

Agenda Item No. 3(b)

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

28 June 2017

Report of the Strategic Director – Economy, Transport and Communities

**TRADING STANDARDS ACTION TO TACKLE THE SUPPLY OF ILLICIT
TOBACCO IN DERBYSHIRE 2016-17**

(1) **Purpose of Report** To inform the Cabinet Member of action taken during the previous year to prevent the sale and supply of illegal tobacco in Derbyshire.

(2) **Information and Analysis** Derbyshire Trading Standards Service (DTSS) has, for the past six years, prioritised tackling the supply of illegal tobacco products (ie cigarettes and Hand Rolling Tobacco – HRT). In 2011, the Division began receiving complaints about the sale of cheap counterfeit and non-duty paid tobacco in ‘high street’ shops throughout the County. Intelligence suggested that the perpetrators were organised criminals that were based in Derby and had expanded their criminal operations into rural Derbyshire. Typically, shop premises in market towns throughout the County would be rented on short-term leases and stocked with cheap non-perishable goods as a front for selling illegal tobacco. The illegal tobacco would be stored ‘under the counter’ so not immediately apparent, but made available on demand. The storage of the tobacco has become increasingly more sophisticated and has necessitated the use of specially trained sniffer dogs to reveal where the cigarettes are being concealed. Sniffer dogs have also been crucial in detecting last consignments of illegal cigarettes held in storage units throughout the County.

The main rationale for prioritising tackling is that illegal tobacco typically sells for £3.50 for a pack of 20 cigarettes compared to legitimate cigarettes that are priced at about £9. Similarly, counterfeit HRT is available for £10 for a 50g pack compared to the legitimate product which costs about £19. The availability of cheap illegal tobacco thus undermines Government strategy of keeping the price of tobacco high to deter people from smoking. Whilst the Department supports steps to reduce smoking prevalence, it has to be recognised that tobacco is still a legitimate product and that the sale of cheap counterfeit tobacco also poses unfair competition to legitimate local businesses. It is estimated that the criminal traders make between £3,000 and £4,000 per week from illegal tobacco sold from high street premises. As no tax

or duty is paid on the illegal cigarettes, there is also a loss of revenue to the Exchequer which could otherwise have been invested into the Health Service to tackle the harmful effects of tobacco.

Whilst the number of complaints about illegal tobacco has fallen slightly to 88 for the previous year, the number is still significant and reflects a less overt style of trading by the criminal fraternity. Because of increased enforcement and successful seizures by Trading Standards staff, the illegal traders tend to be more discerning about who they sell to. Those addicted to tobacco are less likely to complain to the authorities as they know that this could disrupt their supply of cheap tobacco.

Year	Number of Complaints
2011-12	51
2012-13	86
2013-14	108
2014-15	108
2015-16	112
2016-17	88

Similarly, there has been a decline in the volume and weight of cigarettes and HRT (respectively) seized from retail premises throughout the County. This again reflects the success of previous enforcement activities as the illegal traders are storing less tobacco on their premises and using 'runners' to abscond from the premises at the first sign of enforcement agencies. In addition, there have been no seizures by DTSS from commercial storage units in the County during the previous 12 months. Just over 50,000 illegal cigarettes were seized during the year and some 26kg of HRT. This represents a 'high street' value of £35,000 and a loss to the Exchequer of approximately £23,000.

Tobacco Seized	Cigarettes (Sticks)	HRT (kg)
2011-12	14,000	115
2012-13	62,000	26
2013-14	876,000	795
2014-15	347,000	108
2015-16	1,855,750	595
2016-17	52,120	26
Total	3,206,870	1.670 tonnes

During the year, DTSS carried out 27 visits to shop premises, pubs and clubs and deployed a sniffer dog during 12 of these visits. As well as initiating several prosecutions and supporting Derbyshire Police and Her Majesty's Revenue and Customs (HMRC) with several large scale prosecutions of

Organised Crime Groups, The Division has successfully engaged with the landlords of a number of the leased properties selling illegal tobacco. This has resulted in the termination of rental agreements and the eviction of tenants making illegal sales. This 'disruption' tactic has proven as effective as periodic raids which in some instances have proved to be little deterrent to the determined criminals who have restocked and continued their illegal trade, often within hours.

Full details of Trading Standards activities to tackle the illegal trade of tobacco are contained in the appendix to this report.

