

**Manchester City Council
Report for Information**

Report to: Neighbourhoods and Environment Scrutiny Committee
– 6 February 2019

Subject: Action to address non-compliance in premises allowing shisha smoking

Report of: Chief Operating Officer - Neighbourhoods

Summary

This report provides an update on the work being carried out to address the issues of non-compliance in shisha cafes across the city.

Recommendations

That Members note and comment on the report.

Wards Affected: All

Alignment to the Our Manchester Strategy Outcomes (if applicable):

Manchester Strategy outcomes	Summary of how this report aligns to the OMS
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	By enforcing the law in a fair, equitable and consistent manner, assisting businesses to meet their legal obligations and taking firm action against those who flout the law or act irresponsibly.
A highly skilled city: world class and home grown talent sustaining the city's economic success	Taking action against those businesses who are not compliant allows law abiding businesses to thrive.
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	Working with both residents and businesses to support them in improving the neighbourhoods in which they live and work and socialise.
A liveable and low carbon city: a destination of choice to live, visit, work	Addressing nuisance issues to support individuals to live in successful neighbourhoods. Ensuring a safe and compliant night time economy to sustain the city as a destination of choice. Creating places where people want to live and stay.
A connected city: world class infrastructure and connectivity to drive growth	

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Smoke-Free Manchester: Our plan for tobacco control 2018-2021

1.0 Introduction

- 1.1 This report provides the committee with an update on the activity taking place in connection with shisha cafes across the city. There are a number of different services involved in this activity including external partner agencies, with the majority of enforcement and compliance work carried out by the Licensing and Out of Hours (LOOH) Team and the Development Compliance Team (Planning).
- 1.2 The Licensing and Out Of Hours Teams are responsible for licensing enforcement and for addressing effectively a range of issues that that can arise both during and outside of normal working hours e.g. licensed premises enforcement; street trading; domestic and commercial noise enforcement; busking; begging etc. These teams provide cover over 7 days providing a service during the day, evenings and at night. This team also enforces the Health Act 2006.
- 1.3 The Development Compliance Team is responsible for enforcing planning control under the Town and Country Planning Act 1990. The team investigate alleged breaches of planning control, including, but not limited to, non-compliance with planning permissions, unauthorised operational development, material changes of use of land or buildings and the display of advertisements.

2.0 Background

- 2.1 The introduction of the Health Act 2006 made it illegal for an individual to smoke tobacco of any sort in a place that is more than 50 percent enclosed and to which the public has access. This legislation has had a major impact on the levels of smoking nationally although smoking rates in Manchester are still the highest in Greater Manchester, much higher than national averages and have declined more slowly than in other areas of the country. Manchester has the highest premature mortality rates in the country for the three major smoking related conditions: lung cancer, heart disease and stroke (Manchester Tobacco Plan 2018). The need to reduce the smoking of tobacco is highlighted in the new NHS Ten Year Plan, the national Tobacco Control Plan for England and the Manchester Population Health Plan. Operations around Shisha cafes are therefore crucially important in terms of helping Manchester to meet its targets around reduced smoking of tobacco and tobacco related disease. The shisha operations and activity is highlighted in the Manchester Tobacco Plan and has the full support of the Director of Population Health and Wellbeing, Manchester Health and Care Commissioning and local GPs. It is an important part of the city's efforts to control and regulate the use of tobacco, thereby reducing smoking rates and the associated mortality and morbidity.
- 2.2 It is not illegal to smoke shisha in the UK; in the same way it is not illegal to smoke cigarettes. It becomes illegal when it is done in an enclosed/substantially enclosed place to which the public has access. It is no longer legal or socially acceptable to smoke in a coffee shop and most premises provide open outdoor spaces for those who choose to smoke. The

same should apply to smoking shisha but unfortunately the majority of premises offering shisha are allowing people to smoke indoors.

