

Meeting: Licensing Committee **Date:** 14 September 2023

Wards affected: All

Report Title: Vaping Report for Torbay Council

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Purpose of the Report

At the meeting of the Council on 7 March 2023, Members considered a Notice of Motion as set out at Appendix 1, the Notice of Motion requested the Licensing Committee to consider a report detailing enforcement activity and strategy within Torbay related to the illegal sale of vaping products to children and exploring opportunities for engagement with local schools to inform young people of the potential dangers of vaping.

Introduction

The Heart of the South West Trading Standards (HotSWTS) is a joint service commissioned by Devon County Council, Plymouth City Council, Somerset Council and Torbay Council. The legislation relating to the sale of vapes is enforced by Trading Standards.

The Service is receiving large numbers of intelligence reports and complaints regarding vapes – both relating to illegal products and underage sales.

2022-23

Total complaints received service wide relating to vapes – 188
Of those, 30 related to Torbay

2023 – date

Total complaints received service wide relating to vapes – 68
Of those, 13 relate to Torbay

Current Regulation

The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 – Prohibits the sale of vapes containing nicotine to people aged under 18 and proxy purchasing for someone aged under 18 is illegal

The Tobacco and Related Products Regulations 2016 - outlines restrictions to protect children, such as making the vape child-resistant and having warnings on vape packaging. Apply minimum standards for the safety and quality of all

e-cigarettes and refill containers and require all e-cigarettes and e-liquids be notified and published by the MHRA before they can be sold.

Use by children

NHS figures for 2021 showed that 9% of 11 to 15 year old children used e-cigarettes, up from 6% in 2018. An action on Smoking and Health (ASH) survey showed a sharp increase in vaping among 11 to 17 year olds from 4% in 2020 to 7% in 2022. This group and others are not using vapes for smoking cessation purposes but are becoming addicted to nicotine.

Although an age restricted product, many vapes are marketed to appeal to children, for example a variety of sweet fruit flavours are readily available. There have even been some that imitate the branding of the well-known PRIME hydration drink. Intelligence tells us that they are being sold illegally from shops and in schools. Disposable (single-use) e-cigarettes are the vape of choice for children currently vaping (ASH)

Currently, there are no restrictions regarding the packaging or placement of vapes within retail premises. Although it is advised that retailers keep vapes out of reach of children, there is no legal requirement for retailers to do so. Rather than being marketed as an adult smoking cessation aid, the present regime of unrestricted displays and packaging has resulted in bright, colourful and attractive displays of products which are clearly aimed at the youth market

The Chartered Trading Standards are calling for tougher regulations on the packaging and placement of vapes within retail premises in order to restrict the youth appeal of vapes.

In recent months there have been increased reports of user generated content (rather than vape industry generated) on social media portraying vapes as an attractive product. This has included videos and other content created by under 18s or appearing to be aimed at under 18s. In a 2022 ASH survey, the most common place people reported seeing vape promotion online was on TikTok (45.4%). Under current regulations, marketing communications must ensure that they do not appeal particularly to people under 18.

There is also intelligence to suggest that vapes have been supplied to underage children by shops and other businesses, with the intention of grooming them for Child Sexual Exploitation.

For the 6 month period from 01/01/2023 there have been 78 intel logs submitted for the Heart of the South West TS area regarding vapes sold to children between the age of 12 and 17.

A current Government review is considering banning the sale of 'nicotine-free' vapes to under-18s and the handing out of free samples to children. It will

also look in to making it easier for local Trading Standards to issue on the spot fines and fixed penalty notices.

The Heart of the South West Trading Standards encourage retailers to sign up for 'No proof of Age No Sale' training/systems and this is offered free in the Service area. [No Proof of Age - No Sale - Trading Standards South West \(tssw.org.uk\)](https://tssw.org.uk)

Illegal products

Illegal vapes containing high lead and nickel and up to 5 times the amount of nicotine containing e-liquid allowed under UK law are flooding the market. In March it was estimated that around a third of all vapes sold on the high street are illegal. Trading Standards investigations show that the sale of illegal vapes is being conducted alongside illicit tobacco sales and is linked with organised crime.

There is a growing concern regarding dangerous fake 'THC' or 'cannabis oil' vapes and also 'vape spiking'.