(3) **Financial Considerations** The Trading Standards Service has been able to prioritise and maintain current levels of enforcement as a result of £40,000 from the Public Health Resource Fund.

(4) **Social Value Considerations** Illegal tobacco undermines the Government's strategy of encouraging a reduction in smoking prevalence as it is cheaper than the legitimate product. The criminal trader will not pay any tax and so there is a loss of tax revenue that could otherwise contribute to tackling the health related issues associated with smoking. The sale and supply of illegal tobacco also impacts upon local legitimate business.

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

(5) **Key Decision** No.

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

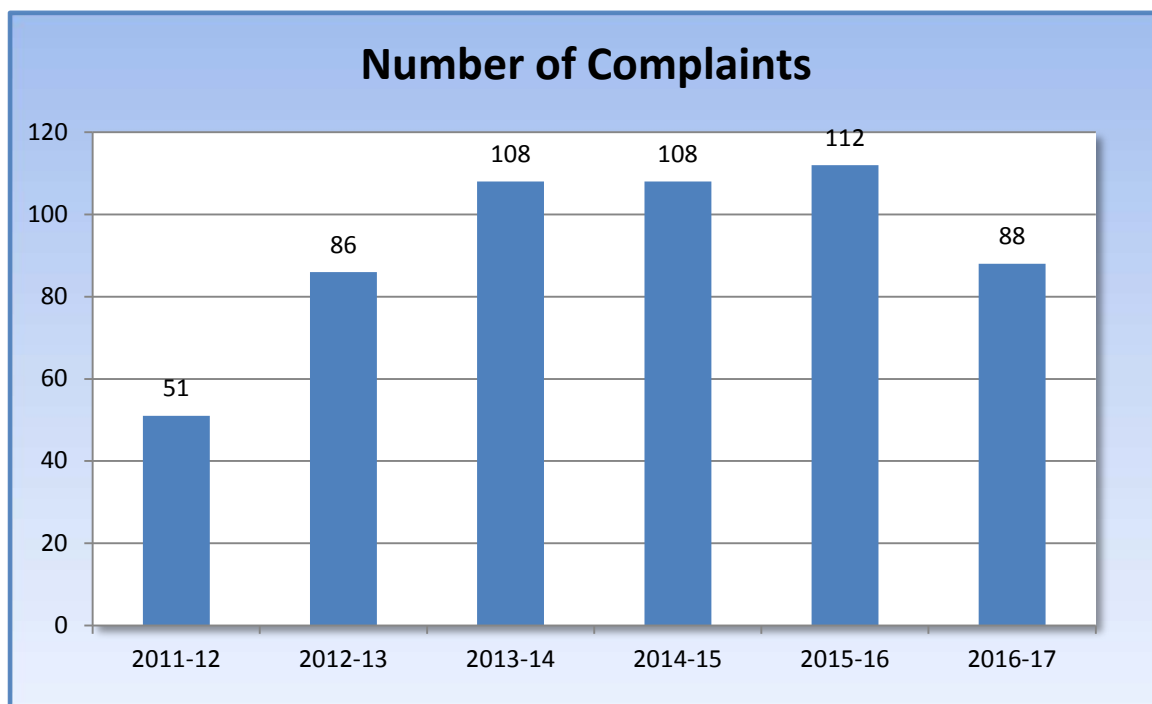
(7) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Robert Taylour, extension 39830.

(8) **OFFICER'S RECOMMENDATION** That the Cabinet Member notes the report.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

Appendix - Derbyshire Trading Standards Service (DTSS) Tobacco Report 2016-17

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 seen a continuation in reports of the sale or supply of illegal tobacco, as the graph below shows, with 88 complaints in the last financial year. This shows that complaints of illegal tobacco are still at a significant level, despite the efforts of this Service.



This continuation of complaints is caused by two distinct supply chains, which in both cases, are seeking to take advantage of the market created by the increasing cost of legitimate tobacco.

