

Agenda Item No. 3(b)

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

20 June 2016

Report of the Strategic Director – Economy, Transport and Communities

TRADING STANDARDS – TACKLING ILLICIT TOBACCO 2015-16

(1) **Purpose of Report** To advise the Cabinet Member of action taken by the Trading Standards Division to tackle the sale of illicit tobacco in Derbyshire during 2015-16.

(2) **Information and Analysis** The adverse public health impact of smoking is clear and efforts to reduce smoking prevalence continue. The supply of illicit tobacco (i.e. counterfeit and smuggled cigarettes and hand rolling tobacco (HRT)) in Derbyshire undermines these efforts at tobacco control and the Trading Standards Division has a key role in tackling the illicit supply.

There are a number of issues raised by the illegal trade:

1. Illegal sales at much cheaper prices make tobacco far more affordable, so undermining the efforts to reduce smoking. A pack of 20 illicit cigarettes sells for £3.50 (rather than a high-street price of around £8) and a 50g pouch of illegal HRT sells for £9 (compared to £18 for the legal product).
2. There is a massive revenue loss through failure to pay UK duty, which means that there is a greater burden placed on the tax payer.
3. Such products are more likely to fall into the hands of children. The illicit tobacco sellers have little regard for legal age limits.
4. Legitimate businesses are hurt by those who sell illegally, many complaints of illegal trading come from genuine businesses. Intelligence suggests that some of these illegal businesses are making around £3,000 - £4,000 per week.
5. The individuals and groups involved in the trade are often part of large Organised Crime Groups who see this as an easy way to make money.

As a result of these issues and the wider public health concerns, the Trading Standards Division works year on year to tackle the illicit trade in tobacco. A full report on this activity is included as Appendix 1, but highlights from activity in 2015-16 include:

Complaints

A total of 112 complaints received (108 in 2014-15). Complaints are a useful source of intelligence about premises causing concern and are used to better target a programme of enforcement activity.

Seizures

During 2015-16, the Trading Standards Division seized:

- 1,855,750 cigarettes which would have netted the criminal sellers approximately £325,000;
- 595kg of HRT – worth £107,000 to the criminal sellers; and
- 734kg of Shisha tobacco. Traditionally used by the Middle Eastern or Asian communities, shisha is tobacco sweetened with fruit sugar or molasses and smoked using a bowl and hose. No Shisha has been found on retail sale in Derbyshire; this seizure was from a storage unit.

The bulk of the cigarettes and tobacco seized came from one of the largest ever trading standards seizures in the UK which was made at a self-storage site in South Derbyshire in December 2015.

[We seize £1m of illegal goods in one of the UK's biggest trading standards hauls: Your council - Derbyshire County Council](#) This story featured heavily on national media and has since been used as a case study by the Local Government Association (LGA) to illustrate the role played by local authority regulators in tackling illicit tobacco.

The amount of illicit tobacco seized since April 2011 is shown below:

Year	Cigarettes Seized	Year	Tobacco Seized Kg
2011-12	14,000	2011-12	115
2012-13	62,000	2012-13	26
2013-14	876,000	2013-14	795
2014-15	347,000	2014-15	108
2015-16	1,855,750	2015-16	595
Total	3,154,750	Total	1,639
Selling price¹ – illicit sales	£552,081.25	Selling price – illicit sales	£295,020

Shop closures

Most sellers of illicit tobacco rent the shops they use from commercial landlords. Commercial leases all tend to include a clause forbidding the premises from being used for illegal activity. Where Trading Standards staff find evidence of illicit tobacco being sold, they try to work with the landlord to get the tenant evicted.

¹ Based on pack of 20 illicit cigarettes selling @ £3.50 and a 50g pouch of illicit tobacco selling at £9

This can be a time-consuming process involving repeated visits to premises and some landlords are more willing to co-operate than others. However, the approach has been successful and, in 2015-16, five offending shops were tackled in this way. The offending tenant is evicted and Trading Standards staff attend at the time of the eviction in order to carry out a final inspection and seize any remaining illicit stock.

Since this approach was adopted, the number of shops selling illicit tobacco has been reduced from a high of 13 down to 6, work is ongoing with the remainder.

Prosecutions and investigations

There are investigations underway in relation to all six premises that are currently known to Trading Standards.

Seven illicit tobacco prosecutions were concluded in 2015-16;

- prison sentences totalling 13 months were imposed in respect of 3 defendants;
- fines totalling £4,290 were imposed in respect of 3 defendants;
- costs of £4,047 were awarded; and
- £2,300 was recovered as Proceeds of Crime, being the shop takings from 1 defendant.

