

Agenda Item No. 3(c)

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

7 September 2017

Report of the Strategic Director – Economy, Transport and Communities

**TRADING STANDARDS CONTRIBUTION TO ALCOHOL HARM
REDUCTION 2016-17**

(1) **Purpose of Report** To advise the Cabinet Member 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** The local authority has a duty to enforce the provisions of the Licensing Act 2005 which prohibits sales of alcohol to young people under 18. The responsibility is shared between the Trading Standards Division and Derbyshire Constabulary. Enforcing the provisions of the original licensing legislation had 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 underage sales requirements for shops, supermarkets and other 'off-licence' premises ('off-trade' licences), whilst the Police retain the lead for pubs, clubs and other 'on-licence' premises.

Licence Applications

The Trading Standards Division carries out a range of functions to seek compliance with the legislation that is intended to prevent young people aged under 18 from gaining access to alcohol. 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 licence to sell. As a 'Responsible Authority' under the licensing legislation, the Trading Standards Division is required to assess all alcohol licence applications to ensure that appropriate measures 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 the Division has the power to raise an objection with the Licensing Authority.

Table 1 – Table 1 Off-Licence Applications Received, Assessed and Conditions Improved

2014-15			2015-16			2016-17		
Total Received	Assessed	Conditions Improved	Total Received	Assessed	Conditions Improved	Total Received	Assessed	Conditions Improved
173	63	24	111	40	25	126	37	25

During the last financial year, the Division assessed 37 applications to sell alcohol at off-trade premises and secured improvements to the licence conditions with regards to 25 of those applications

Advisory Visits

As with other age-restricted products, the Division has a programme of advisory visits to local off-trade businesses to check what systems are in place to prevent illegal sales of alcohol. Nationally-acknowledged good practice recommends that responsible retailers will:

- Train staff in the legal responsibilities of the business and individuals when selling alcohol. Training should cover the business's age-verification policy and its procedures for avoiding underage sales. The training should be provided at the beginning of employment, refreshed frequently and recorded.
- Adopt an age-verification policy that helps overcome the difficulty of assessing a young persons' age. Challenge 25 is promoted by the industry and Derbyshire authorities.
- Check that staff are following instructions. This is often achieved by requiring that staff record refusals to sell and that checks on these records reflect the pattern for the business established by practice. Action to address inconsistencies should be taken and recorded.

Where visits indicate shortcomings in adopting the above precautions, businesses are advised make improvements. Officers assess the risk of non-compliance and allocate a score based on their findings. Practical checks (see below) are routinely targeted at those businesses where confidence in preventing underage sales is low.

Table 2 - Advisory/Risk Assessment Visits

	2013-14	2014-15	2015-16	2016-17
Risk Assessment Advisory Visits	123	120	114	118

The Division carried out 118 advisory visits during 2016-17 which was a similar number to previous years. Intelligence obtained from such visits helps to determine which businesses to target for age verification and underage sales test purchase checks.

Age Verification Checks

As part of a 'reducing legislative burdens on business' agenda, the Department for Business, Environment and Industrial Strategy (BEIS) introduced a Code of Practice on Age Restricted Products (CPARP) that requires local authorities to ensure that enforcement of age-restriction legislation is transparent and that advice and support is provided as well as applying sanctions for non-compliance. Derbyshire Trading Standards has long adhered to this approach. The Code of Practice also recognises that local authorities have to take into account the implications of the Regulation of Investigatory Powers Act 2000 (RIPA) and the potential to obtain personal information whilst undertaking test purchase checks. National guidance on RIPA by the Office of Surveillance Commissioners requires that underage test purchasing is not used for 'fishing trips' and should be based on intelligence and be necessary and proportional.

A consequence of the CPARP and RIPA is that checks on businesses using underage volunteers are now only conducted where other assessments and intelligence, or premises history, suggest underage sales are likely.

To address issues of proportionality, the Division has, in recent years, introduced Age Verification Checks. These checks are conducted with young adults who are aged 18 and do not carry any proof of age. Many businesses have adopted a 'Challenge 21' or Challenge 25' policy, but if the member of staff working on the till fails to ask to see proof of age from someone who could be under 21/25 then, although an offence may not be committed, it suggests that the system is not being properly adhered to.

