

Committee: Port Heath & Environmental Services	Date: 11 th March 2014
Subject: The Trading Standards Enforcement of 'Closing Down' Sales in the City of London	Public
Report of: Director of Markets & Consumer Protection	For Information
Summary	
<p>This report is responding to a request by Members to update the Committee on the situation in the City of London regarding alleged "Closing Down Sales" and the misdescription of goods as being genuine 'sale' items.</p> <p>It references the previous work under taken in the area of consumer protection back in early 2012 by the City Corporation's Trading Standards team.</p> <p>Finally, advising on the current legal position with respect to such trading practices, it concludes that the problem is now very small in terms of consumer detriment in comparison to other matters being investigated by the City Corporation's Trading Standards team – e.g. investment and commodity fraud – but that the situation will still be periodically monitored</p>	
Recommendation	
That Members note the content of this report	

Main Report

Background

1. In times of economic pressure, many businesses are seeking to maximise the return on their stock by selling it off at lower than normal prices, often at barely more than they have paid for it through "sales" and other forms of promotion.
2. In order to attract customers to their supposed bargains, some traders have employed less than scrupulous, sharp practices and sometimes, even illegal means such as alleged "Closing Down" sales to win customers to their particular businesses, thinking that that they are getting a one-off bargain.
3. The City of London is no exception to this and we have received complaints about such practices in the past, often from fellow, legitimate businesses. However, the overall effect of such practices is relatively very small in comparison to the huge amount of consumer detriment suffered in other areas investigated by our Trading Standards team, such as investment and commodity fraud as highlighted in my report to this Committee this January.

4. Nevertheless, in response to problems brought to our attention, the City Corporation's Trading Standards team investigated and advised businesses about the law regarding such "sales". The advisory leaflet "*Guidance on Closing Down Sales*" has recently been up-dated it and a revised version is attached as Appendix A.
5. Our interventions were previously reported to this Committee in January 2012 ("***Closing Down Sales in the City of London***") and I subsequently gave a follow-up oral report our progress in May 2012; of the fourteen shops originally identified as having some form of on-going "sale" in January 2012 and who were advised of their legal responsibilities by the Trading Standards team, the majority were now compliant and the remainder had closed down.

Current Position

6. The law relating to sales and other price comparisons is governed by the Consumer Protection Regulations 2008 (CPRs) and the ***Pricing Practices Guidance*** (November 2010) which offers clear advice on compliance.
7. Where a trader is making a price comparison, this should be with the trader's own previous price and not with a 'Recommended Retail Price' (RRP) which is not genuine, or differs significantly from the price at which the product is normally sold, or for goods supplied.
8. The previous price must be a genuine reference price, i.e. a price at which it would reasonably be expected to sell a significant number of items and a significant number of "sale" items were offered for sale at that previous price, for a significant period of time.
9. The previous price, the "sale" price and any intervening prices must all be shown and unless the basis for comparison is set out explicitly in any advertising material:-
 - a) the previous price should have been offered for at least 28 consecutive days in the last six months;
 - b) the period for which the lower price is offered should not be longer than the period for which goods were offered at the previous higher price; and
 - c) comparisons should not be made with prices last offered more than 6 months ago.
10. With respect to "Closing Down" sales:-

"Claiming that the trader is about to cease trading or move premises when he is not"

is a Banned Practice under Schedule 1 of the CPRs and hence a commercial practice which is considered unfair in all circumstances.
11. However there is no definition of "closing down" in the legislation so one must rely upon the dictionary definitions of:-

“About to” is defined in the as *“soon to perform the action as indicated by the infinitive”* - ie *“soon to cease trading”*(Oxford English Dictionary)

“About to” is *“on the point of doing”* (Chambers Dictionary)

so consequently, the act of ceasing to trade must be one that is already underway and in the process of taking place, so a “Closing Down” sale must be very close to the moment of closure taking into account obvious evidence such as the lease expiring, notice to quit being served on the business, imminent closure due to planned refurbishment works, etc.

12. Most recently, the Trading Standards team have had to deal with one case of “sale” related signage. This case was brought to our attention by another trader in the City and it related to the use of a large “Closing Down” sign relating to part of the business that was ceasing to trade. It was not sufficiently clear that it was only the women’s wear department that was closing so the trader was advised accordingly and made the necessary changes to their signage and is now legally compliant.

Corporate & Strategic Implications

13. Should such traders be allowed to flourish in the City of London, there is a minor reputational risk and in order to ensure they do not flourish, TS officers will periodically monitor the situation.

Financial Implications

14. None

Conclusion

15. Closing down sales are now well controlled in the City of London and are no longer causing the same problems that they were some years ago but the situation will be periodically monitored.
16. Future complaints from business or consumers relating to these matters will be assessed and prioritised in accordance with national guidance produced by the National Trading Standards Board where the level of consumer detriment and the scope of those affected, local, regional or national, are key factors as I reported to your committee in November 2013.

Recommendation

17. That Members note the content of this report.

Appendices

- Appendix A - City of London Trading Standards ***Guidance on Closing Down Sales*** (published 2012, revised 2014)

Background Papers:

“Closing Down Sales in the City of London” - Report to PHES Committee, January 2012

“Implications of the changes to the consumer landscape of the UK for the future of trading standards enforcement in the City of London” - Report to PHES Committee, November 2013

“The work of the Tri-Regional Scambusters team staff in the City of London” - Report to PHES Committee, January 2014

Nora Walsh
Trading Standards Team Manager
020 7332 3123
nora.walsh@cityoflondon.gov.uk