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

(3) **Key Decision** No.

(4) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

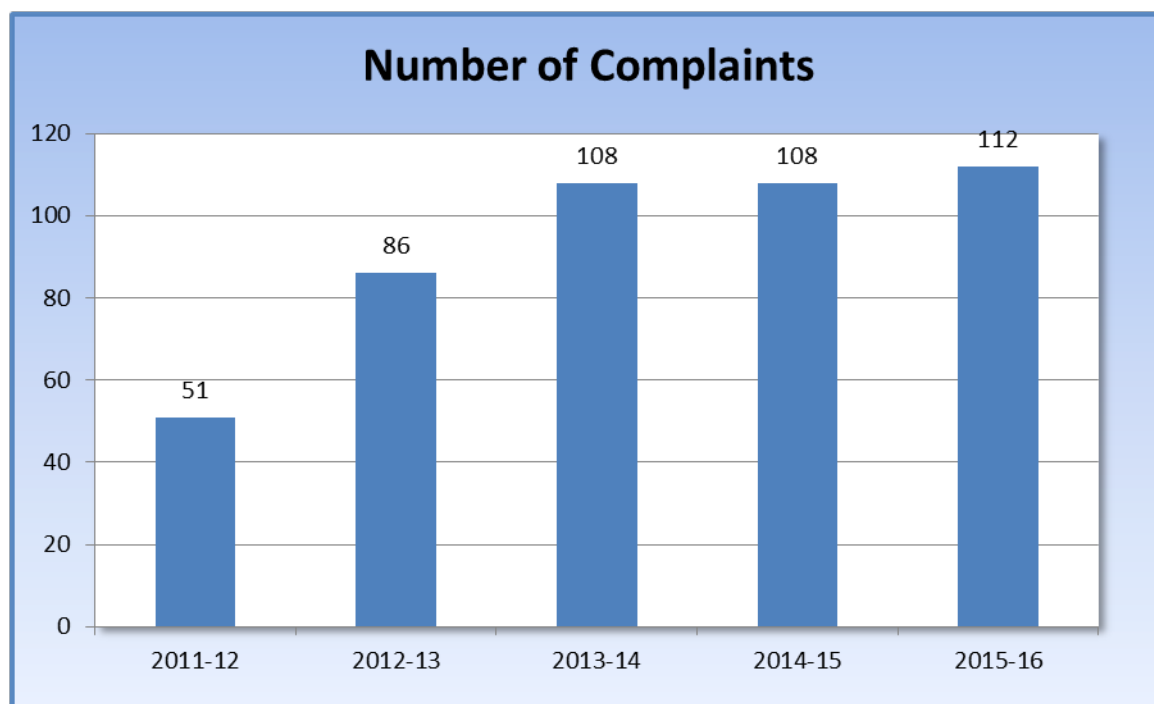
(5) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Robert Taylour, extension 39830.

(6) **OFFICER'S RECOMMENDATION** That the Cabinet Member notes the steps taken by the Trading Standards Division to tackle the supply of illicit tobacco.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

APPENDIX 1 - Tobacco Report 2015-16

Derbyshire County Council Trading Standards continues to monitor and take effective action against traders that deal in illegal hand rolling tobacco (HRT) and cigarettes. This Service has dealt with a continuation in reports of the sale or supply of illegal tobacco in the last financial year.



This continuation of complaints appears in part to be caused by a perpetuation of retail shops operated almost entirely by members of the Kurdish community based in Derby looking to fill a gap in the market created by the increasing cost of legitimate tobacco. They typically employ staff on an informal basis, rotate their staff between premises and regularly switch tenancies in order to avoid detection.

The current investigative workload is still 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 and supply of illegal tobacco. However, concerted efforts by this department have led to the further closure of premises and the evictions of tenants.

Since there appears to be a continuation of complaints from previous years, Derbyshire Trading Standards will continue to work to address the problem as there is a likelihood of this becoming a further problem in the coming year.

In addition to these shops this Service has continued to receive a number of reports about 'fag houses' - private houses where an individual sells tobacco/cigarettes

illegally, and there have also been further complaints relating to pubs and clubs as well as complaints about tobacco being sold via Facebook.

We are currently at varying stages in the investigation of 6 shops, with the intention of putting pressure on the landlords to evict the tenants. It is known that a number of these shops and individuals responsible are linked and may require greater input to progress as investigations.

