

10 November 2015

Agenda Item: 7

REPORT OF THE SERVICE DIRECTOR SOUTH NOTTINGHAMSHIRE AND PUBLIC PROTECTION.

UPDATE ON KEY ISSUES REGARDING E-CIGARETTES AND THE PRACTICE KNOWN AS 'VAPING'.

Purpose of the Report

1. To update the committee on previous actions, the current consumer protection regime, and the future of the regulation of e-cigarettes.

Information and Advice

2. E-cigarettes are an electronic inhaler, meant to simulate, and substitute for, tobacco smoking. The devices generally utilise heating elements that turn a liquid solution into vapour. Some release nicotine, while others merely release flavoured vapour. They are often designed to mimic traditional smoking implements in their use and/or appearance.
3. Research by the campaigning public health charity ASH (Action on Smoking and Health) shows that their use has grown threefold in the last two years from 700,000 to 2.1 million users in the United Kingdom.
4. Compared with smoking tobacco, using an electronic cigarette is considered by many organisations, including Public Health England and Cancer Research UK, to be safer. However, in the absence of a thorough clinical evaluation and long term population level surveillance, absolute safety of such products cannot be guaranteed. By comparison, the harm from tobacco smoking – the leading cause of preventable death in the UK – is well established.
5. Most, but not all electronic cigarettes contain nicotine. The harm from smoking tobacco comes mainly from inhaling tobacco smoke and the chemicals it contains, rather than the ingestion of nicotine. However, nicotine is an addictive drug which stimulates the nervous system, increasing the heart rate and blood pressure.
6. Trading Standards Services at a local and national level have received complaints in three areas, these being:
 - The toxicity of e-liquid;
 - Sales of products to people under the age of 18; and
 - The safety of electrical components in the products, such as batteries and chargers.

7. When the products were first placed onto the market, there was no age restriction for their supply, but there was consumer protection legislation that set the safety standards for the products:
 - General Product Safety Regulations 2005 (GPSRs)
 - Consumer Protection Act 1987 (CPA)
 - The European Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP Regulation)
 - Chemicals (Hazard Information and Packaging for Supply) Regulations 2009 (CHIP)
8. **Action in Nottinghamshire** – the Service started to receive complaints regarding the products in 2013, receiving eight complaints between January and August 2013 regarding the safety of them or sales of the products to under 18s.
9. In August 2013 a Trading Standards Officer visited all specialist retailers, local importers and wholesalers in the County, to ensure the law was being followed and promote best practice. Ten premises were visited and advised regarding the legal requirements, and also promoted a voluntary age restriction of 18 that all the traders agreed to support.
10. In March 2014, the service took part in a national test purchase exercise to ascertain the level of compliance with the voluntary age restriction. Three retailers out of twenty in Nottinghamshire sold an e-cigarette or e-liquid to a 14 year old female volunteer test purchaser.
11. **2015 Safety Awareness Project** – earlier this year, the Service participated in a regional safety awareness project. This involved the production and distribution of an educational poster/leaflet for consumers on the potential dangers associated with e-cigarette use, the distribution of an advice leaflet and letter to suppliers, and a social media awareness campaign.
12. The project recognised to minimise the harm caused, that an education programme of e-cigarette users was needed, and that retailers have a key role in ensuring consumers are aware of the primary product safety risks. Key messages promoted were:
 - Only use the charger provided with an item;
 - Only charge for as long as required;
 - Do not over-tighten the cartridge;
 - Do not leave to charge overnight or unattended;
 - Do not store e-cigarettes or liquids within reach of children or pets; and
 - Be aware: Liquid Nicotine can be fatal if swallowed or in contact with skin (If this happens, seek medical attention immediately).
13. Materials distributed included:
 - 100 posters and 250 leaflets by Public Health for dissemination by Nottinghamshire 'Stop Smoking' Services;
 - 140 posters by Nottinghamshire pharmacies;
 - 90 posters disseminated to GP Practices;
 - Poster displayed on www.smokefreenotts.co.uk;

- Poster/letter and trade advice leaflet sent to all identified e-cigarette retailers;
- Poster sent to 8 District Council customer service points for display;
- Links to the poster on the Council's Facebook and Twitter pages;
- Links to the poster and trader advice leaflet included on Nottinghamshire Trading Standards' Business Advice 'Safety' webpage.

