

DERBYSHIRE COUNTY COUNCIL

MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES

7 July 2015

Report of the Strategic Director, Health and Communities

**TRADING STANDARDS CONTRIBUTION TO
ALCOHOL HARM REDUCTION 2014-15**

1. Purpose of the report:

To advise the Cabinet Member, Health and Communities of activities undertaken by the Trading Standards Division to reduce the harm from alcohol and to confirm the continued approach to enforcement of legislation intended to prevent the sale of alcohol to young people.

2. Information and analysis:

- 2.1 The local authority has a duty to enforce the provisions of the Licensing Act which prohibits sales of alcohol to young people under 18. This responsibility rests jointly with the Trading Standards Division and Derbyshire Constabulary. Enforcing the provisions of the original licensing legislation had always been the province of the Police Authority. However, an amendment to criminal justice legislation in January 2002 imposed a duty on the local 'weights and measures authority' to enforce those provisions that made it an offence to sell alcohol to young people under the age of 18. A national 'Memorandum of Understanding' between trading standards services and the Police has led to the former assuming responsibility for seeking compliance with the under-sales requirements for shops, supermarkets and other 'off-licensed' premises, whilst the Police retain the lead for pubs, clubs and other 'on-licensed' premises.
- 2.2 The trading standards division carries out a range of functions to seek compliance with the legislation that is intended to prevent young people from gaining access to alcohol under-age. The first opportunity to engage with businesses wishing to sell alcohol is to consider what steps are in place to prevent sales to young people when applying for a new or variation to an existing license to sell. As a 'responsible authority' under the licensing legislation, the trading standards division is required to assess all alcohol license applications to ensure that appropriate steps are in place to safeguard young people. If it is felt that these are insufficient, then officers will enter into a dialogue with the applicant to suggest improvements. If agreement cannot be reached with the applicant, then we have the power to raise an objection with the licensing authority.

- 2.3 The Department of Business Innovation and Skills (BIS) is very keen to reduce regulatory burdens on businesses and the Better Regulation Delivery Office (BRDO – a part of BIS) has issued a Code of Practice on Age Restricted Products that requires local authorities to ensure that enforcement of age-restriction legislation is proportionate and that Enforcing Authorities should 'prioritise the support they offer to businesses to those that are least likely to have robust compliance arrangements in place...Proactive checks on business compliance with age restrictions should be targeted on the basis of a robust model, scheme or framework for risk-assessing the businesses'.
- 2.4 As with other age-restricted products, the division has a programme of advisory visits to local off-trader businesses to check what precautions are in place to prevent illegal sales of alcohol. Training should be in place to ensure that sales staff challenge young people who could be under 18 and to keep records of any refusals. For those businesses that are adjudged not to have sufficient systems in place, officers will seek to agree an 'Action Plan' with the persons responsible for the business to address any shortcomings. Failure to address inadequacies can lead to an application to the local licensing authority to have additional conditions placed on the premises license and/or a request to suspend or revoke the license if there is evidence of persistent non-compliance.
- 2.5 With the assistance of teenage volunteers and in accordance with Home Office approved guidance, test purchase exercises have been undertaken throughout Derbyshire to check for illegal sales of alcohol by local retailers. The guidance ensures that the volunteers and their parents/guardians are clearly briefed as to the purpose of the exercises. The guidance originally suggested that volunteers should be at least 18 months younger than the minimum legal age to purchase and be typical of their age-group. Volunteers are required to tell the truth if challenged about their age and not to coerce or persuade the retailer to sell to them. This guidance was to ensure both that the health and safety of the young person was protected and that the retailer or sales assistance were not 'entrapped' in to selling alcohol. As volunteers, the young people do not get paid for their time, although they do receive a gift voucher in recognition of their support.
- 2.6 The Division works closely with other agencies who have an interest in or responsibility for preventing alcohol harm. We were a founder member of the local 'VAL' groups (Violence, Alcohol and Licensing) and regularly attend meetings with Police, Community Safety and district council licensing colleagues to share intelligence about 'problem premises' and hot spots within the county. As well as being lead-agency for off-trade premises (shops, supermarkets, off-licences) the division also supports Police operations by providing the young volunteer test purchasers. The Community Safety team provide some financial assistance with this activity – which tends to be at weekends and/or in the evening.
- 2.7 During the last financial year, a total of 212 licence applications were received. There were 68 applications for premises licences at off-licences ('off-trade

premises'). This compares to 73 for the preceding year. 27 (39.7%) of the applications were considered to have insufficient arrangement for the protection of children from harm – one of the licensing objectives. It was therefore necessary to negotiate with the applicant (or his/her representative) to ensure that appropriate arrangements were put in place – and, if necessary, made a licence condition.

