



Open Report on behalf of Glen Garrod Executive Director - Adult Care and Community Wellbeing

Report to:	Public Protection and Communities Scrutiny Committee
Date:	25 July 2023
Subject:	Trading Standards Enforcement and Education Undertaken in Respect of Vapes 2022-23

Summary:
This report outlines the work undertaken by Lincolnshire County Council Trading Standards during 2022-23 to tackle an increase in the availability of non-compliant disposable vapes and their sales to young people aged under 18.

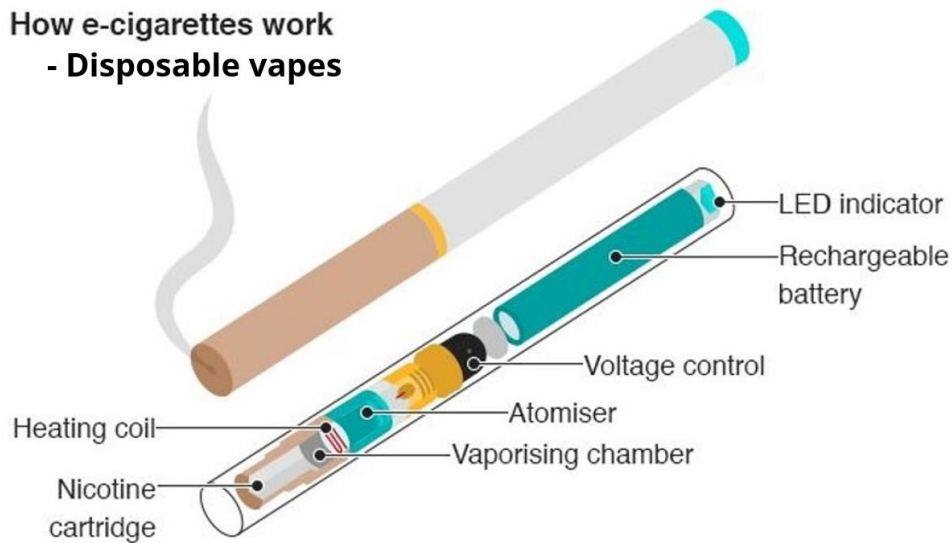
Actions Required:
Members of the Committee are invited to consider and comment on the contents of this report and the delivery of the enforcement and education measures in respect of vaping concerns undertaken by the Trading Standards Service in 2022-23.

1. Background

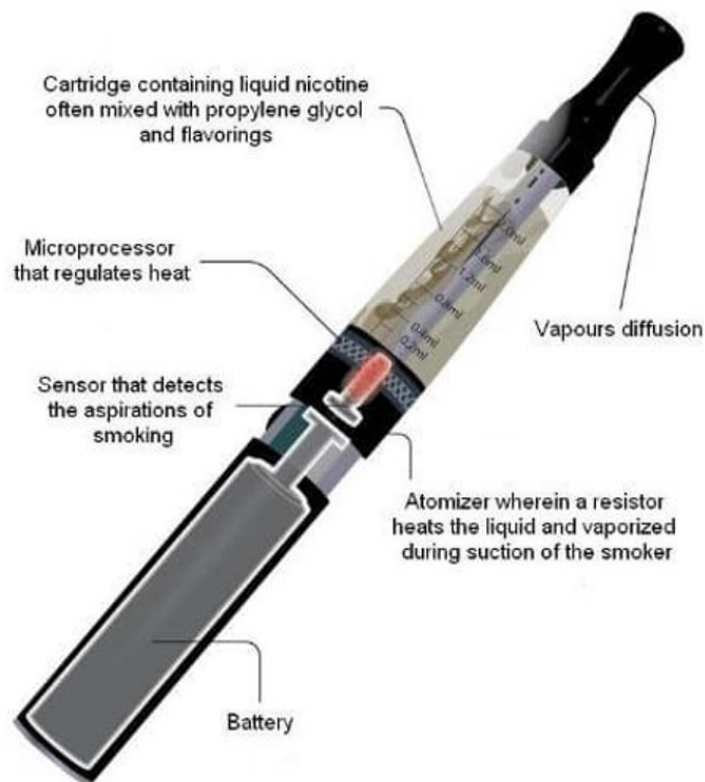
1.1. What is a Vape?

