

DERBYSHIRE COUNTY COUNCIL

Meeting with Cabinet Member, Health and Communities

15 July 2014

Report of the Strategic Director, Health and Communities

TRADING STANDARDS CONTRIBUTION TO TOBACCO CONTROL 2013-14

1. Purpose of the report:

To advise the Cabinet Member, Health and Communities of steps taken by the trading standards division to reduce smoking prevalence during the previous financial year and to seek Members' approval for the annual programme of enforcement to prevent under-age sales of tobacco and aerosol paints.

2. Information and analysis:

- 2.1 As the Cabinet Member is aware, smoking is still one of the biggest contributors to preventable coronary heart disease. The trading standards division – being responsible for a range of legislation that is intended to regulate the supply of tobacco and tobacco products – makes a significant contribution to tobacco control. The attached report in Appendix 2 sets out in some detail activities undertaken during the previous financial year to support both the Council's ambition to make Derbyshire a Safer and Healthier place and also contributes to the Department of Health's 'Healthy Lives, Healthy People – Tobacco Control Plan for England'.
- 2.2 The Tobacco Control Plan for England sets out six strands with regards to tobacco control which are internationally recognised as follows:
 1. stopping the promotion of tobacco;
 2. making tobacco less affordable;
 3. effective regulation of tobacco products;
 4. helping tobacco users to quit;
 5. reducing exposure to second-hand smoke; and
 6. effective communications for tobacco control.
- 2.3 The main areas of activity that has involved the trading standards division and which contributes to at least four of the above strands include:
 1. Preventing under-age sales of tobacco;
 2. Ensuring that the advertising and labelling of tobacco products complies with legal requirements;

3. Responding to safety concerns about 'E-cigarettes' and associated products;
4. Tackling the significant increase in the supply of illegal tobacco throughout the county

Under-Age Sales

- 2.4 The authority is required to consider and approve an enforcement programme under The Children and Young Persons (Protection from Tobacco) Act 1991 (as amended). Together with the Children and Young Persons Act 1933 (as amended), the legislation seeks to protect children from the health risks associated with smoking tobacco. For the past 10 years or so the Trading Standards Division has had a programme of visits to local retailers to provide advice and information on the requirements of age-restriction legislation and what training and procedures stores can adopt to minimise the risk of making an illegal sale.
- 2.5 An assessment is made as to the likelihood of compliance based on the existing systems in place, the response to the advice and guidance that is provided and the number of complaints from the public or intelligence from other agencies about under-age sales. Follow-up test purchases are then made with the assistance of young volunteers in accordance with national home office guidance and best practice – targeting those premises identified as most at risk of breaching the requirements.

Table showing Under-age Cigarette Test Purchase Checks

	2010/2011	2011/2012	2012/2013	2013/2014
Number of Attempts	56	40	43	19
Sales	2	3	5	6
% of sales	3.6%	7.5%	11.6%	31.6%

- 2.6 The above table appears to show that after a period of relatively high compliance in recent years, 2013/14 saw a marked decline in compliance. However, it should be noted that although there were 6 sales to under-age volunteers, three of these were from the same premises and two of these businesses were also found to be selling illegal cigarettes – ie non-duty paid and/or counterfeit cigarettes. If these two businesses are discounted from the above statistics then compliance levels would have been consistent with previous years. One note of slight concern, however, is that when an exercise was conducted to see if local retailers were complying with their own 'Challenge 21 or Challenge 25' policies, many did in fact sell to volunteers who were aged 18. Although no offences were committed, it does suggest a lack of diligence by some shop keepers and their staff in not challenging the age and seeking proof of age of young people who were clearly under 21/25.
- 2.7 There are a range of sanctions available to the authority when breaches are uncovered ranging from a letter of warning or 'formal' caution (formerly known as a 'Home Office Caution' but now referred to as a 'Simple Caution') through to prosecution in the Magistrates Courts. The three businesses that made under-age sales are currently under investigation with a view to prosecution.

- 2.8 It is proposed that the Trading Standards Division continues with an annual programme of business advice, test purchase checks and market surveillance to seek compliance with Children and Young Persons Protection from Tobacco Act as detailed in appendix 1 to this report.

Advertising and Labelling of Tobacco

- 2.9 The Health Act 2009 contains measures to minimise the exposure of tobacco products when sold by retail. The relevant legislation has been 'phased-in' and from the 6th April 2012 the provisions relating 'large' retailers came into force. Those applying to smaller retailers are scheduled to come into force in April 2015. Currently a proposal for cigarettes to be sold in unbranded packaging is also under consideration. There have been no issues reported regarding breaches by the larger retailers of this legislation, but generally speaking, illegal tobacco does not comply with the labelling requirements for individual packs of cigarettes or pouches of hand rolling tobacco.

E-cigarettes or 'Vapourers'

- 2.10 As has recently been reported, there has been a significant increase in concerns about the safety of the recharging of e-cigarette batteries. E-cigarettes – or 'vapourers' as some people prefer to call them as they are not electric nor cigarettes – consist of a nicotine suspension, a heating element and a rechargeable battery to power the heating element. As the nicotine liquid heats the resulting vapour is inhaled by the user enabling them to ingest nicotine. Health professionals appear to be divided as to whether these products are helpful in terms of reducing smoking prevalence, or whether they pose a long-term health risk as they are as yet untested.
- 2.11 The issue of most concern to trading standards and fire colleagues is that the e-cigarette is usually supplied with a charger with a USB adapter with or without an additional 'wall-charger' that plugs into the main electricity supply. There have been instances where none of the separate units; viz e-cigarette, USB charger and wall-charger have incorporated a safety cut out. This can result in the battery continuously charging resulting in it overheating and exploding or starting a fire. During the course of 2013-14 the Division received 34 complaints about e-cigarettes – at least a third of which related to the safety of the battery component.
- 2.12 As well as the electrical safety of the chargers, there has also concern about the packaging and labelling of the nicotine solution (or 'e-liquids') and the availability of e-cigarette products to young people under 18. E-liquids must comply with packaging and labelling requirements such as child-resistant closures and have suitable warnings about the toxicity of the contents.
- 2.13 In response to these concerns the Division made test purchases of a variety of e-cigarettes and associated products from local retailers and submitted them for testing against current legal requirements with the following results:

- Ten electronic cigarette kits purchased – five passed / five failed – three failed in safety critical ways.
- Eight separate wall chargers purchased – three passed / five failed – four failed in safety critical ways, and
- Fourteen 'e liquids' purchased – three passed / eleven failed – one serious failure.

