

Barnet Shisha Bars Report

2016

Dr Laura Fabunmi, Consultant in Public Health

Chimeme Egbutah, Public Health Strategist

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1 Introduction

1.1.1 The purpose of the report is to respond to the growing concern within local communities and Barnet Council on the potential public health risks associated with Shisha. This report will highlight the social, health and business impact related to Shisha activity and suggests a coordinated and proportionate response to these concerns.

1.2 What is shisha?

1.2.1 Shisha is smoking tobacco mixed with dried fruit, fruit flavourings or molasses sugar through a bowl, a hole or tube¹, the substance is burnt over lit charcoal and the smoke is passed through a liquid to cool it down. The tube ends with a mouthpiece, which then allows the consumer to inhale the sweet smoke. It can also be called hookah, (n)arghille, waterpipe or hubble bubble.

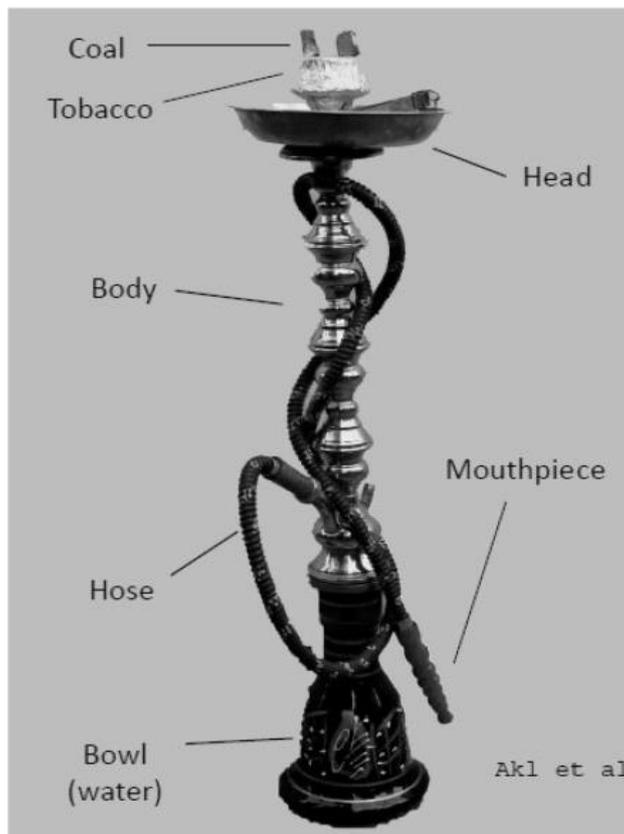


Figure 1. Annotated figure of shisha

¹ British Heart Foundation. Shisha. Found here: <https://www.bhf.org.uk/heart-health/risk-factors/smoking/shisha>

- 1.2.2 Commonly, the type of shisha smoked in the UK is either tobacco (maassel) or non-tobacco “herbal”.
- 1.2.3 Whilst maassel is the most common form of shisha smoking tobacco, a tobacco-free herbal type has become widely available. These types of shisha are often described as “healthy”. However, studies have shown that, although they do not contain tobacco or nicotine, they do contain toxic trace metals found in cigarettes.
- 1.2.4 Furthermore, herbal mainstream and side stream smoke were found to contain cancer causing agents equivalent to, or in excess of those of tobacco products.
- 1.2.5 It should be noted that there are key differences between cigarette smoking and shisha smoking and could lead to differences in the health effects of people smoking shisha. For example, the smoke produced by shisha is at a lower temperature than cigarette smoke, which is likely to produce a different type and quality of toxicants.

1.3 Use of shisha

- 1.3.1 Shisha is originally used by Middle Eastern, North African and Asian community groups. However, recent research has shown that since the introduction of the Smokefree Law in England in 2007, there has been a rise in shisha consumption. This may be due to the increasing availability of shisha, as a result of cheaper prices and a growing number of shisha-serving venues². It is becoming increasingly popular amongst all ethnic groups in the UK and not just people of Middle Eastern descent.
- 1.3.2 According to the World Health Organisation (WHO)³, the growing epidemic of shisha is due to several factors. These are;
 - a) The introduction of flavoured shisha tobacco with its reduced harshness and perceived pleasant flavour and aroma;
 - b) The misperception that it is “healthier” than cigarette smoke;
 - c) Social acceptance and being an essential part of family, peer and public gatherings and cafes and restaurant culture;
 - d) Internet mass and social media;
 - e) Low cost;
 - f) Lack of shisha specific policy and regulation towards its use and
 - g) Immigration of people from Middle Eastern countries to the European region, the Region of the Americas and the Western Pacific region.

² Chaouachi K. Hookah (Shisha, Narghile) smoking and environmental tobacco smoke (ETS). A critical review of the relevant literature and the public health consequences. *International Journal of Environmental Research and Public Health* 2009;6(2):798-843.

³ WHO (2014) Conference to the Parties to the WHO Framework Convention on Tobacco Control. Found here: http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_11-en.pdf

- 1.3.3 Surveys and research projects have been undertaken within boroughs of London focusing on different population groups. It has been observed that in South East London, although rates were highest among those of Arabic or Asian ethnic origin, the majority of respondents to the survey were from White British. Furthermore, smoking shisha was highest amongst 18-24 years old⁴.
- 1.3.4 UK studies amongst the Asian community, have shown that most smokers were mainly male and of Middle Eastern/Asian ethnic origin although increasingly more consumers were from various backgrounds⁵. Further research⁶ from different Local Authorities between 2011 - 2013 has shown that there is high prevalence of smoking amongst university students, ethnic minorities and males and is used as a way of bringing people together socially – “social lubricant”. There is local anecdotal evidence that teenagers frequent some of the shisha bars in peer groups after school.
- 1.3.5 The London Borough Lambeth undertook a specific study focusing on the Muslim Asian community. It was found the community showed a higher prevalence and more frequent use of shisha.⁷ It was found that half of current smokers usually smoked at home, whilst the other half usually smoked in shisha cafes. Whilst mainly males were smoking shisha research showed it was also acceptable for females to smoke.
- 1.3.6 Key points to note from a large study undertaken in Brent by Jawal et al (2011) on a British Asian community in London include⁸:
- shisha smoking was more prevalent than cigarette smoking; people often started smoking shisha whilst in secondary school;
 - students are more likely to smoke shisha if there is shisha premise close to their school;
 - shisha smoking is often more socially acceptable than cigarette smoking, and the difference is particularly important for females;
 - families often introduce shisha smoking to younger members;
 - many people start to smoke shisha intermittently when they are younger and as they grow up they smoke it more frequently;
 - although shisha smoking is most prevalent among Arabic or Asian ethnic groups, there are now high proportions of shisha smokers cross-culturally;
 - most smokers use either a shisha café or smoke at home;
 - shisha smoking in London appears to be most common north of the river and in particular in North West London.