- 2.8 Trading Standards staff carried out 111 advisory visits to local businesses selling alcohol during the year; many of these were carried out jointly with police and /or licensing authority officers. 14 test purchase checks were made which resulted in 5 (36%) illegal sales. The proportion of illegal sales at 36% is significantly higher than in previous years, but a total of only 14 test purchase checks were made during the year. This is in part due to a reduction in capacity of the trading standards team and also due to following the new Code of Practice which requires an intelligence profile to be established before a test purchase check is made
- 2.9 it should be noted that if a business is found to have made an underage sale during an exercise, a second attempt is made to ascertain whether the first sale is a 'one-off' or not. The total number of premises (ie different businesses) visited during the year was 11 of which 4 (36%) made one or more illegal sales.

Off Trade Alcohol UAS Test Purchase Checks

	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015
No. of Attempts	128	196	147	45	14
Sales	14	28	15	5	5
% of sales	10.9%	14.3%	10.2%	10.2%	36%

- 2.10 On-trade test purchase checks are led by the Police and supported by Trading Standards colleagues with financial assistance from the Community Safety Partnership. A similar number of test purchase checks were made during the last financial year as compared to the preceding year, but with only 17 sales from 76 checks the compliance rate was much improved (78% compared to 32.5%). The programme of surveillance and test purchase checks is now well established and there has been a steady decline in failure rates from a high of 49% in 2010/11 to 22% in 2014/15. (See table below).

On Trade Alcohol UAS Test Purchase Checks

	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015
Number of Attempts	85	189	285	80	76
Sales	42	57	77	26	17
% of sales	49%	30%	27%	32.5%	22%

2.11 The Division has a range of sanctions available following the detection of non-compliance – either following an illegal under-age sale, or other breach of licence condition. The most appropriate course of action following each illegal sale of an age-restricted product is determined on a case-by-case basis.

2.12 Formal disposal options available to trading standards for most products are:

- Letter of Warning
- Simple Cautions
- Prosecutions

However, for premises licensed for alcohol sales other actions can be applied:

- Penalty Notices for Disorder (issued by Derbyshire Constabulary).
- Closure orders for 'Persistent Selling' (48 or 80 hours)
- Voluntary variation of Premises Licence by the holder
- Premises Licence Reviews

Both Trading Standards and the Police will also agree a voluntary 'Action Plan' with the premises licence holder which sets out the steps required to be taken to improve compliance.

2.13 As a result of the illegal sales, the following enforcement action has been taken:

Off-trade premises

- 3 fixed penalty notices (£90) were issued to individuals who made a sale
- The Proprietor of an off-licensed business in Bolsover was prosecuted for two offences of selling alcohol to young persons under 18 and was fined £230 and ordered to pay £85 prosecution costs. This business also had its licence to sell alcohol revoked
- Two premise licence holders are still under investigation

On-trade premises

- A letter of warning was issued to the Designated Premises Supervisor
- 14 fixed penalty notices (£90) – now known as 'Penalty Notice Disorder' (PND) - were issued to individuals who made a sale
- 2 Action Plans were agreed
- 2 x 48-hours Closure Orders were issued
- Two individuals have been reported for prosecution

2.14 Tackling alcohol harm by working with partners and local businesses will remain a priority for the Trading Standards Division. It does seem apparent that a combination of advice and information both at the time of licence application/modifications and targeted visits to local businesses to advise them on the requirements of the law does appear to have brought about an improvement in compliance. However, the programme of age-verification and test purchase checks continues to show that a minority of businesses will still

sell alcohol to young people under the age of 18 and therefore it is intended to continue to maintain the range of actions to minimise illegal sales.

3. Other considerations:

In preparing this report the relevance of the following factors has been considered; financial, legal, prevention of crime and disorder, equality of opportunity; and environmental, health, human resources, property and transport considerations.

4. Background papers:

None

5. Key Decision:

No

6. Call-in:

Is it required that call-in be waived for any decision on this report?

No

7. Officer's recommendation:

That the Cabinet Member, Health and Communities notes the contribution to alcohol harm reduction made by the Trading Standards Division and endorses the continued approach to enforcement.