The past year has seen the Service continue to work with other service providers including Derbyshire Police, Border Force, HM Revenue and Customs (HMRC) and several District/Borough Councils. It has also utilised the services of tobacco detection dogs, trade mark holder representatives and financial investigators.

2015-16 saw the continuing trend of 'pop-up' shops (small independent general stores) selling these goods. Typically they don't carry licenses for alcohol, stock newspapers, greetings cards or lottery tickets, only carry small amounts of illegal stock at any one time (they have frequent deliveries) and do not stock perishable goods. The figures in any individual seizure are therefore often modest, and don'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. However, this Service made several significant seizures from self-storage units which produced huge quantities of cigarettes and HRT, as well as other counterfeit goods

Concealments



Tobacco concealed in electromagnetically-operated drawers under shop counter (Note the pot of highly-scented wadding in the bottom right corner of the draw, to try to throw the sniffer dog off the scent)



Concealment behind ceiling light fitting



Concealment of tobacco behind sliding wall tiles

Experience from this and other authorities shows that seizures alone do not act as a deterrent, merely as a disruption. 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. Because of this Derbyshire Trading Standards will continue to work with and put pressure on landlords in order to evict such tenants from the shops and protect the livelihoods of legitimate businesses in the area.

There are a number of issues raised by this illegal trade -

1. 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 £3000-£4000 per week.
2. There is a massive revenue loss through failure to pay UK duty, which means that there is a greater burden placed on the tax payer.
3. Illegal sales at much cheaper prices make tobacco far more available, so undermining the efforts to reduce smoking. This is of greater relevance given the authorities increased role in Public Health. In practice, the illegal cigarettes retail for £3.50, against a high street price of around £8. A 50g pouch of illegal HRT will typically sell for £10, compared to £18 for the legal product.
4. Such products are more likely to fall into the hands of children. The sellers have little regard for under age controls, and indeed encourage the take up by minors as a potential future customer base.
5. The individuals and groups involved in the trade are often part of large Organised Crime Groups, with direct links to money laundering and drugs supply.

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'.

Operation Henry 2

This annual operation consists of the targeted inspection of premises involved in the supply of illegal tobacco using the services of a tobacco sniffer dog. These inspections in December 2015 focussed on five shop premises and one self-storage facility. Concealments were discovered and modest seizures were made at all five shop premises and, importantly, shop keys were seized as none of the shop tenants were actually on the premises at the time of inspection. The tenants are then invited to collect the keys, upon production of suitable identification. This helps to identify the

tenants concerned and provides an opportunity to advise them suitably, warn them as to their future conduct and to inform the landlord that their tenants have breached the terms of their tenancy agreements.

Furthermore, significant seizures were made from 6 units at the storage facility totalling approximately 1.5 million cigarettes and 560kg of HRT as well as 153 boxes of Al Fakher shisha tobacco weighing 734kg.