⁴ Power G (2014) Shisha Smoking in South East London: A cross-population survey of shisha use and awareness in South East London

⁵ Jawad M, Asharia M, Hamilton F, *et al.* Shisha smoking prevalence, predictors and attitudes amongst a British Asian community in London [unpublished]. 2011.

⁶ M.Jawad (2013) The Public Health Implications of Shisha smoking in London. Department of Primary Care and Public Health Imperial College London.

⁷ Jawad M, Asharia M, Hamilton F, *et al.* Shisha smoking prevalence, predictors and attitudes amongst a British Asian community in London [unpublished]. 2011

⁸ Jawad M, Asharia M, Hamilton F, *et al.* Shisha smoking prevalence, predictors and attitudes amongst a British Asian community in London [unpublished]. 2011

2 The health effects of shisha

- 2.1.1 Generally, it is commonly agreed that smoking tobacco through a water pipe is likely to have similar health effects to smoking cigarettes⁹. A summary review of studies undertaken to observe the health effects of shisha by Jawad et al (2011) suggests that one shisha session smoked for approximately 45 minutes may produce 22 – 50 times more tar, 6 – 13 times more carbon monoxide and 1 -10 times more nicotine than a single cigarette.
- 2.1.2 Shisha smoking is associated with the following types of cancer; oral, oesophageal, lung and possibly gastric carcinoma¹⁰ and is known to produce a significant number of carcinogenic toxins. In particular, there is significant exposure to polycyclic aromatic hydrocarbons (PAH) which is associated with the development of various cancers¹¹. In addition to this, the burning of coal used to heat the tobacco is a major source of carbon monoxide (CO) emissions which is also carcinogenic.
- 2.1.3 The burning of ‘herbal’ shisha is also cancer causing. Closer analysis on combustion shows that there are similar levels of CO and tar as seen in ordinary tobacco shisha, the only difference being the lack of nicotine.
- 2.1.4 The association between second hand smoke and smoking in family settings or amongst young children also appears to link to the development of childhood respiratory conditions¹². As herbal shisha is commonly smoked in the UK (due to the perception that it is healthier) exposure to toxic cancerous second hand smoke poses a public health risk.
- 2.1.5 Other risks to health cited by global studies and the WHO have highlighted the long term effects of shisha on developing coronary artery disease, causing a rise in blood pressure and the deterioration of lung function^{13, 14, 15}.
- 2.1.6 Women who smoke shisha during pregnancy have also been found to have babies with low birth weights.
- 2.1.7 Furthermore, there is a potential risk of infection with shisha smoking from sharing mouthpieces, (infection of herpes simplex), inadequate cleaning of waterpipes, and from spending long periods in close proximity with others. In particular, there have

⁹ M.Jawad (2013) The Public Health Implications of Shisha smoking in London. Department of Primary Care and Public Health Imperial College London.

¹⁰ Nakkash R, Khalil J. Health warning labelling practices on narghile (shisha, hookah) waterpipe tobacco products and related accessories. *Tobacco Control* 2010;19:235-9

¹¹ Sepetdjian E, Saliba N, Shihadeh A. Carcinogenic PAH in waterpipe charcoal products. *Food Chem Toxicol* 2010;48:3242–5.

¹² Akl EA, Gaddam S, Gunukula SK, Honeine R, Abou Jaoude P, Irani J (2010) The effects of waterpipe tobacco smoking on health outcomes: a systematic review. *International Journal of Epidemiology* 39: 834-857

¹³ Kadhum M, Jaffery A, Haq A, Bacon J, Madden B. Measuring the acute cardiovascular effects of shisha smoking: a cross-sectional study. *JRSM Open* 2014;5:2054270414531127.

¹⁴ Salameh P, Waked M, Khoury F, *et al*. Waterpipe smoking and dependence are associated with chronic bronchitis: A case-control study in Lebanon *Eastern Mediterranean Health Journal* 2012;18(10):996-1004.

¹⁵ Raad D, Gaddam S, Schunemann HJ, Irani J, Abou Jaoude P, Honeine R, Akl EA: (2011) Effects of waterpipe tobacco smoking on lung function: a systematic review and meta-analysis. *Chest* 139(4):764-74. Accessed at

<http://journal.publications.chestnet.org/article.aspx?articleid=1087831>

been concerns regarding the risk of tuberculosis (TB) but so far only a few case studies, demonstrating this association have been published^{16, 17}.

- 2.1.8 One study has shown that amongst Asian males, a common health effect has been nausea, headache and feeling light headed, possibly due to carbon monoxide poisoning.
- 2.1.9 Although comparisons have been made between shisha and cigarettes, the differences in the way these are smoked, particularly the long smoking periods and intermittent use of shisha, means that estimates of shisha-to-cigarette comparisons are difficult to make accurately¹⁸. Based on this and further studies it has been suggested that that a more consistent message of '**at least as harmful as cigarettes**' may be more appropriate for health promotion and education purposes¹⁹
²⁰.
- 2.1.10 Unlike cigarette smoking, a key factor in addiction in smoking shisha is that there seems to be social and sensory cues, including the atmosphere of shisha cafes, the aromatic smell of the smoke and the flavour of the maassel, and the appearance of the shisha pipe itself.
- 2.1.11 In addition to this, smokers are able to inhale more deeply as it is less of an irritant on throat, trachea and bronchi. Unlike smoking a cigarette, which may last around 6 minutes, a shisha smoking session typically lasts considerably longer, at around 45 minutes for an average session²¹.

