

DERBYSHIRE COUNTY COUNCIL**MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES****15 June 2015****Report of the Strategic Director, Health and Communities****TACKLING ILLICIT TOBACCO 2014-15****1. Purpose of the report:**

To advise the Cabinet Member, Health and Communities of action taken by the Trading Standards Division to tackle the sale and supply of illicit tobacco in Derbyshire during 2014-15.

2. Information and analysis:

2.1 Smoking is still one of the biggest contributors to preventable coronary heart disease. Counterfeit and non-duty paid (boot-legged or smuggled) – collectively known as illegal or illicit tobacco – is still readily available in Derbyshire. Although the rise in the number of complaints about illegal cigarettes has slowed, there were still a significant number during the previous year reflecting the continued presence of shops selling illegal cigarettes throughout the county. The Trading Standards Division – with support from Public Health and other enforcement agencies; namely Derbyshire Police, HMRC and District Council Environmental Health teams, continues to prioritise this activity for the following reasons:

- Illegal tobacco encourages those addicted to smoking to smoke more thus undermining Government strategy of limiting demand by keeping the price high. Illegal tobacco typically sells for £3 to £3.50 per pack compared to £8 to £9 for the genuine product.
- There is evidence to suggest that rogue traders selling illegal tobacco will also breach age-restriction requirements by selling to young people under 18.
- Legitimate local retailers face unfair competition and loss of revenue from the illegal sellers
- There is a loss of tax revenue to the Treasury.
- Illegal cigarettes often do not contain appropriate health warnings; nor do the cigarettes have the self-extinguishing ‘speed humps’ incorporated into their design and therefore could continue to burn if left unattended.
- There is evidence to suggest that the persons behind the sale of illegal tobacco are organised criminal gangs.

2.2 During the previous financial year the Division visited 30 retail outlets, storage units and domestic premises throughout the county. Over two thirds of these visits had the assistance of tobacco sniffer dogs to help locate tobacco that had

been concealed on the premises. Examples of how tobacco was concealed and full details of activities undertaken during the previous financial year are contained within the appendix to this report. A total of some 821,000 cigarettes and 108 kg of hand-rolling tobacco (HRT) was seized. This compares to 876,000 and 795 kg respectively for 2013-14, but is significantly more than the 62,000 and 26 kg seized in 2012-13.

- 2.3 One of the issues facing the Division is that the businesses selling illegal tobacco only keep a relatively small stock – usually hidden – on the premises. As a consequence, not only is it more resource intensive to take enforcement action requiring the services of sniffer dogs and support of Derbyshire Police, it also means that often the business is operating again within days if not hours. As well as taking enforcement action through the courts, one strategy that has proven effective is to identify and work with property owners to evict the persons conducting the illegal business. During the previous year, seven shops have successfully been closed in this way.

Summary of financial outcomes (over last two years)

- 2.4 With financial support from the Public Health Resource Fund, the Division has been able to maintain the prioritisation of tackling illegal tobacco which first began to be seen on the high street of market towns throughout the county in 2012. To date, we have been involved in the seizure of approximately 1.7 million sticks of cigarettes and 910 kg of HRT. Activities to disrupt and take enforcement action against those engaged in the sale and supply of illegal tobacco, and the estimated value of seized tobacco can be summarised as follows:

Amount seized

- Cigarettes: 1.7 million sticks
- Hand rolling tobacco: c910 kg

Estimated value

- **High Street value of goods/Loss to legitimate business - £1,056,000**
- **£680,000** (from approximately 85,000 packs of 20 cigarettes retailing at £8.00)
- **£376,000** (from 20,880 50g packs HRT retailing at £18.00)
- **Prevention of duty lost to UK - £724,000**
- **£524,000** from approximately 85,000 packs of cigarettes – (tax element of £6.17 for each packet of 20 retailing at £8.00)
- **£200,000** from 20880 50g packs HRT (tax element of £10.97 for each 50g packet of HRT retailing at £18.00)
- In addition **seizure of 3 cars, £13,000 cash** in joint enforcement with other agencies

Disruption following closure of shops

- **12 shops closed in last two years – £1,200,000 approximately** - effective reduction of six shops selling illegal tobacco in Derbyshire equates to £1.2 million of prevented sales/loss to legitimate business (on basis of £200,000 sales per year for each shop from illegal tobacco)

- This is equivalent to the **reduction in supply of 150,000 packs of illegal cigarettes** (or HRT equivalent) in Derbyshire communities, sold at less than half the price of legitimate product.