1. A perpetuation of retail shops operated by members of the Kurdish community based in Derby which consist of basic 'mini markets' selling a small range of non-perishable goods, where the prime activity is illegal tobacco and 'Eastern European' also operated by Kurdish nationals. Enquiries and investigations, along with intelligence gleaned over a number of years, show that the network is established nationally, beyond Derbyshire.
2. Predominantly white UK nationals supplying through residential addresses

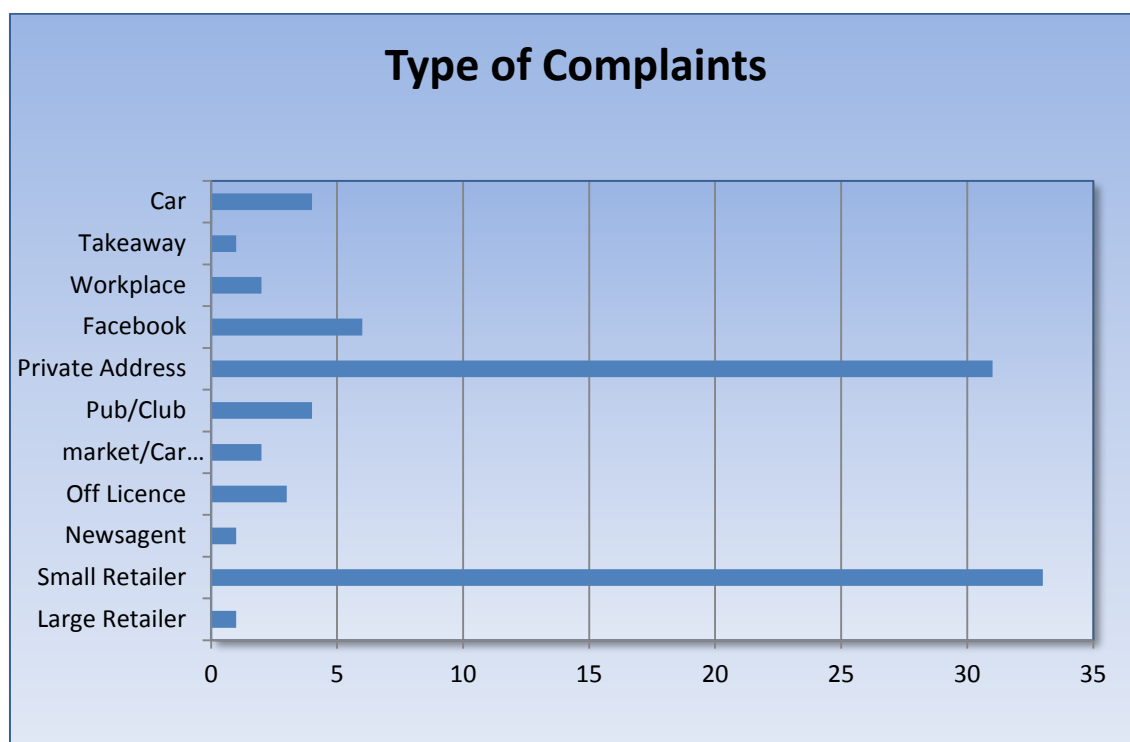
Retail Premises Typically employ staff on an informal basis (sometimes using illegal immigrants), rotate their staff between premises and regularly switch tenancies in order to avoid detection and prosecution. However, it is believed that the decrease in the number of complaints is due to the traders being more

covert with their business and only selling to an identifiable group of customers. This lowers the risk of discovery as these customers are unlikely to complain and jeopardise their source of illicit tobacco. Also, the amount of illicit stock kept on the premises has been reduced with stock being kept off-site and 'runners' used to minimize discovery and any subsequent loss.

The shops are located in Long Eaton, Ilkeston, Heanor, Alfreton, Codnor, Chesterfield, Shirebrook and Newhall. In total, it is believed there are currently 13 shops in Derbyshire involved in illegal sales.

It is estimated that these shops are turning over a minimum of £200,000 per year (which equates to 60,000 illegal packets a year).

Residential (Private) addresses (also known as 'Fag Houses') – Suppliers here will also only sell to an identifiable customer base that is highly unlikely to inform the authorities about these activities. Trading Standards do not have powers to inspect residence-only dwellings without obtaining a warrant, which is very difficult without the necessary supporting evidence.



In addition to complaints about shops and private dwellings, Derbyshire Trading Standards Service (DTSS) has also received complaints about the sale of illegal tobacco at pubs and clubs, as well as complaints about tobacco being sold via Facebook.

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 the illegal tobacco. However, concerted efforts by Trading Standards officers have led to further closure of premises and the evictions of tenants.

