



Illicit tobacco: Piecing it together

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There's no single answer to solving the UK's significant and growing illicit tobacco trade. Gaelle Walker puzzles it out.

Vacuum cleaners, mattresses, wooden planks, tea, baby toys and, just last month, glass panels. Readers of *Convenience Store* will be all too familiar with the lengths that today's criminal gangs will go to smuggle tobacco onto UK shores.

And when you consider that just one lorry load of illicit cigarettes can represent more than £1.5m in profit to the villains behind it, it's not that difficult to understand why. Latest annualised data from the tobacco industry's own MS Intelligence Empty Pack Survey (EPS) revealed that 21% of cigarettes consumed in the UK in 2012 were non-UK duty paid (NUKDP), up from 16.6% in 2011. The survey of discarded cigarette packets, carried out twice a year in 105 of the UK's largest cities, also revealed that levels rose in virtually every region in 2012.

UK sales of illicit Roll Your Own tobacco (RYO) are thought to be much higher, equivalent to more than 50% of the market, and intelligence from JTI suggests that packs of counterfeit RYO are now being assembled on UK shores.

The UK government's own data is also expected to show an increase when HM Revenue and Customs (HMRC) publishes its next Measuring Tax Gaps report for 2011/12 this autumn.

At the last count the UK government was believed to be losing more than £3bn a year in unpaid tax to the dark market - a titanic sum at such a testing economic time.

The government isn't the only loser, though. The damaging impact is being felt increasingly keenly by the UK's fraternity of responsible retailers, and the communities that they serve. According to exclusive figures from a new survey conducted by HIM on behalf of Convenience Store, 43% of independent retailers said illicit tobacco was having a negative impact on their business - losing them legitimate sales, preventing them from taking on new staff, and investing in their stores.

In fact, new data from Imperial Tobacco and MS Intelligence estimates that retailers are now losing up to 5,563 tobacco purchases a year - or 106 a week - to the illicit trade, equivalent to more than £40,000.

More than a quarter of retailers also said that illicit traders were damaging their local communities with their antisocial activities and sales to minors. Illegal street sellers don't adhere to No ID No Sale policies, and recent research conducted for Trading Standards North West into alcohol and tobacco use among 14-year-olds found that 50% of respondents had bought cigarettes with foreign health warnings, while 28% claimed to have bought counterfeit cigarettes.

It's important to note at this point that the criminal fraternity is increasingly creating counterfeit UK brands with foreign health warnings and tax stamps, in a bid to mislead smokers into thinking that they are smuggled legitimate brands rather than counterfeit.

One retailer all too familiar with the evils of the illicit tobacco trade is Debbie Corris of Jim Ingram in Whitstable, Kent. Debbie watched as her tobacco sales "fell off a cliff" for two weeks in late January, when she believes a large haul of illicit tobacco arrived in the area. "It was obvious people were suddenly getting their tobacco from the black market as they were still coming in for lighters and accessories such as rolling papers," she explains.

Drivers

The illicit trade is a complex and multifaceted phenomenon, driven by a wide gamut of socio-economic, regulatory and penal conditions. High taxations, economic pressures and soft penalties all play a part. As such there is an equally broad array of measures which could help to stub it out.

Sustainable taxation

The high prices of legitimate products create incentives for counterfeiters and smugglers.

"Those who consider this issue objectively will recognise that a high tax policy drives smuggling and cross-border shopping," says Jaine Chisholm Caunt, secretary general of the Tobacco Manufacturers' Association (TMA).

Former 'smuggling tsar' Martin Taylor told the government exactly this in his 1999 Taylor review. "The principal cause of the smuggling is the high level of duty in the UK," Taylor told then Chancellor of the Exchequer Gordon Brown.

Despite the warnings, the UK still has the second highest tobacco excise rate in the EU, with tax accounting for as much as 90% of the price of many brands.

The latest hike announced in the March Budget equated to a rise of 5.3%, a move which JTI's head of

communications Jeremy Blackburn says will “further encourage lawbreakers, both large and small”. Not to mention the fact that it will create an even larger temptation for the UK’s cash-strapped adult smokers who, unable to afford the soaring legitimate prices, turn to the illicit trade.

Costcutter retailer Sat Deo in Wath, Rotherham, believes a number of his customers are among them. “We’ve lost £3,000 a week in tobacco sales in recent years. I’d say about £500 of that is from people giving up smoking, and the rest is to the illicit trade because of tobacco price rises,” he adds.

Blackburn concludes: “We urge the Chancellor to abandon the duty escalator for tobacco and introduce inflation-only duty increases as a maximum.”

Working together

You might not think it when you look at the street seller peddling his black market wares in the local market, street corner, pub or café, but the production and distribution of illicit tobacco products is a large-scale enterprise, often involving internationally structured criminal organisations.