Quantity of HRT in one of the units

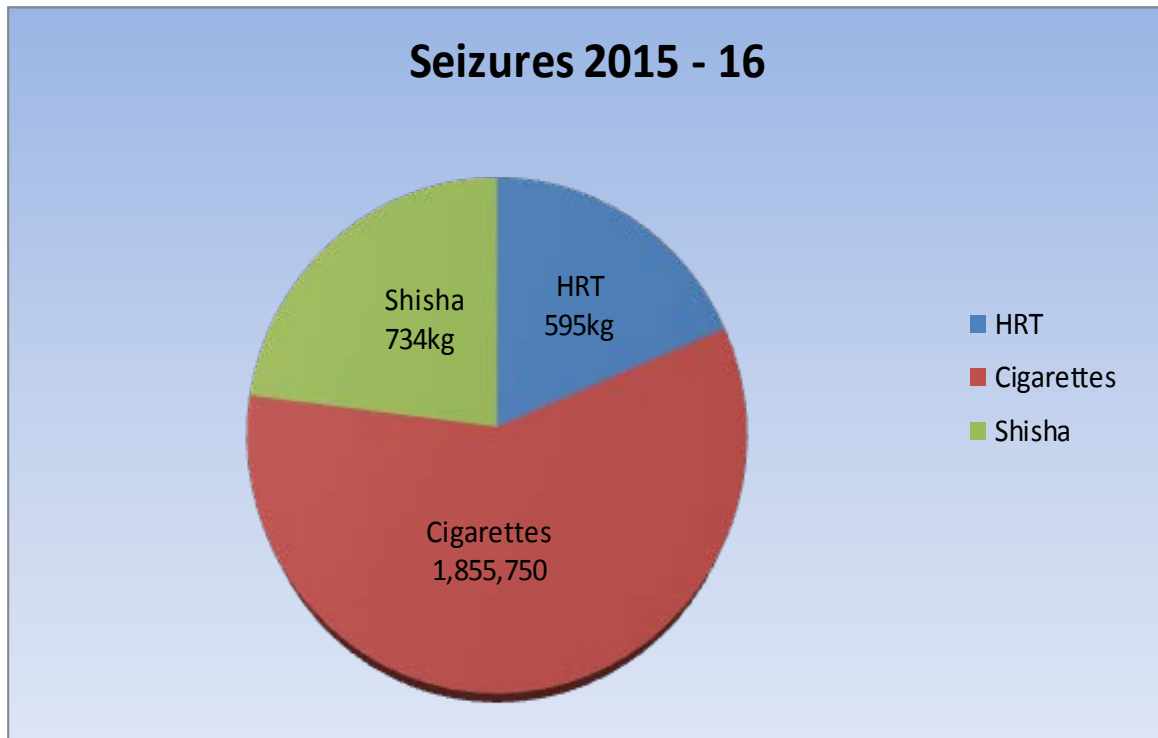


Quantity of cigarettes in a further unit

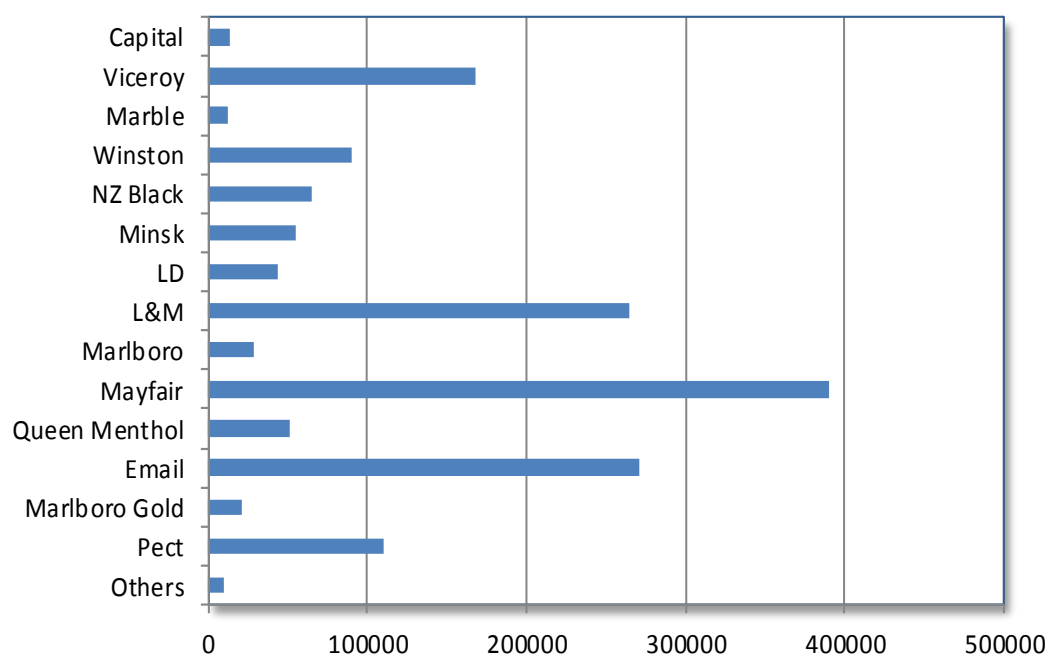


Quantity of shisha tobacco

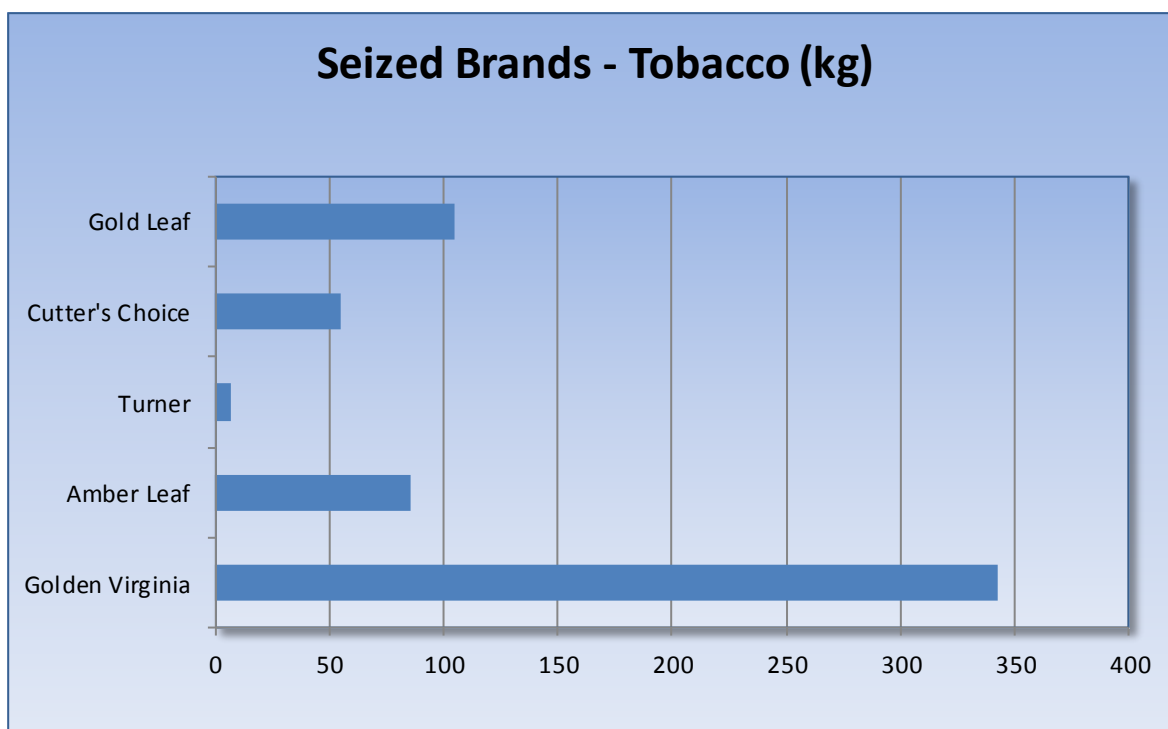
The seizures were so significant that 12 officers were involved and the incident reached regional press and television news. It also posed problems for this service in relation to storage and, due to the scale, the case was passed to colleagues at HMRC for further investigation. Prosecution and proceeds of crime penalties are expected.



Seized Brands - Cigarettes (Sticks)



Of the cigarettes seized 73% were cheap whites, 23% were counterfeit and 4% were non-duty paid.



Of the HRT seized 68% was non-duty paid and 32% was counterfeit.

In total, during 2015/16 officers seized approximately 1.85 million cigarettes and 595 kg of hand rolling tobacco (HRT). This equates to a high street value of £742,300 for the cigarettes and £214,200 for the HRT.

Prosecutions

	Court date	Defendant and business	Offences	Result
1.	13/04/15	Shop assistant, 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
2.	17/04/15	Tenant, Melanie's Mini Market, Heanor & Pound Plus, Ilkeston	15 offences re supply and possession of counterfeit tobacco section 92(1) (b) and (c) of the Trade Marks Act 1994. Shopkeeper jailed for illegal tobacco sales: Your council - Derbyshire County Council	4 months imprisonment
