

DERBYSHIRE COUNTY COUNCIL

Cabinet Member – Health and Communities

18 July 2013

Report of the Strategic Director Cultural and Community Services

TOBACCO CONTROL

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 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 One of the biggest contributors to preventable coronary heart disease is from smoking. According to Department of Health figures, over 70,000 people die prematurely each year from smoking related diseases. Nicotine is a highly addictive substance and one of the most effective ways of reducing smoking prevalence is by stopping young people from starting to smoke. Illicit tobacco – which includes non-duty paid tobacco smuggled into the country and counterfeit tobacco – are readily available in our communities. The lower price of illicit tobacco undermines government strategy of limiting demand by keeping the price of tobacco high.
- 2.2 As well as checking that local retailers are complying with the requirements for advertising tobacco, the trading standards division is also responsible, with other partners, for tackling the sale of illicit tobacco in Derbyshire and for enforcing the legislation that prohibits the sale of tobacco to young people under the age of 18.

Illicit or Illegal Tobacco

- 2.3 There has been a significant (111%) rise in reports of sale/supply counterfeit and illicit tobacco in the last financial year. In 2011/12 there were 52 reports, in 2012/13 there were 110. The main reason for this increase has been the rise in shops selling illegal tobacco. We also receive a significant number of reports about 'fag houses' - private houses where an individual sells tobacco/cigarettes illegally. In total in 2012/13 officers have seized approximately 62,000 cigarettes and 26 kg of hand rolling tobacco (HRT). This would equate to a high street value of over £30,000. In addition, police seized £1,125 after arresting a suspect. In the first quarter of 2013/14 we've already seized over 60,000 cigarettes and 49kg of HRT, in raids at five shops and one 'fag house'.

2.4 We are currently at varying stages in the investigations of 13 shops and one 'fag house' – all of which may lead to prosecution. We believe that a number of the individuals responsible for the shops are linked forming an 'Organised Crime Group' (OCG). It is understood that Derbyshire is the first trading standards service in the country to have had an OCG 'mapped' by the Police which means that we are recognised as being the 'lead agency' for this particular group.

2.5 Illegal tobacco falls into three categories:

- Counterfeit: these are illegally manufactured tobacco products which are often made abroad, but sometimes in the UK. They are sold cheaply and tax free and vast profits are made throughout the supply chain.
- Bootlegged: 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.
- Smuggled: these are generally legitimately manufactured tobacco products ('cheap whites') which have evaded payment of tax by being illegally transported, distributed and sold.

2.6 Trading standards authorities 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 an individual is convicted under that legislation. The Division is working closely with Police and other enforcement colleagues and is keen to work more closely with HMRC colleagues as part of a regional partnership approach with the eight trading standards east midland authorities and public health services in the east midlands. We are also working closely with Derbyshire Public Health to explore ways in which we can continue to tackle the sale of illicit tobacco on the high street of Derbyshire towns.

Under-Age Sales

2.7 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.

2.8 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.

- 2.9 Compliance rates are now generally very good being typically 90% plus. Those under-age sales that do take place are usually attributable to an individual sales assistant who has not followed the appropriate procedures – for example to ask to see proof of age. 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.
- 2.10 There were five under-age sale test purchases during the previous financial year from 43 checks – a failure rate of 11.6% which was slightly higher than in previous years, but not thought to be statistically significant. The relatively low numbers of cigarette test purchase checks are explained by the higher number of alcohol test purchase checks carried out during the year as many of the businesses that sell tobacco also sell alcohol. The five illegal sales resulted in five letters of advice/warning to the businesses concerned. Three of the individual sales assistants also received an advisory/warning letter and two were cautioned.

Table showing Under-age Cigarette Test Purchase Checks

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

- 2.11 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 the appendix to this report.
- 2.12 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.

Aerosol Spray Paint Products

- 2.13 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. 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.

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.

Martin Molloy
Strategic Director
Cultural and Community Services

ENFORCEMENT PROGRAMME FOR TOBACCO PRODUCTS 2013/14

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 national best practice guidance (Currently issued jointly by Local Government Regulation and the Trading Standards Institute).
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. On an on-going basis, monitor the prohibition of tobacco sales from vending machines.
8. Deal with alleged offences in accordance with the Trading Standards Service's Enforcement 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.