

**DERBYSHIRE COUNTY COUNCIL****Meeting with Cabinet Member, Health and Communities****17 June 2014****Report of the Strategic Director, Health and Communities****TRADING STANDARDS CONTRIBUTION TO ALCOHOL HARM REDUCTION  
2013-14****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 haven't sufficient systems in place, officers will seek to agree an 'action plan' to address any shortcomings. Failure to address inadequacies could 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 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, super-markets, 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 123 advisory visits to local businesses selling alcohol during the year; many of these were carried out jointly with police and /or licensing authority officers. 49 test purchase checks were made which resulted in 5 (10.2%) illegal sales. This is on a par with recent years (see table below) and is a significantly better compliance rate than the period 2004-2009 when the failure rate ranged from 23% to 31.5%. The districts with the highest failure rates were Bolsover and Erewash (40% and 20% respectively – see appendix for details). However, it should be noted that the number of test purchase checks was relatively low compared to previous years and 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 proportion of businesses/premises making illegal sales is therefore lower. The total number of premises (ie different businesses) visited during the year was 45 of which 4 (8.9%) made one or more illegal sales which equates to a compliance rate of in excess of 90%.

**Off Trade Alcohol UAS Test Purchase Checks**

	<b>2010/2011</b>	<b>2011/2012</b>	<b>2012/2013</b>	<b>2013/2014</b>
Number of Attempts	128	196	147	45
Sales	14	28	15	5
% of sales	<b>10.9%</b>	<b>14.3%</b>	<b>10.2%</b>	<b>10.2%</b>

- 2.9 On-trade test purchase checks are led by the Police and supported by Trading Standards colleagues with financial assistance from the Community Safety Partnership. This programme of surveillance and test purchase checks is less well established and the failure rates correspondingly higher (see table below). However, although the percentage failure (32.5%) was higher than the preceding two years, it was significantly improved on 2010/11.

**On Trade Alcohol UAS Test Purchase Checks**

	<b>2010/2011</b>	<b>2011/2012</b>	<b>2012/2013</b>	<b>2013/2014</b>
Number of Attempts	85	189	285	80
Sales	42	57	77	26
% of sales	<b>49%</b>	<b>30%</b>	<b>27%</b>	<b>32.5%</b>

- 2.10 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.

2.11 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.

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

Off-trade premises

- 4 fixed penalty notices (£90) were issued to individuals who made a sale
- A premise licence holder was issued with a 'formal' caution
- A business had its licence to sell alcohol revoked
- A premises licence holder agreed to voluntary additions to his licence to ensure that an age verification policy was introduced
- A premise licence holder has been reported for prosecution

On-trade premises

- 14 fixed penalty notices (£90) were issued to individuals who made a sale
- 9 Action Plans were agreed
- 2 x 48 hours and 1 x 80 hours closure orders were issued

2.13 Although the level of 'off-trade' compliance established following the trading standards test purchase programme, it should be noted that, as previously reported in October 2013, a programme of test purchase checks was undertaken with the 18 year-old volunteers. Clearly, although no illegal sales would be made, the purpose of this exercise was to ascertain whether local retailers of alcohol were adhering to their own 'Challenge 21' or Challenge 25' procedures – some of which are a specific condition of the premise licence. Of concern is the fact that 47 premises out of 79 tested (59%) sold alcohol without checking that the young person seeking to make the purchase could prove that they were indeed aged 18 or over. It is therefore recommended that the Division continues to carry out a range of activities to reduce the likelihood of young people being able to purchase alcohol under the age of 18.

**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:**

CabCo Report dated 22<sup>nd</sup> October 2013: Alcohol Age Verification Exercise

**5. Key Decision:**

No

**6. Call-in:**

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

No

**7. Strategic Director'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 2013-14

### Underage Risk- Assessment/Business Support visits

The Department for Business Innovation and Skills/Better Regulation Delivery Office 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...' and 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 nominal 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	14
Bolsover	6
Chesterfield	21
Derbyshire Dales	6
Erewash	14
High Peak	17
North East Derbyshire	10
South Derbyshire	35
<b>Total</b>	<b>123</b>

While carrying out risk assessment visits to two of the premises in the area of Bolsover a number of bottles of Glens vodka were seized that had counterfeit 'duty' labels affixed to the rear. Three bottles were seized from one of the premises whose licence was later revoked as a result of underage sales. 27 bottles were seized from another premises that later transferred its premises licence.

### 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 and 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 on compliance without need to seek authorisation under RIPA, the trading standards service carried out a number of 'age-verification' checks at businesses throughout the county during the second quarter of 2013/2014. Volunteers aged 18 were sent into premises without proof of age to attempt to

purchase alcohol. 79 off-licence premises were visited and 47 (59%) of them sold alcohol to the volunteers without asking for proof of their age.

