A review of business compliance with the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015

Rapid Review of business compliance conducted by Trading Standards Services in England

Jane MacGregor
MacGregor Consulting Limited for the Chartered Trading Standards Institute
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Summary and Key Findings

- The Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015 came into force for all retailers 1st October 2015. The regulations made it illegal to sell products such as E cigarettes and E liquids that contain nicotine to young people under the age of 18 years
- Data from the National Tobacco Control survey 2018-19 suggested that 4 in 10 retailers, when tested, illegally sold products to young persons under the age of 18 years. This coordinated testing has been carried out at the request of the Department of Health and Social Care [DHSC]
- A total of 453 compliance tests using young people under the age of 18 years were conducted at retail business premises in England between October and December 2019. The tests were carried out by Trading Standards Services. This operation was supported by the DHSC and designed to assess compliance with the Regulations. The operation was managed by the Chartered Trading Standards Institute [CTSI]
- Illegal sales were made on 133 occasions from a wide variety of business premises including: markets, mobile phone shops, specialist E-cigarette suppliers and discount stores. This represents an overall illegal sale rate of 29% ; the rate varied between regions from a high of 52% to a low of 14%
- Where an illegal sale was made, the local Trading Standards Service determined the appropriate response which ranged from advice and guidance through to interview and investigation of the breach of the Regulations.

1. Introduction

In 2016, at the request of the DHSC, the CTSI coordinated compliance monitoring of businesses selling nicotine inhaling products. The monitoring was carried out by local trading standards services in England. Specifically, the monitoring focused on the age of sale requirement for nicotine inhaling products. Using young people aged under 18 years a number of test purchases were attempted to assess compliance or otherwise. The text box below provides an overview of the testing [1].

2016
A total of 634 compliance tests using young people under the age of 18 years were conducted at retail business premises in England between January and March 2016.

Compliance with the age of sale aspect of these Regulations was found to be disappointingly low, with illegal sales made on 246 occasions from a wide variety of business premises including: Independent pharmacies, specialist E cigarette suppliers, discount stores and markets.

This represents an overall non-compliance rate of 39%. The range of the

[1] Updated NIPS2 report published by CTSI November 2016 , available online at : https://www.tradingstandards.uk/media/documents/news--policy/tobacco-control/final-nips2-report.pdf [accessed 11 February 2020]

The most recent data arising from the tobacco control survey 2018-19[2] suggests that the illegal sale rate of these products to young people has risen albeit slightly to 40%.

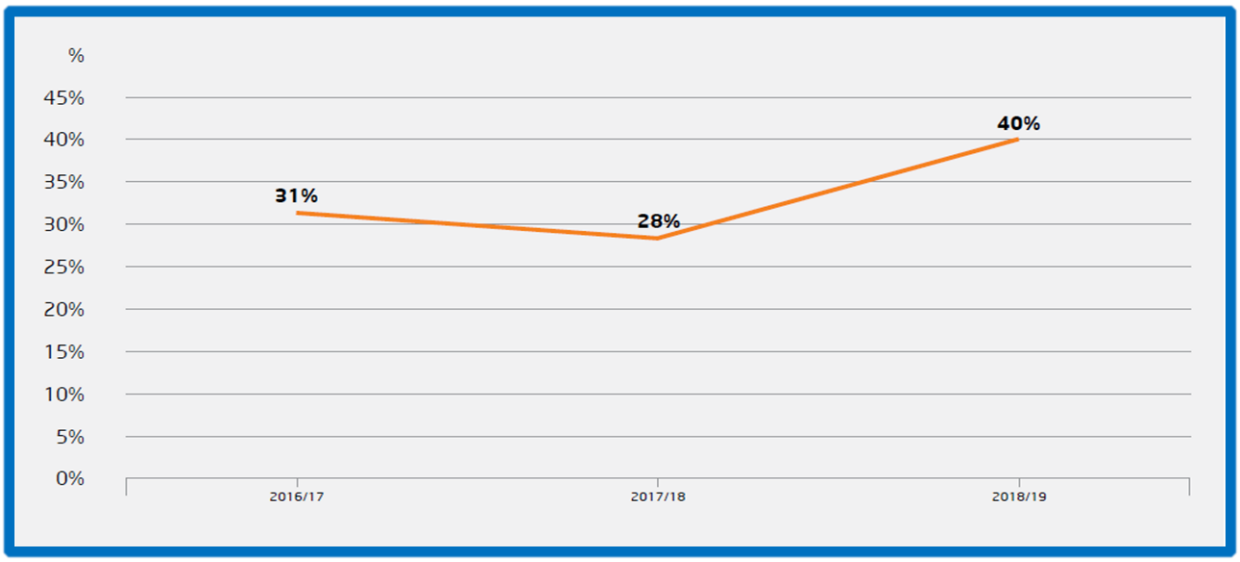


Chart 1: Percentage of illegal sales of nicotine inhaling products 2016 – 2019

Concerns regarding the access to nicotine containing products should however be considered in light of data regarding actual usage of such by young people. The Smoking Drinking and Drug Use among young people in England report (2019)[3] found that whilst 90% of young people aged 11- 15 yrs were aware of electronic cigarettes, only 6% of respondents were current users and only 2% were regular users of the products. It is noted however that the survey is of young people aged 11-15 yrs and does not collect data from those aged 16-17 yrs.

