

BIRMINGHAM CITY COUNCIL

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

16 January 2018
ALL WARDS

Tobacco Control: SHISHA UPDATE

1. Summary

- 1.1 This report sets out current interventions and work undertaken by Environmental Health, relating to venues operating as Shisha premises in Birmingham.

2. Recommendations

- 2.1 That the report be noted.
- 2.2 That a letter be sent on behalf of the Licensing and Public Protection Committee to Jake Berry MP (Minister for Local Government) highlighting the concerns and supporting the call for better legislation in this area.
- 2.3 That outstanding minute 934(ii) be discharged.

Contact Officer: Janet Bradley, Operations Manager Environmental Health
Telephone: 0121 303 5435
E-mail: janet.bradley@birmingham.gov.uk

3. Background

- 3.1 Tobacco shisha smoking is smoking, similar to tobacco cigarette smoking and, therefore, has the same potential health harms as tobacco cigarette smoking. This method of smoking is also called hookah, narghile, water pipe, or hubble bubble smoking. It is a way of smoking tobacco, sometimes mixed with fruit or molasses sugar, through a bowl and hose or tube¹. Electronic shisha is also available to consumers which are usually in the form of shisha pens or electronic shisha pipes. Electronic shisha is similar to electronic cigarettes in that tobacco is not burnt and water vapour with a flavour is the inhaled product, not smoke. This report is concerned with shisha tobacco smoking and, therefore, includes venues operating as shisha premises (commonly known as Shisha lounges).
- 3.2 Your officers have continued to tackle issues surrounding shisha activities within Birmingham. The majority of interventions undertaken by Environmental Health are in response to complaints, inspections following complaint or in conjunction with incidents received by other agencies. There is no programme of proactive inspections at a risk rated frequency.
- 3.3 Since the Health Act 2006 there has been a steady increase in Shisha Lounges across the City. It is believed there are now approximately 37 premises. There is a continuing turnover of businesses and ownership in some areas with Digbeth experiencing the highest concentration of premises.
- 3.4 Unfortunately, as these premises were not prominent at the time the Health Act was drafted they are not adequately addressed within the legislation. Accordingly Environmental Health has led in organising a multi-disciplinary team with WM Police, WM Fire Service, Trading Standards, Licensing and Customs & Excise to disrupt non-compliant businesses.

4. Current interventions surrounding shisha premises

- 4.1 Despite Multi-Agency Team actions and interventions to try and ensure lawful trading of these premises, there continues to be high profile anti-social behaviour; criminal activity; non-compliance with the smoke free legislation; and non-compliance with fire regulations. A number of these premises operate in a manner which has a disproportionate resource demand from all agencies involved in regulating them.
- 4.2 In the last 18 months the level of antisocial behaviour has escalated to a point where both the Police and the Council's own Community Safety team now recognise many of the issues that Environmental Health have been dealing with previously. They have now come to the forefront in proactively tackling the environmental impact of these businesses when poorly operated. This positive response strengthens the City's ability to respond to immediate and emerging challenges. All intervention outcomes are aimed at assisting

¹ <https://www.bhf.org.uk/heart-health/risk-factors/smoking/shisha>

premises to be safe, compliant and have minimal impact in their neighbourhood. However those that will not change are more likely to be prosecuted or closed down under antisocial behaviour powers.

- 4.3 The Police have led on three shisha premises being subject to Closure Orders under antisocial behaviour powers. A Closure Order issued on a licensed premises triggers an automatic review of the licence. Although it does not address the health issues this action has significantly addressed the wider issues experienced by the neighbours of the poorly run shisha lounges.
- 4.4 Much of the work now undertaken by Environmental Health focusses on dealing with reactive complaints relating to smoke free or assisting other agencies reactively or proactively.
- 4.5 In 2018 a prosecution was taken under the Health Act 2006 against a shisha premises within Birmingham regarding smoking within an enclosed premises. The conviction was overturned on appeal at Crown Court. The defence put forward was that the shisha pipes present at the time of the inspection at the premises were electronic and therefore complied with the Smokefree Legislation. Environmental Health were unsuccessful at proving beyond reasonable doubt that the pipes present were not electronic. No costs were awarded against Environmental Health for the appeal. Determining whether or not electronic shisha is present at a premises is now part of the inspection.
- 4.6 All of the multi-agency team's activities are aimed at ensuring customer safety and reducing impacts from associated activities on surrounding communities. This high demand demonstrates the inadequacies of current legislative framework surrounding shisha premises.