Other Concerns

There are environmental and other safety concerns regarding vapes, especially disposable products. Disposable vapes are a hazard for waste collection and cause fires in bin lorries . [Warning after vape nearly set North Somerset bin lorry alight - BBC News](#)

With 1.3 million disposable vapes thrown away every week, they have also become a widespread litter problem. This accumulates to 10 tonnes of lithium a year.

The Local Government Association (LGA) has called for a ban on the sale and manufacture of single-use vapes on environmental and health grounds.

It is the first time the LGA has called on the Government to outlaw the devices, and has urged for the ban to be introduced by 2024, highlighting the risk that with the EU proposing a ban by 2026, and with France planning to introduce a ban in December 2023, disposable vapes could flood the UK as markets close elsewhere.

Enforcement

- 2022/23 – **4705** Illegal Vapes seized Service-wide – a mix of premises inspection (sometimes following Test Purchases) and some seized during illegal tobacco enforcement operations.
- 2023/24 – **695** Illegal Vapes seized Service-wide to date with further enforcement visits planned based on intel
- 2022/23 – **874** Illegal vapes seized in Torbay – some were during premises inspection and others alongside illegal tobacco enforcement

An underage sales Test Purchase operation was undertaken in Torbay at the beginning of August - 7 premises visited overall (2 for alcohol, 5 for vapes) – 2 failed Vape TPs – investigation ongoing

Operation Brioc was conducted in Torbay in June. Three shops were visited in Brixham Town Centre, another in Paignton Town Centre and Car Washes in Paignton & Torquay were visited as well. In addition to the Police Dogs Unit, Trading Standards utilised their own tobacco detection dog during the operation. Quantities of illegal cigarettes, tobacco and vapes were found hidden at all the shops visited.

Operation Flint was conducted in Torquay mid-August. 3 shops were visited (with tobacco detection dogs) and illegal tobacco seized from them all. Large quantities of illegal vapes were seized from 2 of the premises.

In April the Department for Health and Social Care has pledged £3 million in funding to support Trading Standards to tackle the issues of non-compliance. This has become Operation Joseph. HotSWTS has submitted an application to become one of a few Trading Standards Services to undertake shop-based test purchasing market surveillance as part of this campaign.

Due to the number of non-compliant vape products being seized and limited investigation resource we primarily look at adopting a disruption technique against the sellers rather than undertaking prosecution against them all. In one area we have successfully worked with Police and Licensing colleagues to use Closure Notices where we can and are looking at adopting this Service-wide.

Due to limited resources, planned operations this year are restricted to two per quarter and these are focused on illegal tobacco as well as vapes.

Additional Information

Association of Directors of Public Health South West Position Statement on Nicotine Vaping - June 2023 [SW-ADPH-Position-Statement-on-Nicotine-Vaping-1.pdf](#)

- Smoking tobacco remains the single biggest cause of preventable illness and death. It will kill up to 2 out of 3 long term users and is a key contributor to avoidable health inequalities. An estimated 584,218 adults in the South West smoke. In the period 2017 to 2019, a total of 19,761 deaths in the South West were attributable to smoking.
- For smokers, vaping is a far less risky option and poses a small fraction of the risks of smoking in the short and medium term. There is significantly lower exposure to harmful substances from vaping compared with smoking, as shown by biomarkers associated with the risk of cancer, respiratory and cardiovascular conditions. However,

there is similar or higher exposure to harmful substances from vaping compared with not using any nicotine products.

- Therefore, we must ensure that affordable and accessible alternatives for smokers. This includes offering vapes as a substitute for smoking, alongside accurate information on the benefits of switching, including to healthcare professionals.
- However, vaping is not risk-free and therefore vaping must be presented as an alternative to, or replacement for smoking, not an activity which is appealing to the wider non-smoking population, particularly young people. We need to work closely with our Trading Standards colleagues to support compliance with regulations, take enforcement action when necessary and continue to advocate for tighter vaping regulations where needed, ensuring the right balance is taken around protecting young people and supporting adult smokers to quit.

Research by public health charity Action on Smoking and Health (ASH) has found that an estimated 4.7m adults in Britain, around 9.1%, use e-cigarettes, of whom 2.7m are ex-smokers, 1.7m are current smokers, and 320,000 have never smoked. A survey commissioned by ASH found that 43% of people believe vaping is as dangerous, or more dangerous, than smoking cigarettes, and the charity has urged the Government to "act quickly to improve public understanding" on the relative risks of vaping and smoking.