

Adults and Safer City Scrutiny Panel

11 July 2016

Report title	Fatal contraband and alcohol		
Cabinet member with lead responsibility	Councillor Steve Evans City Environment		
Wards affected	All		
Accountable director	Ross Cook -Service Director City Environment		
Originating service	Public Protection		
Accountable employee(s)	Andy Jervis	Head of Public Protection	
	Tel	01902 551261	
	Email	Andy. Jervis@Wolverhampton.gov.uk	
Report to be/has been considered by	Adults and Safer City Scrutiny Panel	11 th July 2016	

Recommendations for noting:

The Panel is asked to note the contents of this report as it arises from a request by the panel for more information on this area of work at its meeting on 22nd March 2016.

1.0 Purpose

- 1.1 This report is in response to a request by the panel for an update into the work of Trading Standards Officers in dealing with contraband items and illicit alcohol enforcement in the City.

2.0 Background

- 2.1 Trading Standards Officers are responsible for enforcing the provisions in relation to the supply of illicit cigarettes and alcohol. Work in this area is intelligence driven, with that information coming from local residents and businesses as well as partners such as the police, the Wolverhampton Tobacco, Alcohol and Substance Misuse Alliance and the local substance misuse service (NACRO:- Recovery near You).
- 2.2 So as to gain a fuller understanding of the problem the City Council also uses its partnership with the Central England Trading Standards Authorities (Centsa) to gather information and intelligence from 14 midlands local authorities. This process enables identification of emerging threats and challenges. Illicit tobacco is one of the major identified threats. A recently identified problem has been with new psychoactive substances which, prior to 26/05/16 were known as “legal highs”
- 2.3 It is worth establishing some key terms that are used throughout this report.

Illicit tobacco-this is either counterfeit or illegally imported tobacco or cigarettes from abroad. Both forms of this product evade duty and provide a cheaper alternative to the taxed and legally produced versions.

Counterfeit product- this is product which is intentionally copied in order to pass itself off as the original branded product. Duty is never paid on counterfeit product.

New Psychoactive Substances- (NPS) are drugs that are designed to replicate the effects of illegal substances. Although these products have been outlawed since 26th May 2016 there is still a legal problem with the use of what were called “legal highs”.

Because:

- they are still relatively easily accessible.
- they are constantly being adapted to avoid legislative control.
- they may not necessarily hold the same perceived threat to health and well-being as illegal drugs.
- some young people are unaware that just because they were advertised as legal, doesn't mean they are safe

- 2.4 As far as illicit cigarettes and tobacco are concerned the best figures are from Her Majesty's Revenue and Customs (HMRC). In 2000, 1 in 5 cigarettes and 60% of hand rolled tobacco were illicit. By 2010/11 the figures had fallen to 1 in 10 for cigarettes and the figures for hand rolling tobacco to 38%. Whilst no specific data is available for

Wolverhampton there is no reason to suggest that the situation in the City is different from the national picture.

- 2.5 As far as alcohol is concerned HMRC seized 2.7m litres of illicit beer and 100,000 litres of illicit spirits in the final six months of 2015 and those figures are broadly in line with the corresponding half year in 2014.
- 2.6 The experience of officers in Wolverhampton is that the problem of illicit tobacco is concentrated in pockets in Wolverhampton rather than being widespread throughout the City. The picture with alcohol is more difficult to determine but the regional intelligence picture suggests that whilst there is a moderate threat for non-duty paid alcohol the incidence of counterfeit alcohol is relatively low.
- 2.7 Availability of cheaper illicit products undermines the City's public health initiatives. A cheaper supply of product undermines the price disincentive designed to stop people smoking and drinking. More worryingly, cheaper alcohol and tobacco undermine the City's attempts to stop young people from taking up smoking and drinking in some cases by offering these products at "pocket money" prices. Additionally there is a loss to the real economy as sellers are indulging in unfair trading whilst also avoiding paying tax on these products.
- 2.8 Whilst in doing this work officers have asked tobacco industry representatives to assist in identifying counterfeit items the council has stuck rigidly to its obligations as a signatory of the Local Government Declaration of Tobacco Control. Namely to "...protect our tobacco control work from the commercial and vested interests of the tobacco industry by not accepting any partnerships, payments, gifts and services, monetary or in kind or research funding offered by the tobacco industry to officials or employees.."
- 2.9 A problem particular with some illicit cigarettes is that they do not meet the European reduced standards for reduced ignition propensity (RIP). RIP cigarettes, also known as "fire-safer" cigarettes, are designed to self-extinguish when left un-puffed. As recently as November 2015 a woman in Bournemouth died in a house fire which was as a direct result of an illicit cigarette which continued to burn after being thrown away. RIP cigarettes have modifications to the cigarette paper to inhibit burning at points along its length. These modifications are absent in many of the cheaper, illicit versions.
- 2.10 Some of the seized products have been made available to West Midlands Fire Service to enable them to carry out checks on the rate at which RIP cigarettes burn. The results of that testing indicate that a non-compliant cigarette, if left, will burn for twenty minutes more than a compliant one.
- 2.11 New psychoactive substances pose a different challenge to enforcers. NPS are often not made in the UK and are regularly smuggled in but until recently could in theory be legally sold. The key problem with NPS is that the composition can vary from packet to packet and so it is not possible to arrive at a safe dose or upper consumption limit for users.

2.12 Until 26th May 2016 NPS were legal to supply and Trading Standards Officers had to use general product safety legislation to deal with them. Since 26th of May the New Psychoactive Substances Act 2016 now creates offences for possession and supply of these products. The powers of investigation lie principally with the Police although there are potentially some powers for the local authority in respect of issuing prohibition notices for premises where NPS related activity takes place.