Since there appears to be a continuation of complaints from previous years, DTSS will continue to work to address the problem.

DTSS is currently at varying stages in the investigation of a number of shops, with the intention of putting pressure on the landlords to evict the tenants. It is believed that 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, HMRC, Derbyshire Fire Service and several District/Borough Councils. It has also utilised the services of tobacco detection dogs, trade mark holder representatives and financial investigators.

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.

The Local Authority has a duty to enforce the provisions of both the Trade Marks Act 1994 and Consumer Safety legislation (The General Product Safety Regulations 2005). Trading Standards is able to use these legislations to tackle the supply of illegal tobacco. Trade Marks legislation 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.

2016-17 saw the continuing trend of small independent general stores selling these goods. Typically they do not carry licenses for alcohol, stock newspapers, greetings cards or lottery tickets, only carry small amounts of 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 do not reflect fully the scale of trade at any given time and often the goods are secreted in unusual hiding places in order to avoid detection.

Illustrations of Concealment of Illegal Tobacco in retail premises in Derbyshire

- 1 Tobacco concealed in a void in wall behind bathroom cabinet 5 May 2017 Codnor



- 2 Tobacco in a laptop case suspended on a cable behind a drinks fridge 25 October 2016 Alferton



**3 Concealment behind a sliding wall panel 21 November 2016
Heanor**



**4 Concealment of tobacco hidden behind sliding wall panel 3 June
2016 Heanor**



Experience from this and other authorities suggests that the seizure of illicit tobacco alone does not act to deter the criminal fraternity, it merely acts 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 just modest seizures. As a consequence, DTSS will continue to work with, and put pressure on, landlords in order to evict such tenants from local shops and protect the livelihoods of legitimate businesses in the area.