As such, it needs to be tackled with effective and co-ordinated action throughout the supply chain at global, European, and national, regional and local level, where recent initiatives have proved successful.

Partnerships involving HMRC, police, Trading Standards, health professionals and the retail trade can be really effective, not only in disrupting the supply, but also in reducing public demand, as has been demonstrated by the ongoing North of England Tackling Illicit Tobacco for Better Health programme. Launched in 2009, the programme was the first in the UK to develop a comprehensive approach to tackling the demand for and the supply of illicit tobacco in communities through partnerships between health and enforcement authorities.

Intelligence generation and sharing between these bodies was increased and improved, as was enforcement. Social marketing campaigns, many of which were aimed at parents and focused on the ease with which their children could access illicit tobacco, were created. In the two years since launch, an independent evaluation of the programme by the UK Centre for Tobacco Control found that the volume of illegal tobacco bought in the North East had gone down by 39%. Importantly, willingness to report illicit trading had also increased.

It is concrete evidence of the power a little joined-up thinking can have, particularly at local level where its impact is being so keenly felt by independent traders.

Closer relationships and intelligence sharing between convenience store retailers and trading standards officers, police, local MPs and tobacco sales representatives can all help.

There are challenges, of course: funding, for one. The UK government decided to protect the budgets of HMRC and UK Border Agency (UKBA) in its last public spending review - a move which all parties agree must be replicated this year. The All Party Parliamentary Group on Smoking and Health's recent inquiry into the illicit trade called for just this, and for the government to "consider improving central funding for regional partnerships and ensuring that local government has sufficient funds to maintain effective enforcement work by trading standards officers".

Increased retailer reporting

Despite 14% of c-store retailers having personally witnessed illicit tobacco being sold in their area, C-Store's research shows that more than half have never reported their knowledge to the authorities. Their reasons make for equally eye-opening reading. When asked why they had not reported their knowledge, 100% of retailer respondents said they "didn't believe it would make any difference" - a damaging misconception that is allowing the illicit trade's roots to sink ever deeper within communities.

Retailers' intelligence, no matter how small, is of significant value to the authorities, HMRC spokesman Bob Gaiger says. "We would strongly encourage retailers who are offered illicit goods, or are aware of goods they suspect of being illicit, to contact the Customs Hotline straight away. Their information is of extreme importance to us and ensures we can be effective in our role to deter and disrupt this serious form of criminality which is led by organised crime gangs both in the UK and overseas," he adds.

Intelligence, explains Imperial Tobacco's anti-illicit trade manager Peter Nelson, is like a jigsaw. Each piece, no matter how small, fits in somewhere and helps the authorities to build a bigger picture. "However minor you think the information is, you should still report it as it could be that missing piece that they need to complete the puzzle," he says.

Better communication of successful raids and seizures would certainly help to boost retailers' confidence in the importance of their intelligence - and illustrate that the issue is being taken seriously at local level. According to our survey, 70% of retailers do not believe it is.

It would also act as a deterrent to illicit traders, including the small number of c-store retailers known to be selling cheap black market stock from under the counter.

According to our survey, 16% of convenience retailers had been approached by criminals to sell illicit tobacco in their stores. Debbie Corris is one. "A few months ago a man came in with a large plastic bag filled with a popular branded rolling tobacco and asked me if I wanted to buy it. It was obviously smuggled, and quite possibly counterfeit, as it had Spanish health warnings on it. He was so brazen, he even emptied the bag out onto the

counter to show me. I said no straight away, but rather than go away he stood on the pavement outside my store offering it to passers-by," she says.

Not all retailers say no. "Those retailers who sell illicit products risk tarring the whole sector with the same brush," Blackburn adds. "I would urge all retailers to report those whom they know to be selling illicit tobacco immediately. Do not let a perception that independent retailers sell illicit products grow," he asserts.

The fear of repercussions, and that identities might be revealed, are key barriers to retailers reporting the illicit trade, but they shouldn't be.

"Law enforcement has developed systems to manage intelligence with firewalls to separate the value of the information from the source of it. These systems are designed to protect the sources of intelligence," Nelson explains.

So who should retailers report their concerns to? The confidential Customs Hotline on 0800 59 5000 is the most appropriate and effective medium. However, according to our survey, only 33% of retailers who had taken the time to report it had called this number. At 50%, most had called the police, for whom illicit trade is not a central priority, while 17% had informed their local trading standards officers. However, those retailers who still harbour fears of reporting to the authorities can also speak to the Tobacco Retailers Alliance, which will make reports on their behalf via the Retailers Against Smuggling campaign. Calls can be made to 0800 008282.

Retailers can also speak to their tobacco sales representatives about their concerns. Imperial has recently invested in a new educational and awareness programme for their staff, focusing on anti-illicit trade training and have produced 'presenter' materials to improve employees' and retailers' knowledge of the issue.

