

Agenda Item No. 3(b)

**DERBYSHIRE COUNTY COUNCIL**

**MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES**

**26 July 2016**

Report of the Strategic Director – Economy, Transport and Communities

**TRADING STANDARDS WORK ON TOBACCO CONTROL 2015-16**

(1) **Purpose of Report** To advise the Cabinet Member of activities undertaken by the Trading Standards Division during 2015-16 to control the sale of tobacco and to seek approval of the 2016-17 annual programme of enforcement in relation to tobacco and aerosol paints.

(2) **Information and Analysis**

**Tobacco Control**

Smoking is one of the biggest causes of death and illness in the UK. According to the NHS Choices website<sup>1</sup>, every year, around 100,000 people in the UK die from smoking, with many more living with debilitating smoking-related illnesses.

The Trading Standards Division has enforcement responsibility for a range of legislation which regulates the sale of tobacco and tobacco products. Activity in this area aims to support Derbyshire County Council's pledges to make Derbyshire a Safer and Healthier place, and contributes to the aims of the Department of Health's Tobacco Control Plan for England.

The Tobacco Control Plan for England sets out six strands which are internationally recognised.

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.

The main areas of tobacco-related activity for the Trading Standards Division are:

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<sup>1</sup>See website via following link: <http://www.nhs.uk/pages/home.aspx>

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; and
4. Tackling the supply of illicit tobacco. The work done in tackling illicit tobacco in 2015-16 was the subject of an earlier report dated 20 June 2016<sup>2</sup> (Minute No. 50/16 refers).

The Trading Standards Division is an active member of the Derbyshire Tobacco Alliance and works closely with other local, regional and national agencies, to seek to reduce the harm from tobacco and associated products. As well as core funding, the Trading Standards Division also receives funding from Derbyshire Public Health and has a Service Level Agreement to deliver tobacco control measures. The Division continues to make a significant contribution to tackling the sale of illicit tobacco and to prevent the sale of tobacco and other products to young people under the minimum legal age.

Whilst the vast majority of tobacco retailers are generally compliant, there remains an issue with retail staff failing to seek proof of age. In addition, there is less awareness, and therefore compliance, with the new age-restrictions on the sale of nicotine inhaling products (e-cigarettes).

Details of performance by the Division towards achieving these targets, together with a breakdown of the advisory visits and test purchase checks carried out by the Division in 2015-16, are provided in Appendix 1 to this report.

### **Tobacco and Aerosol Enforcement Programme 2016-17**

Section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 places a duty on Derbyshire County Council to give annual consideration to carrying out a programme of enforcement action to ensure that tobacco is not sold to persons under 18 years of age and that statutory warning notices are displayed on retail premises.

A similar duty exists under Section 54A of the Anti-Social Behaviour Act 2003 in relation to aerosol paints, although, in Derbyshire, there is little evidence that the underage sale of such paints is an extensive problem.

Details of the proposed Enforcement Programme for 2016-17 for both Tobacco and Aerosol products are set out in Appendix 2 to this report.

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<sup>2</sup> See report:

[http://www.derbyshire.gov.uk/council/meetings\\_decisions/meetings/cabinet\\_member\\_portfolio/health\\_communities/20062016\\_health\\_and\\_communities.asp](http://www.derbyshire.gov.uk/council/meetings_decisions/meetings/cabinet_member_portfolio/health_communities/20062016_health_and_communities.asp)

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, social value 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 RECOMMENDATIONS** That the Cabinet Member:

6.1 Notes the steps taken by the Trading Standards Division to reduce smoking prevalence during the previous financial year.

6.2 Approves the annual programme of enforcement to prevent under-age sales of tobacco and aerosol paints.

**Mike Ashworth**  
**Strategic Director – Economy, Transport and Communities**

## Appendix 1 - Derbyshire Trading Standards - Tobacco Report 2015-16

### Under-Age Sales

The Division seeks to minimise the likelihood of illegal sales in Derbyshire through a combination of advisory visits to local retailers; 'age-verification' checks, test purchase checks, and proportionate enforcement action in accordance with the Trading Standards Division's Compliance Policy.

### Advisory Visits

The Trading Standards Division operates a risk-based programme of visits which aim to assess precautions taken by retailers to prevent underage sales. During these visits, appropriate advice is given to the business and the premises current risk score is revaluated based on the effectiveness of such precautions as staff training, monitoring refused sales and display of warning notices. The number of visits is determined by the risk rating, number of complaints and available resource. In 2015-16, 102 advisory visits were made; this compares to 128 visits in 2014-15 and 118 in 2013-14. Where the precautions in place are deemed poor in response to intelligence from the public or partners, then a test purchase check may be undertaken.