¹⁶ Kadum M, Sweidan A, Jaffery AE, Al-Saadi A, Madden B (2015) A review of the health effects of smoking shisha. *Clinical Medicine* 15(3):263-6

¹⁷ Munckhof WJ, Konstantinos A, Wamsley M, *et al.* A cluster of tuberculosis associated with use of a marijuana water pipe. *International Journal of Tuberculosis and Lung Disease* 2003;7(9):860-865.

¹⁸ Jawad M, Bakir A, Ali M, *et al.* Key health themes and reporting of numerical cigarette waterpipe equivalence in online news articles reporting on waterpipe tobacco smoking: A content analysis *Tobacco Control* 2013;In press.

¹⁹ WHO (2015) Advisory note: waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators – 2nd ed. Accessed at: http://apps.who.int/iris/bitstream/10665/161991/1/9789241508469_eng.pdf

²⁰ Cobb C, Ward KD, Maziak W, Shihadeh AL, Eissenberg T (2010) Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States. *American Journal of Health Behaviour* 34(3): 275-285

²¹ Eissenberg T & Shihadeh A (2009) Waterpipe Tobacco and Cigarette Smoking Direct Comparison Toxicant Exposure. *American Journal of Preventive medicine* 37(6):518-523

3 Shisha and Young People

3.1.1 A study undertaken with university students at Imperial College London gathered information and attitudes and beliefs amongst the student population²². The main points were:

3.1.2 Initiation and Duration

- Shisha smoking was mostly initiated by peers, but also by family members.
- Many first experienced shisha in a foreign country and even brought back a pipe from their visit.
- Smoking sessions lasted on average an hour, but could be many hours due to accompanying social activities e.g. dominoes, TV, talking.
- Smoking usually started intermittently and then evolved into a regular practice.

3.1.3 Appeal

- The sensory cues.
- Fun of exhaling smoke rings.
- Use as a social lubricant, similar to alcohol.

3.1.4 Common Beliefs

- The smoke was filtered by the water
- That it is not addictive, contains little nicotine and it would be easy to quit
- Participants felt that when smoking cigarettes the harm was obvious from seeing the tobacco burning and feeling the heat, but this was not so with shisha smoking.
- There was a general consensus that shisha felt less harmful than cigarettes, and participants described shisha smoke as “cooler”, “milder” and “lighter” than cigarette smoke

3.1.5 Experience of addiction

- Many had failed quit attempts, and experiences of craving.

3.1.6 Knowledge

- Home smokers had the most knowledge about toxicants
- It was felt that there was minimal advertising about the health effects of shisha.
- Smokers found inconsistent messages on the internet made them unable to trust the information they read.

3.1.7 Data from The What About YOUTH (WAY) survey in 2014/2015 (survey looking at the health profiles of young people aged 15 years by Local Authority) shows that compared with the rest of England, when all the Local Authorities in England are

²² Jawad M, Jawad S, Mehdi A, *et al.* A qualitative analysis among regular waterpipe tobacco smokers in London universities. *International Journal of Tuberculosis and Lung Disease* 2013;(in press).

ranked in terms of proportion of respondents who have smoked 'other tobacco products' Barnet appears towards the middle of the rankings (15 out of 35 LA's).

- 3.1.8 The definition of 'other tobacco products' is: "The percentage of 15 year olds who responded to Q20 in the What About YOUth Survey ("Have you ever used/tried other tobacco products i.e. shisha pipe, hookah, hubble bubble water pipe etc?") with the combination of currently, used to use and tried other tobacco products."

4 What do we know about shisha premises in Barnet?

- 4.1.1 Consistent data on the number of shisha premises known to Environmental Health has been recorded since 2013. Records show that there has been an annual increase in the number of premises opening in Barnet. At the end of 2015, there were 23 trading shisha premises known to Environmental Health. At the same point last year there were just 14 of which 50% were compliant with the Health Act 2006. This is an increase in shisha outlets of 61% in a year.
- 4.1.2 Table 1 shows the increase in premises since 2013 and the number of non-compliant premises with the smoke free legislation. Currently, of the 23 current premises, only 9 (39%) are compliant.

Table 1. Number of compliant shisha premises by year since 2013

Year	No of compliant shisha premises/ Total No of shish premises	% of compliant premises
2013	9/13	69%
2014	7/14	50%
2015	9/23	39%

- 4.1.3 Out of the 23 shisha premises identified, eighteen were obtained from the Council database UNIFORM. From this information, we can deduce that at least 21 were cafés/restaurants and only two were exclusively selling shisha.
- 4.1.4 Figure 2 shows that most premises can be found in the southern central part of the Borough, mostly Finchley Church End ward and West Finchley ward. There is no correlation between deprivation and shisha premises.