1.1 Legislation & requirements

The Children and Families Act 2014[4] made provision in Section 92 for making Regulations to prohibit the sale of nicotine products to young persons under the age of 18 years. The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing)

[2] Tobacco Control Survey 2018-18 published by CTSI October 2019 , available online at: https://www.tradingstandards.uk/media/documents/news--policy/tobacco-control/ctsi-tobacco-report-201819-final-version.pdf [accessed 11 February 2020]

[3] Smoking Drinking and Drug Use among young people in England 2018 , published by NHS Digital , available online at : https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2018 [accessed 11 February 2020]

[4] The Children and Families Act 2014 available online at : http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted [accessed 10 March 2020]

Regulations 2015[5] entered into force on the 1st October 2015. These regulations restrict the age of sale of such products and, in common with the restriction placed on tobacco products, the legal age of sale is 18 years.

It is an offence to sell a nicotine inhaling product to a young person under the age of a18 years; with certain exceptions for medicines and medical devices. The penalty for this offence is a fine of up to £2500.

1.2 Definition of Nicotine Inhaling Products

The Regulations define a nicotine inhaling product as:

> *'a device which is 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 regulations cover nicotine inhaling devices such as e-cigarettes, certain component parts and e-liquids that contain nicotine.

2. Purpose

The purpose of this review is to assess levels of compliance by businesses with the Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015 with specific reference to the age of sale provision and, where possible, to compare the results with those arising out of the previous review of compliance carried out by Trading Standards in 2016.

The findings of this review do not correspond in any way to product use by young people, the review seeks to capture only compliance with the regulations.

3. Scope

This was designed to be a rapid review of business compliance and has been carried out in a twelve-week period between October and December 2019. The review has been carried out by Trading Standards Services [TSS] across a number of authorities in England. A mix of business premises have been tested using young persons under the age of 18 years in test purchase operations. A total of 453 compliance tests have been made. The data arising will be included in the National Tobacco Control survey for 2019-20.

[5] The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 available online at : https://www.legislation.gov.uk/uksi/2015/895/contents/made [accessed on line 10 March 2020]

4. Method

For the purposes of the coordination of trading standards matters there are nine regions in England. Each region was invited to conduct up to 50 supported compliance tests at business premises (of their choice) within their region. Each test involved an under 18 year old volunteer tasked with the attempt to purchase a nicotine inhaling product as instructed by Trading Standards.

Standard data was collected for each test as required by the review. Participants were also asked to photograph purchased items and to provide a set of the images to the Chartered Trading Standards Institute [CTSI].

Each region sent the collated results to the CTSI for analysis and reporting. Guidance for the completion of the visit was provided in advance to the TSS taking part in the study.

5. Findings & Results

A total of 453 test were carried out across England using young volunteers. The number of tests undertaken varied between 33 in the Yorkshire and Humber Region and 79 in the North West region. The allocation was determined by the capacity of the authorities in the region to undertake the work in the time frame available and a desire to ensure a spread of visits across the country.

The following tables and charts provide details of the results of this review of compliance.

5.1 Tests and illegal sales

Of the 453 tests carried out across England, 133 resulted in an illegal sale of a nicotine inhaling product being made to a young person under the age of 18 years.

This represents an illegal sale rate of 29% overall although this rate does vary by region.

2016

This compares to an overall illegal sale rate of 39% when coordinated testing was carried out previously