- 1.2. An e-cigarette, or vape, is a device that allows the user to simulate tobacco smoking by inhaling nicotine in a vapour rather than smoke. They do not burn tobacco and do not produce tar or carbon monoxide, two of the most damaging elements in tobacco smoke.
- 1.3. E-cigarettes work by heating a liquid that typically contains nicotine, propylene glycol, vegetable glycerine and flavourings.
- 1.4. There are different types of e-cigarettes, including vape pens, vape bars, pod devices, mods and cigarlike. They can be rechargeable or disposable.

How e-cigarettes work - Disposable vapes



How e-cigarettes work - refillable vapes



1.5. All these products must comply with the Tobacco and Related Products Regulations 2016 (TRPR). The Regulations:

- Limit the capacity of disposable vapes to 2ml equating to 600 puffs.
- Limit the nicotine strength of disposable vapes to no higher than 20mg/ml (2%).
- Require products to be registered with the Medicines and Healthcare products Regulatory Agency (MHRA) and to appear on the MHRA's website as approved.

- The TRPR require packaging of disposable vapes to be labelled with:
 - The exact wording of the nicotine health warning “**This product contains nicotine which is a highly addictive substance**”. It must appear on the front and back of the package and cover a minimum of 30% of each surface.
 - The nicotine content.
 - The nicotine delivery per dose or puff. This can appear as micrograms/puff or mcg/puff.
 - The ingredient list is descending order by weight.
 - The batch numbers.
 - A recommendation that the product is kept out of reach of children.
 - The Name and address of the manufacturer and the Importer into Great Britain, or the name and address of their representative in Great Britain if they are located abroad.

1.6. In addition, the TRPR require each unit pack to include a leaflet containing the following information:

- Instructions for use and storage including a reference that it is not recommended for use by young people and non-smokers.
- Advice regarding contra-indications - warnings that someone should not continue with a particular medicine or treatment because it is or might be harmful.
- Health warnings for specific groups
- Advice regarding possible side effects.
- Advice regarding toxicity and addictiveness.
- The nominal quantity unless specified elsewhere on the packaging.
- Product identifiers e.g., trade names.

1.7. This additional information may be provided on the packaging if it can be done without loss of eligibility to the consumer.

1.8. To supply a product in Great Britain the manufacturer/importer or their representative must have notified the MHRA via their online submission portal. Once submitted MHRA review the product for compliance and publish details on their website. Only when the product notification is published can it be sold legally.

1.9. Failure to comply with any of these requirements is a criminal offence. Anyone caught selling noncompliant products risks having their stock seized and can face prosecution. The maximum penalty is £5000 per offence.