3.	17/04/15	Shop assistant, Melanie's Mini Market, Heanor	5 offences re supply and possession of counterfeit tobacco section 92(1) (b) and (c) of the Trade Marks Act 1994.	6 month supervision order, 12 week curfew and £750 costs
4.	1/7/2015	Tenant, Family Shop & Best Shop , Long Eaton	3 charges of selling counterfeit tobacco, 10 charges of possessing counterfeit tobacco for sale contrary	6 months imprisonment surrendered

	Court date	Defendant and business	Offences	Result
			to the Trade Marks Act 1994 and 3 charges of possessing unsafe tobacco, contrary to General Product Safety Regulations 2005. Shopkeeper and shop worker jailed for illegal tobacco sales: Your council - Derbyshire County Council	£2,300 cash seized under the Proceeds of Crime Act 2002 (POCA)
5.	1/7/2015	Shop assistant, Family Shop, Long Eaton	Offences re sale and possession of counterfeit tobacco and cigarettes – section 92(1) (b) and (c) of the Trade Marks Act 1994.	3 months imprisonment Also sentenced to additional 6 months for having 30,000 counterfeit cigarettes (HMRC)
6.	6/8/2015	Tenant of The Sweet Shop, Swadlincote	8 offences re sale and possession of counterfeit tobacco and cigarettes – section 92(1) (b) and (c) of the Trade Marks Act 1994. Shopkeeper fined £6,700 for possessing and selling fake tobacco: Your council - Derbyshire County Council	Fined 8 x £500 plus costs £2687
7.	9/12/2015	Chesterfield resident, supplying illegal cigarettes from home	Offences re sale and possession of counterfeit tobacco and cigarettes – section 92(1) (b) and (c) of the Trade Marks Act 1994.	Fined £180 with £360 costs