Prosecutions

Following investigations in to the supply and sale of illegal tobacco, 14 prosecutions were concluded during the last year financial year. Sentences imposed by the courts can be summarised as follows:

- **Four months imprisonment**
- **£5,000 proceeds of crime confiscations**
- **600 hours community service**
- **6 months community orders**
- **12 week curfew**
- **£4,741 costs**
- **£1,084 in fines**

- 2.5 Further details of action taken to tackle illegal tobacco in Derbyshire during 2014-15 are contained in the appendix to this report. This activity will remain a priority for 2015-16.

3. Other considerations:

In preparing this report the relevance of the following factors has been considered; financial, prevention of crime and disorder, equality of opportunity; and environmental, health, human resources, legal, property and transport considerations.

4. Background papers:

None

5. Key Decision:

No

6. Call-in:

Is it required that call-in be waived for any decision on this report?
No

7. Officer's recommendation:

That the Cabinet Member, Health and Communities notes the steps taken by the trading standards division to reduce illegal tobacco.

David Lowe
Strategic Director
Health and Communities

APPENDIX 1

Derbyshire Trading Standards - Tobacco Report 2013-14

Despite many years of progress, tobacco remains one of the enduring public health challenges and is the leading cause of premature death and health inequalities in England. Smoking is responsible for 5% of all hospital admissions in those over 35 and the cost of treating diseases caused by smoking was estimated in 2010 to be £2.7 billion annually. It is estimated that over 113,000 adults still smoke in Derbyshire. Around 3,900 adult deaths in the county were attributable to smoking related diseases between 2011 and 2013. 17.5% of adults in Derbyshire are estimated to smoke regularly. Tobacco is a major cause of coronary heart disease, lung cancer and respiratory diseases particularly chronic obstructive airways disease. One in every two regular smokers is killed by tobacco and half of them will die before the age of 70 - losing on average ten years of life.

Trading Standards is an active member of the Derbyshire Tobacco Alliance which plans and delivers the tobacco control programme across Derbyshire. One of the main elements of the work of the Alliance is to make tobacco less affordable. Doing this is proven to be the single most effective way to reduce demand for tobacco at the population level. It is estimated that a 10% price increase will lead to a 4% fall in tobacco consumption over time - this decrease in consumption is likely to be even greater among young people as they are generally more sensitive to tobacco prices than adults. However, the easy and cheap availability of illegal tobacco undermines this price lever.

Illegal tobacco falls into three categories:

- **Counterfeit:** these are illegally manufactured tobacco products which are often made abroad, but sometimes in the UK, and are designed to fool the public into thinking that they are the genuine product. They are sold cheaply and tax free and vast profits are made throughout the supply chain.
- **Bootlegged/Smuggled:** these are tobacco products which are purchased in a country with a low level of taxation and illegally brought into the UK, evading payment of tax.
- **Illicit:** these are generally legitimately manufactured tobacco products ('cheap whites') which have evaded payment of tax by being illegally transported, distributed and sold.