3.0 **Enforcement action**

3.1 Trading Standards Officers in Wolverhampton have been very active in dealing with illicit tobacco and alcohol. Three years ago this consisted of unannounced visits to premises and inspections which were uncovering smallish numbers of cigarettes, some hand rolling tobacco and a little alcohol. Nationally this activity became more organised which was a reflection of the involvement of more serious criminals being involved in the smuggling and supply chains.

3.2 Officers became aware that some shops were going to great lengths carry on this trade. To avoid being caught traders were having concealed hiding places with electrically operated magnetic catches built into walls and shop counters to. It was clear that a simple inspection was an inadequate means of detection.

3.3 Two years ago and using funding from the Black Country Tobacco Alliance a tobacco detection dog was used. These dogs are specially trained to detect tobacco and have helped find cigarettes hidden in the lining of coats; the underside of sofas and in false walls. As a result these dogs became more and more used in operations of this type and there was increase in the amounts of cigarette seized. Officers also found themselves able to conduct more thorough searches of premises and as a consequence more illicit alcohol was discovered.

3.4 In 2014/2015 52,000 illicit cigarettes and 6.25kg of hand rolling tobacco were seized. In the following year 2015/2016 working with better intelligence using more dog based operations officers seized 415,000 cigarettes, 69 kg of hand rolling tobacco and 249 bottles of illicit alcohol. Our follow up work tends to suggest that we have disrupted the activities of two main local suppliers of illicit products.

3.5 Also last year we launched "Operation Riposte" which was a City wide drive to tackle the problem of illicit tobacco at retail premises. Riposte used the full range of legislation to take action against this involved in this business. In particular the Council instituted reviews on the alcohol licenses of those businesses involved in the sale of illicit tobacco and alcohol.

3.6 In September 2015 two City shops had their licences revoked at a meeting of the Licensing committee for their involvement in the sale and storage of illegal alcohol and tobacco. The revocations are, in effect, a huge financial penalty for engaging in this trade and the subsequent publicity has empowered City residents to provide information about this trade which had promoted further enforcement activity. It is important to remember that as no licence is needed to sell tobacco products the loss of an alcohol licence is an

indirect sanction on this activity. Both shop owners are currently being prosecuted by the Council and Crown Court trials are imminent.

- 3.7 In February 2016 Trading Standards and colleagues from Public Health and the NHS manned a display trailer at three locations for a day each in the City. The main purpose was to publicise our work; introduce residents to all the various forms of help to stop smoking and to gather intelligence about where these products are being sold. In total we spoke to over a hundred people. Officers obtained eighty pieces of intelligence, one of which was acted immediately on leading to a seizure of 16,000 cigarettes.
- 3.8 The problems with NPS usage in the city were brought to our attention by Wolverhampton Police. The information was that young people with no other drug history were taking the so called "legal highs" under the mistaken impression that they are safe because they were legal. Apart from the harm at they were causing to themselves the Police had a concern that when under the influence they could be making themselves vulnerable.
- 3.9 In June last year Trading Standards Officers together with Police support, identified and visited retailers in the City and advised them of the risks of selling NPS and the possible enforcement action that was open to us under existing product safety law. Wolverhampton was the first authority in the West Midlands to use this approach.
- 3.10 In April 2015 Wolverhampton took part in a West Midlands Day of Action in which all identified potential sellers were visited and those who had been previously advised but who still had these products on sale had them seized. All the retailers were advised that after May 2016 these products would be illegal and that the Police, supported by the Council, would take robust enforcement.

4.0 Next Steps

- 4.1 The City Council's stance on illicit product and NPS is based on providing consumer protection and ensuring fair trade. Undoubtedly our existing work has worked to deter some traders from entering this market whilst also disrupting those currently in it. Whilst we will need a period of reflection to decide on the next steps, enforcement will be a key component of the future.
- 4.2 In relation to illegal cigarettes and alcohol officers are now looking at confiscation legislation in order to take the criminal proceeds off any individual convicted for this activity. Conversely officers are also working to support reputable traders to prevent them being attracted into selling illicit product in response to unfair competition from neighbouring retailers
- 4.3 The Council's leader has previously written to the government to ask them to consider some tobacco licensing system along the lines of alcohol licensing. This would allow local authorities to add conditions to those premises where there were problems in relation to illicit tobacco. Such a measure would also offer some degree of control to be exercised on premises which sell tobacco but not alcohol and so have no alcohol licence. The

removal of a tobacco licence would also be a powerful sanction against those dealing in illicit tobacco.

- 4.4 Dealing with NPS is now firmly a police matter as those selling them are effectively drug dealers. Trading Standards Officers will continue to gather and act on intelligence in relation to retail sales. Initial impressions are that the retail supply of these products has dried up. The bigger fear is that the supply of these products will go underground but even that will be a reflection that we have been effective a

5.0 Financial implications

- 5.1 This report has no financial implications.
[TT/29062016/G]

6.0 Legal implications

- 6.1 There are no legal implications arising from this report.
[AS/01072016/H]

7.0 Equalities implications

- 7.1 There is no equalities implication arising from this report as the conduct of enforcement activities is covered in assessments elsewhere. However our intelligence suggests that sales of illicit goods are more prevalent in deprived parts of the City. Our enforcement activity benefits communities in those areas.

8.0 Environmental implications

- 8.1 The actions detailed in this report seek to improve the levels of consumer protection in the City

9.0 Human resources implications

- 9.1 There are no human resources implications arising from this report

10.0 Corporate landlord implications

- 10.1 This report does not have any implication for the Council's property portfolio.

11.0 Schedule of background papers

- 11.1 None.