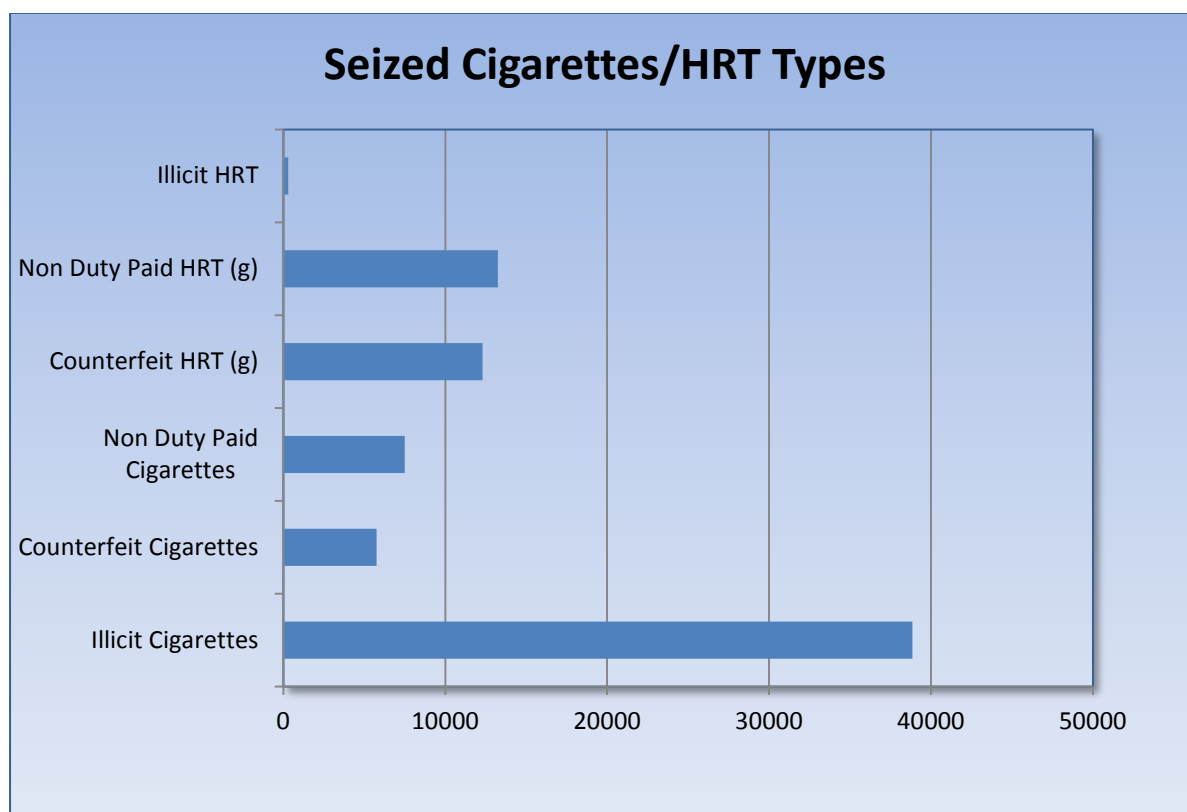
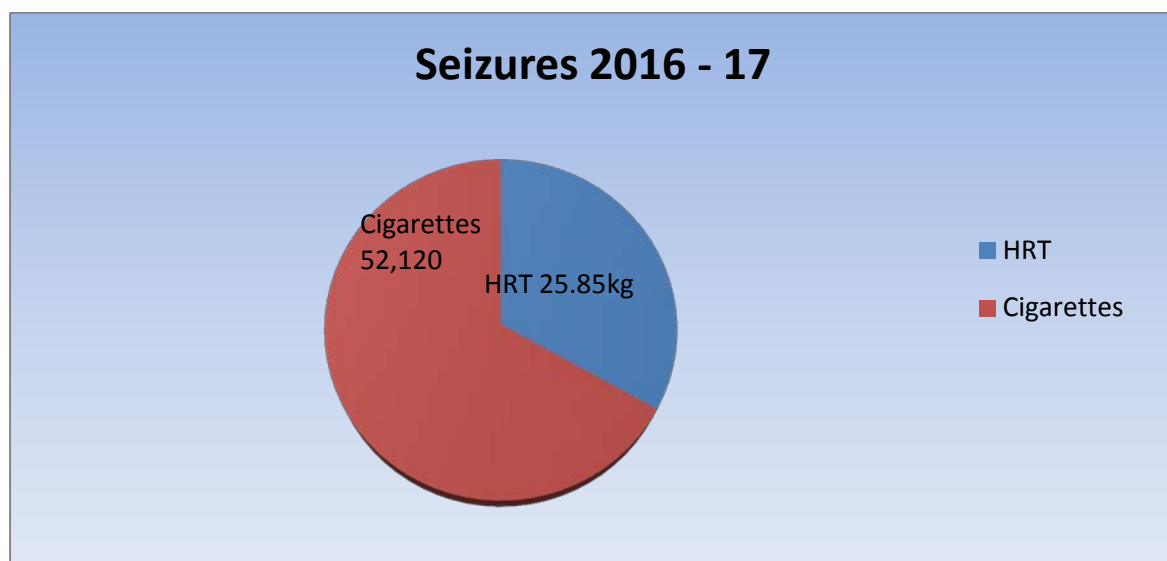
There are a number of issues raised by the illegal trade:

- Legitimate businesses are adversely affected by those who sell illegally, often at below half the price of legal products, and many complaints of illegal trading come from genuine businesses. DTSS has information that some of these illegal businesses are making around £3,000 - £4,000 per week.
- There is a significant loss to the Revenue as a result of the failure to pay UK duty, which means that there is a greater burden placed on the tax payer.
- Illegal sales at much cheaper prices make tobacco far more accessible, thus undermining the efforts to reduce smoking. In practice, illegal cigarettes retail for £3.50 compared to a high street price of around £9. A 50g pouch of illegal HRT will typically sell for £10 compared to £19 for the legal product.
- Such products are more likely to fall into the hands of children. The sellers have little regard for age-restrictions, and indeed encourage the take up by minors as a potential future customer base.
- The individuals and groups involved in the trade are often part of large Organized Crime Groups (OCG) with direct links to money laundering, people trafficking and drugs supply.