2. Trading Standards Enforcement Activity 2022-2023

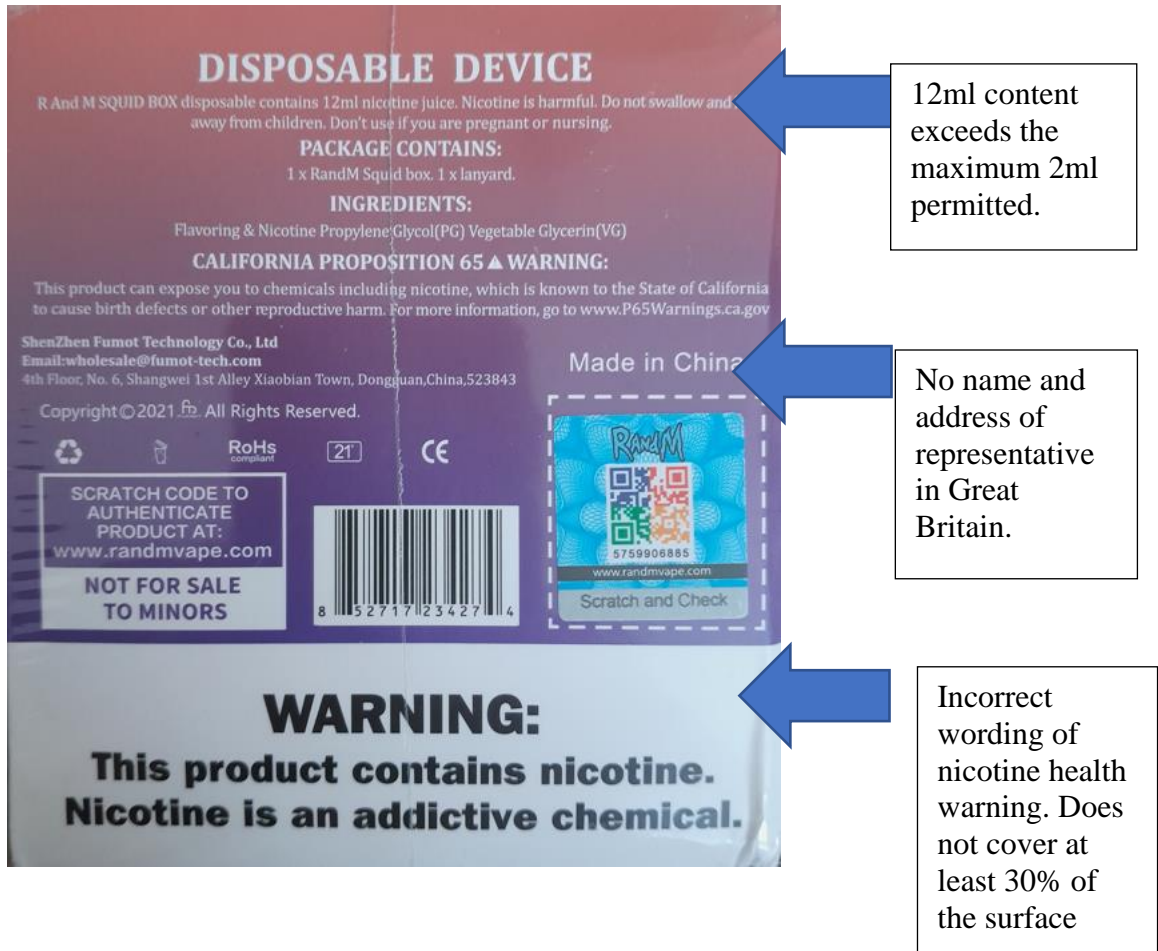
2.1. During 2022-23 the Trading Standards Service began to see an increase in noncompliant disposable vapes entering the market. Each quarter of 2022-2023 the Trading Standards Service seized increasing number of noncompliant disposable vapes. In total 9455 were taken from 19 premises. Many of the vapes seized have been removed from premises where illicit tobacco products have also been found.

	Number of disposable vapes seized
2022-2023 Q1 Apr - Jun	1,049
2022-2023 Q2 Jul - Sep	1,059

2022-2023 Q3 Oct - Dec	2,954
2022-2023 Q4 Jan - Mar	4,383
Total	9,455

2.2.Trading Standards Officers can identify noncompliant products through simple visual checks:

Typical Labelling found on Noncompliant Disposable Vape Packs.



- 2.3. As noncompliance is easy to identify through these visual checks the Trading Standards Service has not routinely submitted devices for formal testing to determine nicotine strength or to test the liquids. The issues identified are sufficient to allow officers to exercise the full range of enforcement powers including seizure and the institution of legal proceedings where appropriate.
- 2.4. Offences under the Tobacco and Related products Regulations 2016 are offences of strict liability. When strict liability rules apply, defendants can be held responsible for the consequences of their actions regardless of whether they behaved intentionally or negligently. It is a liability which does not depend on actual negligence or intent to harm.
- 2.5. A statutory defence is available if the defendant can show that they exercised all due diligence to avoid committing the offence. Persons prosecuted would be unlikely to avail themselves of this defence if they had failed to carry out the basic visual checks outlined above and remove noncompliant products from sale.
- 2.6. The majority of the vapes seized are flavoured. Many are found with references to California Proposition 65. Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm. These chemicals can be in the products that Californians purchase, in their homes or workplaces, or that are released into the environment. By requiring that this information be provided, Proposition 65 enables Californians to make informed decisions about their exposures to these chemicals.
- 2.7. In August 2020 the California State Legislature passed a law banning the sale of flavoured tobacco products including vapes from stores and vending machines. The ban did not take immediate effect due to a petition demanding a referendum on the law. This took place on the 8th of November 2022 and the ban was upheld.
- 2.8. This has left manufacturers with significant stocks of disposable vapes initially intended for the Californian market. Some of that stock has been redirected to other markets including Great Britain.
- 2.9. Due to the sudden appearance and seizure of noncompliant illegal vapes the Trading Standards Service sent a guidance leaflet produced by the UK Vaping Industry Association to over 100 premises identified as likely to sell disposable vapes. The guidance was developed in partnership with Buckinghamshire and Surrey Trading Standards Service who are their Primary Authority partners. Trading Standards began distribution of the guidance in August 2022.