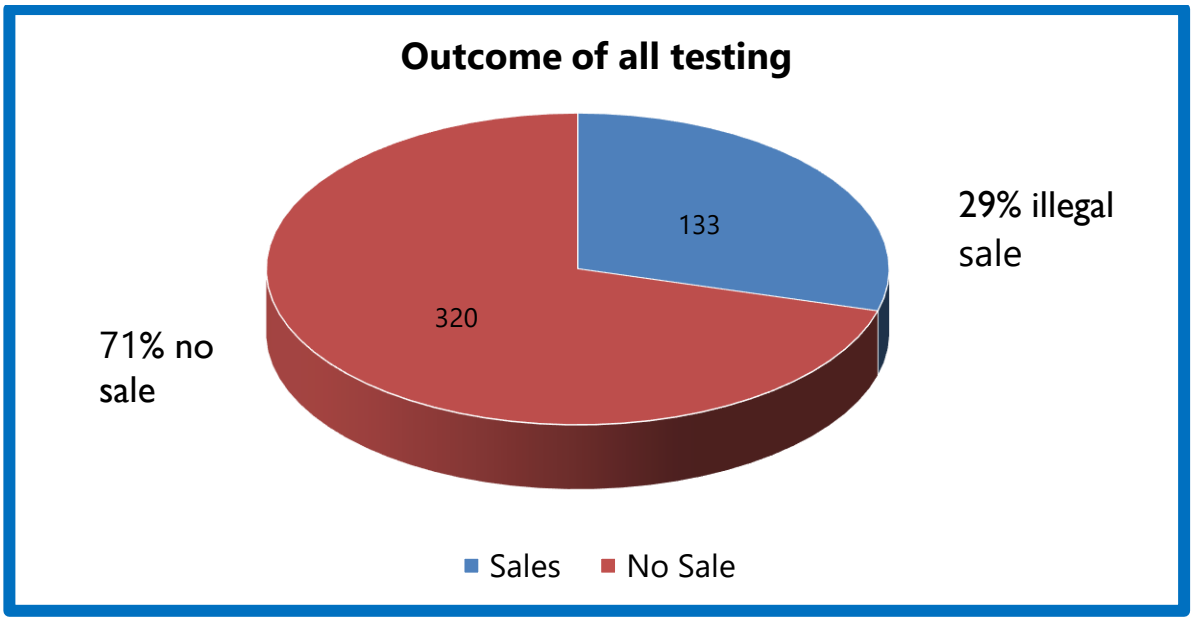


Chart 2: Number of refusals [no sale] and illegal sales made during the review

The largest number of compliance visits were carried out in the North West region; this region returned an illegal sale rate of 33 %. The highest illegal sale rate was returned by the CENTSA region with 52%, the lowest illegal sale rate was returned by the London region at 14%.

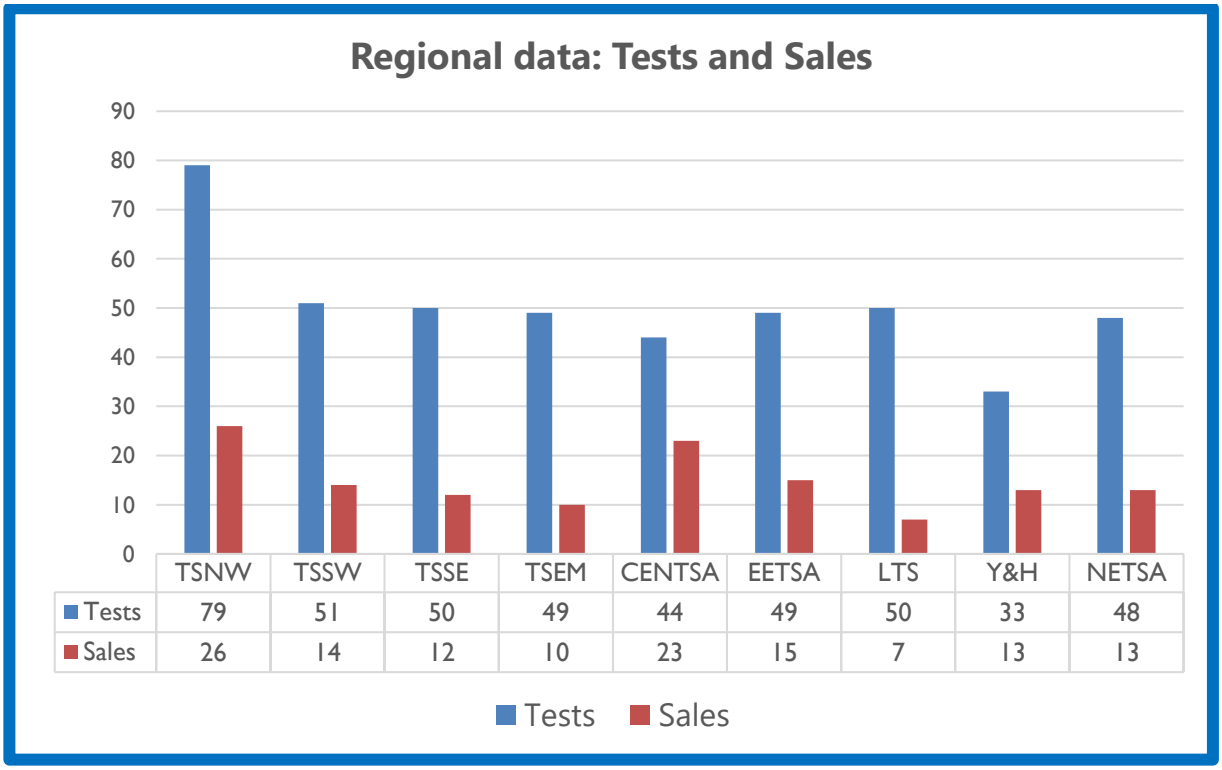


Chart 3: Compliance monitoring and outcomes by region

Respondents were asked to describe their visit as either a new visit i.e. a first visit / test of a premises or, as a revisit, indicating there has been previous activity in relation to underage sales.

436 respondents gave an indication, with 117 visits being "re visits" and 319 being classified as new visits. The outcomes of testing are given in the chart below.

