
Report of Ruth Turner – Team Manager Environmental Health

Report to Licensing Committee

Date: 28 April 2017

Subject: Update on Shisha Smoking – Enforcement Activity

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix 1: Report Public Health England and the Association of Directors of Public Health: 'Waterpipe Smoking (Shisha) in England - The Public Health Challenge	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. This report is provided an update to Licensing Committee, as requested in relation to activities carried out by out by Environmental Health – Health and Safety Team with regard to enforcement activity within the year 2016/17

Recommendations

1. The Committee is asked to note the contents of the report, make comments, ask questions, and provide suggestions. The Committee is also asked to consider the frequency of any further update reports.

1. Purpose of this report

- 1.1 The purpose of this report is to provide an update on the on-going work to tackle shisha smoking in the city. It follows on from previous reports provided to the Committee

2. Background information

- 2.1 Previous reports to Committee have provided information on smoke free legislation, it's application to shisha bars, and the staged approach to enforcement of the legislation. The reports also advised of the partnership approach which is taken to tackle shisha and general tobacco smoking across the City.
- 2.2 Reports of smoking shisha can be received from the public or may be witnessed pro-actively by officers from the Council

3. Public Health England and the Association of Directors of Public Health Report - February 2017

- 3.1 A review carried out by Public Health England and the Association of Directors of Public Health: 'Waterpipe Smoking (Shisha) in England - The Public Health Challenge was published in February 2017. (See: Appendix 1 for a copy of the report)
- 3.2 The report provides a summary of the current evidence of health effects of waterpipe smoking, an overview of the prevalence of waterpipe smoking in Britain, 2 case studies of local authority (LA) approaches to addressing local public health and regulatory challenges and suggested actions for LAs to consider in relation to waterpipe smoking.
- 3.3 The health effects of waterpipe smoking have received less research attention than cigarette smoking. However, the available evidence indicates that waterpipe smoking is associated with cancer, heart disease and lung disease. There have also been reports of increased risk of infectious disease, and the large amount of carbon monoxide created by the constant heating of tobacco by burning charcoal introduces the risk of carbon monoxide poisoning.
- 3.4 Some LAs are experiencing regulatory challenges where a range of regulations are being breached including Smokefree legislation, age of sale, fire safety, health warnings, and tobacco product display. Waterpipe tobacco is also often imported illegally and sold without duty. Intervention by a wide range of stakeholders, including public health, environmental health, and trading standards is often required to achieve adequate enforcement.
- 3.5 A coordinated multi-agency approach to enforcement and prevention work in relation to waterpipe smoking is needed in some local areas.

4. Main Issues

- 4.1 Enforcement of 'Smoke free' Legislation falls within the remit of the Environmental Health function within the Environmental Action Service. This is one function of the team and work is prioritised on a risk basis
- 4.2 Many of the businesses are open on an evening with the majority of customers being male. This can prove to be an intimidating environment for officers to visit. A multi-agency approach is required to carry out the visits. With competing priorities It can prove difficult to get all agencies to attend.

- 4.3 It can prove difficult to determine who the business owner is and owners change on a regular basis. This proves difficult to take enforcement action.
- 4.4 Currently the maximum fine for successful prosecution under the Health Act 2006 is £2500. Historically the fines in relation to the offence of 'Failing to prevent smoking in a smoke free place' are relatively low compared to the revenue derived from providing the activity. The low level of fines is no deterrent to the operators. Previous successful prosecutions have resulted in fines of £0 - £1500 plus costs
- 4.5 A Multi-Agency response is required to tackle the issue of Shisha Smoking. With competing priorities and limited resources it can prove difficult to get all partner agencies on board

5. Enforcement Activity

- 5.1 The Environmental Health Team received 8 service requests in relation to smoke free Premises in the year 2016/17. Of these 5 requests were in relation to general smoking, 1 request for information in setting up a shisha business and 2 in relation to smoking shisha inside a premises
- 5.2 A multi-agency visit was carried out on 6th October 2016 targeting known or alleged Shisha Bars, who were potentially not complying with the Health Act 2006, in that they were allowing people to smoke in a 'smoke free – place'
- 5.3 The agencies involved were Health and Safety, Food Safety, Police and Entertainment Licencing. The operation started at 19:30 and was completed by 23:30
- 5.4 Four premises were visited in the Leeds 9 area.
- 5.5 Smoking of Shisha pipes was observed taking place inside, at all of the premises, as was the supply of Shisha pipes. Preparation of tobacco and hot coals for smoking was observed. Quantities of prepared tobacco, in plastic containers was also observed at all the premises.
- 5.6 Numerous pipes and their attachments, stored prior to use, and upwards of 20 people using Shisha Pipes was also observed at each of the premises
- 5.7 Other issues identified at the time of the visit were dealt with by Entertainment Licensing i.e. locked fire doors and the Illegal broadcasting of Sky TV
- 5.8 Following the visits the following enforcement action was taken:
One business had a new operator and was issued a warning letter.
The owner of one business could not be identified
Two cases were sent to Legal for formal action through the Magistrates Court.
- 5.9 One case progressed and was heard in court on 5th May 2017. The owner failed to attend court and was found guilty in his absence at Leeds Magistrates Court of 'Failing to prevent smoking in a smoke free place' He was fined £440 plus £1818 costs and £44 victim surcharge. A press release was published and the result of the case was posted on Social Media via the 'Clean Leeds' Twitter feed

- 5.10 A separate case was taken against the owner of a premises following an Environmental Health Officer witnessing the smoking of Shisha during a routine food hygiene inspection. A case was prepared for prosecution. During interview it was determined that the business operator had changed and the person responsible at the time of the visit no longer had any dealings with the business. The person responsible at the time of the visit has accepted a Formal Caution in relation to the offence.

6.0 Conclusions and Actions

- 6.1 Shisha smoking continues to be a risk to public health and Environmental Health continue to be the lead agency on enforcement
- 6.2 A Multi-Agency approach is essential for tackling the problem. This approach should not be limited to enforcement but should include education for both business operators and customers
- 6.3 Where intelligence shows there is an ongoing problem multi-agency visits will be organised. Co-operation between partners is essential to carry out evening visits and any subsequent enforcement activity
- 6.4 The number of complaints received by the service in relation to shisha smoking is low
- 6.5 Of the 5 businesses visited 1 case progressed to the Magistrates Court and the business owner was found guilty. Alternative enforcement action was taken on 2 occasions
- 6.6 Historically the fines levied on the offenders have been relatively low which provides no deterrent to business operators.
- 6.7 Another Multi-Agency visit is planned to tackle other businesses who are allegedly providing shisha and allowing smoking in a smoke free place.
- 6.8 The Council and its partners will educate the community about the dangers of shisha smoking.

7.0 Recommendations

- 7.1 The Committee is asked to note the contents of the report, make comments, ask questions, and provide suggestions. The Committee is also asked to consider the frequency of any further update reports.