3. Age Restricted Sales

- 3.1. On 18th August 2022 The Chartered Trading Standards Institute issued a press release [raising concerns around possible links between underage vaping and risks of Child Sexual Exploitation](#). In that report they refer to data gathered from Local Trading Standards across England and Wales that indicated a significant increase in reports of vapes being sold to persons under the age of 18. Although the numbers were still low intelligence

logged between May 2021 and July 2022 showed an increase of 1958% and complaints made to Trading Standards via Citizens Advice had risen by 1367%.

3.2. Locally in Lincolnshire intelligence reports regarding vapes have been recorded under underage sales, product safety, intellectual property crime or illicit tobacco depending on the nature of the intelligence in the report. Since 2020-21 the Service has seen an increase in all underage sales reports of 154% with those relating to vaping increasing by 344% in the last year alone. Reports of underage vaping accounted for 68% of all underage sales intelligence reports in 2022-2023. Nationally they accounted for 55%.

	Underage Sales Intel Reports	Mentioning Vapes	% Vapes
2020 - 2021	15	0	0
2021 - 2022	54	18	33
2022 - 2023	137	80	58

3.3. The prevalence of vaping among young people is increasing. According to [the Action on Smoking and Health \(ASH\) survey on the use of e-cigarettes among young people in Great Britain](#) in March/April 2023:

- 20.5% of children had tried vaping, up from 15.8% in 2022 and 13.9% in 2020.
- There was significant growth in experimentation, trying once or twice, from 7.7% in 2022 to 11.6% in 2023.
- The increase in those currently vaping was smaller at 7.6% up from 6.9% in 2022.
- Since 2021 the proportion of children vaping has been greater than that of children currently smoking. 7.6% vaping compared with 3.6% smoking.
- The proportion of children who have never smoked but have tried vaping is 11.5%. 62% have tried vaping only once or twice.
- 70% of children currently vaping have also tried smoking.
- 4.6% of 11–15-year-old are current users rising to 15% for those aged 16-17 and 18% for those aged 18.
- The most common sources for children to obtain vapes are shops (48%), given to them (48%) and informal purchase (26%). Multiple options were allowed. Only 7.6% purchased vapes online.
- Disposable vapes were the most frequently used device at 62% up from 52% in 2022 and 7.7% in 2021.
- The most popular flavours are fruit (60%) and sweet or soft drinks (25%)

3.4. The Trading Standards Service undertakes age restricted sales test purchasing operations annually. The number of vaping devices included since the introduction of legislation banning their sale to under 18's is produced below with the number of attempts to purchase alcohol and tobacco included for comparison.

Vaping		Alcohol and Tobacco	
2015 – 2016	35 attempts 15 sales.	2015 - 2016	58 attempts 10 sales
2016 - 2017	None	2016 - 2017	64 attempts 14 sales
2017 - 2018	None	2017 - 2018	65 attempts 9

			sales
2018 - 2019	13 attempts 3 sales	2018 - 2019	61 attempts 14 sales
2020 - 2021	Covid no operations undertaken	2020 - 2021	Covid, no operations undertaken
2021 - 2022	2 attempts no sales	2021 - 2022	48 attempts 8 sales
2022 - 2023	45 attempts with 12 sales	2022 - 2023	18 attempts 2 sales.

3.5. The Trading Standards Service provides advice to all businesses who have sold to one of our underage volunteers. Those businesses have or will be retested to ensure that the advice is followed.

3.6. The Service will investigate if advice regarding age restricted sales has been provided previously and the business has failed to act. One prosecution was brought in respect of offences in 2022-23 that came before the courts on the 5th of June 2023. The Magistrates found that they had been given ample opportunity by Trading Standards to put a system in place to address underage sales and had failed to do so. They were fined £1200, ordered to pay a victim surcharge of £481 and costs of £1,621.81 making a total of £3,302.81. The maximum penalty for this offence is £2500, the reduction was applied in respect of the Defendant's early guilty plea. Other incidents are still under investigation.

3.7. Trading Standards Officers promote the "Challenge 25" approach. This recommends that anyone who looks to be under the age of 25 is asked for proof of age. The business is asked to record all instances where a sale is refused as evidence that they are complying with the scheme.

4. Education

4.1. The Trading Standards Service has employed a Tobacco Control Officer (Young People) for several years. The post is funded by Public Health through a ring-fenced Public Health grant for tobacco control. The Officer offers secondary schools and educational establishments covering those ages, a range of resources and workshops to help their students make better informed choices around the use of tobacco and vaping products.