2.14 Appropriate follow-up action has been taken to ensure that no-complying products have been removed from sale and with the support of the Communications Team and in-conjunction with Fire Officer colleagues, appropriate warnings have been issued to the public.

2.15 It is difficult to understand why there has been such a proliferation of e-cigarettes. The legislative controls that are in place to limit the supply of tobacco products are lagging behind; albeit that there is a European Directive that does seek to address some of the concerns¹. The huge increase in internet transactions, the relatively cheap and easily transportable nature of the product, the increase in the supply of the product from China and the far east and the relative ease in which they can be imported has led to an increase in the number of individuals importing into the UK and selling e-cigarettes to the public. Whilst enterprising individuals identifying a gap in the market and seeking to provide a product that it in demand is good for the economy, primary responsibility for ensuring the safety of such products rests with the manufacturer if produced in the European Community or with the importer if manufactured outside of the EC.

Illicit or Illegal Tobacco

2.16 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; viz Derbyshire Police and HMRC 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.

¹ DIRECTIVE 2014/40/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC:
http://ec.europa.eu/health/tobacco/docs/dir_201440_en.pdf

- 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.
- 2.17 During the previous financial year the Division conducted 18 test purchase checks which resulted in raids to 16 different retail outlets throughout the county and to eight associated storage facilities in Derby. A total of 878,000 cigarettes and 794 kg of hand-rolling tobacco was seized. This compares to 62,000 and 26 kg, respectively, for the previous year and is equivalent to a high street value of c£0.65m. Trading Standards staff are currently investigating 13 stores and five prosecutions were completed during the year against shops in Heanor, Swadlincote, Danesmore, Long Eaton and Chesterfield.
- 2.18 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, five shops have successfully been closed in this way.
- 2.19 In light of Derbyshire's experience with tackling illegal tobacco and having contributed to supporting the control of tobacco for a number of years, the Trading Standards Division has identified a number of issues which, it is believed, would support that control. These are listed as follows:
1. Compulsory licensing of tobacco retailers – although this might be rejected on grounds of cost, there is evidence to suggest that shops selling illegal tobacco cost legitimate businesses up to £3,000 which might make the cost to local businesses from the introduction of a licensing regime more attractive.
 2. As an alternative to a licensing regime, a compulsory registration of tobacconists – and e-cigarette/vapour products. This would enable local authorities to more effectively monitor new and existing businesses and take appropriate – proportionate, enforcement action against those that are non-compliant.
 3. Empower local authority trading standards staff to apply to the Courts to seek the suspension of the sale and supply of any tobacco (or similar product) from businesses premises where the owner or operator has been convicted of relevant offences. Currently HMRC colleagues have this power but rarely make use of it.
 4. Better controls for the safety of e-cigarettes, batteries and chargers in light of recent concerns.
 5. Support proposals to more effectively control the sale and promotion of e-cigarettes and associated products – including age-restriction

legislation as may be proposed in the EC Directive with appropriate resources to enforce.

6. Legislation to prohibit 'proxy sales' of tobacco.

Aerosol Spray Paint Products

- 2.20 The Anti-social Behaviour Act 2003 creates an offence for anyone to sell aerosol paint products to persons under the age of 16 years as it is believed that the majority of graffiti is committed by persons under that age. The restriction is designed to help reduce the incidence of graffiti that, if left unmanaged, can create the impression that an area is neglected and, in turn, encourage other types of anti-social behaviour. When the Act was introduced, the use of spray paints was widely reported but this has since declined alongside a shift towards the use of cheaper and more readily available marker pens and shoe care products. As with previous years, because of a lack of intelligence to suggest that there is a current problem with under-age sales of aerosol paints, it is proposed that no proactive enforcement of this legislation is undertaken during this year unless the Division receives any significant complaints. No such complaints were received in 2013-14.

3. Legal Considerations

- 3.1. The County Council has statutory obligations under Section 5(1) of the Children and Young Persons (Protection from Tobacco) Act 1991 (as amended) and Section 54A of the Anti-Social Behaviour Act 2003.

For both of these statutes it is the duty of the relevant authority:

- to consider, at least once in every period of twelve months, the extent to which it is appropriate for the authority to carry out in their area a programme of enforcement action in relation to the relevant underage restrictions, and
 - to the extent that they consider it appropriate to do so, carry out such a programme.
- 3.2. In respect of both tobacco products and aerosol paint products a programme of enforcement action in relation to the relevant underage restrictions is a programme involving all or any of the following:
 - the bringing of prosecutions in respect of offences under that section,
 - the investigation of complaints in respect of alleged offences under that section;
 - the taking of other measures intended to reduce the incidence of offences under that section

4. 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, property and transport considerations.

5. Background papers:

None

6. Key Decision:

No

7. Call-in:

Is it required that call-in be waived for any decision on this report?

No

8. Strategic Director's recommendation:

That the Cabinet Member, Health and Communities notes the steps taken by the trading standards division to reduce smoking prevalence and agrees to the proposed programme of enforcement to prevent under-age sales of tobacco and aerosol paints.

David Lowe
Strategic Director
Health and Communities

ENFORCEMENT PROGRAMME FOR TOBACCO PRODUCTS 2014/15

The Trading Standards Service will:

1. Carry out a programme of business support visits to retailers to check for compliance with statutory requirements relating to the advertising and display of tobacco products including an assessment of management controls on age-restricted products.
2. Provide relevant guidance and advice to businesses as identified during support visits in order to improve compliance.
3. Use the assessments from support visits to ensure that high risks are addressed and to inform the process for deciding appropriate enforcement outcomes.
4. Investigate complaints or other intelligence referred to the service that relate to the illegal supply of tobacco products to young persons.
5. Using a risk-based and 'intelligence-led' approach, carry out test purchase exercises using young volunteers. The test purchasing will be conducted in accordance with the Government's Code of Practice for Age Restricted Products and Services.
6. Work in partnership with Public Health colleagues and those of other enforcement agencies to tackle underage sales, and the problem of illicit tobacco products.
7. Continue to check 'e-cigarettes' and associated products, including e-liquids and chargers, for compliance with relevant legislation and check the availability of e-cigarettes to under-18s
8. Deal with alleged offences in accordance with the Trading Standards Service's Compliance Policy.
9. Where appropriate, raise awareness within the trade of relevant information by means of web-based guidance, press-releases and mailshots and publicising significant enforcement outcomes.