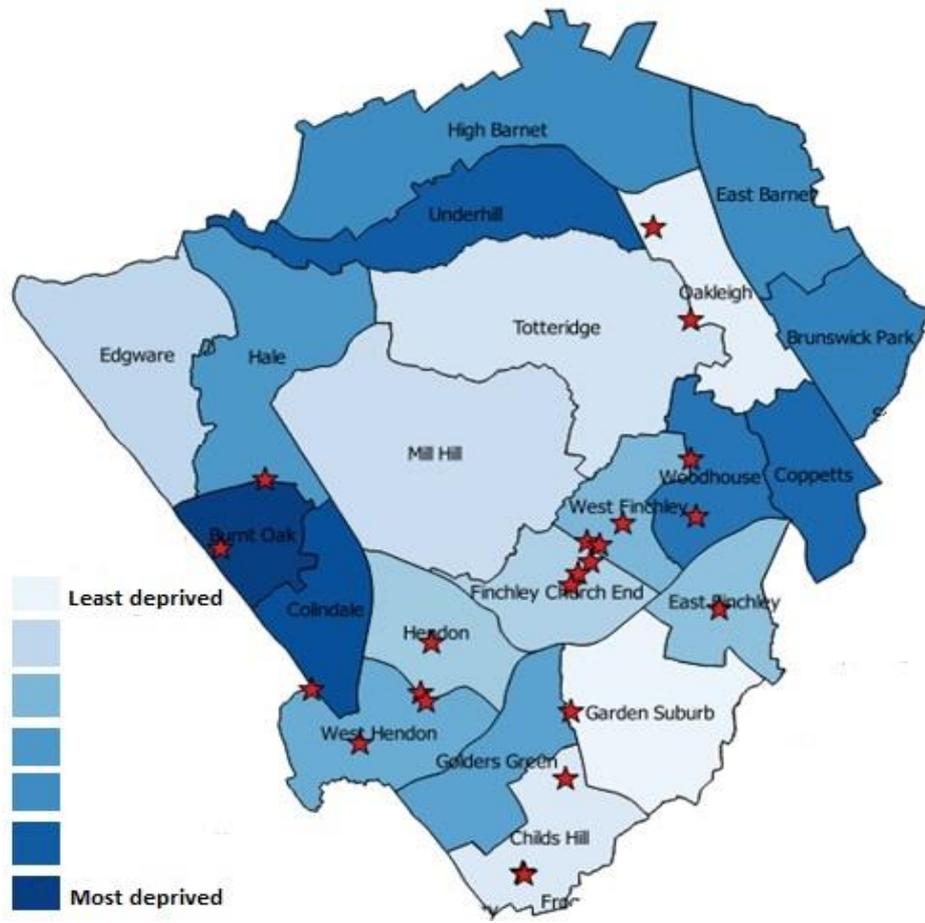


Figure 2. Location of shisha premises in Barnet

5 Key issues arising from shisha premises in Barnet.

- 5.1.1 Whilst the main focus of concern about the increasing use of shisha is the health impacts, other social impacts can be associated with shisha premises, such as noise and anti-social behaviour. The most common complaints in Barnet are noise, non-smoke free compliance issues and antisocial behaviour.
- 5.1.2 Six out of the 23 premises have had noise specific related complaints. Poor management of health and safety and hygiene have also been noted, however not to any greater extent than with premises that do not serve shisha. From police records antisocial behaviour has been reported in streets on or near where shisha premises are located but there is no evidence specifically related to shisha premises. However, further exploration of crime data will be carried out as guided by the Crime and Strategic Needs Assessment 2014-2015, to find out if there are any associations or correlations with other crimes (such as robbery) and the shisha hotspots identified in the map above.
- 5.1.3 Labelling and tax issues and smoke free compliance have also been noted in relation to shisha tobacco and are discussed further in this report.

5.2 Proximity of shisha bars to schools

- 5.2.1 The appeal of shisha smoking is commonly seen amongst young people and studies and local observations by enforcing officers, have shown that school aged young people do smoke shisha. Figure 5 shows the proximity of shisha premises to schools.
- 5.2.2 In the London Borough of Brent an anonymous survey of secondary schools was carried out in 2011/12. Nearly a quarter of students had tried shisha, and 36.2% of these were introduced to it by family, highlighting the social acceptance of the practice.
- 5.2.3 The study also showed that the proximity between shisha premises and schools may influence shisha prevalence, with students attending schools with a shisha premise within a half mile radius being 2.5 times more likely to smoke shisha than those who did not. Furthermore, it was found that many shisha smokers took their first puff in a shisha café while underage.
- 5.2.4 Figure 3 shows that out of 25 secondary schools in Barnet, ten are within walking distance (400m) of shisha premises. These are found in the following wards, West Hendon; Hendon; Finchley Church End; West Finchley and Oakleigh wards.