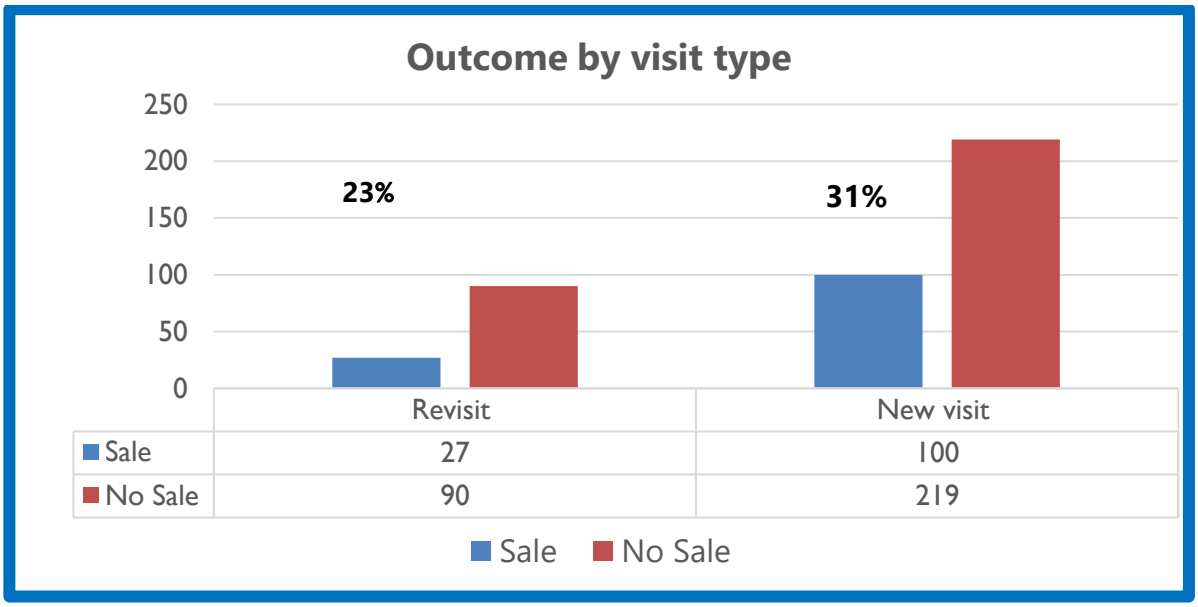
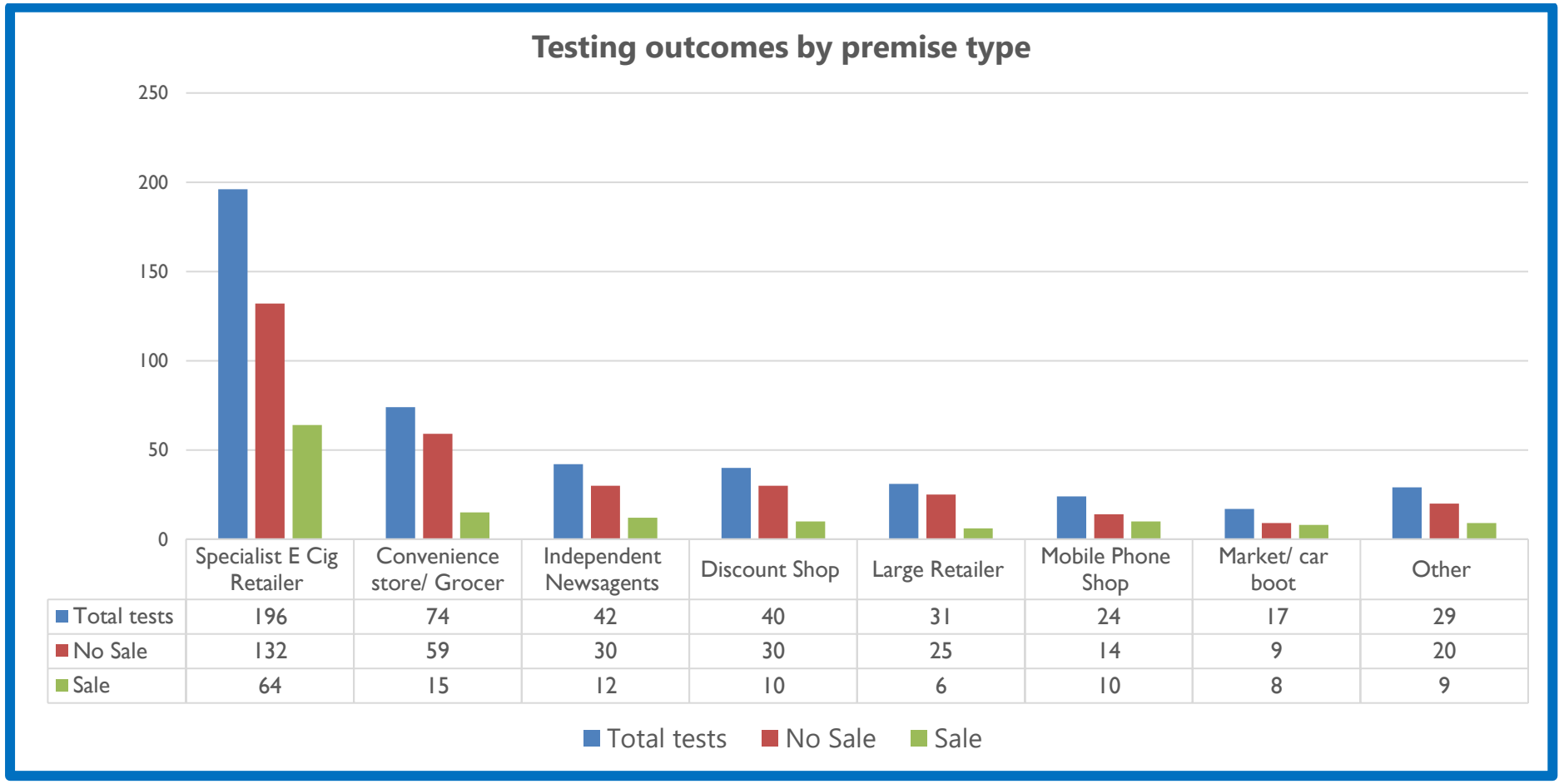