Derbyshire Trading Standards - Tobacco Report 2013-14

1. Introduction

Smoking is the primary cause of preventable morbidity and premature death, accounting for 81,400 deaths in England in 2009. In England, deaths from smoking are more numerous than the next six most common causes of preventable death combined (i.e. drug use, road accidents, other accidents and falls, preventable diabetes, suicide and alcohol abuse). ² In Derbyshire it is estimated that there are approximately 114,000 adult smokers which represents 18.6% of the population. It is also estimated that the cost to society of smoking in Derbyshire each year is approximately £188m. This includes:

- The estimated cost of cleaning smoking materials in Derbyshire is £4.7 million
- Estimated cost of lost productivity from smoking related sick days in Derbyshire is £34.2 million
- Estimated cost of smoking related fires in Derbyshire homes is £6.9 million.

The Department of Health has set out a 'Tobacco Control Plan' to reduce smoking prevalence. It includes 'six internationally recognised strands' which are:

7. stopping the promotion of tobacco;
8. making tobacco less affordable;
9. effective regulation of tobacco products;
10. helping tobacco users to quit;
11. reducing exposure to second-hand smoke; and
12. effective communications for tobacco control.

Through the legislation that we enforce on behalf of the local authority, the Trading Standards Division directly contribute to the first three of those strands in the following specific areas:

5. Under-age sales of tobacco
6. Advertising and labelling of tobacco products
7. E-cigarettes
8. Illegal tobacco

This report sets out Derbyshire Trading Standards' contribution to tobacco control during the previous financial year.

2. Under-age sales of tobacco

The Children and Young Persons (Protection from Tobacco) Act 1991 (as amended) places an obligation³ on the local authority to 'consider, at least once in every twelve months' the extent to which it is appropriate .. to carry out .. a programme of enforcement' under the legislation; the main provisions for which are to make it an offence to sell cigarettes to young people under 18. Enforcement of this legislation directly contributes to the 'effective regulation of tobacco products' strand.

² Healthy Lives Healthy People A tobacco control plan for England:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213757/dh_124960.pdf

³ See legislation via following link:
<http://www.legislation.gov.uk/ukpga/1991/23/section/5#reference-c931418>

In practice, the Trading Standards Division has a programme of advisory visits to retail premises selling tobacco and conducts follow-up test purchase checks with the assistance of young volunteers. Care is taken to ensure the well-being of the young volunteers and the Division follows best practice guidance to ensure that the health and wellbeing of the young person is safe-guarded and that test purchases are conducted in such a way so as not to deceive the retailer into selling age-restricted products to young people who appear older than they in fact are.

Most retailers that sell tobacco are known to the Division and often sell other age-restricted products, such as alcohol. As the Service has been actively seeking compliance with the requirements for over a decade, a good local knowledge base has been established and businesses are classified in terms of the likelihood (risk) of making an illegal sale. This risk is determined by the level of confidence in the business owner/operator to prevent sales; the extent of systems and procedures to prevent sales, eg the use of a till prompt or refusals book; training of staff and use of procedures such as Challenge 25 – ie, if a young person looks like they might possibly be under 25 to seek to see proof of age to ensure that they can prove that they are in fact old enough to purchase tobacco (or other age-restricted products). The previous history of the business and whether it has been subject to complaints/allegations of illegal sales will also determine the risk rating.

Advisory Visits

The Trading standards service operates a programme of visits aiming to carry out a three-yearly risk-assessment of the underage sales precautions operated by independent retailers of age-restricted products. During these visits appropriate advice is given to the business and the premises underage risk score is re-assessed based on the confidence of the effectiveness of the systems in place. During 2013-14 123 advisory visits were made.

Age Verification Checks

In addition to the traditional test purchase checks, the Division also undertook a programme of checks with 18 year-old volunteers to ascertain whether local businesses were complying with their own 'Challenge 21' or 'Challenge 25' policies. As previously intimated, because it is difficult to assess age and because young people intent on experimenting with age-restricted products are unlikely to tell the truth when seeking to purchase such products, it is crucial that those businesses selling age-restricted products seek proof before making a sale if there can

Businesses were selected for checking because they:

- had been given a low confidence rating in respect of precautions in place to prevent underage sales following a risk assessment visit and/or
- were the subject of underage sales allegations and/ or
- had recently sold to persons underage

21 premises were visited and on 15 occasions the volunteer was not asked to prove their age and so a sale was made. Although no offence took place because the volunteer was 18 or over, this does represent a worrying 71% failure rate.

Test Purchase Checks

19 test purchase tests were made with the assistance of young volunteers who were aged under 18. These attempts resulted in six illegal sales from three premises selling tobacco in Derbyshire. Although this figure is higher than in previous years it should be noted that:

- Test purchasing is targeted at those premises considered to be of highest risk; for example, businesses that had failed to follow their own 'Challenge 25' policy were targeted.
- It is normal practice when an illegal sale is made to seek to make another test purchase to establish whether the first sale is a 'one-off' or not. Three businesses made two illegal sales and therefore the percentage of non-compliant businesses was 18.8%.
- Two of the businesses were not 'traditional' retailers and were found to be selling illegal cigarettes.

	2010/2011	2011/2012	2012/2013	2013/2014
Number of Attempts	56	40	43	19
Sales	2	3	5	6
% of sales	3.6%	7.5%	11.6%	31.6%

All three businesses that made illegal under-age sales, which were in Amber Valle, Erewash and North East Derbyshire, are being investigated with a view to prosecution.