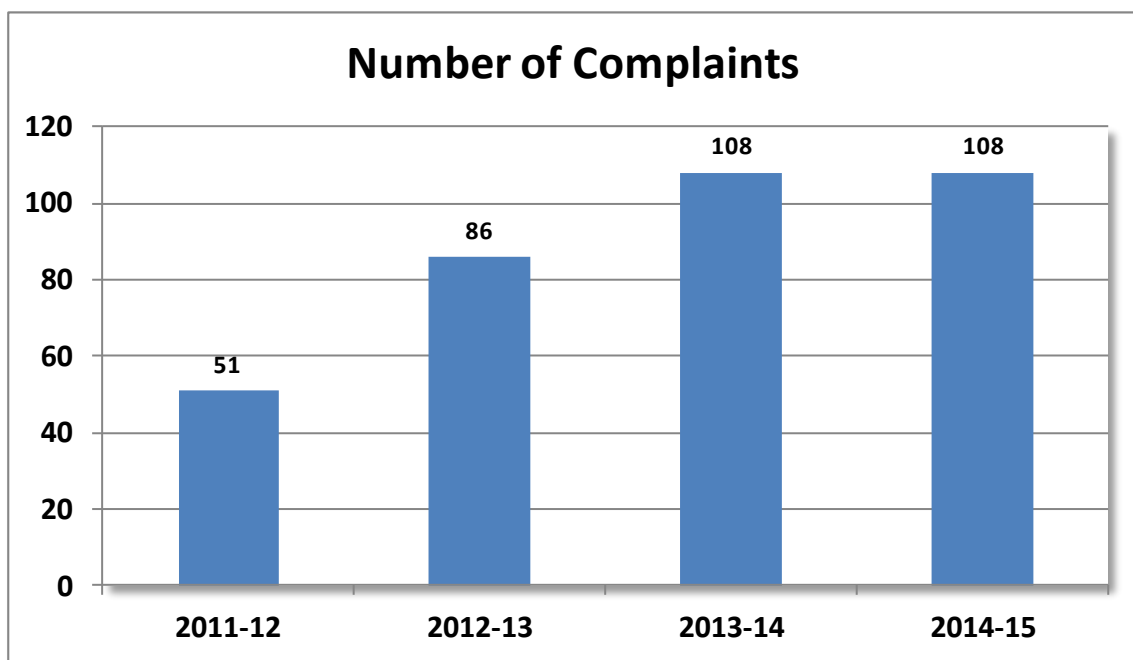
Why tackle illegal tobacco?

- Illegal tobacco dealers target underage smokers encouraging them to start smoking.
- Because illegal cigarettes are cheap they encourage people to smoke more and make it harder for them to quit. In practice, the illegal cigarettes retail for £3-£3.50 compared to a typical high street price of around £8. A 50g pouch of illegal hand rolling tobacco (HRT) will typically sell for £8-£9, compared to £17 for the legal product. This is making tobacco more than twice as affordable in many instances.
- ALL tobacco contains around 4,000 chemicals including formaldehyde, arsenic and ammonia and is extremely harmful.

- Illegal tobacco takes millions away from the public purse in unpaid taxes and undermines legitimate local businesses.
- There is the wider impact on society to consider, including crime and children's safety in our communities.
- Illegal cigarettes routinely fail safety standards that reduce the risk of cigarettes causing house fires.
- The individuals and groups involved in the trade are often part of large Organized Crime Groups, with direct links to money laundering and drugs supply.

The problem of Illegal tobacco in Derbyshire

Derbyshire County Council Trading Standards continues to monitor and take effective action against traders that deal in illegal tobacco and cigarettes. This Service has dealt with a continuation in reports of the sale or supply of illegal tobacco in the last financial year. In 2011-2012 there were 51 complaints, 86 in 2012/13, 108 in the year 2013/14 and a further 108 in 2014/15.



This continuation of complaints appears in part to be caused by a perpetuation of retail shops operated by Derby based individuals. They typically employ staff on an informal basis and regularly switch tenancies in order to avoid detection. 2014-15 saw the continuing trend of 'pop-up' shops (small independent general stores) selling these goods. Typically they do not carry licenses for alcohol, stock newspapers, greetings cards or lottery tickets, only carry small amounts of stock at any one time (they have frequent deliveries) and do not stock perishable goods. The amount of illegal tobacco in any individual seizure is therefore often modest, and does not reflect fully the scale of trade at any given time. Often the goods are secreted in unusual hiding places in order to avoid detection.

At this time we believe there are ten such shops in Derbyshire known to be selling illegal tobacco, and are subject to ongoing surveillance. There a number more where officers are actively gathering intelligence on their activities.

Examples of hidden storage methods

1) Toilet cistern containing cigarettes and tobacco



2) Consignment of cigarettes hidden in ceiling



3) Cigarettes concealed in counter plinth



4) Concealment within drinks cans



In addition to complaints about high street premises selling illegal tobacco, the Service has also received a number of reports about 'fag houses'; that is private houses where an individual sells tobacco/cigarettes illegally. There has also been a significant rise in the number of complaints about tobacco being sold via Facebook.