14. **Minimum age of sale** - From 1st October 2015, a minimum age of sale of 18 years came into effect for nicotine inhaling products, defined as those "intended to enable nicotine to be inhaled through a mouthpiece (regardless of whether the device is also intended to enable any other substance to be inhaled through a mouthpiece)". The definition includes disposable and rechargeable e-cigarette devices and component parts containing nicotine, i.e. refill cartridges and refill liquids ('e-liquids').
15. The regulations make it an offence for a retailer to sell a device or liquid to a person aged under 18, and carries a maximum fine of £2500. As with the sale of tobacco, it is also generally an offence for an individual to purchase products on behalf of young people under 18 years i.e. 'Proxy Purchasing'.
16. Trading Standards officers are responsible for the enforcement of the regulations, which will apply in England and Wales.
17. It is worth noting that all e-cigarette retailers visited as part of the 2015 project were already adopting a voluntary policy of not selling e-cigarettes and associated products to persons under 18.
18. **Summary of recent local issues** – this year, the Service has received 6 complaints about e-cigarettes issues. With the exception of one, these complaints have involved instances of e-cigarettes or chargers overheating, and in some cases causing fires.
19. Although the exact cause of these incidents remains unconfirmed, it appears that at least one can be attributed to a USB e-cigarette being connected to an unsuitable device for charging (a video game console). With this in mind, Trading Standards Officers have focused their efforts on providing advice to consumers and traders on important safety issues surrounding the use of e-cigarettes and chargers. Advice to traders has included an emphasis on making sure that they provide adequate safety warnings and instructions to their customers to avoid misuse of the products sold.
20. The one complaint not involving overheating/fires was an allegation that a manufacturer of e-liquids in the County was not applying the correct labelling to e-liquids. On inspection, a few technical labelling issues were found and the trader was advised accordingly.
21. Currently electronic cigarettes are regulated as general consumer products. Once the EU Tobacco Products Directive (TPD) comes into effect in Member States in May 2016, electronic cigarettes containing up to 20mg/ml of nicotine will come under the TPD (levels of 18mg/ml have been reported on user websites as suitable for typical smokers).
22. Above that level, or if manufacturers and importers decide to opt into medicines regulation, such products will require authorisation by the Medicines and Healthcare Products Regulatory Agency (MHRA) as over the counter medicines, in the same way as nicotine replacement therapy (NRT).

23. **Plans for the future** - Trading Standards will continue to monitor local and national emerging issues concerning e-cigarettes.
24. Complaints about the safety of e-cigarettes and associated products will be dealt with on a case-by-case basis.
25. Similarly, where intelligence is received about alleged sales to persons under the age of 18, the appropriate course of action will be considered depending on the circumstances involved. Where appropriate, the response of the service to complaints will involve inspections of premises for general compliance to all relevant requirements.
26. Once the Tobacco Products Directive (TPD) comes into effect, all local importers and manufacturers of e-cigarettes, e-liquids and associated products will be contacted to highlight their new obligations under the Directive.

Other Options Considered

27. None

Reason/s for Recommendation/s

28. This is an information report

Statutory and Policy Implications

29. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

30. This report contains no additional financial implications, with activity reported or that proposed being contained within existing service budget.

RECOMMENDATION/S

- 1) It is recommended that the Community Safety Committee notes the update from this report and the various developments in the area of work contained in the report.

Paul McKay,
Service Director, South Nottinghamshire & Public Protection.

For any enquiries about this report please contact:

Tim Watson, Trading Standards Officer
Trading Standards and Community Safety Service
Tel: (01623) 452 047
Email: tim.watson@nottsgov.uk

Constitutional Comments

As this report is for noting only, Constitutional Comments are not required

Financial Comments (KAS 20/10/15)

The financial implications are contained within paragraph 30 of the report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- 'None'

Electoral Division(s) and Member(s) Affected

- 'All'