4.2. A qualification, the level 1 Award in Smoking Awareness, is offered to education groups across Lincolnshire where there is an identified group of vulnerable young people and is free of charge.

4.3. This informative qualification is aimed at those in their impressionable teenage years, giving young people the facts, they need to make the decision that is best for their health with regards to smoking. The qualification content helps learners to understand:

- Why people start smoking,
- What is in tobacco products,
- The short, medium and long-term effects of smoking,

- The dangers of passive smoking,
- How to give up smoking and the benefits of stopping and
- The implications of the illegal trade in tobacco.

4.4. This is delivered over approximately 4 guided learning hours, with a multi-choice exam at the end, and is accredited as a Level 1 qualification.

4.5. Two Standalone workshops are offered 'Tobacco and young people Workshop' and 'Vaping: Have a BLAST? Workshop'. The workshops can be offered to schools/colleges/educational establishments where there is an identified group of vulnerable young people, who do not want to necessarily undertake a qualification but simply receive a workshop to help them make more informed decisions. This is again free of charge. Since 2010, The Award in Smoking Awareness has been offered to groups, with a target of around 100 learners sitting the exam each year.

4.6. Following the June half term in 2022, the requests from schools for intervention moved quickly away from requests for Tobacco workshops and the award course, to requests around vaping.

4.7. On 1st July 2022 a multi partners meeting between the Stay Safe Partnership coordinators, Tobacco Control, Fire and Rescue, We Are With You, and Lincolnshire Police was called to agree an education response to vaping requests from schools. It was agreed that this would be best delivered from an agreed single point for content, updates, and knowledge, and that this should be via the Tobacco Control Officer based on role, knowledge and experience.

4.8. The workshop on vaping offered 'Vaping: Have a BLAST?' has proven very popular, receiving multiple bookings and positive feedback. Much of the Tobacco Control Officer's work is now focussed on vaping.

4.9. The workshop is aimed at Key stage 3 learners and covers many elements of vaping and helps answer questions, and challenge myths. The BLAST acronym helps learners remember the topics covered:

- Are they **B** – Bad for you or worse than smoking?
- Are they **L** – Legal age to buy, the law, and dangers of illegal vapes,
- are they **A** – All the same?
- Are they **S** – Safe to use? And
- Are they **T** – Targeting young people? Could it be a Trendy gateway to smoking?

4.10. Based on the Tobacco Control Officers experience vaping is the most pressing issue in Lincolnshire schools, and tobacco use is hardly ever encountered. As a result, targets for smoking awareness learner numbers will need review, as schools are wishing to tackle vaping first and foremost.

4.11. For an example, from June – July 2022 when vaping workshops were first being requested in final half term of school year, and from January to March 2023, the start of new school year, there were over 50 workshops delivered on vaping. A trend that has continued and grown in the months following.

- 4.12. Requests are now being received for vaping education intervention at primary school age; something the Stay Safe Partnership does not deliver within its stay safe days of multi-agency workshops. The Tobacco Control Officer and partners will need to review if we can engage with learners of primary school age. The key message for this age group with regards to vaping, drugs and alcohol, is one of safer choices. We do not want to run the risk of exposing primary age children to knowledge of vapes such as types, size, ingredients, as this would increase awareness and possible appeal, when sessions on 'looking after your body', being 'safe in choices' would be better suited for teachers to address.
- 4.13. In the academic year 2022-2023 there were 61 tobacco related exclusions in Lincolnshire schools. 17 (28%) were due to vaping. However due to the way exclusions data is recorded the actual number is expected to be higher with some recorded as tobacco and some as drug related.
- 4.14. Schools have now been asked to add a comment if a tobacco related exclusion is due to vaping.
- 4.15. Public health will undertake a review of the support that the Tobacco Control Officer (Young People) provides to schools to determine if the level of provision is sufficient to meet the level of need.

5. Media

- 5.1. The Trading Standards Service has seen significant media interest in vaping. Officers from the Service have been interviewed by BBC Radio Lincolnshire on six occasions, once by BBC radio Humberside and twice by ITV Calendar. In 2022-23 30 articles in the local press mentioned illegal vapes when highlighting the work undertaken by Trading Standards.
- 5.2. When conducting any media interviews Trading Standards Officers are mindful of the role that vaping can play in smoking cessation. The Association of Directors of Public Health North East (ADPHNE) has issued a [Vaping \(Electronic Cigarettes\) Communications Guide](#) to assist in framing consistent messages around the use of vaping devices. The overarching key points are:
- Smoking remains the single largest cause of preventable illness and death in England every year.
 - It is far less risky to vape than it is to smoke.
 - Nicotine vaping is an effective and popular tool to aid smoking cessation.
 - Vaping is not for children.
 - Vaping is not risk free and those who don't smoke should not vape.
- 5.3. The ADPHNE guidance promotes the following messages to use:
- Vaping poses a small fraction of the risks of smoking. Most of the health harms from tobacco come from the tar rather than the nicotine. The toxic substances which cause the main smoking-related diseases are not present in e-cigarettes or found in much lower levels.