David Lowe
Strategic Director
Health and Communities

Alcohol Harm/Underage Sales Activities 2014-15

Underage Risk- Assessment/Business Support visits

The Department for Business Innovation and Skills (BIS) Better Regulation Delivery Office (BRDO) Code of Practice on Age Restricted Products cites the Regulators' Compliance Code requirement that Enforcing Authorities should 'prioritise the support they offer to businesses to those that are least likely to have robust compliance arrangements in place...' It also states that 'proactive checks on business compliance with age restrictions should be targeted on the basis of a robust model, scheme or framework for risk-assessing the businesses'. In order to determine these priorities and inform targeting, the trading standards service operates a programme of visits aiming to carry out a three-yearly risk-assessment of the underage sales precautions operated by independent retailers of age-restricted products. During these visits appropriate advice is given to the business and the premises underage risk score is re-assessed based on the confidence of the effectiveness of the systems in place.

Risk assessment visits

Area	Visits to tobacconists and off-licences
Amber Valley	17
Bolsover	19
Chesterfield	22
Derbyshire Dales	7
Erewash	20
High Peak	7
North East Derbyshire	18
South Derbyshire	1
Total	111

Whilst carrying out risk assessment visits, officers check stocks to ascertain whether there is any counterfeit or non-duty paid alcohol being supplied. Packets of cigarettes are also checked to make sure they are UK duty paid, compliant with labelling requirements and to check for counterfeit product.

During risk assessment visits the following suspect bottles of alcohol were seized from three different off-licences:

- 39 x 70cl bottles of Glens vodka;
- 13 x 1 litre bottles of Glens vodka;
- 13 x 70cl bottles of High Commissioner Whisky; and
- 19 x 1 litre bottles of High Commissioner Whisky

All the bottles were found to have counterfeit duty paid labels on the back. These items were surrendered to Trading Standards and the business owners were issued with letters of warning.

Age Verification Checks

The BIS/BRDO Code of Practice on Age Restricted Products also cites the need to consider statutory requirements under the Regulation of Investigatory Powers Act 2000 (RIPA) in relation to the conduct of test-purchasing. The Code indicates that it is unlikely that covert test-purchasing using underage persons will be considered proportionate 'without demonstration that overt methods have been attempted and failed'. In order to check compliance without the need to seek authorisation under RIPA, the Trading Standards Service carried out a number of 'age-verification' checks at businesses throughout the county. Volunteers aged 18 were sent into premises without proof of age to attempt to purchase alcohol. 69 off-licence premises were visited and 14 (20%) (59%) of them sold alcohol to the volunteers without asking for proof of their age. This is a significant improvement from the previous year when 47 out of 79 premises checked made a sale to an 18 year-old despite operating a 'Challenge 25' policy.

Businesses were selected for checking because they:

- had been given a low confidence rating in respect of precautions in place to prevent underage sales following a risk assessment visit and/or
- were the subject of underage sales allegations and/ or
- had recently sold to persons underage

Results:

Age-verification checks:

Area	Number of purchase attempts	Number of premises visited	Number of sales	% sales
Amber Valley	6	6	3	50%
Bolsover	7	7	2	29%
Chesterfield	11	11	3	27%
Derbyshire Dales	6	6	0	0%
Erewash	4	4	3	75%
High Peak	9	9	0	0%
North East Derbyshire	12	12	3	25%
South Derbyshire	14	14	0	0%
TOTAL	69	69	14	20%

Because it is so difficult to assess how old someone is, all licensed premises are required to operate a 'Proof of Age' Scheme as a condition of their Premises Licences. This basically requires all staff to ask customers who might be under 18 to prove they are in fact old enough to purchase the goods in questions. Staff are meant to politely refuse to sell to customers that are not old enough to buy age-restricted products and to record the refusal. There are a number of Proof of Age Schemes and the most popular one is known as 'Challenge 25'; whereby staff are asked to seek proof of age of anyone they think might be under 25 to prove that they are 18 or over if they are seeking to purchase alcohol. Age-verification checks generally make use of volunteers who are aged 18 (but who do not carry proof of their age for the purposes of this exercise) to check to see if they are in fact challenged. No offence of selling is committed if they are sold alcohol, but

there will have been a breach of the licence condition and demonstrates that staff are not following the correct procedure. It also suggests that if the volunteer had been under 18 a sale would have been made and an offence committed.

All the Premises Licence Holders and Designated Premises Supervisors of the premises visited were notified in writing that an age-verification check had been carried out and whether or not a sale took place.

Off- licence test purchasing

The Premises visited were all targeted due to being either 'Priority' premises or were businesses that sold without requesting proof of age during age verification checks.