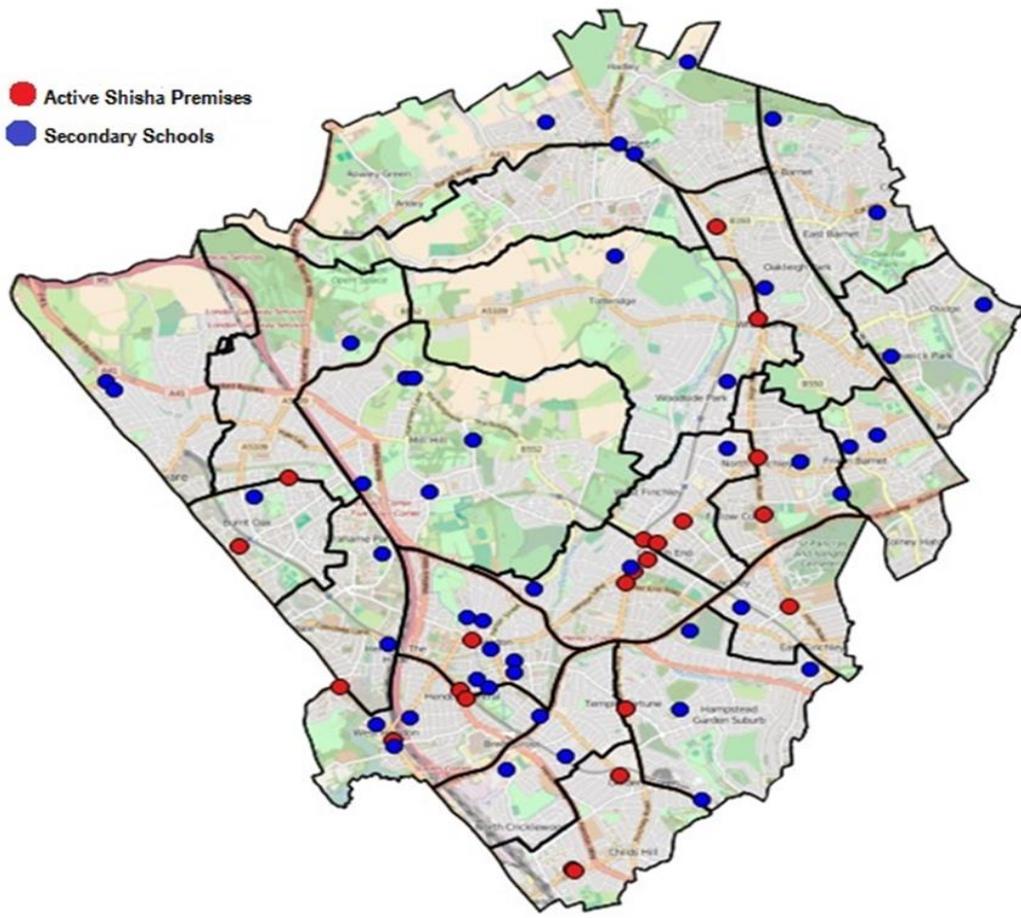


Figure 3. Shisha Premises and Secondary Schools in Barnet

6 What have other Local Authorities done to tackle shisha?

6.1 City Of Westminster

- 6.1.1 City of Westminster undertook to tackle shisha premises as part of a wider approach to engaging with non-compliant premises. This proved to be a successful operational delivery model, in that street based staff were trained in the Health Act in order to supplement and support witnessing breaches of the Act. The approach highlighted a number of hidden smoking rooms and other non-compliance with legislation. City of Westminster were the first to use the closure powers from the ASB Act in 2012 upon two non-compliant premises and it saw fines and legal costs recovery of £20,000 from the two premises.
- 6.1.2 Westminster are now consulting on the development of a strategy to address the impact on health and the nuisance and harm caused by unregulated shisha smoking.

6.2 Brent Council

- 6.2.1 Brent has a lead officer who deals with shisha enforcement. Since 2012 Brent have prosecuted approximately 30 premises for smoke free and related offences. They have worked with the Police to close cafes with an antisocial behaviour closure order (ASBCO). The order allowed Brent to prove that some premises are a 'crime generator' and therefore working with other colleagues have been able to successfully prove that there is a detrimental effect to a neighbourhood.
- 6.2.2 In 2011/12 Brent Council undertook an anonymous survey of secondary schools to explore attitudes, beliefs and use of shisha. As a result, Brent has produced online resources, dispelling the myths surrounding shisha smoke.

6.3 Enfield and Haringey Councils

- 6.3.1 Enfield and Haringey Public Health and Trading Standards teams have joined forces as the Tobacco Control Alliance to tackle illegal shisha premises. Some of the problems already identified with shisha bars include use of illegal smoking shelters where smoking is effectively taking place indoors, sales of untaxed tobacco, shisha tobacco being served without written and pictorial health warnings and a failure to display statutory warning signs on the premises about under the age sales.

6.4 Borough of Tower Hamlets

- 6.4.1 Tower Hamlets have taken the approach of giving advice to local businesses. Regular visits are undertaken with Trading Standard Officers and the Police and a web page highlighting key legislation and expectation of shisha business owners is addressed on line. Signposting to smoking cessation services part of the overall message to anyone who would like to give up smoking.

6.5 Camden and Islington Councils

- 6.5.1 Islington Council have also collaborated with Camden as part of the Smoke Free Alliance. This collaboration has resulted in a joint action plan for 2014 -2016. The Plan tasks Trading Standards to maintain current levels of monitoring of shisha premises. In addition to this, several public health campaigns (including focusing on Ramadan) have been undertaken and a draft policy has been written. This joint work with Public Health and regulatory services has been reported to the Health and Wellbeing Board as a success. Future work includes a cross-borough approach to tackle illegal tobacco.

6.6 Blackburn and Darwin Council

- 6.6.1 Between 2011 and 2015 there were a growing number of shisha premises located in the town centres of Blackburn and Darwin. It was recognised by the Council that this was contributing to a number of anti-social incidents and therefore a coordinated approach was undertaken to help reduce town centre disturbance. Key partners such as Community Safety, Trading Standards, Environmental Health, Police (PCSO's), Public Health and the Fire Service worked together to drive down the number of shisha premises. Currently, Blackburn and Darwin have a total of six shisha bars from previously having 14 in 2011 and are in the process of consulting on the proposal of a new Supplementary Planning Document that prohibits the opening of any shisha premises that will have a negative impact on health and wellbeing.
- 6.6.2 The Council undertook a low tolerance approach to non-compliant shisha premises and conducted joint visits with the Police and Regulatory officers (i.e. Trading Standards and Environmental Health). Using the Police and Criminal Evidence Act section 19, officers were able to seize equipment from nuisance premises.
- 6.6.3 An education campaign was developed lead by Public Health focusing on schools. This is currently being delivered through the voluntary sector.

7 Use of Legislative Controls²³

- 7.1.1 Shisha lounges do not have to be licensed unless they also provide alcohol, entertainment or late night refreshment (after 11pm) but they may be subject to other regulatory requirements as described above. Local policy utilising good practice such as that from London Borough of Islington, has been demonstrated to provide some degree of control over shisha premises.
- 7.1.2 The World Health Organisation (WHO) has published a set of policy recommendations as part of its Framework Convention on Tobacco Control (FCTC)²⁴. In relation to shisha Article 5, recommends that any legislation and regulation on tobacco should specify all tobacco, not just that in cigarettes is covered in countries with a high or increasing prevalence of shisha.

7.2 Health Act 2006

- 7.2.1 The primary legislation is the Health Act 2006, which states “that ‘smoking’ refers to smoking tobacco and anything which contains tobacco, or smoking any other substance. Smoke free legislation (the “smoking ban”) prohibits smoking in enclosed public places and workplaces relates to any smoking product, whether it contains tobacco or not. There is no exemption for Shisha, although there are misconceptions about this. Both operators/managers and smokers can face prosecution, although to date prosecution has been limited to those in control of premises rather than customers.