Reactive work/inspections

30 visits to shop premises, storage units and domestics address were carried out during the past financial year. This has led to significant seizures of illegal tobacco. Tobacco sniffer dogs were used in 22 of the visits and are seen as vital to uncover the wide variety of attempts to conceal the illegal stock from the authorities. Throughout our operations and investigations we have worked closely with Derbyshire Police as well as UK Border Force, HMRC and several District Councils, and other Trading Standards Departments. We have also routinely utilised the services of tobacco detection dogs, trade mark holder representatives and testing laboratories. Since concerted efforts to deal with the increase in illegal tobacco began in 2013/14 this Department has been involved in the seizure of approximately 1.7 million sticks of cigarettes and 1440 kg of HRT.

Table showing amount of illegal cigarettes and Hand Rolling Tobacco (HRT) seized per year

	Sticks	HRT (kg)
2011/12	14,000	115
2012/13	62,000	26
2013/14	876,000	795
2014/15	821,000	108
Total	1,773,000 (88,650 packs of 20)	1,044 (20,880 x 50g packs of HRT)

- Of the cigarettes seized in 2014/15 - 66% were counterfeit, 33% were illicit cheap whites, and 1% were non-duty paid.
- Of the Hand Rolling Tobacco(HRT) seized in 2014/15 - 53% was non-duty paid, 45% was counterfeit and 2% were illicit cheap white.

Prosecutions

2014/15 has seen a large number of criminal investigations, into the sale of illegal tobacco, come to their conclusion in the courts. The cases have been brought under a range of legislation that Trading Standards enforces, as below -

- **Trade Marks Act 1994** – this legislation creates an offence for the application of a false trade mark, without the permission of the Trade Mark holder. Commonly counterfeited brands include Mayfair, Regal, Palace, Golden Virginia and Amber Leaf.
- **General Product Safety Regulations 2005** - 21 samples were sent for Reduced Ignition Propensity testing to determine whether the seized cigarettes complied with the General Product Safety Regulations 2005. Since 2011, cigarettes sold within the UK should comply with new standards, meaning that they should extinguish more quickly than standard cigarettes if ignored, with

the intention of preventing accidental fires. They are produced by adding two bands of fire retardant to the cigarette paper during manufacture in order to slow the burn rate at the bands. Of the 21 samples, 20 failed the test and, therefore, could be subject to charges.

- **Children and Young Persons Act 1933** – this legislation sets out the prohibition for selling cigarettes to a minor. A number of cases have been brought where under-age volunteers have been sold cigarettes alongside the sale and possession of illegal cigarettes. In the cases the children have been sold illicit or counterfeit packs.

A full list of prosecutions is provided at the end of this report

Cases against three more individuals are currently in the legal process/awaiting sentencing, as well as there being warrants for arrest outstanding for another two suspects who failed to attend court.

Proactive work

Publicity

An important part of the work conducted by Trading Standards is to demonstrate the council's commitment to taking strong action against those who sell illegal tobacco, and to warn the public of the dangers of buying and smoking such goods. Four press releases have been sent out this year highlighting enforcement activities and prosecutions.

1. http://www.derbyshire.gov.uk/council/news_events/news-updates/2014/april/shopkeeper_sentenced_for_selling_illegal_high-risk_cigarettes.asp
2. [Illegal tobacco worth £6,400 seized in raids: Your council - Derbyshire County Council](#)
3. [Shopkeeper sentenced for selling illegal tobacco: Your council - Derbyshire County Council](#)
4. [Our trading standards team flush out fake tobacco: Your council - Derbyshire County Council](#)

These have resulted in a number of articles in local press including those below.

- <http://www.derbytelegraph.co.uk/Shopkeeper-sent-jail-months-selling-counterfeit/story-26357357-detail/story.html>
- <http://www.chad.co.uk/news/crime/illegal-tobacco-seized-by-derbyshire-county-council-1-6591393>
- <http://www.belpernews.co.uk/news/local/shopkeeper-sentenced-for-selling-illegal-tobacco-in-belper-1-6634976>

Working with landlords of shops selling illegal tobacco

The Trading Standards Division has initiated an innovative approach to tackling the Illegal trade in Derbyshire. Alongside the more traditional inspections, seizures and investigations, officers have recognised that the landlords of properties leased to those selling the illicit tobacco are often unaware of the illegal activities taking place.