Chart 4: Outcome by visit type

23% of revisits resulted in an illegal sale being made to a young person under 18 years, whist 31% of new tests resulted in an illegal sale.

5.2 Compliance tests by premise type & region

Each region undertook compliance testing across a range of business premise types; the selection of businesses to visit was made by the participating TSS. The greatest number of compliance tests were made at specialist E cigarette premises [196], with the fewest visits made to National newsagents and pharmacies [2and 6 visits respectively and included in the "other "premises category].



	Specialist E Cig Retailer	Convenience store/ Grocer	Independent Newsagents	Discount Shop	Large Retailer	Mobile Phone Shop	Market/ car boot	Other
Total tests	196	74	42	40	31	24	17	29
No Sale	132	59	30	30	25	14	9	20
Sale	64	15	12	10	6	10	8	9

Chart 5: Compliance testing by business type plus outcomes

Premise type	Percentage of test purchase attempts that resulted in an illegal sale to a young person under the age of 18 years
Market stall /car boot sale	47%
Mobile Phone shop	42%
Specialist E cigarette supplier	33%
Independent newsagent	28%
Discount store	25%
Convenience store / grocer	20%
Other	31%

Table 1: Percentage of tests that resulted in an illegal sale by business type

The highest proportion of illegal sales were made at markets and car boot sales with 47% of tests resulting in a sale to the young volunteer, high levels of sales were also found at mobile phone shops. A third of tests resulted in sale from premises described as "other". These are broken down as follows:

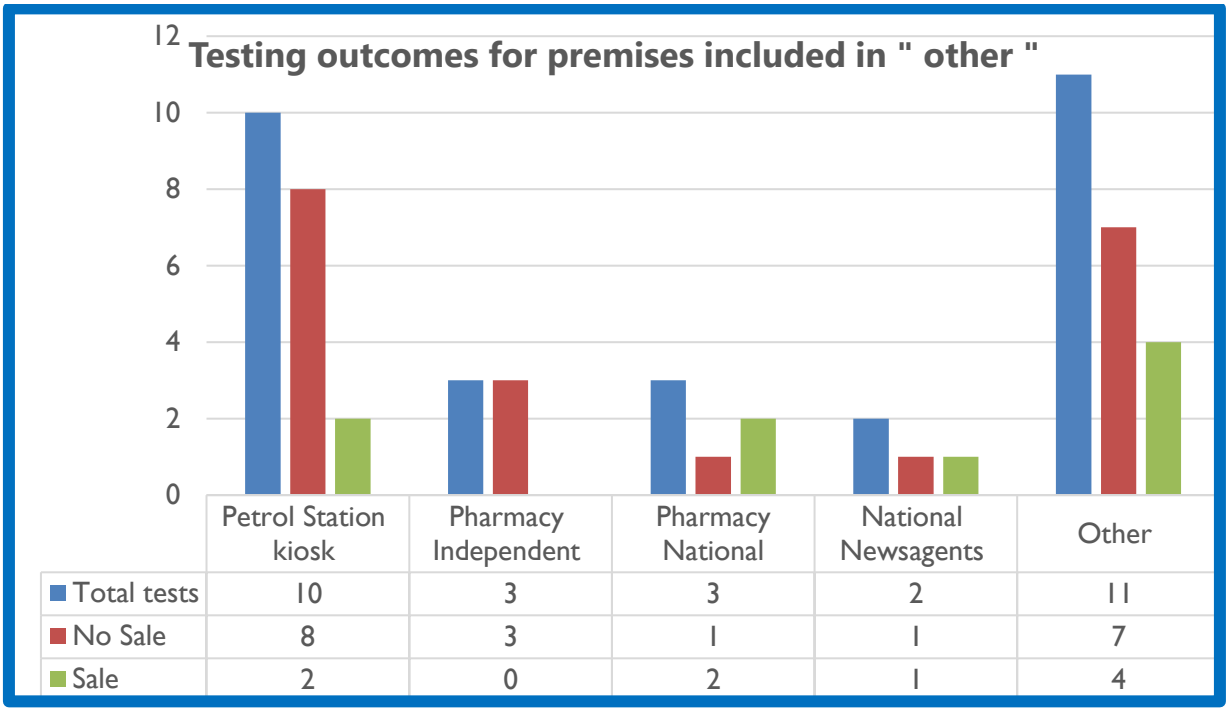


Chart 6: Testing outcomes for premises included in "other" category

2016

The outcomes of testing in 2016 found that the highest proportion of illegal sales were made at markets and car boot sales with 68% of tests resulting in a sale to the young volunteer [similar to 2019]. In contrast, in 2016 fewest sales were made by mobile phone stores and convenience stores – this is not replicated in 2019 testing.

5.4 Profile of test purchase volunteers & outcomes

A range of young people were recruited to work with Trading Standards Services in this review of compliance in terms of their age and gender. The age range extended between fifteen and seventeen years (the research protocol requested that young people preferably aged 16-17 participate) with 213 visits undertaken by male volunteers and 240 by females.