- 2.3 The Population Health and Wellbeing Team, which is part of Manchester Health and Care Commissioning, has been working with the Licensing and Out of Hours teams since 2017 to address the breaches of the Health Act in some shisha premises, as well as the risks of smoking shisha generally. When smoked in enclosed spaces, shisha smoking will impact upon not only the smokers' health, but any non-smokers, including café employees, who are exposed to the environmental tobacco smoke produced by the pipes.
- 2.4 Shisha pipes use tobacco sweetened with fruit or molasses sugar, which makes the smoke taste more aromatic. It is the fact that Shisha pipes are a way of smoking tobacco which is the primary cause for concern in terms of health. The World Health Organisation state that "Tobacco kills up to half of its users. It kills more than 7 million people each year. More than 6 million of those deaths are the result of direct tobacco use while around 890 000 are the result of non-smokers being exposed to second-hand smoke."
- 2.5 There do appear to be some misconceptions around the risks associated with smoking shisha and they are frequently underestimated. Shisha contains many harmful chemicals, although there may be a belief that it is safe. In fact, the way that a Shisha pipe works means that the water used does not filter out harmful tobacco smoke and the pleasant and exotic flavours used may even give the impression that the substances smoked are simply herbal. By masking the tobacco flavour, the smoker may actually not be aware that they are indeed smoking tobacco. The tobacco contained within shisha pipes, like all tobacco, contains hundreds of toxins, for example, toxic heavy metals, such as arsenic and lead, formaldehyde, ammonia, hydrogen cyanide (used in rat poison), acetone, carbon monoxide (which can be fatal in high doses) and of course other substances which are carcinogenic. All tobacco contains Nicotine, which is a highly addictive substance.
- 2.6 Smoking shisha in cafes around the city appears to be a socially attractive thing to do and often attracts young people. The average length of a shisha smoking session is around one hour. A number of research studies show that smoking a shisha pipe for one hour is roughly equivalent to smoking one hundred cigarettes in terms of the amount of tobacco inhaled and the resulting health impacts. It is worrying too, that because of the nicotine content of tobacco, smoking shisha pipes can most certainly lead to an addiction to tobacco, be that in the form of shisha pipes, cigarettes, or other forms of tobacco. This is, therefore, a highly risky pastime and the reason why Population Health and Compliance teams have joined forces to produce and issue public health and educational information.
- 2.7 Currently the number of known shisha premises operating within the City is 44. These are spread across a number of wards, with a concentration along Wilmslow Road. This area is covered by 2 wards, Moss Side and Rusholme, Fig.1 shows a breakdown of shisha premises by ward.

Fig.1: Number of shisha premises per ward

Ward	Number of shisha premises
Cheetham Hill	4
Chorlton Park	4
Deansgate	7
Fallowfield	1
Longsight	1
Moss Side	17
Moston	1
Old Moat	1
Rusholme	6
Withington	2
Grand Total	44

- 2.8 The operation of a shisha cafe does not require a licence. This means that unless the operator of the shisha cafe applies for a late night refreshment or alcohol licence or wants to serve food, no authority needs to be notified. In turn this means that keeping a track of new premises is challenging. Officers within the LOOH Team regularly survey the city and if they identify a new shisha cafe they will create a record for this.
- 2.9 Shisha smoking can, in some instances take place without requiring planning permission. This is where it is ancillary to another existing lawful use, such as a restaurant. However, a “shisha café” where shisha smoking is the primary use of a site, or a significant part of a mixture of uses, will usually require planning permission as this will constitute a material change of use.
- 2.10 Where planning permission is required, relevant issues that relate to shisha cafes are considered. These include noise outbreak from the premises and noise associated with customers coming and going, particularly at night and in the early hours of the morning. In addition, there is also the adequate control of fumes and odours due to tobacco smoke and in some cases cooking food, to be considered.
- 2.11 In many cases there is also harm caused to the character and appearance of the areas in which the shisha cafes are located. This is due to haphazard operational development, inadequate arrangements for storage and disposal of refuse and from the display of advertisements. In areas of high

concentration, such as the Rusholme District Centre, this can also create the impression of a disregard for the law due to the unrestrained promotion of the availability of shisha smoking within what should be smoke-free premises.

3.0 Approach

3.1 There are a number of concerns associated with some premises operating as Shisha cafes in Manchester. These include:

(i) Health Concerns - There is clear evidence that smoking shisha has detrimental health impacts. This includes startling facts such as 1 hour of smoking shisha can be as damaging as smoking 100 cigarettes.

(ii) Breach of the Health Act 2006 - Businesses knowingly operating in an illegal manner cannot be tolerated. These businesses are knowingly encouraging their customers to take part in an illegal activity by offering shisha indoors.

(iii) Breach of Planning Legislation - this is a concern for the reasons set out in paragraphs 2.6 and 2.7

(iv) Tax avoidance - Unpaid tax on the tobacco used in some shisha premises gives these businesses an unfair advantage over law abiding businesses. Knowingly operating in an illegal manner cannot be tolerated.