Operation Paris/ Paris 2

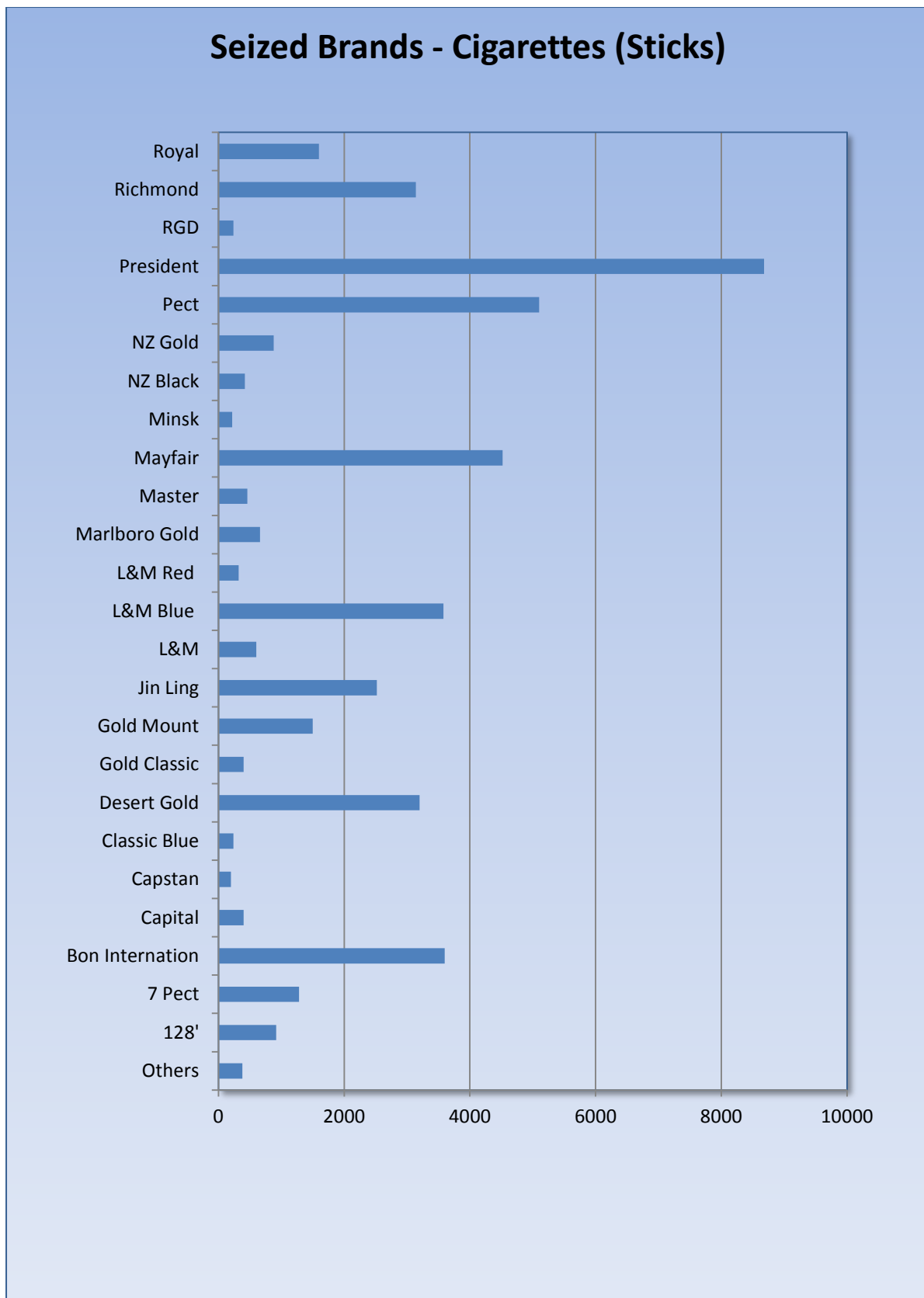
Operation Paris involved the targeted test purchasing of premises involved in the supply of illegal tobacco using the services of a Polish-speaking operative. They also focussed on several licensed premises that were selected either because officers had experienced difficulty in test purchasing (due to familiarity between customer and shop worker) and/or where intelligence was held that sales were occurring. Positive purchases were obtained at all of the premises visited and warning letters were issued where appropriate. A second operation was then undertaken and those licensed premises that failed a test purchase for a second time are to be the subject of a licence review application.