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	10	10	6	60%
Bolsover	11	11	4	36%
Chesterfield	12	12	5	42%
Derbyshire Dales	6	6	5	83%
Erewash	11	11	8	73%
High Peak	8	8	5	63%
North East Derbyshire	11	11	8	73%
South Derbyshire	10	10	6	60%
<b>TOTAL</b>	<b>79</b>	<b>79</b>	<b>47</b>	<b>59%</b>

20 of the premises that sold to our volunteers without asking for some proof of age are required to operate 'Challenge 25' or 'Challenge 21' proof of age schemes as conditions on their Premises Licences. The relevant licencing authorities were notified of the potential breaches of licence conditions indicated by these age-verification checks.

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 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 49

- Number of sales 5 (10.2%)
- Number of premises visited 45
- Number of premises infringing 4 (8.9%)

Breaking 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	7	1 (14.3%)	6	1 (16.7%)
Bolsover	5	2 (40%)	4	1 (25%)
Chesterfield	5	0	5	0
Derbyshire Dales	5	0	5	0
Erewash	10	2 (20%)	8	2 (25%)
High Peak	5	0	5	0
North East Derbyshire	7	0	7	0
South Derbyshire	5	0	5	0
<b>Total</b>	<b>49</b>	<b>5 (10.2%)</b>	<b>45</b>	<b>4 (8.9%)</b>

All the Premises Licence Holders and Designated Premises Supervisors 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

#### Bolsover

The sales assistants working for the same business who each made a sale were issued with a Fixed Penalty of £90. As two sales were made from the same business, the Premises Licence was revoked at a hearing before a Sub Committee of Bolsover District Council in April 2014. The Premises Licence Holder has 21 days to appeal at Magistrates Court. In addition the business owner is being reported for prosecution.

#### Amber Valley

The sale was made by the Premises Licence Holder who was also the Designated Premises Supervisor for the premises. After an investigation, he was offered a simple caution on the condition that he voluntarily varies his licence to add a condition to specify that 'Challenge 25' is the age-verification policy operated at the premises.

#### Erewash Sales

The sellers at both premises were issued with a Fixed Penalty of £90. Following investigation, both businesses were considered to have been operating adequate procedures to prevent underage sales so no further action was taken.



## 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: 80
- Number of sales 26 (33%)
- Number of premises visited 65
- Number of premises infringing 22 (34%)

Area	Number of test purchase attempts	Number of sales	Number of premises visited	Number of premises infringing
Amber Valley	10	2	10	2
Bolsover	5	1	4	1
Chesterfield	16	7	10	5
Derbyshire Dales	6	1	6	1
Erewash	13	4	10	4
High Peak	5	3	5	3
North East Derbyshire	11	7	6	5
South Derbyshire	14	1	14	1
<b>Total</b>	<b>80</b>	<b>26</b>	<b>65</b>	<b>22</b>

### Significance of Results:

There has been a slight increase in the number of on-licence alcohol sales from last figure last year, where we had 27 % alcohol sales and 27.1% of premises infringing.

**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.**

#### High Peak

The Premises were all issued with an action plan to prevent the risk of further sales of alcohol to underage. The three sellers from each of the premises were all issued with an FPN.

#### Derbyshire Dales

A decision has not yet been made.

#### Amber Valley

One of the Premises has closed and is to become a Co-op.  
The other Premises is being advised at the moment with no decision at present.  
The sellers at both Premises were issued with an FPN.

#### Bolsover:

The Premises was placed on an action plan with advice given to try and prevent

further underage sales .The seller was issued with an FPN.

#### **North East Derbyshire:**

One of the premises was issued with a 48 hour closure notice after making two sales in a 3 month period and after making a further sale the Police are looking at a premises licence review. The other four premises were all put on an action plan and advised to try and prevent further sales of age restricted products. The sellers from all of the premises have been issued with an FPN.

#### **Chesterfield:**

One of the premises made two sales in a 3 month period and had a 48 hour closure. One of the Premises made two sales within a 2 month period and had an 80 hour closure. The other 3 premises that sold were issued with an action plan and given advice to prevent further alcohol sales to underage. Revisits to the premises resulted in refusals. The sellers were all issued with an FPN.

#### **Erewash and South Derbyshire:**

We are still awaiting a response from the Licensing Sergeant to find out the outcomes. The four premises that sold in Erewash and the one that sold in South Derbyshire,

#### **Conclusion**

**Off-Licence test purchasing**, compared with the 10.2% level of business non-compliance previous year, there has been a further reduction to 8.5% of businesses selling alcohol during trading standards checks in 2013-14.

Despite the fact that test-purchasing is only carried out at businesses giving rise for concern, this is the lowest recorded level of failures for underage alcohol in the county since the current Licensing Act came into force in 2005.

**On-Licence test purchasing**, compared with the figure last year of 27.0% alcohol sales with 27.1% of premises infringing, the figure has increased slightly to 33% alcohol sales with 34% of premises visited infringing.

This is in contrast to level of off-sales test purchase failures which appear to have reduced in recent years in response to a pro-active, targeted, enforcement approach