Tougher penalties

Punishments need to fit crimes. Yet when it comes to the penalties applicable to those engaged in the illicit trade, it appears to be a pretty poor match. The incentives far outweigh the risks.

Let's just reiterate: just one lorry load of illicit cigarettes can represent more than £1.5m in profit to the criminals behind it, money which has been linked to funding seriously noxious illegal activities including people trafficking and terrorism. Then there's the point that it's money which has been diverted from government coffers and the tills of legitimate retailers, at a time that neither can afford.

The maximum amount of jail time for those convicted of this pernicious crime? No more than 10 years for infringements of the Trade Marks Act 1994, and that's if they get caught and tried. In 2010/11, only 133 people were convicted for tobacco-related fraud, according to JTI.

Steep fines can also be handed down and assets seized, but even these function only as a small deterrent when the gigantic profits to be had are considered.

The penalties for individuals prosecuted for tax evasion under the Customs and Excise Management Act 1979 are lower, at up to seven years in prison, plus fines.

Retailers and others who sell tobacco without an authentic UK-duty paid mark can also theoretically be fined up to £5,000, have their vehicles seized and be prohibited from the sale of tobacco products for up to six months.

HMRC can also formally object to the renewal of a retailers' alcohol licence, and they can also lose their Lottery terminal, although according to a Camelot spokeswoman this has only ever happened "a handful" of times in its 18-year history, and not all of cases have been to do with illicit tobacco.

The truth is, as the following reports and arguments suggest, that the full weight of the law is only rarely brought to bear. Where penalties are imposed, sentences tend to be quite a bit lower than the theoretical maximum. Transcrime's Factbook on the Illicit Trade in Tobacco Product says. "On average, penalties range from below 12 months of suspended imprisonment, to three to five years on larger cases. These cases show that there is some distance between the 'law in the books' and 'the law-in action'," the report, compiled by the independent academic research centre Transcrime, continues.

Just this month, an Essex businessman who hid more than 279,000 smuggled cigarettes under hundreds of pairs of false eyelashes in an attempt to avoid paying more than £63,000 in duty was sentenced to just nine months in prison, suspended for 18 months.

When it comes to dealing with the lowest echelons of the illicit trade - the unscrupulous retailers who sell their black market wares from under the counter, or the black bag-clad street sellers - it's far more likely that the suspect goods will simply be seized and a caution handed out, says Will O'Reilly, a former Scotland Yard Detective Chief Inspector who now conducts research on behalf of Philip Morris International.

"Prosecuting retailers and street sellers for illicit trade crimes is simply too challenging," he says. "They could be prosecuted for offences under the Trade Mark Act, however, to do this the authorities would first have to prove that the product was counterfeit by sending it off to the manufacturer for analysis. It's time consuming and costly, so it's far more likely they'll take goods and give out a caution instead," he explains.

It is this that prompted Herefordshire MP Jesse Norman to spark a fiery debate in the House of Commons last summer, after he was made aware of the deepening problem of illicit tobacco sales within his constituency.

"The problem is easily stated," he told peers. "A number of shops in my constituency persistently sell illegal tobacco under the counter. A regular pattern is emerging: the shops are raided, goods are seized and fines imposed, and so it goes on. The actions make a mockery of the law and our enforcement agencies, and they need to be stopped. Police and HMRC need to be able to close down premises for significant periods when there have been repeated violations of the law. That may require new law-making."

Changing consumer perceptions

News stories and campaigns which highlights the true insidious nature of the illicit trade could also help to dispel consumer perception of it as a 'Robin Hood-style crime', and in turn help to reduce sales and demand, JTI's Blackburn says.

A good example of just how effective consumer information campaigns can be is the Don't Let Them Make A

Packet campaign currently being run by the Lancashire Evening Post. The campaign is designed to “lift the lid” on how the county’s criminal underworld is profiting from the sale of illicit tobacco. According to trading standards chiefs, a third more people have already come forward with information about illicit tobacco sales since the campaign started last autumn.

Tobacco registration

Already introduced in Scotland, the introduction of a tobacco registration scheme across the rest of the UK could, some believe, help to deter some illicit trade sales. While many members of the retail trade are staunchly against any further regulation, others are of the opinion that a simple registration scheme for those wishing to sell tobacco products, and an offence for selling tobacco while unregistered, could help to reduce the volume of illicit tobacco currently being sold through car boot sales, markets and on street corners.

The All Party Parliamentary Group on Smoking and Health is certainly of this opinion, and recommends the introduction of such a scheme in its inquiry into tackling the illicit trade.

The Scottish scheme, which allowed retailers to register online or via a manual form, was introduced with “no cost to the retail trade,” Scottish Grocers Federation chief executive John Drummond explains. And there have been many benefits. “It allows Trading Standards to check the register and take appropriate action against traders who sell cigarettes, but are not registered. This has applied to market traders selling illicit product, resulting in severe fines.” •