### Test Purchase Checks

Twenty one test purchase tests were made with the assistance of young volunteers who were aged under 18. These attempts resulted in four illegal sales from four different businesses selling tobacco in Derbyshire; a failure rate of 19%, which is an improvement from seven sales from 16 test purchase checks the previous year which equated to a failure rate of 43.8%. However, 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. As a consequence of the introduction of the Better Regulation Delivery Office (BRDO) Code of Practice in 2013, the level of test purchase checks has reduced and so comparison of failure rates with previous years is not necessarily valid.

**Table – Tobacco Test Purchase Checks**

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
<b>Number of Attempts</b>	56	40	43	19	16	21
<b>Sales</b>	2	3	5	6	7	4
<b>% of sales</b>	<b>3.6%</b>	<b>7.5%</b>	<b>11.6%</b>	<b>31.6%</b>	<b>43.8%</b>	<b>19%</b>

### Age Verification Checks

In addition to the traditional test purchase checks, the Division also undertook a programme of visits with 18 year-old volunteers to check whether local businesses were complying with their own 'Challenge 21' or 'Challenge 25' policies.

Accurately assessing a young person's age can be difficult so it is crucial that businesses selling age-restricted products seek proof before making a sale. Responsible businesses should ensure that their staff adopt a precautionary policy that requires proof of age before they sell to anyone who appears under the challenge age, typically 25 or 21.

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.

Twenty nine businesses were visited and, on 14 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 show that in 48% of cases, sales staff were selling without asking for proof of age.

Appropriate advice and warnings were given to the individuals concerned and the relevant businesses. The information was also recorded and fed into the risk assessment process.

Figures for the previous two years are shown below but sales rates are variable, making it difficult to identify clear trends.

### Age Verification Checks

	2013-14	2014-15	2015-16
<b>Number of Attempts</b>	17	18	29
<b>Sales</b>	12	1	14
<b>% of sales</b>	<b>70.6%</b>	<b>5.6%</b>	<b>48.3%</b>

### Enforcement

Following investigations as a result of the four illegal under-age sales of tobacco, two formal Cautions were issued and two individuals (who were in partnership) were prosecuted. Each were fined £500 and ordered to pay £305 towards prosecution costs. One prosecution is outstanding but scheduled for court in July 2016. Details of the completed prosecution are given below.

Court date	Defendant	Location	Offences	Result	
				Fine (£)	Cost (£)
16/09/15	Karmjit Singh t/a Killamarsh News	Killamarsh	Sold cigarettes to a young person under the age of 18.	500	305
	(partnership)		Children and Young Persons Act 1933		
16/09/15	Amarjit Kaur t/a Killamarsh News	Killamarsh	Sold cigarettes to a young person under the age of 18.	500	305
	(partnership)		Children and Young Persons Act 1933		

## 2. Advertising and Labelling of Tobacco

The main areas of enforcement responsibility for trading standards, with regard to the advertising and labelling of tobacco, are point of sale promotion and the labelling of the packages.

The Tobacco Advertising and Promotion Act 2002 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. The ban came into effect for larger retailers in 2012 and for smaller retailers from 2015. To date, there have been no instances of non-compliance observed or reported.

In 2013, the Children and Families Act 2014 included provisions to enable the Government to introduce standardised packaging. Regulations were approved in 2015 and the law took effect in May 2016.

It is hoped that the introduction of 'plain' or 'standardised packaging', which requires tobacco manufacturers to place graphic warnings about the harm from tobacco, will greatly assist in reducing the number of people starting to smoke.

### 'E-cigarettes'

In October 2015, new Regulations, the Nicotine Inhaling Products (Age of sale and proxy selling) Regulations 2015, came into force. The Regulations make it an offence to sell nicotine inhaling products to persons under the age of 18

years. The legislation includes such products as e-cigarettes and e-liquids containing nicotine.

In 2015-16, 22 complaints alleging illegal sales of tobacco products and nicotine inhaling products to persons under the age of 18 years were received. Eight complaints were made alleging retail premises were selling tobacco products to persons underage; one complaint alleged that a private individual was supplying tobacco to persons underage from his house. In addition, 13 complaints were received alleging retail premises were selling e-liquids or e-cigarettes (nicotine inhaling products) to persons underage. Appropriate enforcement action was taken in each case, either a standard letter accompanied by a letter of advice and / or a risk assessment visit.