3. Advertising and Labelling of Tobacco

The main areas of enforcement responsibility for trading standards with regards to the advertising and labelling of tobacco is point of sale promotion and the labelling of the packages. The Tobacco Advertising and Promotion Act has greatly curtailed the industry's ability to advertise tobacco. However, research has indicated that there is still considerable brand awareness amongst young people. This has, in part, been as a result of large displays of individual packs of tobacco products on retail premises. In response, Government has required that retailers ensure that packs of cigarettes and other tobacco products are not on display on retail premises. This ban has come into effect for larger retailers and will also apply for smaller retailers from 2015. To date there have been no instances of non-compliance observed or reported.

The debate about 'plain packaging' continues with tobacco manufacturers lobbying hard and instigating legal action against governments who have introduced plain packaging. The UK Government has indicated that it is 'minded to' introduce legislation that would require tobacco products to have no branding but just carry graphic health warnings.

Illegal tobacco – ie counterfeit or non-duty paid (smuggled) – is often in breach of UK labelling requirements for tobacco and enables enforcement authorities to seize and detain non-compliant products (see explanation below regarding illegal tobacco).

4. E-cigarettes

There has been a rapid rise in the sale and use of e-cigarettes and of the number of retail outlets selling this product. E-cigarettes – or electronic cigarettes - consist of a cartridge containing a nicotine solution; a heating element and a battery to power the heating element. Strictly speaking they are not cigarettes – and not electronic! The process involves inhaling the vapour that is produced by heating the nicotine solution that is available in a variety of flavours. E-cigs are sold either as single use disposable units or with a cartridge that can be refilled. They are usually supplied with a charger fitted with a Universal Serial Bus (USB) which can fit into a computer – or similar – port.

Wall chargers – ie a unit with a three pin plug and USB port – are sometimes supplied as well (known as a starter kit) or can be bought separately (see illustration below).



Opinion as to the health implications of e-cigarettes is mixed. There is a belief that inhaling nicotine in this way is considerably less harmful than smoking tobacco. However, as they are not tobacco products they are not caught by the tobacco legislation and so are exempt from all the current controls around the advertising, promotion and sale of tobacco. There is therefore concern that young people will be tempted to use e-cigarettes and then progress to tobacco. However, the main trading standards concern is that of product safety.

The safety picture is a complex one, there are no specific safety regulations for electronic cigarettes so they are covered by the General Product Safety Regulations 2005 – they have to be “safe” products. The wall chargers plug directly into mains electricity so they also have to be safe and comply with the Electrical Equipment Safety Regulations 1994. Finally, the e liquids contain nicotine which is a toxic chemical so they have to comply with regulations relating to the packaging and labelling of chemicals – typical requirements include child resistant closures, tactile danger warnings and labelling with various safety phrases and a warning symbol.

Complaints about e-cigarettes

Year	Safety	Total
2012-13	1	2
2013-14	12	34

As the above table indicates, there has been a significant increase in the number of complaints about e-cigarettes. Whilst the majority have been about the labelling of the nicotine product, a significant minority have been complaints about over-heating and exploding batteries and e-cigarettes catching fire. The main problem appears to be the absence of a safety cut out to prevent over-charging. If any of the three separate elements; the e-cigarette battery; the ‘USB charger’; or the wall charger has a safety cut out and they are used together then over-charging and the build-up of heat will be prevented. However, if none of the units have a cut-out then there is a risk of over-heating if left charging for a long period of time. Society has become used to charging battery operated appliances such as mobile phones and tablets over-night. A particular concern is that many electronic cigarette battery units and charger connectors are readily interchangeable and consumers can put themselves at greater risk by mixing and matching these components.

In response to the complaints, Derbyshire Trading Standards have undertaken a sampling exercise and purchased a variety of e-cigarettes at the cheaper end of the market from local retailers. The samples were obtained in March 2014 and the results received in April 2014. 14 Derbyshire shops were visited and samples purchased and submitted for testing with the following results:

- Ten electronic cigarette kits purchased – five passed / five failed – three failed in safety critical ways.
- Eight separate wall chargers purchased – three passed / five failed – four failed in safety critical ways, and
- Fourteen “e liquids” purchased – three passed / eleven failed – one serious failure.

Electronic cigarettes

The electronic cigarettes were submitted to a lab so that they could have the batteries tested and the instructions assessed. Five passed and five failed - two failed because there were no instructions for use – essential for user safety. The other three failures were potentially serious in that the batteries had no safety cut-out (2 samples) or the cut-out wasn't working properly (1 sample). This is a safety critical issue as without the cut-out, there is no protection from overcharging and (particularly if left unattended) the batteries would simply carry on charging and so pose an unacceptable risk of overheating / explosion.

Wall chargers

The same lab tested the wall chargers and reported four safety-critical failures. The chargers did not have secondary fixing to secure internal connections meaning that they posed a greater than acceptable risk of live parts becoming detached within the body of the charger.

E liquids

Most of the failures related to labelling deficiencies where one of more of the required warning phrases were missing. In the most serious case the e liquid did not have the required child resistant closure preventing inadvertent access to the toxic contents of the bottle.

Action Taken

All the shops selling e-cigarettes with safety-critical failures have been visited and the products of concern taken off sale. The retailers who sold other products with less serious safety features are also in the process of being advised. With have been in discussion with Derbyshire Fire Service and have devised advice for the public who might own a non-compliant e-cigarette and are currently in discussion with Derbyshire Communications Team about issuing a press release.

Issues

Whilst there is legislation, as described above, that prohibits the sale of unsafe products, the primary responsibility rests with the manufacturer or first importer into the UK. Because of the rapid growth in the popularity of e-cigarettes and the relative ease in which they can be imported into the UK, a number of enterprising individuals have entered the market. Unfortunately, however, they have relied on their suppliers to ensure that the products are compliant with UK and European legislation and as we have demonstrated, many of the cheaper products are not compliant and pose a serious safety hazard.

The most effective way of ensuring the safety of such products is to make it mandatory for the battery unit within the e-cigarette to have a safety cut out. In this way, the risk of over-heating would be eliminated.

5. Illegal Tobacco

Derbyshire County Council Trading Standards continues to monitor and take effective action against traders that deal in illegal tobacco and cigarettes.

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.