Priority premises as determined by the Trading Standards risk score based on:

- Confidence in the precautions to prevent sales to persons underage
- Complaints /intelligence
- Previous sales history,

Off Licence test purchasing

- Number of test-purchase attempts in total 14
- Number of sales 5 (36%)
- Number of premises visited 11
- Number of premises infringing 4 (36%)

Table showing break-down the total test purchases by District Council area

Area	Number of test purchase attempts	Number (%) of sales	Number of premises visited	No. of (%) premises infringing
Amber Valley	5	2 (40%)	4	1 (25%)
Bolsover				
Chesterfield				
Derbyshire Dales				
Erewash	8	2 (25%)	6	2 (33%)
High Peak				
North East Derbyshire	1	1 (100%)	1	1 (100%)
South Derbyshire				
Total	14	5 (36%)	11	4 (36%)

All the Premises Licence Holders (PLH) and Designated Premises Supervisors (DPS) of the Premises visited were notified in writing that a test-purchase had been carried out. This notification of test purchasing activity is a recommendation of the new Code of Practice.

Summary of any infringements

Off-licence test purchasing

Amber valley

The business that sold in Amber Valley is still under investigation by this department
The person that made both sales was issued with a Penalty Notice Disorder. (PND).

Erewash Borough Council

One of the businesses in Erewash that that made an illegal under-age sale has been sold since the sale took place. The DPS / PLH sold the business and transferred the premises licence after the sale. She was issued with a letter of warning by Trading Standards for the sale and Erewash Borough Council for breach of Premises Licence conditions. The seller was issued with a Penalty Notice Disorder (PND).

The other business was issued with a letter of warning as it was considered that they had appropriate systems in place. The seller was also issued with a letter of warning.

North East Derbyshire

The business that sold in North East Derbyshire is still under investigation by this department. The person that made the sale is being issued with a Penalty Notice Disorder. (PND)

A business owner and PLH / DPS of a premises that sold alcohol on two separate occasions to persons under the age of 18 years in November 2013 was prosecuted at Chesterfield Magistrates Court. The premises Licence was also revoked by Bolsover District Council at a Review Hearing but the Premises Licence Holder appealed against the revocation and during that process sold the business and transferred the Premises Licence.

Summary of County-wide On-Licence test purchasing by the Police

The selection of Premises visited on these exercises is determined by Police Licensing Officers. The test-purchasing activity is supported by the Trading Standards service in the form of providing underage volunteers and provision for their safeguarding.

On-Licence test purchasing

- Number of test-purchase attempts in total: 76
- Number of sales 17 (22%)
- Number of premises visited 66
- Number of premises infringing 16 (24%)

Area	No. of test purchase attempts	No. of sales	(%)	No. of premises visited	No. of premises infringing	(%)
Amber Valley						
Bolsover	5	2	40%	3	1	33%
Chesterfield	9	3	33%	6	3	50%
Derbyshire Dales	8	3	38%	8	3	38%

Erewash	19	3	16%	18	3	17%
High Peak	9	1	11%	9	1	11%
North East Derbyshire	8	2	25%	5	2	40%
South Derbyshire	18	3	17%	17	3	18%
Total	76	17	22%	66	16	24%

Significance of Results:

There has been an improvement in the number of refusals as only 16 out of 66 premises visited made an illegal sale (24%) compared to 22 from 65 businesses checked (34%) in 2013-2014.

On-licence test purchasing, figures obtained from the Police as follow-up to any sales and decisions on corrective action are taken by the Police.

Bolsover

The premises that sold twice in Bolsover was issued with a 48-hour Closure Notice. The sellers in both instances were issued with a penalty notice disorder (PND).

Chesterfield

The sellers at two of the premises in Chesterfield were issued with a penalty notice disorder. The Designated Premises Supervisor made the sale at the other premises and was reported for summons.

Derbyshire Dales Area

The sellers at all 3 on licences were issued with a penalty notice disorder (PND). The premises in each case were issued with an action plan by the Police.

Erewash area

The sellers at all 3 on licences were issued with a penalty notice disorder (PND). One of the premises that sold closed due to ongoing issues.

North East Derbyshire

One of the premises that sold was issued with a Closure Notice after selling in the previous three months, the seller was issued with a penalty disorder notice. The Designated Premises Supervisor made the sale at the other premises and was reported for summons

South Derbyshire Area

The sellers at all three on-licences were issued with a penalty notice disorder for the offence. The DPS of two of the premises were sent a letter of warning about the offence. The other premises agreed to have conditions on their licence by way of a minor variation as there were a number of issues. The premises later closed.