Table 3 - Age Verification Checks

	2014-15			2015-16			2016-17		
	Checks	Sales	Fail (%)	Checks	Sales	Fail (%)	Checks	Sales	Fail (%)
Total	69	14	20.3	64	23	35.9	45	13	28.9

Forty five age verification checks were carried out in 2016-17 which was slightly fewer than in previous years. These checks resulted in 13 sales of age-restricted products – a failure rate of 29%. Although no underage offences were committed, the sales represent a failure to follow the shop's systems to avoid sales and could breach the Premises Licence conditions.

Underage Sales Test Purchase Checks

With the assistance of teenage volunteers and in accordance with the CPARP, test purchase exercises to check for illegal sales of alcohol by local retailers have been undertaken throughout Derbyshire. The guidance ensures that the volunteers and their parents and/or guardians are clearly briefed as to the purpose of the exercise. Underage volunteers are selected with regard to their age and experience, bearing in mind the nature of the premises to be visited. The CPARP seeks to ensure that the health and safety of the young person is protected and that the retailer or sales staff are not 'entrapped' into 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.

Table 4 – Off-Trade Alcohol Underage Sales Test Purchase Checks

	2011-12	2012-13	2013-14	2014-15	2015-16	2015-16
Number of Attempts	196	147	45	14	15	22
Sales	28	15	5	5	0	2
Percentage of sales	14.3%	10.2%	10.2%	36%	0%	9.1%

Twenty two test purchase checks were made which resulted in two illegal sales from two separate businesses. This is a failure rate of approximately 9% which is broadly consistent with recent years. Following the introduction of the Code of Practice, the total number of checks made is significantly lower than in previous years, but they are now more targeted so could suggest that overall compliance at off-trade premises has generally improved. However, additional intervention suggested by the CPARP, such as written notification following age verification checks or allegations of underage sales taking place, will tend to increase businesses' awareness that underage checks may follow.

On-trade test purchase checks are led by the Police and supported by Trading Standards officers with financial assistance from either the Community Safety Partnership or Police budgets. Only one test purchase exercise was organised by the Police due to other service pressures and a restructuring of Command Units. Eight test purchase attempts were made which resulted in two sales – a failure rate of 25% but because of the small sample size, comparisons with previous years could be misleading.

Table 5 - On Trade Alcohol Underage Sales Test Purchase Checks

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Number of Attempts	189	285	80	76	57	8
Sales	57	77	26	17	17	2
Percentage of sales	30%	27%	32.5%	22%	30%	25%

Sanctions

The Trading Standards Authority can instigate a wide range of sanctions following an illegal sale from a written caution to legal proceedings and/or a review of the Premises Licence. Following an illegal sale, an investigation will be conducted to establish the level of culpability of individual seller, shop owner and/or Licence Holder. For a first offence, the sales assistant is usually issued with a Fixed Penalty which is administered by the Police.

The circumstances and outcome following illegal sales to two trading standards volunteers, aged 15 and 16 respectively, are detailed in the table below.

Table 6 – Outcome of Enforcement Action

Date/Premises	Brief Details of Case	Outcome
Aug 2016 Independent Off-licence, Dronfield	Targeted as a result of low confidence and failure of age-verification in 2016. Sale made by store assistant	Seller issued with Fixed Penalty. Licence Holders issued with Cautions after premises licence voluntarily varied to include conditions recommended by Trading Standards and new Designated Premises Supervisor (DPS)
Oct 2016 Independent Off-licence, Buxton	Targeted as a result of low confidence and failure of age-verification in 2016. Sale made by store assistant	Seller issued with Fixed Penalty. Licence Holder issued with Caution after premises licence voluntarily varied to include conditions recommended by Trading Standards

Tackling alcohol harm by working with partners and local businesses will remain a priority for the Trading Standards Division for the current financial year. Evidence suggests 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 has 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.

A breakdown of the advisory visits and test purchase checks by District/Borough Council area is provided in the appendix to this report.

Other Considerations

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

(3) **Key Decision** No.

(4) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(5) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Robert Taylour, extension 39830.