Health and Economic Detriment from Illicit Tobacco

The sale of illegal tobacco directly challenges Government policy to reduce the harm from tobacco in the following ways.

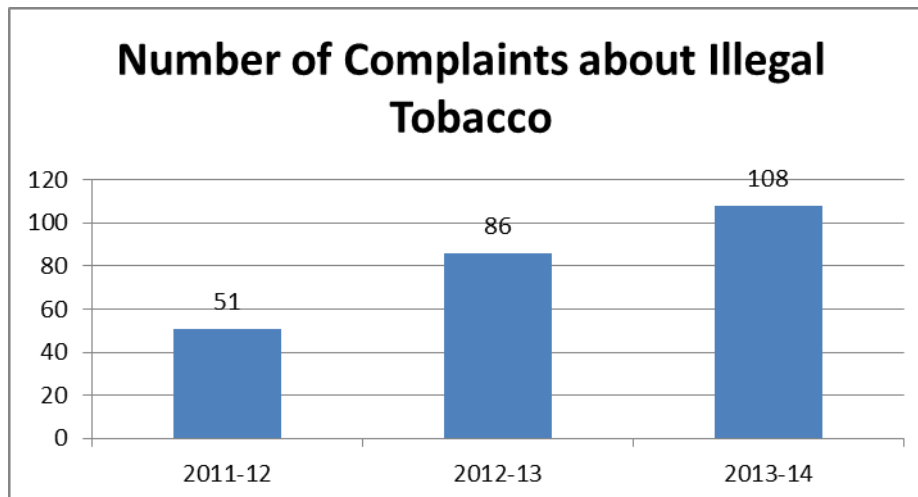
1. Cheap cigarettes make it harder for people to quit and remain smoke free – illegal tobacco severely undermines the efforts of Public Health initiatives to reduce smoking prevalence. Illegal cigarettes typically retail for £3-£3.50, compared to a legitimate high street price of around £8. A 50g pouch of illegal 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. The network of shops selling illegal tobacco tend to be in areas of higher deprivation thus attracting consumers from lower income households and therefore widening health inequalities. This is contrary to one of the six strands of Government policy to make tobacco less affordable.
2. There is clear evidence that people selling illegal tobacco have no qualms about selling cigarettes to young people under 18. Young people who are seeking to experiment with tobacco are therefore more likely to be able to purchase illegal cigarettes. Young and vulnerable people are often the ones to visit "Fag houses" to buy cigarettes. It puts them into risky situations with people who might also be selling alcohol, drugs and stolen goods. This is contrary to the Government objective to reduce rates of regular smoking among 15 year olds in England to 12 per cent or less by the end of 2015.
3. Legitimate businesses are hurt by those who sell illegally, often at below half the price of legal products, and many complaints of illegal trading come from genuine businesses. We have information that some of these illegal businesses are making around £3,000 to £4,000 per week. The viability of small, independent general stores is often put at risk from unfair competition from the sellers of illicit tobacco. The closure of legitimate retailers will have an adverse impact on local communities and in particular older people who are less inclined to travel to 'out of town' super-markets thus again potentially increasing health inequalities.
4. There is a significant revenue loss through failure to pay UK duty, which means that there is a greater burden placed on the tax payer.
5. All tobacco is harmful to health, but illegal cigarettes do not tend to comply with new requirements for 'reduced ignition propensity' (RIP) or known as 'speed humps'. These are designed to ensure that unattended cigarettes self-extinguish and thus do

not pose a fire safety hazard. Illegal cigarettes also tend not to have the appropriate health warnings as required by UK legislation.

6. The individuals and groups involved in the trade are often part of large Organized Crime Groups (OCG's), with purported links to money laundering, drugs supply, people trafficking and terrorism. The shops that we are aware of in Derbyshire have at their root a core of individuals organising the trade and Derbyshire Trading Standards are working with Police colleagues to address this problem.

Complaint Levels

In 2013/14 the Service has dealt with an increase in reports where the sale or supply of illegal tobacco is specifically identified. In 2011-2012 there were 51 complaints, 86 in 2012/13 and 108 in the year 2013/14. This represents a high volume of complaints and an increase of 26% from the previous year.



This increase in complaints appears in part to be caused by a continued expansion out of Derby City by individuals looking to fill a 'gap in the market', with staff and tenants often based in Derby. The current investigative workload is therefore a significant draw on Trading Standards resources, especially as the enquiries need to prove the identity of often elusive individuals and link them beyond all reasonable doubt to the sale/supply of illegal tobacco. Since there appears to be no sign of a reduction from the previous year, there is the likelihood for this becoming a continuing problem in the coming year. The main reason for the number of complaints has been the persistence in shops selling illegal tobacco. We also received a number of reports about 'fag houses'; private houses where an individual sells tobacco/cigarettes illegally. The Service secured its first prosecution of an individual selling illegal tobacco from his home address – a Chesterfield man was fined £1,856 after pleading guilty to the supply of illegal tobacco from his home address.

Seizures and Investigations

In response to the increase in complaints about illicit tobacco, the Division has continued to monitor new and existing retail outlets and during the last financial year has carried out 18 test purchase checks and follow-up raids at 16 different retail outlets throughout the county and has also conducted 8 raids at warehouses in Derby and Derbyshire.

In total, during 2013/14 officers seized approximately 878,000 cigarettes and 794 kg of hand rolling tobacco (HRT). This would equate to a high street value of £369,600 for the cigarettes and £279,480 for HRT. In addition, cash totalling £4,425 was also seized together with 39 mobile phones, five computers, two CCTV systems, one car and one satellite navigation unit.

As a consequence of the seizures, we are currently at varying stages in the investigation of 13 shops – all of which may lead to prosecution. We believe that a

number of these shops/individuals responsible for the shops may be linked and will require greater input to progress as investigations. Further details about seized illicit tobacco can be found in Appendix 1.

Partnership Working

The past year has seen the Service work with other service providers including Derbyshire Police, UK Border Agency (now Border Force), HMRC and several District Councils. It has also utilised the services of tobacco detection dogs, trade mark holder representatives, testing laboratories and forensic services and financial investigators. Trading Standards are able to use Trade Marks and Consumer Safety legislation to tackle these illegal sales. The former has the advantage that it automatically triggers proceeds of crime legislation if convicted under that legislation and, additionally, does not have a time limit with regard to prosecution.

