

**NORTH LANARKSHIRE COUNCIL  
REPORT**

To: ENVIRONMENTAL SERVICES COMMITTEE	<b>Subject: DELEGATION OF LOCAL AUTHORITY POWERS AND FUNCTIONS UNDER TRADING STANDARDS LEGISLATION TO STAFF IN COSLA'S TRADING STANDARDS SCOTLAND TEAM</b>
From: HEAD OF PROTECTIVE SERVICES	
Date: 28 OCTOBER 2014 Ref: CM/PB	

**1. Purpose of Report**

- 1.1 To inform Members of the establishment of a Scotland-wide trading standards team, Trading Standards Scotland ("TSS"), employed by the Convention of Scottish Local Authorities (COSLA). The team will complement the work of local services and deal with national and cross border issues as well as crimes of a specialist nature such as illegal money lending and E-crime;
- 1.2 To seek Members' agreement to the proposed mechanisms for delegating the Council's functions and powers under trading standards and consumer protection legislation to TSS staff.

**2. Background**

- 2.1 Trading standards and consumer protection functions are currently performed by individual local authorities as local weights and measures authorities. We have in recent years been supported in our role by three national teams which were established to target major scams and trading malpractices which individual authorities would not have the resources to deal with. These three teams consisted of a central team based in COSLA, an operational unit dealing with illegal money lending hosted by Glasgow City Council, and the Scambusters/E-crime unit hosted by North Lanarkshire Council (formerly in conjunction with Dundee City Council).
- 2.2 From 1 July 2014, a fully amalgamated national team (TSS) was established within COSLA to replace the three separate teams. It is funded by the UK Government via the Department of Business, Innovation and Skills (BIS), with the remit of providing a Scottish-wide service, delivered through COSLA. This new team is overseen by COSLA's TSS Chief Officer and COSLA have responsibility for the team's strategic and personnel management. The transfer of North Lanarkshire Council staff to the new COSLA team was reported to Committee on 12 August 2014.
- 2.3 TSS staff will require powers to undertake enforcement action within the scope of their role, including (but not limited to) statutory powers enabling them to:
  - investigate any suspected illegal activities;
  - enter and inspect premises, and to inspect goods and equipment;
  - require production of documents and other records and to take copies of documents;
  - sample goods for analysis and testing;
  - seize and detain goods and equipment for examination and testing;
  - undertake test transactions of goods and services;
  - serve enforcement notices; and
  - impose civil penalties.

2.4 These powers are currently conferred on local weights and measures authorities and/or their duly authorised officers. North Lanarkshire Council and its officers will retain these powers, as TSS will not assume existing local trading standards functions. It is simply a resource intended to add capacity to local authority trading standards teams in relation to the specialist functions of tackling illegal money lending and E-crime, and it also has a role in co-ordinating and enforcing cross-boundary and national casework. However, in order to be fully effective in its role, the operational team will need staff properly authorised to undertake the full range of trading standards activities.

### 3. Delegation

3.1 In establishing the new team, it is important that the delegation arrangements put in place are sufficiently robust. It is also considered appropriate that delegation arrangements are sufficiently specific to avoid challenge on vires grounds for lack of clarity or lack of specification.

3.2 To ensure that the authorisation of TSS staff is as robust as possible, it is proposed that all 32 local authorities in Scotland take a co-ordinated approach to the delegation process. The suggested mechanisms for delegation (together with a brief explanation of the reasons for the chosen approach) are as follows:

#### 3.3 Step 1 – Appointment of TSS staff as officers of local authorities

Enforcement powers under the relevant pieces of trading standards and consumer protection legislation are granted to either a “local weights and measures authority” or to “officers” or “authorised officers” of such an authority. Some powers are granted directly to officers; in other cases the authority must authorise its officers to exercise the powers on its behalf. In effect, however, the general position is that the relevant powers are granted to every Scottish local authority and (either automatically or by delegation by the authority) to the officers whom they have appointed to carry out the functions of a local weights and measures authority.

3.4 Therefore, if TSS staff are to benefit from the full range of authorisations, the first step in the delegation process is that they must be appointed as officers of each local authority. For the avoidance of doubt, there is no requirement that an individual appointed as a local authority officer must also be an employee of that authority, so the fact that TSS staff are employed by COSLA is no barrier to their appointment as local authority officers. Nor is there anything to prevent an individual from being appointed as an officer by more than one local authority.