Officers will now take steps to ascertain the property owners, and provide them with evidence of the criminal actions being carried out. Commercial tenancies typically include clauses prohibiting illegal activities in the shops, and also preventing nuisance to neighbouring properties. The breaching of such rental conditions provides the opportunity to take steps to terminate tenancies and remove those responsible for operating the illegal shops. To ensure that property owners are fully aware of their responsibilities as landlords, a joint letter with Derbyshire Police and Trading Standards Service has been devised highlighting the problems caused by illegal tobacco, and the risks to landlords that fail to act.

This approach has brought very significant results, by securing the closure of twelve shops in the last two years in Chesterfield, Belper, Swadlincote, Long Eaton, Ilkeston, and Heanor. In Ripley, the actions of Trading Standards, with excellent support from Derbyshire Police, ensured that two shops were closed in swift succession, with the landlord's support. A third shop, that was shortly due to start trading, was prevented from opening, following early dialogue with the landlord.

The significance of this approach can be seen when one considers that these shops have been found to sell an average of £5,000 per week of illegal tobacco. Whilst we are aware that individuals may in time re-open elsewhere, it is clear that there has been a real reduction in outlets selling, from around 15 shops to a current level of nine. This will have prevented illegal activity in the county worth well over £1 million to the local economy and taxpayer, and caused the tenants significant loss of profit, deposits, alongside the need to remove stock and fittings.

Working with partner agencies

Joint work with other agencies has been key to maximising the impact of activities to tackle illegal tobacco. We have developed a close-working relationship with the Police and Safer Neighbourhood Teams (SNT) and have been provided with vital operational and administrative support. A Police seizure in 2014 of over 470,000 cigarettes resulted from such joint work. In addition, work with HMRC led to their seizure of £3 million of cigarettes, with arrests and further seizures following. District Council partners have continued to provide valuable information regarding individual shop premises, without which investigations would fail. We continue to participate in joint investigations across borders with Trading Standards colleagues across the East Midlands. Derbyshire Fire Service has also provided important evidence in several prosecutions highlighting the significant harm from cigarettes that don't extinguish when left unattended.

In 2014 Derbyshire Trading Standards became the first Trading Standards Service in the UK to become the lead responsible authority for the management and disruption of a formally recognised Derbyshire based Organised Crime Group (OCG) involved in the sale of illegal tobacco. This has led to close working with local and regional police OCG teams.

Summary of financial outcomes (over last two years)

Since concerted efforts to deal with the increase in illegal tobacco began in 2013/14 this Department has been involved in the seizure of approximately 1.7 million sticks of cigarettes and 910kg of HRT. This can be summarised as follows:

From seized goods

- **High Street value of goods/Loss to legitimate business - £1,056,000**
- **£680,000** (from approximately 85,000 packs of 20 cigarettes retailing at £8.00)
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Disruption following closure of shops

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14 Prosecutions in the last year – which resulted in:

- **Four months imprisonment**
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Full details of completed prosecutions during 2013-14 and the resultant media coverage are provided in the table below.

Derbyshire County Council Trading Standards Service – Completed Tobacco Prosecutions Since April 2014