Reduced Ignition Propensity (RIP) testing

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, are the subject of charges. This is significant as illegal cigarettes were identified as the likely cause of a fatal house fire in Lincolnshire in 2012, and more generally smoking materials are the primary cause of domestic fires in the UK.

'Pop-up' shops in town centres

2013-14 saw the continuing trend of 'pop-up' shops (small independent general stores) selling illicit tobacco. Typically they don't carry licenses for alcohol sales, only carry small amounts of stock at any one time (they have frequent deliveries) and do not stock perishable goods. Consequentially the amount of seized tobacco is often modest, and doesn't reflect fully the scale of trade at any given time. Often the goods are secreted in unusual hiding places in order to avoid detection. Examples of how illegal tobacco has been concealed within high street shops are provided in appendix 2 to this report. One of our recent seizures at Bzee Shop in Chesterfield, in a joint operation with police, saw Trading Standards Officers also being accompanied by local BBC radio and television. During the operation 31,000 cigarettes and 8kg of HRT were seized, which had a retail value of approximately £15,000. As with many such searches, the goods were hidden – this time in a flat linked to the main premises. One arrest was made; the person was questioned and bailed pending further enquiries.

Outcomes

Prosecution and formal action

Enforcement action was concluded against eight individuals involved in the supply of illegal tobacco in 13/14. These include the following prosecutions

1. Melanie's Mini Market, Heanor – Shop worker fined ordered to pay over £1000 in fines and costs following offences under the Trade Marks Act 1994.
2. Mr Cheap, Swadlincote – Tenant due for sentencing, shop worker given 40 hours community service and costs of £760.
3. Kevin Wing, Danesmoor - ordered to pay over £1,800 in fines and costs after pleading guilty to three offences under the Consumer Protection Act 1987.
4. Family Stores, Long Eaton – tenant ordered to pay £786 in fines and costs.
5. Bzee Shop, Chesterfield – shop keeper sentenced to a day in custody.

In addition, a formal caution was also given to a shop assistant following investigations into an Ilkeston shop. A Long Eaton shop worker was issued with a letter of warning.

Investigations continue in many cases which may result in further prosecutions as well as confiscation of assets.

On-going Investigations

The Division has thirteen ongoing investigations regarding the sale and supply of illegal tobacco and cigarettes – all from retail outlets across Derbyshire. These are at various stages – the majority of which are close to charges or court. As well as breaches relating to a lack of appropriate labelling, for example health warnings, there will also be potential charges relating to illegal sales of illicit cigarettes to young people under 18.

Visits

As well as undertaking other duties, 30 visits to shop premises, storage units and domestics address were carried out in this period.

Tobacco sniffer dogs were used in 22 of the visits. These operations also included maintaining close working relationships with the Police, Immigration Service, HMRC, trade mark representatives and interpreters.

Loss to Treasury/industry

As referenced above, approximately 878,000 cigarettes and 794 kg of HRT were seized during 2013-14 period. The typical 'high street' price for legitimate cigarettes is £8 per pack and for 50 grams of HRT is £17. Thus the amount of tobacco seized equates to a high street value of £350k for the cigarettes and £270k for the HRT.

In the UK, tax on cigarettes per packet of 20 is £3.52. On top of this, VAT is charged at 20% on the price paid at the till. Cigarettes also attract an additional tax of 16.5% per price paid at the till. This means that each packet of 20 retailing at £8.00 contains a tax element of £6.17. Therefore, the seizures in 2013/14 have a retail value of £351,228, the sale of which would equate to a loss to the Exchequer of over £270,000. Similarly, of the retail value of £17.00 for HRT, the duty is £8.64 (£10.36 with VAT) equating to a loss to the Exchequer of over £165,000.

Regarding these duty figures, they are significant as it means that any tobacco for sale below £6.17 for cigarettes and £10.36 for HRT can be regarded as suspicious.

Shop Closures

Regrettably, enforcement action including detecting and seizing illegal cigarettes and arresting – via the Police - and subsequently prosecuting individuals caught selling illegal cigarettes does not deter the organised criminals from continuing to sell. As has been found in by other authorities, the shops are often reopened and selling again within a few hours. Prosecution and the potential for confiscation of assets following conviction will inevitably hurt more than modest seizures alone. As most of the high street premises are leased by the occupants, one tactic that does seem to successfully disrupt the sale of illegal cigarettes is to identify the landlord and to seek to have the tenant ejected.

Although the trading standards division enforces a wide range of legislation on behalf of the local authority, none of it empowers the authority to close down businesses supplying illegal products. However, by identifying the landlords who own the premises from where illegal tobacco has been sold and making them aware of the activities of their tenants, it has been possible to put a stop to the sale of illegal cigarettes.

Invariable tenancy agreements include clauses prohibiting illegal activities, so we will advise them of ongoing criminal activity in their premises, with a view to termination of the agreements. Not all landlords have proved to be particularly cooperative and it does require officer time to identify the people responsible, but this tactic has proven to have successfully disrupted the following businesses:

1. Bzee Shop, Chesterfield – Trading Standards worked in co-operation with the local MP and the landlord to facilitate the closure of this shop.

2. Mr Cheap, Swadlincote – The landlord was able to evict the tenant following several raids and after taking the advice of this Department.
3. Ezee Shop, Ilkeston – The premises closed following a raid and subsequent investigations by this Department.
4. Belper Mini Market, Belper – Closed following our involvement in two raids on the premises.
5. Your Shop, Heanor – Trading Standards raided the premises accompanied by officers from HMRC. The business ceased trading shortly afterwards

It is estimated that these closures alone saved the tax payer and the local economy approximately £750,000 a year – based on best estimates from accounts seizure (where shops appear to have an average turnover of £150,000 per year). We will continue to work with landlords and lettings agencies to raise the issues that are occurring in their shops, with a view to them taking steps to terminate tenancy agreements. This approach has been successful with several shops, and we hope to achieve more success in this form of 'disruption'.