#### 3.5 Step 2 – Delegation of functions

Once appointed as local authority officers, some of the necessary powers will flow to TSS staff automatically by virtue only of their appointment (i.e. those powers conferred directly on “officers” of local weights and measures authority under the relevant legislation).

3.6 For the remaining powers (i.e. those granted to weights and measures authorities only, or those conferred on “authorised officers”), local authorities would have to delegate their functions to appointed officers for the authorisations to take effect. Delegation to TSS staff may be made under section 56(1) of the Local Government (Scotland) Act 1973 (the “**1973 Act**”). This provision allows local authorities to arrange for the discharge of their functions by their officers (subject to a small number of notable exceptions that do not apply here). North Lanarkshire Council currently authorises its Executive Director of Regeneration and Environmental Services, its Head of Protective Services and its Trading Standards Manager to fulfil these “weights and measures” functions either on their own, or by authorising “officers of the Council” to do so.

3.7 Once a local authority has delegated its weights and measures functions to officers, the necessary enforcement powers will automatically follow. Section 56(14) provides that references to the discharge of any functions of a local authority include references to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of those functions. While this is not intended to put those to whom a local authority's powers have been delegated in a better position than the local authority itself would have been in (i.e. there is no scope for gaining powers that the local authority did not already have under the relevant legislation), the person to whom functions have been delegated should be in no worse a position and is automatically deemed to be able to exercise the powers relating to the delegated functions in the same manner as the delegating authority.

3.8 It is proposed that each local authority in Scotland will use section 56(1) to delegate its functions under the relevant trading standards legislation to the Chief Officer of TSS. This means that all of the necessary authorisations of each authority will flow to the Chief Officer. In turn, the Chief Officer will also be granted the power by each local authority to delegate further the functions of each authority to all TSS staff (each of whom would separately have been appointed as officers of every local authority). In this manner, TSS employees could acquire the whole suite of enforcement powers necessary for the fulfilment of their duties.

3.9 The Chief Officer will maintain a list of officers to whom further delegation has been made of the functions delegated by each authority. This list will be kept under review and provided to local authorities. It will not be made available for public inspection, due to the sensitive nature of the work TSS staff are engaged in. However, there will be a process allowing individuals or businesses subject to enforcement action to have a means of checking that TSS enforcing officers are properly authorised.

#### 3.10 Amendment to schemes of delegation

A diagram illustrating how this authorisation scheme would operate has been provided as Appendix A to this report. In order to achieve this in practice, all local authorities will require to assess their schemes of delegation or lists of powers delegated to officers in due course.

3.11 Should the recommendations in this report be followed by committee, then the Council's Scheme of Delegations to Officers, at paragraph 42 of the delegations in respect of Regeneration & Environmental Services, will be amended in due course to acknowledge the Chief Officer of TSS as exercising delegated functions on the Council's behalf.

3.12 The recommendations in this report, if approved, will provide sufficient authority for TSS to function as intended meantime.

#### **4. Financial Implications**

4.1 There are no financial implications contained within this report.

#### **5. Corporate Considerations**

5.1 This report has been agreed with colleagues in Legal Services.

5.2 Upon approval of this report, there may be a requirement to amend the scheme of delegation to officers, devised by Corporate Services' Committee and Civic Governance Services Section.

## 6. Recommendation

6.1 The Committee is invited to:

- a) note the contents of this report;
- b) approve the appointment of TSS staff as officers of the Council;
- c) under section 56(1) of the 1973 Act extend the delegation of the relevant trading standards and consumer protection functions, as outlined in the Council's Scheme of Delegations, to the Chief Officer of TSS;
- d) approve the granting of the power, for the purposes of the functions outlined in this report only, to the Chief Officer of TSS to appoint, and to remove the appointment, of TSS employees as Officers of the Council on an on-going basis.



**CRAWFORD MORGAN**  
**HEAD OF PROTECTIVE SERVICES**

Local Government Access to Information Act: For further information please contact Paul Bannister on 01236 856460.

**APPENDIX A**

**COSLA (employer)**



**TSS employees (all)**



**Appointed as officers of every local authority**

**Delegation of local authority functions**



**Chief Officer of TSS**



**Further delegation to additional TSS staff, as Officers of the Council, named on a list maintained by the Chief Officer**