

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18<sup>th</sup> December 2019**

**ALL WARDS**

**Trading Standards – illicit tobacco update**

1. **Summary**

- 1.1 The report is to inform Committee of the work undertaken by the Trading Standards Service in delivering its service priority “Community Safety – prevent the sale of illicit/counterfeit alcohol and tobacco”. Illicit tobacco relates to both counterfeit, foreign labelled and non-duty paid products.

2. **Recommendation**

- 2.1 That the report be noted.

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### 3. **Background**

3.1 Controlling the supply of illicit tobacco remains a priority area for Birmingham Trading Standards.

3.2 The Chartered Trading Standards Institute (CTSI) has recently published the outcomes of the Tobacco Control Survey England 2018/19. The report can be read in its entirety here;

<https://www.tradingstandards.uk/media/documents/news--policy/tobacco-control/ctsi-tobacco-report-201819-final-version.pdf>

3.3 129 councils (out of 151 who undertake tobacco control), responded to the online survey. Although this response rate is of 85% high, the base for some findings does vary as not every respondent answered every question.

Respondents were asked which core tobacco control activities their council undertook (from a list of seven) in the financial year 2018/19.

98% of councils undertook at least one type of activity. Two councils replied no to all the activities outlined.

The activity most frequently undertaken related to illicit tobacco products (95%), with the least common activity (28%) being activities in relation to SPoT. (Standardised Packaging).

3.4 Statistics released in July 2019 by the Office of National Statistics show that 16.2% of people in Birmingham smoke - up from 13.7% in 2017. It's the highest proportion of smokers recorded in the city since 2014, when 17.9% of the population considered themselves current smokers

<https://www.birminghammail.co.uk/news/health/more-people-birmingham-taking-up-16522021>

3.5 In May 2018 a report from Public Health England revealed that people were admitted to hospital in Birmingham for smoking-related diseases on 9,107 occasions in 2016-17. In total it cost the NHS more than £15m to treat people in Birmingham for these diseases in hospital during that period.

<https://www.birminghammail.co.uk/news/midlands-news/smoking-putting-more-brummies-hospital-14667840>

3.6 Over the last ten years the price of tobacco has increased by 97%. The price of tobacco increased by 50% relative to retail prices; as a result, tobacco has become 30% less affordable since 2008. Cigarette smoking prevalence is higher in more deprived areas of England compared with less deprived areas.

3.7 The work that Birmingham Trading Standards does helps to reduce the prevalence of supply of cheap, illicit tobacco and is focussed on the following objectives:

- Protecting Health by preventing access to cheap tobacco products
- Supporting legitimate business by creating a level playing field

- Preventing tax evasion
- Undertaking Proceeds of Crime cases
- Undertaking intelligence led operations
- Identifying other areas of criminality such as modern slavery, illegal immigration and organised crime groups and sharing that information with partner agencies.

#### 4. **Birmingham's outcomes for 2018/19**

- 4.1 A total of 105 complaints were received regarding illicit tobacco; this resulted in 81 visits to premises. The intention of the visits was to initially provide trader advice; these included sixty four small retailers, five independent newsagents and twelve off-licences.

144,900 sticks of illegal cigarettes was seized which equates to 7,245 packets of 20 cigarettes and 107.9kg of illicit hand rolling tobacco.

There is a huge market for illicit tobacco, largely driven by price, which in most cases is less than half that of the legitimate tobacco products.

- 4.2 In the CTSI survey 94% of all councils that undertook work in relation to illicit tobacco products had seized illicit tobacco products. 79 out of the 111 councils that seized illicit tobacco products, the three most frequently seized illicit tobacco products were:

- Cigarette brands that are not for legitimate sale in the UK; these were seized by 91% of councils, with a median average of 19,320 sticks per council. In Birmingham we seized 127,512 sticks.
- Counterfeit cigarettes; these were seized by 86% of councils, with a median of 10,770 sticks per council. In Birmingham we seized 17,388 sticks.
- Counterfeit hand-rolling tobacco; this was seized by 78% of councils, with a median average of 13 kg per council. In Birmingham we seized 57.65kg.

#### 5. **Legislation**

Guidance is available on tobacco legislation at:

<https://www.businesscompanion.info/en/quick-guides/miscellaneous/tobacco-etc-packaging-labelling-advertising-and-tracking>

The main areas concerning illicit tobacco generally relate to labelling, packaging and counterfeiting. HMRC deal with matters concerning the payment of duty on tobacco products.

##### 5.1 **The Tobacco & Related Products Regulations 2016**

These deal with the manufacture, presentation and sale of tobacco and related products, including herbal products for smoking, e-cigarettes and refill

containers as well as smokeless and novel tobacco products. (*A novel tobacco product is not a cigarette, hand rolling tobacco, pipe tobacco, waterpipe tobacco, a cigar, a cigarillo, chewing tobacco, nasal tobacco or tobacco for oral use*)

## **5.2 Standardised Packaging of Tobacco Products Regulations 2015**

These standardise the packaging of certain tobacco products by requiring the removal of all promotional features. The packaging must be a specific shape and colour; all other colours, trademarks, logos and promotional graphics are prohibited.

