

From: Mike Hill, Cabinet Member for Community and Regulatory Services
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To: Growth, Economic Development and Communities Cabinet Committee – 28 June 2023

Subject: **Underage vaping**

Classification: **Unrestricted**

Past Pathway of report: N/A

Future Pathway of report: N/A

Electoral Division: All

Summary: This short report details the current and planned future activities of Kent Trading Standards in tackling illegal vape products and their sale to children.

Recommendation(s): The Cabinet Committee is asked to note and discuss the report.

1. Introduction

1.1 This short report details the current and planned future activities of Kent Trading Standards in tackling illegal vape products and their sale to children.

2. Background

2.1 The UK, as with many other countries, has seen extensive growth in the use of vapes across society, which has been extremely successful as a tool in reducing dependency on tobacco and supporting more people to give up smoking. Unfortunately, the use and marketing of the vaping products has created a significant uptake by young people to the extent that in England, the proportion of 11- to 15-year-olds using vapes increased from 6% to 9% from 2018 to 2021 and is still rising¹.

2.2 Kent Public Health data on the changing use of vaping has shown that primary school children are using vapes at an increasing percentage too. There is some confusion in figures as this may include vapes that do not contain nicotine, which are not age restricted and can legally be sold to children, however there is significant concern that non-nicotine vapes can be a gateway to using nicotine vapes.

¹ [Chief Medical Officer for England on vaping 30 May 2023.](#)

- 2.3 These products are regulated in their manufacture and sale under the Tobacco and Related Products Regulations 2016 (the 2016 Regulations), breaches of the legislation are criminal offences punishable by fine or imprisonment.
- 2.4 The controls in relation to illegal vape products and in relation to sales of vapes to children are only applicable if the vape contains nicotine. KCC's in-house laboratory, Kent Scientific Services, has developed the necessary testing methods using liquid chromatography with mass detection to ensure that KCC Trading Standards, and other Trading Standards Services across the Southeast, have access to the required evidence should formal enforcement action become necessary.
- 2.5 There is a legitimate trade in vape products, with producers investing significantly in ensuring products meet the strict rules on compliance, while also working with regulatory bodies to reduce the illegal products on the market and illegal sales, helping advise and train enforcement.

3. Current activities

- 3.1 The 2016 Regulations strictly control the quantity of liquid that vapes can contain, the strength of nicotine, labelling, and their electrical safety. Vapes that do not comply with the regulations are not only illegal but place the user at risk through nicotine poisoning (through leaking containers or ingestion by younger children) or burns from exploding batteries which may also cause significant property damage.
- 3.2 Initial vape enforcement work has focused on these illegal products due to the widespread risk to all, and several operations have been conducted over the past year within Kent targeting premises marketing these products.
- 3.3 The products are often novelty shapes, often stickered with cartoon characters or illegally carry trademarked brands of well-known food manufactures (e.g., chocolates), making them extremely attractive to children.
- 3.4 In addition, the Regulations set a maximum 2ml liquid limit, which equates to "600" puffs (this is what the industry recognises and markets these as). Illegal products are often significantly greater than this, and can be up to 10,000 puffs, with a reservoir of 10 times the legal limit,
- 3.5 Shops selling these products are often owned or supplied by organised criminal groups, who import them as part of other criminal activity. This is extremely profitable, as it does not carry the risk associated with, for example, smuggling drugs. Our dedicated KCC Trading Standards ports team is working with Border Force and HMRC in detaining these illegal products at the border, with significant volumes destined for the UK market. Since December 2022 we have detained over ½ million vapes.



Figure 1 Imported Vapes 7000 Puffs



Figure 2 Imported vapes.



Figure 3 Imported Vapes 9000 Puffs

- 3.6 Our experience of this criminal activity, as with illegal tobacco, is that the organised criminals selling these products will sell to children.
- 3.7 We have also been working closely with the vape industry to support the legitimate trade and have, since 2017, established a primary authority partnership with the Independent British Vape Trade Association (IBVTA). The partnership provides advice to assist their members and the wider vape trade sector to understand the legislation and support compliance in the ever-developing market.
- 3.8 Comprehensive guidance was created in 2018 by IBVTA in partnership with Kent Trading Standards which helped businesses understand and comply with the relevant regulations². This was followed with further guidance covering the prevention of underage sales as single use disposable products started to flood the market (Appendix 1).
- 3.9 As part of this work, Kent Trading Standards and Gillian Golden (CEO of the IBVTA) joined the Age Verification Panel set up by the UK Home Office and Office for Product Safety and Standards (OPSS) to work with businesses, retailers, and regulators to combat issues around age verification. This enables Kent CC to play a leading national role.
- 3.10 In addition, another Kent Trading Standards Officer is the regional (South East) representative among the National Vape Co-ordinators group, regularly liaising on the national issues. KCC Trading Standards is therefore now working with the newly appointed Chartered Trading Standards Institute Lead Officers on vapes and the Medicines and Healthcare Regulatory Authority e-cigarette manager.
- 3.11 Kent Trading Standards has developed an easy-to-understand guidance document, providing a checklist of what to look out for to identify illegal vapes, to assist retailers (Appendix 2).