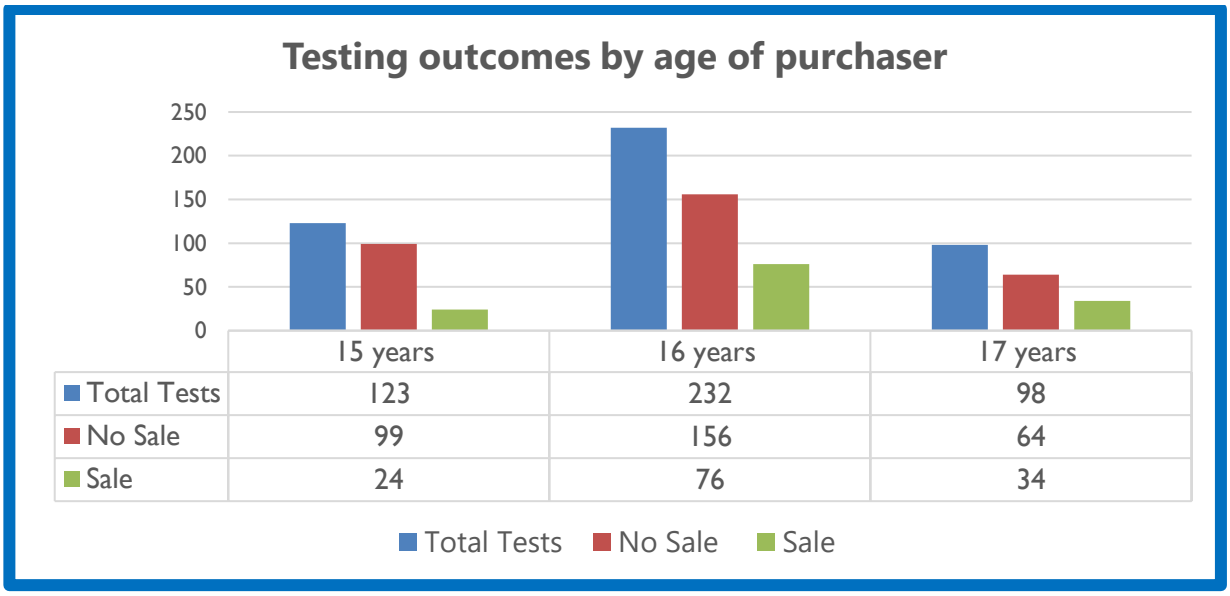


Chart 7: Compliance testing and outcomes by age of purchaser

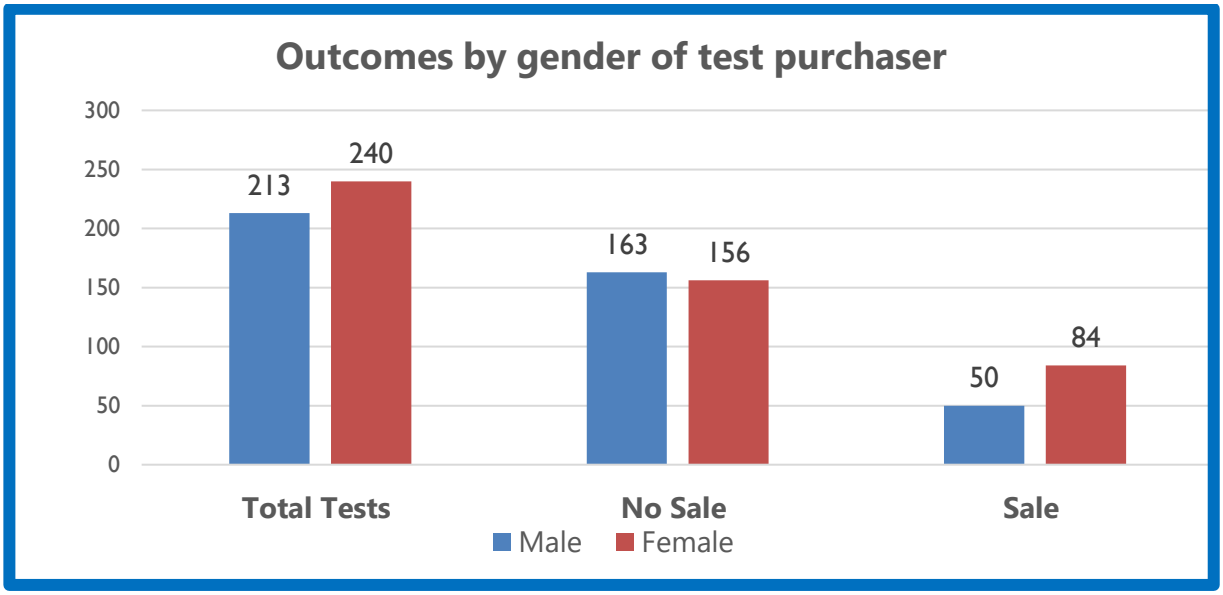


Chart 8: Compliance testing and outcomes by gender of test purchaser

There was a difference between testing outcomes of tests made between male and female test purchasers with 23% of male and 35% of female attempts to purchase resulting in a sale of nicotine inhaling products whilst under the age of 18 years.

The age of the purchaser revealed differences, with 19% of tests carried out by young persons of 15 years resulting in a sale and 35% of tests carried out by young people of 17 years resulting in a sale or non-compliance. This is not unexpected. It was noted that of the 98 purchasers that were aged 17 years, 58 were female and 40 males. This might account for the higher overall sale rate reported for females than males.

2016
In 2016, there was no significant difference between testing outcomes of tests made between male and female test purchasers with 38% of male and 39% of female test purchasers being supplied with nicotine inhaling products whilst under the age of 18 years.
The age of the purchaser revealed some differences, with 33% of tests carried out by 14 years olds resulting in a non-compliance, and 48% of tests carried out by 17year olds resulting in similar non-compliance. This is replicated in 2019 testing with sales to the older purchasers being made more frequently.

5.5 Products purchased during compliance testing

All but two of the products purchased by young test purchasers were E liquids containing nicotine; the other two were described as re chargeable E Cigarettes. It is suggested that this is primarily a feature of price. Each product is purchased at a cost to the Trading Standards Service and thus in most cases the least expensive product was selected. See Annex 1.

5.6 Other matters arising from this review

There were other matters recorded as part of this review of compliance brief details of which are provided in the sections below:

5.6.1 Requests for Proof of Age

Respondents were asked to note whether the business actively requested production of proof of age from the young person when attempting to purchase the products. 66% of businesses tested made this request with 43% not making this simple but effective check.

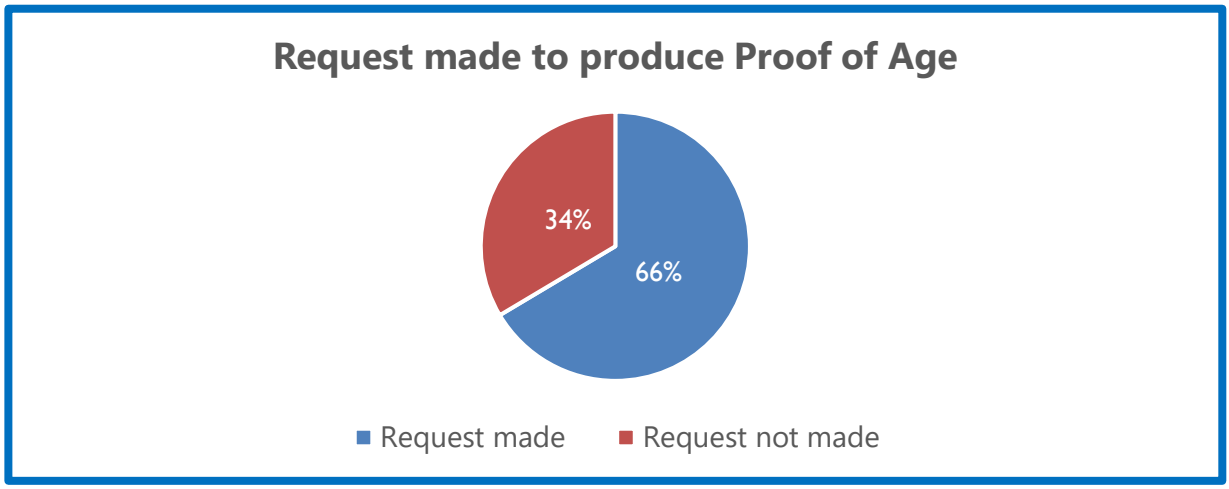


Chart 9: Request made by business for young person to produce Proof of Age

5.6.2 Proposed Action where an illegal sale has been made

Respondents were asked to indicate where possible what the proposed course of action would be following the illegal sale. Where indicated, the majority proposed a warning or advisory letter often with a proposed retest of the premises.