	Court date	Defendant and business	Offences	Result
1.	17/04/14	Director of company. Superpound, Glossop	1 offence re sale of counterfeit tobacco section 92(1) (b) of the Trade Marks Act 1994.	Fine £120 Costs £250
2.	17/04/14	Manager of shop. Superpound, Glossop	1 offence re possession for sale of counterfeit tobacco section 92(1) (c) of the Trade Marks Act 1994.	Fine £144 Costs £250
3.	23/04/14	Business owner. Euro Mini Market, Ilkeston,	4 offences re sale and possession for sale of counterfeit tobacco and cigarettes – section 92(1) (b) and (c) of the Trade Marks Act 1994. 2 offences re possession for sale of dangerous cigarettes under reg 20 of the General Product Safety Regulations 2005 – the counterfeit cigarettes failed the reduced ignition propensity test in EN16156 – which legitimate cigarettes must pass. Shopkeeper sentenced for selling illegal high-risk cigarettes: Your council - Derbyshire County Council	300 hours unpaid work Costs £1800
4.	21/05/14	Business owner. Belper Mini Market, Belper,	9 offences re sale and possession for sale of counterfeit tobacco and cigarettes – section 92(1) (b) and (c) of the Trade Marks Act 1994. Shopkeeper sentenced for selling illegal tobacco: Your council - Derbyshire County Council	200 hours unpaid work Costs £500
5.	25/06/14	Partner in business. Killamarsh News, Killamarsh	2 offences re sale of cigarettes to a person under 18 - Section 7(1) of the Children and Young Persons Act 1933.	Fine £460 (£230 x2) Costs £85
6.	25/06/14	Partner in business. Killamarsh News, Killamarsh	2 offences re sale of cigarettes to a person under 18 - Section 7(1) of the Children and Young Persons Act 1933.	Fine £460 (£230 x2) Costs £85
7.	07/08/14	Person caught	3 offences re possession for sale of counterfeit cigarettes – section 92(1)	24 month

	Court date	Defendant and business	Offences	Result
		delivering tobacco to Your Shop, Heanor	(c) of the Trade Marks Act 1994.	conditional discharge Costs £411
8.	21/08/14	Shop worker. Raisway News, Long Eaton	3 offences re possession for sale of counterfeit cigarettes – section 92(1) (c) of the Trade Marks Act 1994.	Fine £100 Costs £250
9.	28/08/14	Business owner. Mr Cheap, Swadlincote	4 offences re possession for sale of counterfeit cigarettes – section 92(1) (c) of the Trade Marks Act 1994.	Fine £200 + repay £5000 proceeds of crime
10	15/09/14	Shop worker. Raisway News, Long Eaton	2 offences re sale of cigarettes to a person under 18 - Section 7(1) of the Children and Young Persons Act 1933. 2 offences re sale and possession for sale of counterfeit cigarettes – section 92(1) (b) &(c) of the Trade Marks Act 1994.	Fine £110 Costs £240
11	04/12/14	Shop worker. Pound Plus Ilkeston	6 offences re possession for sale of counterfeit cigarettes – section 92(1) (c) of the Trade Marks Act 1994.	100 hours unpaid work Costs £500
12	16/01/15	Business owner. Melanie's Mini Market, Heanor	2 offences re sale of cigarettes to a person under 18 - Section 7(1) of the Children and Young Persons Act 1933.	Fine £300 Costs £300
13	13/04/2105	Shop worker. Belper Mini Market	6 offences re sale and possession for sale of counterfeit cigarettes – section 92(1) (b) &(c) of the Trade Marks Act 1994.	Fine £110 Costs £250
14	17/04/15	Business owner. Pound Plus Ilkeston and Melanie's Mini Market, Heanor	12 re sale and possession for sale of counterfeit cigarettes – section 92(1) (b) &(c) of the Trade Marks Act 1994. 3 offences re possession for sale of dangerous cigarettes under reg 20 of the General Product Safety Regulations 2005 – the counterfeit cigarettes failed the reduced ignition propensity test in EN16156 – which legitimate cigarettes must pass. Shopkeeper jailed for illegal tobacco sales: Your council - Derbyshire County Council	4 months imprisonment

	Court date	Defendant and business	Offences	Result
15	17/04/15	Employee. Melanie's Mini Market, Heanor	5 offences re sale and possession for sale of counterfeit cigarettes – section 92(1) (b) &(c) of the Trade Marks Act 1994.	6 month community order +12 week curfew (7am to 7pm)

Other Press Releases in addition to the press releases issued about specific prosecutions the following media alerts have also been circulated.

- July 2014 [Our trading standards team flush out fake tobacco: Your council - Derbyshire County Council](#). Seizure of 25,000 cigarettes and 13 kg of hand rolling tobacco – worth £14,000
- May 2014 [Illegal tobacco worth £6,400 seized in raids: Your council - Derbyshire County Council Seizure of 8,660 cigarettes and 8.2kg of hand rolling tobacco.](#)