² The guidance provided information on compliant vape products including guidance on Electromagnetic Compatibility Regulations 2016 (EMC), Restrictions of Hazardous Substances Directive (RoHS), Waste Electrical and Electronic Regulations 2013, Classification, Labelling and Packaging of Chemical Substances Regulations 2008 (CLP), Food Imitation (Safety) Regulations 1989 and General Product Safety Regulations (GPRS), as well as practical tips, useful scenarios and information about underage sales, advertising and marketing.

3.12 The high level of advice provided, and enforcement activities undertaken by Kent Trading Standards has resulted in many requests for media interviews through radio and television. This has been used to publicise messages through social media, joining up with Public Health, to drive wider public awareness of the issue.

4. Future Activities

4.1 The Government announced £3m funding for tackling vapes that will be coordinated through National Trading Standards as Operation Joseph. Kent Trading Standards is currently waiting to see how this will impact on its future activity. Current proposals would enable better sharing of intelligence and understanding of the illegal trade in vapes, including increasing measures to prevent age restricted sales.

4.2 It is also hoped that there will be additional funding available to assist with storage and disposal costs.

4.3 The ministerial announcement also called for evidence on age restricted sales, that Kent Trading Standards has responded to.

4.4 A further additional measure announced by the Government will be to introduce fixed penalty notices for those shops selling vapes illegally. Although this will be a useful addition to the tools available for Trading Standards, where a seller refuses to pay the fine, they will have to be prosecuted, at the expense of the County Council.

4.5 Kent Public Health approached Kent Trading Standards in December 2022 to explore a partnership to reduce the sales of vapes to underage children. Following proposals from Trading Standards, Kent Public Health agreed to support a 2-year project, funded at £109K per year, to develop a project working with retailers, partner authorities and other agencies to reduce the risk of supply to children. This will require the recruitment of three dedicated full-time staff to work with the retail sector providing advice and training to help them comply with the legislation and put effective controls in place to prevent underage sales.

4.6 This liaison will also provide a conduit for improved information sharing and intelligence on the market place, which will also be coordinated by the project.

4.7 The officers will conduct Challenge 25 visits to help determine whether targeted enforcement action is required, carrying out test purchases with underage volunteers where necessary.

4.8 The project will also develop an effective targeted communication strategy aimed at businesses with social media awareness. This will build towards the development in the second year of an acceptable behaviour charter which is aimed at retailers, schools, students, and enforcers.

4.9 The increased activity on vapes, with the associated media campaigns, will raise public awareness of the issues, generating reports via Citizens Advice

Consumer Service and Crimestoppers, boosting intelligence and allowing more targeted enforcement by Trading Standards

5. Risks

5.1 While enforcement activities are resource intensive and will be boosted by the Public Health project, there are additional areas of risk when dealing with illegal vapes.

5.2 Storage

5.2.1 As vapes are a volatile product many facilities refuse to store these items as they contain lithium-ion batteries. Kent Trading Standards is currently working with Professor Paul Christensen from Newcastle University, who is an expert on battery storage, to develop safe practices which will provide an assured process to mitigate the risk and allow for safe storage.

5.3 Disposal

5.3.1 Kent Trading Standards have raised the disposal of these products through Trading Standards South East and have been in discussion with the disposal companies to understand their processes. The officer additionally sits on an Environment Agency working group to assist with these disposal issues and the promotion of better recycling at retail level.

5.4 Court costs

5.4.1 As stated above, fixed penalty notices will increase the risk of court action with associated costs. This will be an additional burden, as well as the cost of testing required to establish the presence of nicotine etc. as part of evidential process.

6. Financial Implications

6.1 Officer time, product testing and court costs relating to illegal vapes are anticipated to grow as this market continues to evolve. It is not possible at this time to put an estimate on these costs. These will create an unfunded burden on KCC and other local authorities. This is not atypical - as legislation emerges and evolves, Trading Standards authorities across the country are expected to assume various emerging legislative requirements.

7. Legal implications

7.1 As described at 4.4 and 5.4.1, it is anticipated that KCC will become involved in a growing number of enforcement and court cases.

8. Equalities implications

8.1 This work will have a positive impact on the Age protected characteristic.

9. Other corporate implications

9.1 This works supports KCC's role as a Public Health Authority, as detailed at paragraph 4.5.

10. Governance

10.1 Not applicable

11. Conclusions

11.1 Kent Trading Standards remains active locally, regionally and nationally, dealing with all regulatory aspects of the sale and marketing of vape products. Providing support, advice, and guidance to legitimate traders, and developing local partnership, Kent Trading Standards is also taking robust enforcement action including seizure of imports at the border.

12. Recommendations

12.1 The Cabinet Committee is asked to note and discuss the report.

13 Appendices

- **Appendix 1** IBVTA Age of Sale Guidance: [Age of Sale Guidance for Vape Shops.pdf \(kent.gov.uk\)](#)
- **Appendix 2** Disposable E-Cigarette Guidance: [Disposable E-cigarette Guidance.pdf \(kent.gov.uk\)](#)

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