7.3 Product marking and labelling

- 7.3.1 Tobacco containing shisha must comply with all the requirements of the tobacco products regulations. Primary legislation is the Consumer Protection Act 1987 (CPA) and secondary regulations include, The Tobacco Products (Manufacture, Presentation and Sale (Safety) Regulations 2002 and; The Tobacco Products (Manufacture, Presentation and Sale) (Safety) (Amendment) Regulations 2007.

7.4 Children & Young Persons (Protection from Tobacco) Act 1991

- 7.4.1 It is illegal to supply shisha tobacco to anyone under 18 and businesses are expected to take reasonable precautions and show appropriate diligence to avoid doing so. Notices regarding the illegality of selling to under-18s must also be displayed.

²³ Shisha Policy (2012). London Borough of Islington.

²⁴ WHO (2015) Advisory note: waterpipe tobacco smoking: health effects, research needs and recommendations by regulators – 2nd ed. Accessed at: http://apps.who.int/iris/bitstream/10665/161991/1/9789241508469_eng.pdf

7.5 Health & Safety / Fire Safety / Food Safety

7.5.1 Shisha businesses must apply appropriate control measures generally and particularly in respect of the hazards of infection from shared pipes; maintain appropriate fire precautions including escape routes and prevention of ignition e.g. from burning charcoal and heating devices; and comply with food safety requirements where food is served.

7.6 Table and Chairs²⁵

7.6.1 A licence is required for tables and chairs on the street, which can stipulate numbers and permitted hours on the street of use, under a street trading licence if on the public highway. The placing of tables and chairs placed on the street and outside premises is considered to require planning permission in most cases.

7.7 Planning Consent

7.7.1 Any legal shisha businesses will have to have an outdoor area for their customers to smoke in. There may be planning issues for structures or areas used for this purpose.

7.8 Licencing

7.8.1 Licences required for late night refreshment apply only to hot food or hot drinks after 23:00 and the sale of alcohol. Premises which serve cold food, cold drinks and offer shisha smoking do not require a licence.

7.8.2 The majority of shisha premises within the London Borough of Barnet do not hold premises licence and therefore do not offer hot food or drink after 23:00 or serve alcohol.

7.8.3 Of those premises that do offer these services the Licensing team monitors the premises as they do all licensed premises; to ensure that the licensing objectives are being upheld. The Licensing objectives are:

- Prevention of Crime and Disorder
- Prevention of nuisance
- Public Safety
- Protecting children from harm

²⁵ Reducing the Harm of Shisha: Towards a strategy for Westminster. December 2015. Found here: http://transact.westminster.gov.uk/docstores/publications_store/consultations/shisha_consultation_full.pdf

7.8.4 The Licensing team is working closely with the noise nuisance team in relation to monitoring noise nuisance emanating from licensed premises which provide shisha.

7.9 Noise Nuisance

7.9.1 There may be noise nuisance issues, as the most popular times for customers will be in the evening. This is particularly exacerbated in 'smoke free compliant' premises as the shelter is outside and leads to greater transmission of noise. The noise team provide an out of hours service at the following times which individuals can contact should they be disturbed by noise from a shisha premises:

- Wednesdays 20:00 – 01:00
- Fridays 20:00 – 04:00
- Saturdays 12:00 – 04:00
- Sundays 10:00 – 03:00

7.9.2 The noise nuisance team work closely with Environmental Health and Licensing in relation to joint responses to issues from shisha premises.

7.10 Anti-Social Behaviour, Crime and Policing Act 2014

7.10.1 The purpose of the updated Antisocial Behaviour Act 2003 is to put victims at the heart of the response to Antisocial Behaviour (ASB). It focuses on the act on the victim rather than the behaviour itself. The ASBCP Act 2014 allows front line professionals to use their judgement rather than operating a "one size fits all" approach.

7.10.2 The Anti-Social Behaviour, Crime and Policing Act 2014 introduces new measures such as the **Community Trigger** and **Community Protection Notices**. Community Trigger gives victims a right to request a review of their case and bring agencies together to take a joined up problem-solving approach. Community Protection Notices are designed to stop a person aged 16 or over, business or organisation committing unreasonable behaviour affecting the community's quality of life.

7.11 Penalty for Breach

7.11.1 It is an offence to fail to comply with the notice.

7.11.2 A Penalty for Breach can be issued of up to £100 if appropriate or they can be liable on summary conviction to a fine not exceeding £2,500. If a body or business is found guilty of an offence they will be liable on summary conviction to a fine exceeding £20,000.

7.11.3 An offence does not occur if all reasonable steps were taken to comply with the notice or if there are reasonable excuses for the failure to comply.

7.11.4 Where there is persistent nuisance and/or anti-social behaviour the act affords the use of closure powers and civil injunctive relief to those who may be affected by unregulated, rowdy or inconsiderate behaviour that cannot be managed swiftly or robustly by the usual primary legislations such as the Environmental Protection Act.

8 Tackling shisha in Barnet

8.1 Developing local legislation on shisha control

- 8.1.1 The possibility of developing local legislation (a byelaw) on shisha control is highly unlikely. In order to develop a byelaw, consideration must be given to whether the issues (i.e. the nuisance) are already covered by other legislation. To create a byelaw, reliance on an enabling power under statute is required but if there is general legislation on subject then a byelaw would not be appropriate. Byelaws also usually have to be approved by the Secretary of State. Whilst there is not specific legislation on shisha smoking, there is legislation that covers the issue i.e. that which controls (cigarette) smoking generally, as well as other legislation mentioned in this document, that can be used to control its environment.

8.2 Strategic Planning

- 8.2.1 Any applications for shisha uses are considered against the policy framework within Barnet's Local Plan adopted in 2012. The Local Plan contains a policy on Improving health and well-being in Barnet (Policy CS11). This supports the targeting of unhealthy lifestyles such as smoking and is therefore a material consideration in planning applications.
- 8.2.2 The relevant Local Plan policy is Policy DM01 Protecting Barnet's character and amenity. Any change of use in a commercial high street should maintain an active street frontage with the ground floor interior being visible from the street. Evening economy uses are recognised as contributing to town centres viability and vitality.
- 8.2.3 Local Plan (Policy CS6) Promoting Barnet's town centres states that we will ensure that food, drink, entertainment uses as part of a healthy evening economy in our town centres do not have a harmful effect on residents and the local area.
- 8.2.4 An establishment offering shisha would need to provide an outdoor area where customers can smoke. If a structure is provided to offer shelter then this would require planning permission.