Warning letters

14 Letters of Warning were issued during the 12 month period

Inspections

As well as undertaking other duties, 44 visits to shop premises, storage units and domestics addresses were carried out in this period. Tobacco sniffer dogs were used in 24 of the visits. These operations also included maintaining close working relationships with the Police, Immigration Service and Border Force, HMRC, trade mark representatives and interpreters.

Roadshow

In September an officer from this Service staged an Illegal Tobacco Awareness roadshow in Chesterfield in conjunction with BWY Canine Ltd.



The roadshow was well attended and, in addition to helping to promote the dangers of illegal tobacco, it also gave the members of the public an opportunity to provide information that may be helpful in tackling the problem.

Memex intelligence database

There were 79 Memex entries made over the 12 month period.

Loss to UK taxpayer/industry

As mentioned, 1,855,750 cigarettes and 595kg of HRT were seized over this period. This equates to a high street value of £742,300 for the cigarettes and £214,200 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 2015/16 have a retail value of £742,300, the sale of which would equate to a loss to the Exchequer of over £572,000. Similarly, of the retail value of £18.00 for HRT, the duty is £9.14 (£10.97 with VAT) equating to a loss to the Exchequer of over £130,000.

Regarding these duty figures, they are significant as it means that any tobacco for sale below £6.17 for cigarettes and £10.97 for HRT can be regarded as suspicious.

Shop closures

This Service aims to work together with landlords in order to protect them from rogue tenants who trade illegally and also to provide a level playing field for legitimate traders. With this in mind, the co-operation of landlords is important in ensuring that those tenants that are trading illegally are evicted swiftly from shop premises and Trading Standards are able to assist by providing evidence of offences and attending at the time of eviction in order to carrying out a final inspection. The following premises have all been prevented from being involved in the supply of illegal tobacco –

- Melanie's Mini Market - Following the prosecution of the tenant and shop assistant by Trading Standards the premises were closed
- Famous Shop, Ilkeston – The landlord was able to evict the tenant after this Service provided evidence of the tenant's previous involvement in the supply of illegal tobacco and subsequent positive inspection
- Family Shop, Long Eaton – Trading Standards carried out the prosecution of the tenant and shop assistant. This proved invaluable in facilitating the closure of the shop premises
- Ezee Shop, Ripley – Following a raid and subsequent investigations by this Department, the landlord evicted the tenant
- Convenience Store, Ilkeston – Tenant was evicted following positive inspections and test purchases from the premises.

On-going investigations

This Department is currently carrying out investigations into a further six premises regarding the sale and supply of illegal tobacco and cigarettes. It is envisaged that all of these premises will either be closed or change their trading practices after intervention from this Department.

Conclusion

This Department has worked hard in order to deal with the issue of illegal tobacco within the county. It has developed and encouraged a close-working relationship with the Police and their Safer Neighbourhood Teams (SNT) which has proved to be fruitful in that the SNTs have been able to provide intelligence as well as identify any suspicious activity. Also, the close relationship means that organising raids in co-operation with the Police is easier and less time consuming. UK Border Agency has accompanied several raids and working relationships with HMRC have improved. Since concerted efforts to deal with the increase in illegal tobacco began in 2011/12 this Department has been involved in the seizure of 3.1 million sticks of cigarettes and 1.6 tonnes of HRT.

Year	Cigarettes Seized		Year	Tobacco Seized Kg
2011/12	14,000		2011/12	115
2012/13	62,000		2012/13	26
2013/14	876,000		2013/14	795
2014/15	347,000		2014/15	108
2015/16	1,855,750		2015/16	595
Total	3,154,750		Total	1,639

Due to the continued number of complaints received, it may be necessary to re-evaluate the Department's strategy regarding the investigation of illegal tobacco shops. Clearly our resources are finite and there may come a stage where a higher threshold may be needed to be reached until a full investigation is launched. Furthermore, a greater emphasis may be placed on inspecting self-storage facilities in an effort to stop the supply higher up the chain. Regardless, it must be stressed that this Department will continue to provide a high quality service by supporting business, helping consumers and tackling unfair and unsafe trading practices.