(v) Immigration offences - Employing people who do not have the legal right to work in the UK puts those individuals at risk as they are not covered by employment law, as well as potentially depriving local residents of employment opportunities. There are also lost revenues to the public purse through unpaid income tax and National Insurance contributions.

3.2 A strong partnership approach has been developed to address these issues. Most of the Shisha activity takes place outside of standard working hours and therefore when the Licensing and Out of Hours Service was formed in 2016 it provided the opportunity to take more concerted enforcement action at times when most shisha smoking is taking place. A bi monthly Shisha Task Group meeting takes place with a variety of partners who have an interest in the work being done around shisha premises in Manchester. The group is made up of council departments including Licensing and Out of Hours, Development Compliance (Planning) , Trading Standards and Neighbourhood Compliance and partner agencies including Greater Manchester Police (GMP), The Complex Safeguarding Hub, Her Majesty's Revenue and Customs (HMRC), Home Office Immigration Enforcement,(HOIE) Greater Manchester Fire and Rescue Service (GMFRS) and the Manchester Population Health and Wellbeing Team. The meeting provides a forum to share intelligence about shisha premises and plan multi agency operations.

3.3 As well as compliance and enforcement activity there has been a programme of work around raising awareness of the health impacts of smoking shisha. This has involved the use of posters and postcards that were developed by the

council's Communications team, Population Health and Wellbeing and managers from Compliance (see appendix 1). This material alerted the public to the fact that one hour of smoking shisha can be as damaging as one hundred cigarettes. Further information was also included about the harmful aspects of shisha as well as it being illegal to smoke indoors. From February 2018 material was distributed to libraries, doctors' surgeries and other community hubs in and around the Rusholme and Moss Side area. Initially LOOH officers also used the postcards during visits to shisha cafes and handed them to all the customers as an alternative to issuing fixed penalty notices (FPNs). At the same time the council ran a targeted social media campaign. This involved an information film appearing on the social media accounts of the target audience. A Manchester GP also spoke in some of the social/digital media. There was also press activity.

- 3.4 The Population Health and Wellbeing Team have carried out recent analysis which shows that smoking rates are now highest in age groups under 25. This is the cohort that the health promotion materials targeted because the clientele of many shisha cafes is relatively young. The estimated smoking prevalence within the City has been mapped (appendix 2) and shows that the areas with the highest concentration of shisha premises also have the highest percentage of people who smoke.

4.0 Enforcement

- 4.1 Since 2016 the Licensing and Out of Hours Team has undertaken a number of enforcement actions in relation to shisha premises. Fig.2 shows the number of FPNs issued. FPNs are issued for smoking in a smoke free place (inside) and for not having the correct "no smoking" signage in place. Fig.3 shows the number of prosecutions that have been carried out since 2016, along with the fines issued. In addition to these results there are currently 22 prosecutions pending.

Fig.2: Number of FPNs served by type and year

Calendar Year	2016	2017	2018	Grand Total
Health Act 2006 Section 7 - Smoking in Smoke Free Place FPN (£30 if paid within 15 days or £50 thereafter)	4	14	40	58
Health Act 06 Section 6 - Signage FPN (£150 if paid within 15 days or £200 thereafter)	0	6	2	8

Fig.3: Number of prosecutions undertaken per year and fines issued

Calendar Year	Fine	Costs	Victim surcharge	Grand Total
2017				
Premises 1	£2000	£806	£100	£2906
Premises 2	£1100	£600	£0	£1700
Premises 3	£500	£0	£20	£520
Premises 4	£1100	£660	£0	£1760
Premises 5	£500	£0	£20	£520
Premises 6	£50	£220	£100	£370
2018				
Premises 7	£3000	£375	£100	£3475
Premises 8	£5000	£835	£170	£6005
Premises 9	£660	£425	£30	£1115
Total				£16,841

- 4.2 The approach to enforcement in relation to Shisha cafes has been evolving since the formation of the LOOH team in 2016. In the early days and in line with the corporate enforcement policy, an advisory approach was initially taken whereby the manager was advised that smoking in a smoke free place is unlawful and that if they allow it to continue the customer could receive an FPN and the management could be prosecuted for allowing smoking in a smoke free place. Information aimed at educating people on the negative health impacts of smoking Shisha was also distributed.
- 4.3 Following the initial warning the premises would then be monitored and if smoking of shisha was witnessed it was recorded as evidence for use in enforcement action against the premises and customers who were smoking were issued with an FPN. After a number of offences of smoking in a smoke free place had been witnessed a prosecution would be taken forward.
- 4.4 In addition to helping to identify the owners and occupiers of Shisha cafes to facilitate Health Act prosecutions and breaking the cycle of continuous non-compliance the Development Compliance Team had the additional objective of seeking to clear land on Aspinall Street (Rusholme) of shipping containers and other haphazard extensions.

