

BUCKINGHAMSHIRE COUNCIL AND SURREY COUNTY COUNCIL

TRADING STANDARDS JOINT COMMITTEE

DATE: 24 MARCH 2021

LEAD OFFICER: DAVID PICKERING

SUBJECT: TRADING STANDARDS TOBACCO WORK

SUMMARY OF ISSUE:

The Children and Young Person's (Protection from Tobacco) Act 1991 requires Local Authorities to consider, at least once in every period of twelve months, the extent to which it is appropriate to carry out enforcement action to ensure that the provisions of the Children and Young Persons Act 1933, are effected. This seeks to prohibit the sale of cigarettes and associated items, such as nicotine delivery systems, to persons under the age of 18. This duty relates to tobacco enforcement only.

The Service undertakes work in this area supporting the delivery of the Public Health improvement outcomes and responsibilities that relate to the use of tobacco in order to help people to live healthy lifestyles; make healthy choices and reduce health inequalities.

This report considers the Service's work in relation to tobacco and associated products and is not restricted to the potential sale to children and young people.

RECOMMENDATIONS:

It is recommended that:

The Joint Committee notes and considers the report as a reflection of activity over the financial year 2020 – 2021 and endorses continued enforcement activities which will be undertaken in 2021– 2022.

REASON FOR RECOMMENDATION:

The Children and Young Person's (Protection from Tobacco) Act 1991 requires Local Authorities to consider, at least once in every period of twelve months, the extent to which it is appropriate to carry out enforcement action to ensure that the provisions of the Children and Young Persons 1933 Act, are effected.

DETAILS:

1. To ensure coherence and to maximise the impact of our work, Trading Standards link closely to Public Health led strategies to reduce tobacco consumption. The Trading Standards role is mainly in relation to tackling supply. However increasing levels of innovation in the alternatives to tobacco, such as e cigarettes, continue to provide constant challenges to us when assessing how the legislation applies to them. The Service has also facilitated links to be made between Surrey and Buckinghamshire Public Health teams to share information and good practice. We also link into the regional tobacco groups and the Chartered Trading Standards Institute (CTSI) led Department of Health and Social Care funded national initiatives
2. In Surrey, Trading Standards chair the Tobacco Alliance. This group of partners oversee the delivery of the Public Health Tobacco Control Strategy for Surrey and reports back to the Health & Wellbeing Board. With the ambition for Surrey to have the lowest smoking prevalence in England, the Priorities include, among others; “helping young people to be tobacco free”; “tackling illicit tobacco” and “raising the profile of tobacco control”.

In partnership with our Public Health colleagues the remit of the group has been extended recently to include alcohol issues as there are common areas of concern.

The Surrey Strategy can be found at:

<https://www.healthysurrey.org.uk/your-health/smoking/smokefree-surrey/tobacco-control-strategy-for-surrey>

The Strategy for 2021-2026 is being developed and will consider the priorities in the new national strategy (when released) as well as local ones.

Progress against these priorities was reported to the Surrey Health and Wellbeing Board in December 2020. Details can be found at this address (page 92):

[Item 6 - Surrey Health and Wellbeing Strategy Highlight Report.pdf \(surreycc.gov.uk\)](#)

The Buckinghamshire Tobacco Control Strategy “Towards a smoke free generation” was launched in June 2019 and we are supporting this by tackling the supply of illicit tobacco and supporting the Alliance group:

<https://www.loc-net.org.uk/media/6836/buckinghamshire-tobacco-control-strategy-2019-2024.pdf>

The four main themes of the Buckinghamshire Strategy are Prevention First, Supporting smokers to quit, Eliminating variations in smoking rates and effective enforcement, with an overall focus on key groups.

3. Tobacco use among young people is considered as risk-taking behaviour (by themselves as much as anyone else) and may be seen therefore as gateway-behaviour for other risk taking activities. These would include experimenting with

alcohol and other illicit substances when this is combined with carrying offensive weapons and misuse of fireworks the resulting anti-social behaviour adversely affects how safe people feel in their own communities.

4. Sales of illicit tobacco facilitate a cheap way to start or continue smoking and as such needs to be minimised to reduce this impact. In addition, legitimate businesses are disadvantaged threatening small businesses in the local economy.

<https://www.illicit-tobacco.co.uk/problem/illicit-tobacco/>

5. There is evidence that the supply of illicit can be linked to organised crime and we work in partnership with the police to ensure appropriate dissemination of intelligence

https://www.eesc.europa.eu/sites/default/files/files/mr_arndt_sinn_speech.pdf

6. The programme for the financial year 2020/2021 was as follows:-

6.1. Continue to participate in those new projects and initiatives that fit within our enforcement activities outlined above together with our own initiatives where they are felt necessary.