Press Releases

Raising public awareness of the harmful effect of tobacco and the damage that illicit tobacco does to public health and also economic health is an important aspect of the work of the Division. Eleven press releases in total were issued relating to the use of tobacco sniffer dogs, seizures from various shops, closures of premises and outcomes of prosecutions. These picked a variety of coverage across the region. Details of these press releases and the media coverage that they generated are shown in Appendix 3 to this report.

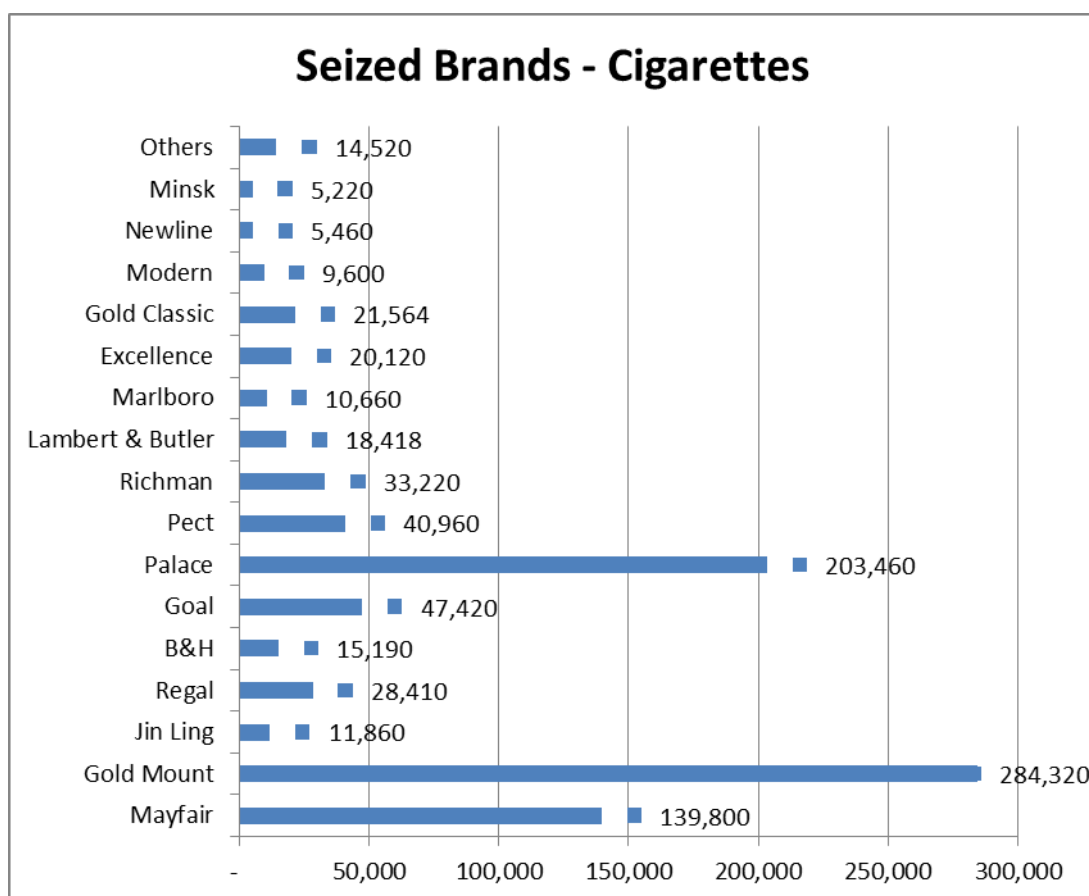
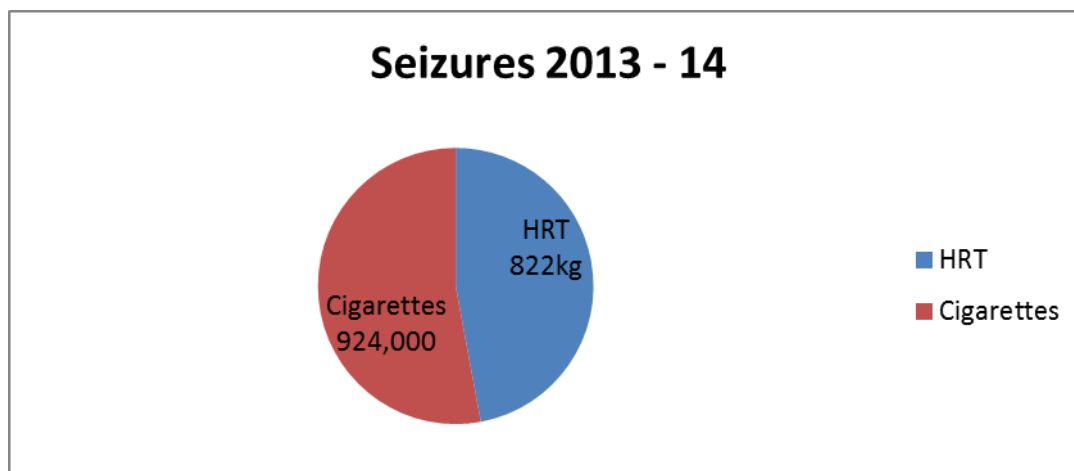
Summary

The Trading Standards Division has a significant contribution to reducing the harm from tobacco in a number of existing and emerging markets. Preventing young people from starting to smoke is key to reducing smoking prevalence. Whilst the majority of local retailers are generally compliant with the age-restriction legislation, it is important that the programme of advisory visits and test purchase checks are maintained.