- 4.5 Investigations revealed that the majority of the shisha cafes within the City have opened within the last 10 years. In many cases there has been a shift from licensed restaurants with ancillary shisha offer, to unlicensed, late night shisha smoking places. Between August 2017 and January 2019, the Planning service has taken action against nineteen separate premises, involving the service of Temporary Stop Notices, Stop Notices and Enforcement Notices.
- 4.6 A planning notice can impose a prohibition against the use of a premises for shisha smoking specifically. Where a notice has taken effect the evidence threshold for identifying an offence is much lower than that required for a Health Act 2006 prosecution; for example, an officer seeing shisha smoking equipment on a premises is sufficient to prove an offence.
- 4.7 The potential penalty for a contravention of a planning notice is also much more severe than for a Health Act 2006 offence, being an unlimited fine as opposed to a maximum fine of £2500. Crucially the prohibition imposed by a planning notice runs with the land and applies to the owners of a premises as well as the occupiers which is a significant difference to other types of action available to deal with this issue.
- 4.8 It would appear that the threat to the owners of the buildings and not just the occupiers has proven to be a highly effective deterrent. There is some evidence that compliance has been achieved by owners evicting tenants who are operating illegal cafes and instructing tenants to remove unauthorised developments.
- 4.9 Several premises are continuing to operate in breach of notices and the team has started to take action in default by removing unauthorised developments and shisha smoking equipment. Contractors were instructed to remove decking from the front of a premises on 6 November 2018 and within two weeks unauthorised decking at the front of four other premises had been removed by the owners/occupiers.
- 4.10 In addition to taking forward prosecutions for breaches of the Health Act 2006 and contravention of planning notices, a strong element of the enforcement against shisha premises has been multi agency operations targeting a range of non-compliance issues. The case studies below are illustrative of the type of operations that have taken place:

**Case Study 1 - Moss Side Ward, Rusholme Ward and Withington Ward
June 2018**

A multi agency operation was planned to visit 3 premises in the Moss Side, Rusholme and Withington Wards. The aim of the operation was to disrupt the illegal activity of smoking shisha in an enclosed space and identify other offences in relation to unpaid duty on tobacco. The operation involved staff from MCC, GMP and HMRC.

Visits were carried out to 3 premises and smoking shisha was witnessed in all premises. Customers were advised by officers to stop smoking and were

given health promotion cards which warned of the health implications of smoking shisha. Those customers who refused to stop smoking were issued with FPNs. 'No smoking' signage was not present inside one of the premises, as is required by the Health Act 2006 and a fixed penalty notice was issued to the duty manager. HMRC seized tobacco where duty had not been paid from all three premises. The total value of the unpaid duty on the tobacco seized was £11,400.71.

- 4.11 Despite successful prosecutions of a number of premises it was evident that following prosecution some companies were being dissolved meaning that any fines imposed by the courts remained with the now defunct company and as such this was not an entirely effective deterrent.
- 4.12 An alternative approach is now being used whereby alongside prosecution of the premises, the seizure powers under the Health Act 2006 are also being used. This approach involves five stages:
1. Warning letter advising the premises that if smoking is witnessed inside a seizure will be carried out;
 2. On witnessing smoking within the premises officers will seize those shisha pipes in use at the time;
 3. Follow up warning visit with hand delivered letter advising that further offences will result in the seizure of all shisha pipes at the premises irrespective of whether they are being used at the time of the visit;
 4. Full seizure. On witnessing smoking within the premises officers will seize all the shisha pipes within the premises;
 5. Prosecution of the premises using the items seized as evidence and including the request to the court for a destruction order for items seized.
- 4.13 Using this five stage approach means that there is an immediate impact on the premises, rather than waiting up to six months for a prosecution to get to court. The following case studies illustrate the successes from this approach:

Case study 2 - Moss Side Ward

Despite previous warnings, smoking inside a particular premises was still taking place. The premises had been visited a number of times since 2016 and on 10 October 2018, after a warning letter had been sent, officers attended the premises and carried out a seizure of the 4 shisha pipes in use at that time. This visit was followed up with a letter advising that if officers witnessed any further breaches of the Health Act 2006 then all the shisha pipes on the premises would be seized.