8.3 Planning Enforcement

- 8.3.1 A change of use to a shisha use alone would require planning permission. However, shisha uses are more generally uses ancillary to either Class A3 (Restaurants and cafés) or Class A4 (Drinking Establishments).
- 8.3.2 If a shisha use starts and planning permission is required for the use, then the Council has the option to take planning enforcement action. A planning application for the retention of the use would be sought. In the event a planning application is not forthcoming and the use is considered unacceptable on its planning merits or a planning application is refused then a planning enforcement notice would be served. The notice would require the cessation of the unauthorised use.

- 8.3.3 There is a right of appeal (from the proprietor) against a planning enforcement notice to the Planning Inspectorate. If an appeal is made against a planning enforcement notice then the appeal process takes a minimum of six months and in the meantime the unauthorised use can continue. If an appeal is dismissed, then the requirements of the enforcement notice would need to be met (usually three months after the appeal decision date). In the event the requirements of an enforcement notice are not met before the notice expiry date then prosecution action can commence.
- 8.3.4 The Proceeds of Crime Act (POCA) permits monies and/or assets to be seized by the authority if a person or business is found guilty of breaching a planning notice and potentially a Community Protection Notice (CPN) as both are criminal offences. In order for this to be enforced, specific prerequisites and clarity on evidence would be required.

8.4 Future opportunities for planning and public health

- 8.4.1 As part of the wider programme to include health outcomes into regeneration, public health will focus on promoting healthy places and tackling some the health issues to ensure there is a coordinated approach; public health is exploring with Planning the possibility of integrating health considerations in the planning of applications and development of businesses in areas where public health is an important consideration for local populations. A paper on public health and planning is being developed to be presented at the next health and Well-being board for discussion.
- 8.4.2 This will include the input of public health considerations into the Healthy Urban Development Unit's (HUDU) checklist. The purpose of the HUDU checklist is to screen businesses to ensure that businesses do not adversely impact on local health and wellbeing in the area.
- 8.4.3 It is recognised that, the council considers protection of the economic development of Barnet as being key to a successful borough, and it is important to find ways to ensure that a balance can be struck between developing local businesses to reach their full potential and enabling the population to live in places that protect their health and support healthy choices.

8.5 Environmental Health

- 8.5.1 Shisha businesses need no specific licence, registration or other formal permissions from the Council before start up beyond those which apply to ancillary activities such as the sale of food. Most shisha businesses are already trading when they come to the attention of Environmental Health.
- 8.5.2 In 2010 a survey by LACORS and CIEH of all Council's was undertaken. The results showed that enforcement barriers experienced by regulatory officers were similar to those faced by Barnet Council's enforcement team. For example, shisha owners challenging the requirement for smoke free compliant shelters and the identification of business owners.

8.6 How Environmental Health are tackling shisha in Barnet

- 8.6.1 The regulatory powers available to Environmental Health are in two areas which have little or no impact on preventing shisha start up:
- 8.6.2 **Smokefree Legislation.** This requires that any structure used for smoking in a public or work place is not less than 50% open to the air (where it has a roof or ceiling). In essence this legislation legalises smoking in compliant structures, but, beneficially, reduces the health risk from smoke for non-smokers in the immediate vicinity. EH will continue to inspect and advise on compliance and the worst repeat offenders will be considered for prosecution in line with the Council's enforcement policy.
- 8.6.3 The health and safety team has completed two successful prosecutions in relation to the above. It took two years to complete, the fine was too low to be a deterrent and the business continues to trade under new management. Prosecution is a very resource intensive approach and may not be effective. It necessarily has to be focussed on one or two offenders at any one time on.
- 8.6.4 **Powers within the Environmental Protection Act 1990** can be used by Environmental Health to control noise, smoke and odours from shisha premises affecting neighbouring residents. Statutory nuisances from these emissions can be abated, but little can be done when these elements fall short of the statutory nuisance test. In the area of smoke nuisance for example, the legislation is intended to deal with bonfires and similar smoke sources. Officers suspect that there will be very few instances where statutory nuisance controls could be applied to shisha outlets. However, any complaints of nuisance affecting residents will be investigated and abatement notices will be served where statutory nuisance can be proved.
- 8.6.5 The Environmental Health Scientific Services team also has a role in advising Planning Service colleagues on the environmental impact of development plans. They would normally be consulted by Planning on new shisha bar developments. They will advise on the likely impact on residents and recommend conditions, where appropriate, which might minimise that impact.

8.7 Trading Standards

- 8.7.1 Trading Standards tobacco control legislation will apply in broadly similar way to familiar tobacco products such as cigarettes. The 3 areas that apply to shisha premises are:
1. Underage purchase of tobacco: shisha products containing tobacco must be sold to persons under the age of 18

2. An A3-sized notice with characters of at least 36mm high displaying the following statement - ***'It is illegal to sell tobacco products to anyone under the age of 18'*** - must be displayed at every premises at which tobacco is sold by retail. Ideally this notice will be displayed in close proximity to the tobacco products themselves.
3. The tobacco provided should not be counterfeit or illicit tobacco. (Products imported through the black market for which there is no guarantee of its contents and for which no duty has been paid).