(6) **OFFICER'S RECOMMENDATIONS** That the Cabinet Member

6.1 Notes the activities of the Trading Standards Division to contribute to reducing harm from alcohol.

6.2 Confirm the continued approach to enforcement of legislation intended to prevent the sale of alcohol to young people.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

Appendix – Derbyshire Trading Standards Underage Alcohol Intervention 2014 – 2017 (By District)

Table 1 – Off-Trade Premises Under-Age Sales Test Purchase Checks

	2014-15						2015-16						2016-17					
District/Borough	Ex	TP	Bus	Sales	Bus	%	Ex	TP	Bus	Sales	Bus	%	Ex	TP	Bus	Sales	Bus	%
Amber Valley	2	5	4	2	1	25	1	1	1	0	0	0	2	2	2	0	0	0
Bolsover	-	-	-	-	-	-	2	4	4	0	0	0	1	1	1	0	0	0
Chesterfield	-	-	-	-	-	-	1	2	2	0	0	0	-	-	-	-	-	-
Derbyshire Dales	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1	0	0	0
High Peak	-	-	-	-	-	-	1	1	1	0	0	0	1	4	4	1	1	25
NE Derbyshire	1	1	1	1	1	100	1	4	4	0	0	0	1	3	3	1	1	33.3
Erewash	3	8	6	2	2	33.3	1	3	3	0	0	0	3	9	9	0	0	0
South Derbyshire	-	-	-	-	-	-	-	-	-	-	-	-	1	2	2	0	0	0
Total	6	14	11	5	4	36	4	15	15	0	0	0	4	22	22	2	2	9
Businesses selling	36%						0%						9%					

Table 2 – Off-Trade Premises Under-Age Sales Test Purchase Checks (Police)

	2014-15						2015-16						2016-17					
District/Borough	Ex	TP	Bus	Sales	Bus	%	Ex	TP	Bus	Sales	Bus	%	Ex	TP	Bus	Sales	Bus	%
Amber Valley	-	-	-	-	-	-	2	10	6	5	4	66.6	1	4	4	1	1	25
Bolsover	3	5	3	2	1	33.3	1	1	1	0	0	0	-	-	-	-	-	-
Chesterfield	3	9	5	3	3	60	-	-	-	-	-	-	1	3	3	0	0	0
Derbyshire Dales	-	-	-	-	-	-	3	26	26	13	7	26.9	1	1	1	1	1	100
High Peak	1	9	9	1	1	11	1	6	6	1	1	16.7	-	-	-	-	-	-
NE Derbyshire	3	8	5	2	2	40	-	-	-	-	-	-	-	-	-	-	-	-

Erewash	2	19	18	3	3	16.6	1	12	12	4	4	33.3	-	-	-	-	-	-
South Derbyshire	2	18	18	3	3	16.6	1	10	10	1	1	10	-	-	-	-	-	-
Total	8	68	58	14	13	22.4	8	65	61	20	17	27.8	1	8	8	2	2	25
Businesses selling				20.6%						30.8%						25%		

Table 3 Age-Verification Checks – Off-Trade Premises

	2013-14			2014-15			2015-16			2016-17		
District/Borough	Checks	Sales	Fail (%)	Checks	Sales	Fail (%)	Checks	Sales	Fail (%)	Checks	Sales	Fail (%)
Amber Valley	7	5	71.4	6	3	50	13	2	15.4	10	1	10
Bolsover	11	4	36.4	7	2	28.6	9	5	55.6	3	1	33.3
Chesterfield	12	5	41.7	11	3	27.3	9	3	33.3	6	0	0
Derbyshire Dales	6	5	83.3	6	0	0	3	2	66.7	1	0	0
High Peak	9	6	66.7	9	0	0	6	1	16.7	8	3	37.5
NE Derbyshire	11	8	72.7	12	3	25	4	3	75	4	3	75
Erewash	13	9	69.2	4	3	75	9	3	33.3	8	5	62.5
South Derbyshire	10	6	60	14	0	0	11	4	36.4	5	0	0
County Total	79	48	60.8	69	14	20.3	64	23	35.9	45	13	28.9