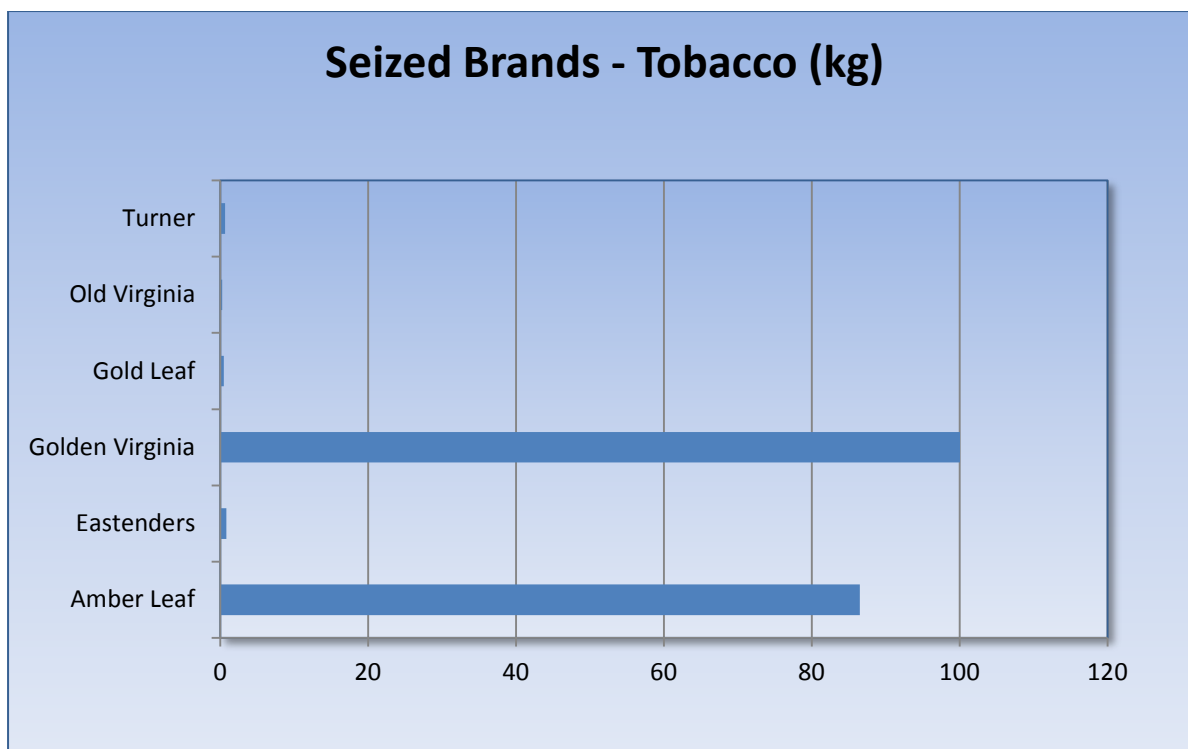
Seizure figures



Of the cigarettes seized 74% were illicit, 11% were counterfeit and 14% were non-duty paid.

Of the HRT seized 51% was non-duty paid, 48% was counterfeit and 1% was illicit.





During 2016-17, the street value of seized tobacco equates to £23,400 for the cigarettes and £10,100 for the HRT.

Press releases

Three press releases in total were issued relating to the use of tobacco sniffer dogs, seizures from various shops and the closures of premises.

Derbyshire Trading Standards also featured on BBC Watchdog Roadshow and followed officers to premises in Alfreton and Heanor where inspections were carried out and seizures made.

Warning letters

Four Letters of Warning were issued during the 12 month period.

Inspections

As well as undertaking other duties, 27 visits to shop premises and pubs and clubs were carried out in this period. However, inspections of private dwellings were not undertaken as warrants would need to be obtained and this would have been difficult without the necessary evidence.

Tobacco sniffer dogs were used in 12 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.

Loss to UK taxpayer/industry

52,120 cigarettes and 25.85kg of HRT were seized during the year which equates to a high street value of £23,454 for the cigarettes and £9,823 for the HRT.

In the UK, tax on cigarettes per packet of 20 is £3.52. 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 £9.00 contains a tax element of £6.94. Therefore, the seizures in 2015-16 have a retail value of £52,120, the sale of which would equate to a loss to the Exchequer of over £18,000. Similarly, of the retail value of £19.00 for HRT, the duty is £9.14 (£10.97 with VAT) equating to a loss to the Exchequer of over £5,600.

Regarding these duty figures, they are significant as it means that any tobacco for sale below £6.94 for cigarettes and £10.97 for HRT can be regarded as suspicious.

