undertaken by officers of the Consumer Protection team.

7.4 A Safer Halton

None directly as there are no material changes to work already undertaken by officers of the Consumer Protection team.

7.5 Halton's Urban Renewal

None directly.

8.0 RISK ANALYSIS

8.1 There are no risks of any significance associated directly with the recommendations.

The proposal is not so significant as to require a full risk assessment.

9.0 EQUALITY AND DIVERSITY ISSUES

9.1 There are no equality and diversity issues flowing directly from this report or the recommendations.

10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

10.1 There are no background papers within the meaning of the Act.