- Vaping is a popular and effective tool for quitting smoking. E-cigarettes are now the most commonly used quitting aid in the UK and the Government has announced plans to encourage 1 million smokers to swap cigarettes for vapes.
- Vaping is a fraction of the risk of smoking but is not risk free – it is not recommended for non-smokers and young people.
- In the UK e-cigarettes are tightly regulated for safety and quality. Regulations cover tank size, nicotine strength, packaging, ingredients, labelling, and notification to the MHRA. Some restrictions on promotion and advertising are also in place.
- It is important to encourage smokers to switch while also stopping children from vaping.

5.4. The ADPHNE guidance advises that the following should be avoided:

- Vapes are unsafe/harmful/dangerous. Care should be taken to ensure smokers are not deterred from switching to less harmful forms of nicotine.
- All young people are vaping.
- Vaping is a gateway to smoking.
- Vaping is dangerous for bystanders.

5.5. The guidance also advises caution when:

- referring to vapes seized as potentially unsafe or dangerous.
- Suggesting we don't know enough about the long-term health effects of vaping.
- Suggesting there is a need to clamp down on vaping.
- Suggesting vapes are a fire risk.
- Suggesting flavours are all aimed at children.

5.6. These messages in isolation can be misleading without context. For example:

- the vapes seized by Lincolnshire Trading Standards are noncompliant as the tank capacity is too big and they are labelled incorrectly. These in isolation would not render the device unsafe.
- Flavoured vapes can be marketed in packaging that is attractive to children. However, they are also popular amongst adults who vapes and those using them to help them to quit.

5.7. Trading Standards Officers who are conducting interviews with the media are briefed to avoid being drawn into Public Health related questions where possible as they are not experts in that area. Where it is unavoidable our messaging is:

- If you smoke and want to quit, then vapes are an effective aid. Advice can be sought from the smoking cessation service One You Lincolnshire.
- If you don't smoke, then you should not vape.
- It is illegal to sell vapes to children and young people aged under 18.

5.8. The Trading Standards Service has responded to the Governments recent Youth Vaping – Call for Evidence providing input into the responses submitted by Public Health in Lincolnshire and the Trading Standards East Midlands Vapes working group.

6. Conclusion

- 6.1. As the enforcing body Lincolnshire trading Standards have an important part to play in tackling the availability of illegal disposable vapes.
- 6.2. As part of their response Trading Standards needs to continue to educate businesses to help them identify noncompliant products and ensure they have systems in place to minimise the risk of young people purchasing these devices.
- 6.3. The Service must continue to work with educational establishments to ensure that young people receive appropriate messaging that allows them to make informed healthy lifestyle choices. The messaging must continue to be reviewed and developed with input from partners, in particular Public Health.
- 6.4. Trading Standards needs to continue to inspect premises and remove noncompliant products from the market. The inspections undertaken should be based on intelligence to ensure resources are targeted appropriately.
- 6.5. The Service should continue with a programme of age restricted sales test purchasing with the aim of reducing the level of noncompliance to a level that it is comparable with alcohol and tobacco.
- 6.6. When taking enforcement action Trading Standards must continue to consider all of the options available to them in order to disrupt illegal sales including the use of temporary closure orders, prosecution and criminal behaviour orders.
- 6.7. Trading Standards should ensure that any media undertaken to highlight their work in this area is compatible with Public Health messaging and promotes the One You Lincolnshire Smoking Cessation Service.

3. Consultation

a) Risks and Impact Analysis

The risk analysis and impact assessment will be carried out on 17th July 2023.

4. Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Chattered Trading Standards Institute Press Release	www.tradingstandards.uk/news-policy/news-room/2022/ctsi-voices-concerns-around-possible-links-between-underage-vaping-and-risks-of-child-exploitation/
ASH Use of e-cigarettes among young people in Great Britain	https://ash.org.uk/resources/view/use-of-e-cigarettes-among-young-people-in-great-britain

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