- The impact of the Covid lockdowns since March 2020 had a significant impact on our ability to carry out physical visits to businesses. We had to postpone planned visits with the sniffer dogs. We did however carry out 24 covert visits to attempt purchases and obtain intelligence about methods of selling illicit tobacco and will use this in the future to target potential sellers. We used intelligence to target the visits and one premise we had previously prosecuted refused to sell citing the trouble he had previously been in for selling illegal tobacco.
- The Court system was also affected but we did have two cases that were concluded.

The first case was heard in October 2020. A business in Chesham was visited in May 2019 and a large quantity of tobacco was discovered in the shop that was not labelled in accordance with current legislative requirements. The illegal tobacco seized from the shop. Ten charges covered the possession for supply of tobacco that was not correctly labelled with the necessary statutory warnings, not in the correct packaging, and a small number of counterfeit tobacco products. In total there were 259 packets of cigarettes and 55 pouches of hand rolling tobacco that were not correctly labelled and were in non-compliant packaging; there were also 14 packets of cigars that were not labelled with the statutory health warnings. Most the items were non-complaint due to their age – they had been compliant at the point of manufacture but had become non-complaint more than three years ago following amendments to the law. There were also a fairly small number of items that were genuine but not intended for supply in the UK and consequently any warnings that they bore were not in English, as required by the legislation. The business owner pleaded guilty to offences under the

Trade Marks Act for the counterfeit products; the Tobacco and Related Products 2016; and the Standardised Packaging of Tobacco Products Regulations 2015 and was fined £537 (reduced from £807 for credit awarded due to the guilty pleas). The magistrates ordered the forfeiture and destruction of all of the tobacco products and awarded full prosecution costs.

The second case was heard in February 2021. It resulted from intelligence that was received by the service that a business in High Wycombe was selling illicit tobacco from a van parked outside the shops. TSO's visited the premises on the December 2019 with a test purchaser who purchased 6 packets of non-compliant cigarettes.

- TSO's then revisited the shop later in December as part of a tobacco operation day. Officers searched the van and found 188 packets of 20 cigarettes and 76 pouches of hand rolling tobacco. All items from the initial inspection did not contain the correct health warnings and were not in the required coloured packaging. 36 packets were identified as counterfeit. All items were confirmed as not intended for sale in the UK. The own pleaded guilty to all 8 offences and the magistrates commented that there was a degree of planning as he was keeping them in the back of his van and not on the premises. The business owner was reluctant to give over the van keys to officers when they first requested which shows non-cooperation and an attempt by him to conceal the evidence. There was an element of financial gain and the possibility of putting other people at risk. This behaviour could adversely impact other legitimate local businesses. The Court noted that this was the owners first offence and that the shop has been running for 10 years with no previous breaches and credit was given for a guilty plea. In total the fine was £1,840 and costs were awarded. Forfeiture and destruction was granted for all items.

6.2. Promote the education message about the harm illicit tobacco causes and the smoking cessation message and gather any intelligence about sales of illicit tobacco to identify sources.

- We have used social media to promote messages about smoking cessation and illicit tobacco. The planned physical roadshows were cancelled
- We are working with Buckinghamshire and Surrey Public Health teams on the 'Illegal Tobacco - keep it out' campaign to be advertised via social media. This provides a dedicated reporting email for consumers that feeds directly into TSSE regional intel officer. It is currently planned to be rolled out soon after April 2021.

6.3. We will continue to support the Tobacco Alliance groups in both counties

- A team manager continues to Chair the Surrey group and a team supervisor participates in the Buckinghamshire group.

- We share good practice between the groups and liaise on possible common areas of work

6.4. Continue to use local, regional and national intelligence to ensure we target our interventions and resources appropriately

We have continued to use information and intelligence gathered from a variety of sources to inform our work relating to illicit tobacco and tobacco related issues generally, including intelligence gathering test purchasing operations to enable us to focus our time with the tobacco sniffer dog most effectively.

6.5. Seek licence reviews through the relevant District Council when appropriate.

Prosecutions for illicit tobacco can be used to add additional conditions onto the premises licence including the installation of CCTV at the premises, price labels on the alcohol to include the name of the shop, or the imposition of clear and stringent stock control measures.