## **5.3 The Tobacco Products (Traceability and Security Features) Regulations 2019**

These deal with traceability and security features systems for tobacco products. Existing stocks of cigarettes and hand-rolling tobacco that were manufactured or imported into the EU before 20 May 2019 can still be supplied until 20 May 2020. The rules will apply to all other tobacco products from 20 May 2024. There are registration requirements for those involved in the supply.

## **5.4 The Trade Marks Act 1994**

Benson and Hedges is a registered trade mark and the trade mark owner is Philip Morris Incorporated. A person commits an offence if they use that trade mark, without permission, on packaging and subsequently supplies them.

## **6. Intelligence led operations**

6.1 When complaints are received an intelligence log is recorded. Background checks are made regarding the person/premises and if no previous history exists in relation to illegal tobacco then an officer will visit the premise to give advice only. Intelligence will be reviewed and those where most complaints have been received will be considered for inspection. These operations require police support and often the services of a tobacco detection dog. Any enforcement action[s] taken as a result of the operations are subject to our Enforcement Policy. Attached as Appendix one is a summary of actions taken since April 2018.

## **6.2 Operation Kernow – Handsworth 25 & 26 September 2018**

During this operation six shops were visited. Five of which were found with illicit products. Cigarettes were concealed in various places including vehicles outside the stores, above shelves and hidden at the back of premises. Illicit cigarettes worth £21,000 were seized along with £1,750 worth of hand rolling tobacco.

### 6.3 Operation Liskeard – Erdington 14 June 2019

During this operation three shops were visited. Cigarettes were concealed under counters, behind false walls and inside two vehicles parked behind the shops. Illicit cigarettes and tobacco worth over £30,000 was seized.

### 6.4 Operation Juno – Handsworth 22 July 2019

Three premises were visited and two were found to have illicit products. Around 22,000 cigarettes were seized. In addition almost £7,000 in cash was seized. These matters are ongoing.

## 7. Premises Licence Reviews

- 7.1 Trading Standards has duties as a Responsible Authority under the Licensing Act 2003. This enables us to request a review of the premises licence, thus ensuring licence holders have due regard for the licensing objectives particularly Crime and Disorder and Protecting Children from Harm. Since 1 April 2018 there have been four such reviews. Two had their licence revoked, one surrendered before the hearing took place. One was revoked but appealed but withdrew the appeal. There are currently two pending. Details can be found in Appendix one.

During a recent underage test purchase of alcohol a 14 year old female purchaser was sold alcohol. Officers also found a small quantity of counterfeit hand rolling tobacco. This will also result in a premises licence review and potential legal proceedings.

## 8. Proceeds of Crime

Trading Standards has two Accredited Financial Investigators who seek to confiscate money and assets under the Proceeds of Crime Act 2002, in order to prevent offenders from benefiting from their crimes.

All criminal cases taken by Trading Standards are assessed to decide whether a Proceeds of Crime confiscation investigation may apply.

Below is a summary of proceedings taken that relate to illicit tobacco seizures.

Defendant / Business	Street Value of Tobacco	Ordered to Pay
Sumara JAVID, t/a Alisha Polski Sklep, Wellington Road	£3,499.00	£34,729.00
Shadab KHAN t/a Subhan Newsagents, Havelock Road	£5,879.00	£20,000.00
Akbar MADANI-ESFAHANI t/a Norooz Supermarket, Hagley Road	£1,493.00	£36,493.00
Dildar KHAN t/a Zahir Supermarket, Bordesley Green	£1,285.00	Case On-going
Jambaz AHMADZAI t/a Metro	£6,419.00	£22,230.00

Express, Alum Rock Road		
Jameil TAREEN t/a Murad Superstore, Ladypool Road	£4,353.00 (joint with TARIN)	£12,257.00
Janbaz TARIN t/a Murad Superstore, Ladypool Road	£4,353.00 (joint with TAREEN)	£1,614.13
Najaf BOUSJIN t/a Pick & Save Grocers, Springfield Road	£280.00	£21,548.56
Mastu TARIN & Murad Superstore Limited, Ladypool Road	£1,094.00	£16,000.00
Total	£28,655.00	£164,871.69

## 9. **HMRC considerations**

Data produced by HMRC in Measuring Tax Gaps 2019 edition 7 summarises the position as follows: *"The tobacco tax gap is driven by the illicit market in cigarettes and hand-rolling tobacco and is estimated to be £1.8 billion in 2017-18. An estimated total of £1.4 billion has been lost in tobacco duties and a further £0.4 billion in VAT. The cigarette tax gap is estimated to be £1 billion and the hand-rolling tobacco tax gap is estimated to be £0.8 billion in 2017-18."*

## 10. **Implications for Resources**

- 10.1 The work identified in this report was undertaken within the resources available to your Committee. The cost of the tobacco detection dogs was paid for using Proceeds of Crime money.

## 11. **Implications for Policy Priorities**

- 11.1 Controlling the supply of illicit tobacco has a direct impact on the fair trading environment and protects the public's health within the City. The work contributes to the Trading Standards priorities around Community Safety by taking illicit products out of the supply chain this contributes to improved health outcomes and the Council's strategic outcome of being a great city to live in.

## 12. **Public Sector Equality Duty**

- 12.1 The actions identified in this report were taken in accordance with approved enforcement policies which ensure that equalities issues have been addressed.

## **INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: The Chartered Trading Standards Institute (CTSI) Tobacco Control Survey England 2018/19