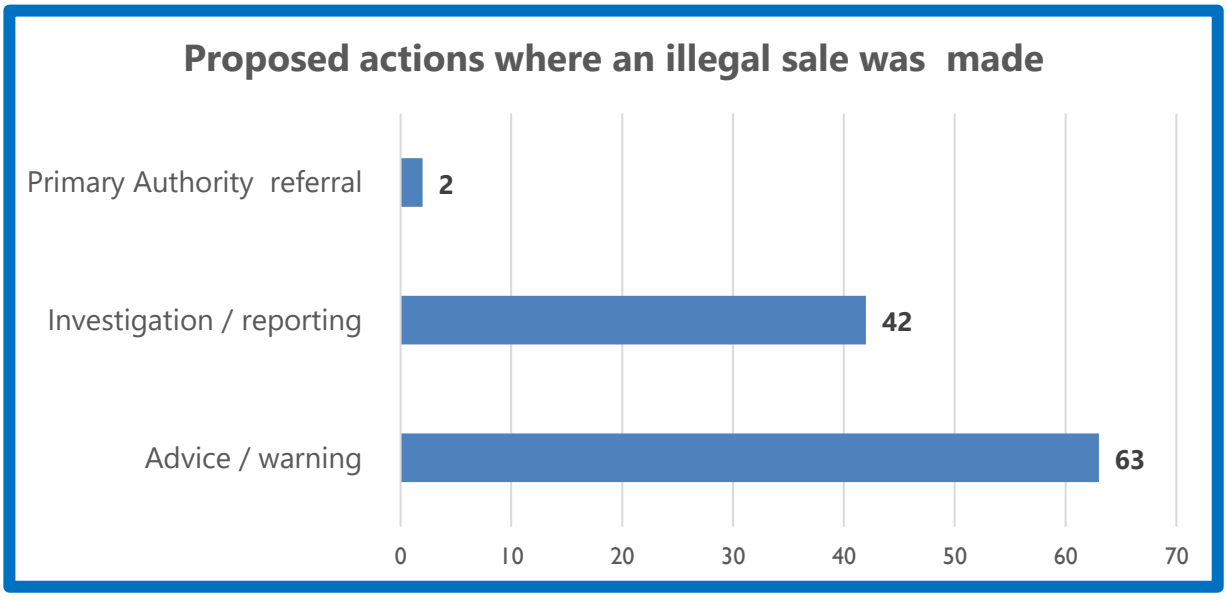


Chart 10: Proposed actions where an illegal sale as made to a young person

Of the 27 sales made by premises that were classified as "re tests", proposed actions were categorised as "investigation / reporting "[17] and "advice / warnings "[10].

6. Observations

This review has demonstrated that nicotine inhaling products are still being supplied by businesses to young people under the aged 18 years despite the regulations having been in force now for 4 years.

In this review of compliance, illegal sales occurred in 29% of test purchase attempts. These results are lower than those recorded in the tobacco control survey at 40% but still give cause for concern.

The following observations are made in respect of this review of compliance:

1. The time frame for delivery of this review was short [12 weeks] and although there was a wide geographical spread of participants this may have restricted the participation of some Trading Standards Services in the review. For example, only 1 borough in London participated in the compliance testing and thus the findings for London may not be representative of the region as a whole
2. Further to the point above , there was considerable variation in the illegal sale rates between Regions , the sale rate for London was low [14%] compared to 50% in the CENTSA region ; this may have been as a result of only 1 borough participating and being a borough that has delivered focussed business advice and guidance on this sector previously
3. Although the illegal sale rate was high for both market stalls / boot sales and mobile phone shops it should be noted that the sample was small 17 and 24 tests respectively
4. It is noted that there is still a wide range of business types retailing nicotine inhaling products from specialist E cigarettes retailers to pharmacies and petrol station kiosks. This presents a challenge for Trading Standards in identifying all businesses that retail these products
5. There was a higher sale rate made from premises described as new with 31% compared to sales from premises described as re-visits 23%. This is likely to be a feature of the businesses having received advice previously following other compliance activity
6. It remains the fact that where a business asks for proof of age a sale was not made to the test purchaser. This basic step is critical in protecting a business from making illegal sales to young people
7. Where illegal sales were made, the majority of respondents reported that the proposed course of action was to provide advice to the business or to issue a warning letter. This accords with the desire to build business compliance and where enforcement action is taken only as a last resort. Where respondents indicated that an investigation was planned this was most usually in response to a second illegal sale being made by the business.