8.8 How Trading Standards are tackling shisha in Barnet

- 8.8.1 Trading Standards have been working closely with Environmental health and HMRC in relation to joint visits to Shisha premises. The focus on these visits is to ensure that the warnings are being correctly displayed and also to ensure that the tobacco being provided is genuine. Historically there have been high levels of non-compliance in these areas in Barnet.
- 8.8.2 For example, in one premises officers found the smoking area to be compliant but the manager advised that no shisha smoking took place. However, tobacco and pipes were found and HMRC seized all duty unpaid shisha tobacco.
- 8.8.3 Trading Standards have also been using Barnet Council's social media such as Facebook and Twitter to raise awareness of the dangers of Shisha.
- 8.8.4 Trading Standards also undertake regular under age sales test purchasing in partnership with the Police. This work is intelligence based with premises risk assessed and prioritised depending on the intelligence. There currently is very little intelligence in relation to allegations of underage use of shisha in the shisha premises in Barnet.

8.9 Future opportunities for Environmental Health and Trading Standards

- 8.9.1 Periodically, Environmental Health has worked successfully with colleagues in HMRC and Trading Standards to check on smoke free compliance and the legality of shisha tobacco products. Most recently, between 5th and 15th January 2016, unannounced joint visits to five premises were undertaken to identify unpaid duty on shisha tobacco and to gain insight into current compliance with other relevant legislation.
- 8.9.2 Environmental Health, Trading Standards and HMRC will continue to work closely in relation to shisha premises as outlined above. In particular, more planned joint visits, continuation of sharing intelligence with planning, supporting Public health with an education campaign on raising awareness and educating local shisha businesses on shisha use, compliance and health messages.

8.10 Community Safety and Anti-social Behaviour

- 8.10.1 From a community safety and ASB perspective, where an establishment is causing persistent nuisance and anti-social behaviour and the legal owners are not taking steps to address the complaints the council and the police can consider the use of the new powers set out in the ASB Act 2014, this includes a closure order which could last up to 6 months.
- 8.10.2 The Safer Community Partnership have set up a multi-agency panel 'The Community Safety MARAC' where cases such as these can be referred into so that a multi-agency response can be put in place and appropriate prevention and enforcement action can be considered. The partnership enables a coordinated focus on 'problem premises' supporting proactive activities following a complaint by any individual.
- 8.10.3 The Community Trigger is also in place where members of the community can initiate the Community Trigger. However, it is important to note that any action taken to respond to the ASB will be considered alongside the broader intervention including licensing, noise, planning.
- 8.10.4 Currently the Strategic Leads across the Environment Commissioning portfolio are reviewing the Council's approach to enforcement. An enforcement policy for the council and specific enforcement procedures are being drafted for Street Scene. Re already have in place an enforcement policy and procedure.
- 8.10.5 Officers will be presenting the revised policy and procedures to both the Community Leadership Committee and the Environment Committee.
- 8.10.6 The Community Safety Team has already delivered training to over 300 officers across the council on the use of the new ASB tools and powers. They are drafting a partnership protocol clearly setting out Barnet's local process on using the powers effectively – this will include how to respond to nuisance premises.

8.11 Future opportunities for the Community Safety Partnership

- 8.11.1 Local intelligence suggests that ASB issues linked to shisha premises are relatively low. However, there may be opportunities to use Community Protection Notices (CPN) to tackle shisha where circumstances are appropriate to do so. The CPN is flexible and can be applied to commercial premises such as shisha. Where there are possible complaints about odours and fumes, for example, the Community Safety Partnership could facilitate the use of the notice by controlling the nuisance and require the business to take remedial action to prevent the nuisance from happening again.
- 8.11.2 Further opportunities include undertaking a proactive communications plan, collating all enforcement action and/or activity using Council and Police licensing systems.

8.12 Public Health

- 8.12.1 Public Health is leading the Council in its responsibility for improving the health and wellbeing of its residents through local commissioning and service planning. The Joint Strategic Needs Assessment (JSNA) 2015-2020 highlights the need to protect children from tobacco use.
- 8.12.2 This report has gathered local intelligence on shisha and good practice from other areas to inform how the Council can tackle the growing numbers of shisha in Barnet. It is clear that enforcement has a place in limiting the number of shisha premises opening and ensuring that the health and safety of consumers and residents are protected. However, the health risks associated with smoking shisha is still yet to be addressed, and Public Health is ideally placed to take these health messages forward as part of a multi-pronged approach.
- 8.12.3 Public Health therefore proposes to lead a sustainable health promotion and education campaign with support of the corporate communications team with the following aims:
1. To raise awareness of the negative health impacts of shisha usage amongst the demographic who use shisha with a particular emphasis on young people;
 2. To conduct in partnership with Environmental Health and Trading Standards an educational campaign aimed at local shisha businesses to improve compliance within existing legislation and consider the health impacts of their business on the local area and residents.

8.13 Approach

- Poster campaign utilising bus shelters, community centres, libraries and health premises;
- Digital campaign that utilises social media channels e.g. Facebook, Youtube and Twitter dispelling myths and providing accurate information. Evidence has shown that young people are attracted to shisha use through these mediums and also use them to obtain information about shisha;
- Sign posting to existing resources on the Council website including Barnet Stop Smoking Services;
- Training stop smoking advisors to include information on shisha smoking;
- Targeted engagement with the voluntary sector to raise awareness amongst particular ethnic groups where shisha use is prevalent;
- Engagement and health promotion advice to shisha establishments e.g. appropriate cleaning of pipes, dangers of CO poisoning in enclosed spaces as well as health risks to consumers;

8.13.1 To further support the evidence base for the campaign, a brief survey will be conducted with young people through the Youth Parliament to understand prevalence.

9 Proposal to tackling shisha in Barnet

9.1.1 It is proposed therefore that the Council takes a multi-pronged approach with the following actions:

- **Educate and Engage.** A health educational and promotion campaign in partnership with the Council's communications department that is aimed at users of shisha, with a particular focus on young people but also including shisha premises.
- **Regulate Activity.** A partnership approach to be taken to non-compliant premises, focusing on agreed hotspots identified through local intelligence, including the Community Safety Partnership, HMRC, the Police and London Fire Brigade.
- **Explore current Planning Policy.** To include health and wellbeing considerations, so that local businesses such as shisha establishments, do not adversely impact on neighbouring residential amenity.