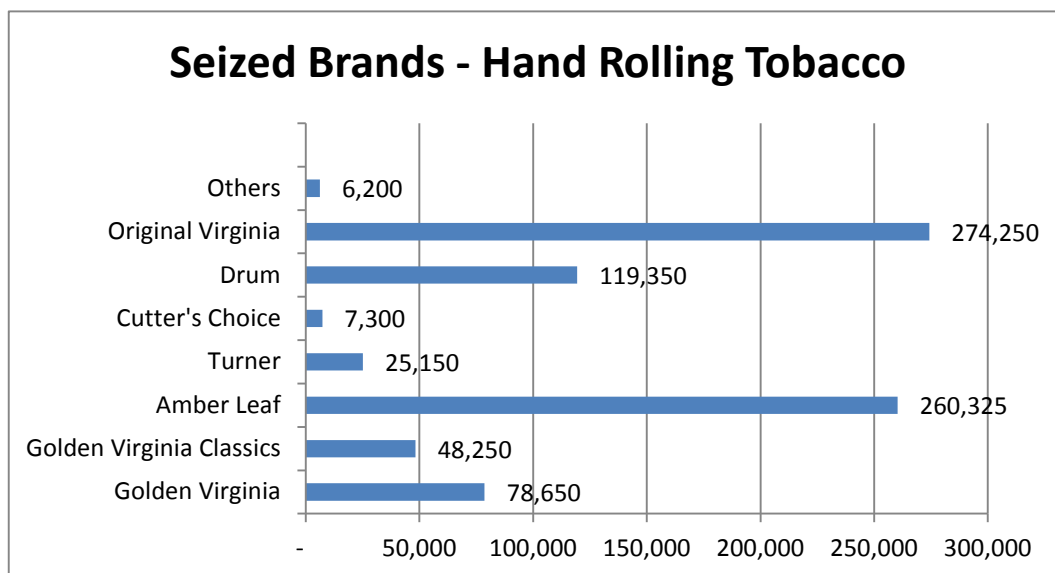
There has been a huge increase in the sale of illegal tobacco from high street shops in towns throughout Derbyshire. Selling at less than half the legitimate price, illegal tobacco undermines Government tobacco control strategy to keep demand low by having a high price. The traders selling illegal tobacco are organised criminals who are not easily deterred via traditional enforcement methods and so we are reliant on close working with regional colleagues as well as other enforcement agencies and in particular the Police, Border Control and HMRC.

E-cigarettes, irrespective of whether or not they are helpful in terms of reducing the harm from tobacco, pose serious safety concerns because of the risk of fire from over-heating batteries and it is essential that awareness is raised and that the problem is addressed.

Appendix 1 - Amount and type of illicit tobacco seized during 2013-14



Approximately 59% of the cigarettes seized were counterfeit with the remaining 41% being illicit or bootlegged



Of the hand-rolling tobacco seized, approximately 67% was illicit or bootlegged with the remaining 33% being counterfeit.

Appendix 2 – Examples of attempts to hide illegal cigarettes on retail premises

The following photographs illustrate examples of hidden storage methods:

1 Sliding panel under counter



2 Hidden in footrest



3 Concealment within metal security door



4 Cigarettes concealed in shop assistant's socks



Appendix 3 - Tobacco press releases 13/14

May 2013

1. [Sniffer dog finds illegal tobacco worth £20,000: Your council - Derbyshire County Council](#)
2. [Hefty fine for illegal tobacco seller: Your council - Derbyshire County Council](#)

June 2013

3. [Chesterfield shop forced to close after third raid for illegal tobacco: Your council - Derbyshire County Council](#)
4. [More than 28,000 cigarettes seized in Long Eaton tobacco raids: Your council - Derbyshire County Council](#)

August 2013

5. [Council's new plan to stamp out illegal tobacco sales: Your council - Derbyshire County Council](#)
6. [Cigarettes and tobacco worth £415k seized: Your council - Derbyshire County Council](#)

September 2013

7. [We continue court clamp-down on illegal tobacco sellers: Your council - Derbyshire County Council](#)

October 2013

8. [Illegal tobacco dealers targeted in county council health plan: Your council - Derbyshire County Council](#)
9. [Man fined £1,856 for selling illegal tobacco from his home: Your council - Derbyshire County Council](#)

December 2013

10. [Warning about increased fire risk caused by illegal cigarettes: Your council - Derbyshire County Council](#)

January 2014

11. [cigs seized.docx](#)
12. [..\..\2014\attach\GJM\Mr Cheap shop owner admits selling illicit cigarettes.docx](#)

Newspaper reports

Derby Evening Telegraph - <http://www.thisisderbyshire.co.uk/Dog-nose-crime-sniffs-30-000-illicit-cigs-shops/story-18979773-detail/story.html#axzz2TGXj7Wg3>

Ilkeston Advertiser - <http://www.ilkestonadvertiser.co.uk/news/ilkeston-news/sniffer-dogs-help-locate-illegal-tobacco-1-5663744>

Sheffield Star - <http://www.thestar.co.uk/news/local/sniffer-dog-used-in-raids-to-find-hidden-illegal-tobacco-1-5525796>

Derbyshire Times - <http://www.derbyshiretimes.co.uk/news/grassroots/chesterfield-town-shop-closed-after-raid-1-5794311>

Derby Evening Telegraph - <http://www.thisisderbyshire.co.uk/28-500-illegal-cigarettes-seized-raids/story-19420224-detail/story.html#axzz2Xilo5nNd>

Nottingham Evening Telegraph - <http://www.thisisnottingham.co.uk/Illegal-cigarettes-seized-shop-raids/story-19428428-detail/story.html#axzz2XiJ0RQDD>

Nottingham Post - <http://www.nottinghampost.com/28-000-illegal-cigarettes-seized-shops-Long-Eaton/story-19420177-detail/story.html>

Long Eaton People - <http://www.longeatonpeople.co.uk/Illegal-cigarettes-seized-shop-raids/story-19428428-detail/story.html>

Derby Telegraph

<http://www.derbytelegraph.co.uk/415-000-haul-illegal-cigarettes-tobacco/story-19694197-detail/story.html>

<http://www.derbytelegraph.co.uk/Counterfeit-cigs-pose-health-risks-Derbyshire/story-20338050-detail/story.html>

<http://www.derbytelegraph.co.uk/Smokers-warned-risks-illicit-cigarettes/story-20337123-detail/story.html>

<http://www.derbytelegraph.co.uk/Shop-employee-fined-selling-illicit-products/story-20110777-detail/story.html>

<http://www.derbytelegraph.co.uk/Thousands-products-seized-thanks-sniffer-dogs/story-20078235-detail/story.html>

<http://www.derbytelegraph.co.uk/Retailers-fined-caught/story-20046108-detail/story.html>

<http://www.derbytelegraph.co.uk/pound-1-110-selling-counter-tobacco/story-19761908-detail/story.html>