6.6. Continue to support retailers by promoting the use of the Challenge 25 Training Pack and advising traders about legislative requirements in this area.

This would be done in response to requests for advice on underage sales legislation and also will be promoted proactively during visits to traders for other reasons.

6.7. Continue to ensure that the restrictions of both price marking and visual display requirements of tobacco products in retail premises are adhered to.

Physical visits were restricted last year but when it was possible (visits dealing with fireworks selling for instance) officers checked this as part of the visit. No issues were found.

7. For 2021-22 we will:

7.1. Contribute to the Surrey and Buckinghamshire Tobacco Control Strategies by taking action to reduce the supply of illicit tobacco through intelligence and enforcement.

- a. We will gather local intelligence, use appropriate enforcement action against suppliers, share intelligence across relevant enforcement agencies to tackle organised distribution networks, repeat the illicit tobacco campaign, gather local intelligence and enforcing regulation on nicotine containing devices, raise the profile of the issue through local publicity and participate when relevant in nationally organised campaigns.
- b. We will liaise with the fire service about the use of their sniffer dogs to identify sellers of illicit tobacco

- c. We will participate in a joint operation with the HMRC to identify and take appropriate action against sellers of illicit tobacco
- d. Once lockdown restrictions are lifted we will carry out work to identify if there are issues with providers of shisha tobacco in both authorities

7.2. Promote the education message about the harm illicit tobacco causes and the smoking cessation message and gather any intelligence about sales of illicit tobacco to identify sources.

- a) We will work with Public Health to achieve the best outcome we can from an educational perspective in particular identifying the best use of social media to target messaging.
- b) We will continue to liaise with both Councils communications teams to publicise our work about tobacco issues.

7.3. We will continue to support the Tobacco Alliance groups in both counties

We will continue to Chair the Surrey Alliance group and will participate in meetings organised for both Councils. We will work with partners on the groups to deliver the agreed strategies to reduce smoking prevalence rates in both counties.

7.4. Continue to use local, regional and national intelligence to ensure we target our interventions and resources appropriately

We will continue to explore ways to:

- improve intelligence sharing between relevant partners;
- upgrade intelligence from all viable sources; and
- explore alternative means of detecting sales (other than by test purchases)

7.5. Seek licence reviews through the relevant District/Unitary Council when appropriate.

Prosecutions for illicit tobacco can be used to add additional conditions onto the premises licence including the installation of CCTV at the premises, price labels on the alcohol to include the name of the shop, or the imposition of clear and stringent stock control measures.

7.6. Continue to monitor the market for alternatives to tobacco products, such as vaping products, to assess potential risks and look for solutions to ensure any risks to consumer safety is minimised

- a) As well as work relating to reducing the supply of illicit tobacco, we will continue to assess appropriate interventions relating to tobacco alternatives such as vaping.

- a. There is continuing uncertainty and lack of confidence in agencies advising about smoking cessation and we can support them by carrying out testing of liquids and equipment relating to vaping to ensure they comply with relevant legislation.
- b. We will continue to liaise with partner agencies, in particular about the use of CBD oil in vaping liquids and any regulatory issues this raises

CONSULTATION:

- 8. Public Health teams in Surrey and Buckinghamshire have been consulted with and have contributed to this report.

RISK MANAGEMENT AND IMPLICATIONS:

- 9. We are supporting an important strand of tobacco reduction strategies by seeking to reduce the supply of tobacco products. If we are unable to carry out this work the effectiveness of this will be reduced and it is more likely that such products will be available to children and young people.

Financial and Value for Money Implications:

- 10. The work in this area is carried out by a number of officers as a small part of their wider role. At times work in this area, such as advice to businesses, is combined with other visits that officers are carrying out to the same premises or area to maximise efficiency. This report is suggesting that the Service broadly maintains its approach to this work and therefore there is no additional financial implication beyond that which is already committed.

Legal Implications:

- 11. As outlined in the report, there is a requirement for Local Authorities to consider carryout enforcement actions at least once in every twelve-month period, to ensure that the provisions of the Children and Young Persons Act 1933, are effected. The report outlines the enforcement action taken and the legal consequence to such action.

Equalities and Diversity:

- 12. Tobacco consumption is disproportionately prevalent in particular socio-economic groups; tackling tobacco consumption has a positive impact in helping tackle health inequalities. There is no likely negative disproportionate impact arising from the work described in this report on people with protected characteristics.

WHAT HAPPENS NEXT:

- 13. This is set out in section 8 above.

Contact Officer:

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Consulted:

Annexes: None
