

DERBYSHIRE COUNTY COUNCIL

Meeting with Cabinet Member – Health and Communities

22nd October 2013

Report of the Strategic Director Cultural and Community Services

ALCOHOL AGE VERIFICATION EXERCISE

1. Purpose of the report:

To advise the Cabinet Member – Health and Communities of the results of a recent survey to check the application of the Challenge 21/25 Schemes and to note the instances where local alcohol retailers have failed to take sufficient steps to check the age of young people seeking to buy alcohol.

2. Information and analysis:

- 2.1 As Members will be aware, the trading standards division has a duty to enforce those provisions of the Licensing Act 2003 that prohibit the sale of alcohol to young people under 18 years of age. The division has similar responsibilities for other age-restricted products such as tobacco, alcohol, fireworks and knives. To check compliance the division has a programme of advisory visits and test purchase exercises throughout the county. Premises licensed to sell alcohol are generally classified as either 'on-trade' premises such as pubs, clubs and restaurants where the alcohol is consumed within the building; or 'off-trade' premises such as corner shops, general stores and supermarkets. In recognition of a county-wide Enforcement Protocol the trading standards service takes the lead with regard to underage issues at off-trade premises, whereas the Police are the lead agency for on-trade businesses. In Derbyshire, the trading standards service works closely with all other agencies with an interest in reducing alcohol harm and regularly supports Derbyshire Police in conducting test purchase exercises within pubs and clubs throughout the county.
- 2.2 All local businesses in the county to which trading standards legislation applies are categorised according to the risk associated with any non-compliance. The risk is determined by a number of factors including the size of the business; the type and range of products sold; an assessment of the management control systems that might be in place; the number of complaints that the business may have generated; and the previous history of the business in terms of compliance. The frequency of interaction with the business is determined by an assessment of the risk of non-compliance. All off-trade businesses that sell alcohol have been assessed and all have been subject to advisory visits and follow-up test purchase checks.

- 2.3 An advisory visit will assess the awareness of the owner or proprietor of the shop and the staff of the requirements of the legislation and the adequacy of staff training and systems to avoid under-age sales. Till prompts and refusal logs are useful ways to ensure that staff are reminded not to sell to young people who may be under 18 and that they are regularly challenging and recording refusals to sell. Because it is so difficult to assess age, the advice given to retailers is to always challenge young people to prove their age and if they cannot prove that they are legally old enough, not to sell. Since October 2010, all premises licensed for the supply of alcohol have to observe a mandatory condition requiring the operation of an age-verification policy. To ensure that there is a margin for error, national good practice advice is that retailers should adopt a 'Challenge 21' or 'Challenge 25' policy. In other words, young people who look as if they might be under 21 or 25 are asked to prove that they are 18 or over and if they cannot, they should not be served. In Derbyshire, the enforcement authorities jointly promote the trade-preferred 'Challenge 25' recommendation.
- 2.4 Test purchase checks conducted by the trading standards division have always had full regard to any national best practice advice. A new Code of Practice on Age-Restricted Products – published early in 2013 by the Department of Business, Innovation and Skill's Better Regulation Delivery Office (BRDO) – is the new reference. Volunteers – and their parents or guardians – are fully briefed as to the test-purchasing process. Young persons are selected on the basis that their appearance corresponds to their actual age and their safety and welfare is assessed throughout the exercises. They are routinely instructed to tell the truth about their age if they are challenged and do not carry ID.
- 2.5 One of the drivers for the new Code of Practice was a response to industry concerns about the potential burdens placed on responsible businesses by routine underage test-purchasing activities. The new Code encourages enforcement authorities to target formal test-purchasing approach only where a risk-based approach can be demonstrated. Recent guidance issued to the County Council by the Office of Surveillance Commissioners on the application of the Regulation of Investigatory Powers Act 2000 also requires that test-purchasing activities with juveniles are properly assessed and proportionate.
- 2.6 Advice to both local businesses and consumers about the requirements of legislation relating to age-restricted products – including how to report concerns about suspected underage sales – is available on the county council website via the link below:
- http://www.derbyshire.gov.uk/business/trading_standards/salesto_children/default.asp
- 2.7 As has previously been reported, the number and proportion of shops selling alcohol to young people as assessed via trading standards test purchase

checks has fallen significantly over the past eight years or so as a result of the advisory visits and test purchase checks, as illustrated by the table below.