	Cigarettes	Tobacco
Number/Weight Seized	52,120	25.85kg
High Street Value	£23,454	£9,823
Tax Element	£18,088	£5,678

Shop closures

DTTS 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. The co-operation of landlords is therefore important to ensure that those tenants that are trading illegally are evicted swiftly from shop premises. DTSS is able to assist by providing evidence of offences and attending at the time of eviction in order to carry out a final inspection. DTTS intervention has resulted in the following premises being prevented from involvement in the supply of illegal tobacco:

- Family Shop, Long Eaton – Trading Standards carried out an investigation of the tenant following the reopening of the premises. This proved invaluable in facilitating the closure of the shop premises.
- Orange Convenience Store, Codnor – Following an inspection, seizure and subsequent investigations by this Department, the landlord evicted the tenant.
- Midland News, Long Eaton – The licensed premises were closed following positive inspections and seizures from the premises.

On-going investigations

The Division is currently working on three joint investigations (relating to four individuals) with HMRC and Derbyshire Police. These are:

- An investigation into two of the main nominals involved in the Operation Rocha OCG, managed by DTSS until January 2016 (when responsibility was handed to HMRC's National Intelligence Team). DTSS provided an evidence package to assist HMRC. This is listed for Crown Court in June 2017.
- Enquiries stemming from the seizure of 650,000 illegal cigarettes from a South Derbyshire storage site in December 2015 into a Derby based individual. This investigation is also linked to Operation Rocha and is currently with CPS awaiting a decision.
- Investigations into an unlinked individual from the same South Derbyshire seizures. These relate to 1.1 million cigarettes, 580kg illegal hand rolling tobacco, 740kg of shisha style tobacco (on which no duty had been paid). Other goods seized include 31,000 Viagra-type tablets worth £155,000, 60 items of counterfeit clothing including fake G-Star jeans and Barbour jackets worth £5,000 and 30 boxes of illegally stored display fireworks valued at £6,000.

In addition, there are now two parallel HMRC enquiries into the aforementioned OCG covering high level international money laundering and international tobacco smuggling.

DTSS is also carrying out investigations into 13 premises regarding the sale and supply of illegal tobacco and cigarettes. It is envisaged that all of these premises will either be closed or will change their trading practices after intervention from this Department.

Disruption

Trading Standards, with the assistance of Derbyshire Police on some occasions, have initiated a dialogue with the landlords of the problem shops. This is with a view to highlighting the risks posed to the property owners by permitting the continuing sales of illegal goods from their property by their tenants. As a consequence, 22 shops have had their tenancies terminated. This is despite not having any powers to compel a landlord to act. DTSS has adopted a policy where, if illegal tobacco is found on premises during an inspection and the tenant is not on the premises, the shop worker is asked to leave the premises, the shop is then secured and the keys retained. The tenants are then invited to collect the keys, upon production of suitable identification and a valid copy of the tenancy agreement. This helps to identify the tenants concerned and provides an opportunity to provide appropriate advice; warn them as to their future conduct; and to inform the landlord that their tenant has breached the terms of their tenancy agreements.

Whilst some shops have reopened there has been an overall reduction in shops selling illegal tobacco throughout the County and also a major disruption of the illegal activity, especially in the context of the likely sales from the shops if they continued to operate.

Conclusion

With the support from Public Health, DTSS has prioritised the issue of illegal tobacco within the county. It has developed and encouraged a close-working relationship with the Police and the 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 the execution of a warrant in co-operation with the Police is easier and less time consuming.

There has been a change in tactics by those operating the illegal sale of tobacco in retail premises; from concealed storage of illegal goods within the shops, to using 'runners', who will locate themselves at the back of the shop. Any suggestion of enforcement/intervention will generally result in the individual absconding. This means that seizures from shops have reduced from when the enforcement commenced in earnest in 2012. However, to date, DTSS has been involved in the seizure of 3.2 million sticks of cigarettes and 1.6 tonnes of HRT.

It remains the case that Derbyshire has approximately 13 shops selling at the current time. Whilst this has increased from a previous low (partly due to the recent East European test purchasing exercise carried out as part of Operation Paris) it is still a reduction from the peak of around 16 in early 2015.

Illegal Tobacco Seized 2011-12 to 2016-17

Year	Cigarettes (Sticks)	HRT (kg)
2011-12	14,000	115
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