5. Draft Shisha Strategy

- 5.1 At Birmingham's Licensing and Public Protection Committee in November 2017 a draft shisha strategy was presented and endorsed for further consultation with other West Midlands Local Authorities, Public Health England and West Midlands Association of Directors of Public Health (APDH).
- 5.2 Although the work is aimed to maximise Harm Reduction, there was insufficient support to take the strategy forward.
- 5.3 Presently, Environmental Health are now only discharging their statutory duties as it relates to Smoke-free legislation.

6. Current Legislative Provisions for Shisha Venues

- 6.1 There is no legal requirement for the business or the operators to be authorised, licensed or registered to open and operate as a shisha premises other than the general requirements to gain planning permission, register as a food business and/or apply for a licence for alcohol, regulated entertainment, gambling etc. as required.

- 6.2 The fact there is no single piece of legislation with which to effectively regulate these premises means the only control which can be applied is limited to individual agencies enforcing their own specific legislation which is of limited effect. This can mean many different agencies dealing with issues separately, effectively causing a low level of impact on the business and therefore leaving little incentive for compliance.
- 6.3 When considered in isolation, the breaches may appear to be relatively minor and might not trigger more severe enforcement action, as opposed to if the breaches were able to be considered cumulatively, by a single agency.

7. Future Proposals

- 7.1 As stated above and reported previously to your committee, the current legislative controls surrounding shisha premises are piecemeal and inadequate with a disproportionate public sector resource required to deal with the challenges.
- 7.2 Following discussions with Environmental Health, Licensing, WMFS and WM Police concerns were raised with Shabana Mahmood MP with a proposal to change the legislative landscape surrounding shisha premises by bringing them within a licence regime.
- 7.3 On 5th December 2018 Shabana Mahmood MP presented the proposal for further regulation at a Westminster Hall debate. A transcript of the debate can be found on Hansard from 2.30pm onward at: <http://bit.ly/2QhNuyl>
- 7.4 The proposal suggested by Ms Mahmood MP was to amend the Local Government (Miscellaneous Provisions) Act 1982 to introduce a new licensing regime. This would be akin to the existing provisions within the Act as it would allow for local policies with local conditions, and has the added benefit of being adoptive legislation, meaning there would be no burdens placed on Local Authorities who do not experience any of these issues. It would also be possible to identify and set 'fitness' standards for those people operating the businesses.
- 7.4 Also party to the debate was Jake Berry MP - Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government. In response to the debate, Mr Berry said:
"I happily invite [Ms Mahmood MP] to come and meet me and officials, together with council officers who have real expertise in this area, and we as a Department should start that dialogue about how we can help and what would be an appropriate national response, if indeed one is required. The bar for closing someone's business should be quite high, as should the bar for a national response when many powers already rest with local authorities. I have not closed my mind to the fact that there should perhaps be a national response, but a lot of work must take place before we get there. I hope that is helpful."

7.5 The Local Government Policy Office have already been in touch with officers with a view to arranging a meeting. Further updates will be provided to your Committee in due course.

8. Implications for Resources

8.1 The work identified in the report was undertaken within the resources available to your Committee.

8.2 Any enforcement actions taken in relation to Shisha are subject to the considerations in Regulation and Enforcement's enforcement policy.

9. Implications for Policy Priorities

9.1 The contents of this report contribute to the priority action of ensuring business compliance with legislation to protect the economic interests of consumers and businesses as contained in the Council Business Plan 2015+.

9.2 The work particularly addresses the Council plan priority "To tackle inequality and deprivation, promote social cohesion across all communities in Birmingham and ensure dignity, in particular for our elderly and safeguarding for children". The work further addresses the Council plan priority "Creating a healthier environment For Birmingham".

10. Public Sector Equality Duty

10.1 Nothing proposed within the report will have an impact on our Public Sector Equality Duty. Should a proposal for further regulation be taken forward by Government, it will be subject to all of the necessary equality impact assessments. This report only seeks to update the Committee.

11. Consultation

11.1 The content of this report has been discussed with partners but no further consultation is required at this stage.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:
NIL