During the course of the year, the Division participated in a national exercise to check compliance with the new requirements organised by the Chartered Trading Standards Institute (CTSI) and funded by the Department of Health (DoH). Ten local businesses were visited by a volunteer under the age of 18 years and attempts were made to purchase either e-cigarettes or e-liquids containing nicotine. Guidance was given by CTSI on how to conduct the project. A variety of premises were visited throughout the County, including specialist 'e-cigarette' suppliers, local and national convenience store chains and newsagents, as well as petrol station kiosks. Priority was given to premises where the Division had received complaints and allegations that shops were selling this type of product to persons under-age and businesses where there had been previous sales of age restricted products.

Six out of the ten stores sold either an 'e-liquid' or a rechargeable e-cigarette. Revisits were made to the shops that sold the products and appropriate advice, along with a letter of warning, was given to the owner of the business. Those businesses where a sale was refused were all sent a standard letter to advise them of the test purchase attempt.

### **Aerosol Spray Paint Products**

The Anti-Social Behaviour Act 2003 creates an offence for anyone to sell aerosol paint products to persons under the age of 16 years. 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 2015-16.

### **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. Five 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 HM Revenue and Customs (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.

Recognising the contribution that the Trading Standards Service makes to Tobacco Control, the Division has a Service Level Agreement (SLA) with Derbyshire's Public Health Service. The SLA reflects the Key Objectives of the current DoH Tobacco Control Plan for England to reduce smoking prevalence and is provided below.



Trading Standards SLA with Public Health for 2015-16			
Objective 1: Effective Communications		Target	Total
1.1	Communication Activity with retailers/partners/public		
1.2	No. of complaints of illegal and illicit tobacco		94
1.3	No. of media releases related to illegal and illicit tobacco	2	5
Objective 2: Making Tobacco Less Affordable			
2.1	No. of inspection visits conducted	20	44
2.2	No. of cigarettes seized		1,857,482
2.3	Weight of hand rolled tobacco seized (kg)		592
2.4	No. of cautions issued		0
2.5	No. of prosecutions initiated		4
2.6	No. of prosecutions concluded		11
2.7	No. of complaints about mobile vendors responded to		1
2.8	No. of landlords engaged		
Objective 3: Effective Regulation of Tobacco		Target	Total
3.1	No. of under-age risk assessments at businesses selling tobacco undertaken	100	103
3.2	No. of tobacco sellers identified where follow-up advice/action is required and what action was taken		97
3.3	No. of age-verification checks at businesses selling tobacco (premises identified from previous history or low confidence score at risk assessment)	15	29
3.4	No. of age-verification check failures		13
3.5	No. of underage test purchases conducted at businesses selling tobacco (premises identified from previous history/low confidence score at risk assessment/failure of age-verification check)	15	21
3.6	No. of enforcement actions arising from under-age sales		4
3.7	No. of display compliance checks undertaken	100	101
3.8	No. of enforcement actions arising from display of tobacco checks		1
3.9	No. of advisory visits to businesses selling tobacco (age of sale, proxy purchasing)	100	103
3.10	No. of complaints regarding under-age sale of tobacco responded to		7

## **Appendix 2 - ENFORCEMENT PROGRAMME FOR TOBACCO PRODUCTS 2016-17**

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 under-age 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 Division'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.

## **ENFORCEMENT PROGRAMME FOR AEROSOL PRODUCTS 2016-17**

Derbyshire Trading Standards Service does not intend taking any proactive enforcement action with regards to potential under-age sales of aerosol products to young people in Derbyshire, but will respond to any intelligence received regarding such sales.

### Appendix 3 – TOBACCO PRESS COVERAGE 2015-16

1. [Shopkeeper jailed for illegal tobacco sales: Your council - Derbyshire County Council](#)
2. [Shopkeeper and shop worker jailed for illegal tobacco sales: Your council - Derbyshire County Council](#)
3. [Shopkeeper fined £6,700 for possessing and selling fake tobacco: Your council - Derbyshire County Council](#)
4. [Derbyshire trading standards sniffer dog team's crackdown on illegal tobacco - Derbyshire Times](#)
5. [We seize £1m of illegal goods in one of the UK's biggest trading standards hauls: Your council - Derbyshire County Council](#)