Alcohol	2004-05	2005-06	2006-07		2010-11	2011-12	2012-13
No. of test purchase attempts	143	176	177		128	196	147
No. of illegal sales	45	46	41		14	28	15
% illegal sales of alcohol	31.5%	26.1%	23.2%		10.9%	14.3%	10.2%

2.8 Businesses wishing to sell alcohol must have a licence issued by the local (district/borough) council, under the Licensing Act. The trading standards division is a Responsible Authority under the Act and in this capacity can recommend that conditions be applied to alcohol licences. One of which is that the age-verification policy operated is 'Challenge 25' to ensure that their staff do not inadvertently, recklessly or negligently sell alcohol - or other age-restricted products - to young people under 18. However, recent trading standards exercises suggest that many local businesses are not adopting this level of precaution.

2.9 Checks were carried out between July and September this year with young volunteers aged 18 but without any proof of age. The businesses identified for inspection was based on intelligence and were selected because they were:

- considered lacking in basic precautions to prevent underage sales following advice visits,
- were the subject of underage sales allegations, or
- had recently sold to persons under age

2.10 The results of the test purchase checks are shown by district area in the table below.

District	No. of attempts	No. of sales	% sales	No. of refusals
Amber Valley	10	6	60%	4
Bolsover	11	4	36%	7
Chesterfield	12	5	42%	7
Derbyshire Dales	6	5	83%	1
Erewash	11	8	73%	3
High Peak	8	5	63%	3
North East Derbyshire	11	8	73%	3
South Derbyshire	10	6	60%	4
Total	79	47	59%	32

- 2.11 47 of the 79 off-trade retailers (59%) visited failed to ask to see a proof of age and sold alcohol to the young person. Although there were no potential under-age sales offences because the volunteers were all aged 18, many of the businesses had a legal obligation as a result of their licence conditions to challenge anyone who could be under 25 and to refuse to sell alcohol unless they could prove that they were legally old enough to purchase.
- 2.12 32 (40%) of the off-licences checked had specific licence conditions requiring the age verification policy to be either Challenge 21 or Challenge 25. Despite these, 20 of the premises (62%) sold alcohol.
- 2.13 During the exercises a number of tobacco retailers were visited. 3 of the sales made by off-licences were of both alcohol and cigarettes. Of the 14 tobacco retailers checked, 11 (78%) sold cigarettes to our volunteers; significantly, one of these sales was a packet of counterfeit cigarettes.
- 2.14 As previously indicated, Derbyshire trading standards test-purchase exercises involving young volunteers under the age of 18 are conducted in accordance with best professional practice and the young people are routinely instructed not to lie about their age. It is of concern that local a high proportion of local retailers where there is low confidence about their systems, are not, apparently following trading standards advice to take adequate steps to prevent sales of alcohol and tobacco to young people under age. It also demonstrates the importance of maintaining a programme of advisory visits and follow-up test purchase checks to ensure that young people do not gain access to these restricted products.
- 2.15 All of the businesses have been advised of the results of the checks. Those failing to request ID will be considered for further checks using volunteers below the age of 18. The first of these underage test-purchase exercises took place last week – reassuringly there were no sales made from the 14 businesses visited on this occasion, suggesting that the recent warning sent to them had raised awareness and diligence at those premises.

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, human rights, health, human resources, property and transport considerations.

4. Background papers:

Alcohol Harm Reduction CabCo report dated 9th July 2013

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 results of a recent survey to check the application of the Challenge 21/25 Schemes and to note the instances where local alcohol retailers have failed to take sufficient steps to check the age of young people seeking to buy alcohol.

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