On 30 October 2018, LOOH Officers attended the premises with the support of GMP and witnessed customers smoking inside in breach of the Health Act 2006. When officers asked to speak to a member of management they were told that none were available. The lead officer advised that they were there to take all the shisha pipes and a group of males became abusive towards officers and one of these males claimed that he had taken over the premises 10 days previously. He could not produce any documentation to corroborate

this and officers continued with the seizure. 95 shisha pipes were seized from this premises and 2 fixed penalty notices were served on customers who were smoking. A prosecution file has been submitted to Legal Services including a request that the seized shisha pipes are destroyed.

Case Study 3 - Old Moat and Rusholme Wards, November 2018

This operation was led by the Home Office Immigration Enforcement service based on intelligence regarding immigration offences in shisha premises. Officers from the Licensing and Out of Hours Team, Trading Standards and GMP supported this operation with the aim of addressing Health Act and other offences.

Premise 1 - Old Moat Ward.

Three fixed penalty notices were issued to customers who were smoking inside and 3 shisha pipes were seized as evidence in a future prosecution. The manager was present and he was verbally warned that he, along with the director of the company would be invited to an interview under caution.

Premises 2 - Rusholme

Three fixed penalty notices were issued to customers who refused to stop smoking. 51 shisha pipes were in operation in this premises which were all seized as evidence for use in a future prosecution. The Immigration, Compliance and Enforcement Team arrested 3 people who had breached their conditions and were prohibited from working in the UK. A further 2 individuals were removed from the premises as they had no rights to work in the UK.

- 4.14 Since starting the new approach there have been 9 seizures carried out at 7 premises. Fig.4 gives details of the number of shisha pipes seized from each premises to date.

Fig.4 Number of shisha pipes seized

	First Seizure	Second Seizure	Grand Total
Premises A	1	-	1
Premises B	4	91	95
Premises C	4	94	98
Premises D	13	-	13
Premises E	7	-	7
Premises F	3	-	3
Premises G	51	-	51
Total	83	185	268

Case Study 4 - Moss Side Ward

On 9 November 2018, LOOH Officers with support from GMP Officers visited a shisha cafe on Wilmslow Road, where they carried out an initial seizure following warning letters. 13 shisha pipes were seized and 3 FPNs were issued for smoking inside. On completing this visit they went directly to the shisha cafe next door. Here officers seized 7 shisha pipes and 4 FPNs were issued for smoking inside.

As officers were leaving the premises 2 males entered the premises and were verbally abusive and intimidatory towards LOOH Officers. The males did not disclose their interest in the premises but while they were speaking to officers a large group of people started to enter the premises with more gathered outside in an attempt to intimidate the officers carrying out the seizure. As the officers were leaving a bottle was thrown towards the vehicle from the crowd of 30 to 40 people outside the premises

- 4.15 Officers have faced hostility in a number of premises when carrying out their enforcement duties. This is not acceptable and action will be taken against premises who try to obstruct officers in carrying out their lawful duties.
- 4.16 The Development Compliance Team are now also in a position to carry out seizures based on non-adherence to the Enforcement Notices that have been issued to some shisha cafes. On 11 January 2019 the Development Compliance Team, supported by GMP Officers along with other Council officers and officers from HMRC carried out seizures at two premises removing 130 pipes, over 30kg of tobacco and hundreds of items associated with shisha smoking. These operations, along with Health Act seizures, will be repeated when council and GMP resources are available to ensure that they carried out in a safe and controlled manner.
- 4.17 Prosecution proceedings have also commenced against some owners and occupiers with the first planning prosecution case due to be heard in March.

5.0 Conclusion and next steps

- 5.1 The approach taken to date has seen an increase in enforcement action taken against Shisha premises who allow customers to smoke in breach of the Health Act 2006 and who are contravening planning permission. Over the last 2 years 9 shisha cafes have closed down due to a combination of enforcement action. The more recent action which has included seizing Shisha pipes is expected to increase this number, although it is still early days.
- 5.2 Action will continue against premises that are not complying with the Health Act 2006, planning legislation or any other related legislation.