

Agenda Item No. 3(a)

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

24 May 2016

Report of the Strategic Director – Economy, Transport and Communities

**TRADING STANDARDS CONTRIBUTION TO ALCOHOL HARM
REDUCTION 2015-16**

(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 Police. Enforcing the provisions of the original licensing legislation had been the province of the Police. 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-age sales requirements for shops, supermarkets and other 'off-license' premises, whilst the Police retain the lead for pubs, clubs and other 'on-license' premises.

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 underage. 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 the Division has the power to raise an objection with the Licensing Authority.

The Department of Business Innovation and Skills (BIS) has an ambition to reduce regulatory burdens on businesses and the Better Regulation Delivery Office (BRDO – a part of BIS and, since April 2016, re-named ‘Regulatory Delivery’) 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’*.

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. Training should be provided 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 person responsible for the business to address any shortcomings. Failure to take action to correct inadequacies can lead to an application to the local Licensing Authority to have additional conditions placed on the premise’s license and/or a request to suspend or revoke the license if there is evidence of persistent non-compliance.

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 and/or guardians are clearly briefed as to the purpose of the exercise. The guidance originally suggested that volunteers should be at least 18 months younger than the minimum legal age to purchase the goods in question 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 assistant 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.

The Division works closely with other agencies who have an interest in or responsibility for preventing alcohol harm. The Division was a founder member of the county-wide ‘VAL’ groups (Violence, Alcohol and Licensing) and regularly attend meetings with Derbyshire Police, Community Safety and district/borough 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 Derbyshire Police operations by providing the young volunteer test purchasers. The Community Safety team provides some financial

assistance with this activity, which tends to be at weekends and/or in the evening.

During the last financial year, a total of 86 licence applications were received. There were 35 applications for premises licences at off-licences ('off-trade premises'). This compares to 68 for the preceding year. Some 23 (66%) of the applications were considered to have insufficient arrangements for the protection of children from harm; one of the licensing objectives. It was therefore necessary to negotiate with the applicant (or his or her representative) to ensure that appropriate measures were put in place and, if necessary, made a licence condition.

A total of 51 licence applications were received for on-licences. To avoid unnecessary duplication of effort, there is an understanding between Derbyshire Police and the Trading Standards Division that, in respect of underage aspects, the Police will comment in the case of on-licence applications and Trading Standards in respect off-licences. However, in some cases, particularly micro-breweries and premises incorporating a shop or restaurant, the business may involve significant amounts of both on and off-sales. In these instances, although the premises be deemed an on-licence, it is appropriate for both authorities to comment. In 12 (23%) of such cases, the Trading Standards Division has made representations regarding the applications, all of which have resulted in improved conditions.

Trading Standards staff carried out 98 advisory visits to local businesses selling alcohol during the year; many of these were carried out jointly with police and /or licensing authority officers. A total of 15 test purchase checks were made but no illegal sales recorded. This is a significant improvement on the previous year when 14 test purchase checks resulted in five sales (36%), although it should be noted that, as a result of the BRDO Code of Practice, the total number of checks made is significantly lower than in previous years.

Table 1 – Off-Trade Alcohol Underage Sales Test Purchase Checks

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Number of Attempts	128	196	147	45	14	15
Sales	14	28	15	5	5	0
Percentage of sales	10.9%	14.3%	10.2%	10.2%	36%	

On-trade test purchase checks are led by Derbyshire Police and supported by Trading Standards officers with financial assistance from the Community Safety Partnership. Fewer test purchase checks were made during the last financial year compared to the preceding year, due to other service pressures within Derbyshire Police. The 17 sales, resulting from 57 checks, equates to a compliance rate of 70% which is not as good as the previous year (70%)

compared to 78%). Nevertheless, the programme of surveillance and test purchase checks is well established and there has been a steady decline in failure rates from a high of 49% in 2010-11. (See table below).

Table 2 - On Trade Alcohol Underage Sales Test Purchase Checks

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Number of Attempts	85	189	285	80	76	57
Sales	42	57	77	26	17	17
Percentage of sales	49%	30%	27%	32.5%	22%	30%

The Division has a range of sanctions available following the detection of non-compliance, either following an illegal underage 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.

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 Police).
- Closure orders for 'Persistent Selling' (48 or 80 hours)
- Voluntary variation of Premises Licence by the holder
- Premises Licence Reviews

Both Trading Standards and Derbyshire 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. There were no illegal sales following test purchase checks conducted during the year, but an investigation initiated the previous year was concluded in November 2015 with the successful conviction of a Dronfield based Convenience Store. This case followed the sale of 8 cans of lager to a Trading Standards volunteer. The Magistrates imposed a penalty of £250 for this offence and also ordered the defendant to pay £600 towards Prosecution costs for this and an unrelated Trading Standards offence.

Tackling alcohol harm by working with partners and local businesses will remain a priority for the Trading Standards Division for the forth coming 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.

Further details and a breakdown of the advisory visits and test purchase checks by district/borough council areas are provided in the appendix to this report.

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 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 RECOMMENDATION** That the Cabinet Member notes the activities of the Trading Standards Division to contribute to reducing harm from alcohol and to 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 – Alcohol Harm/Underage Sales Activities 2015-16

Underage Risk- Assessment/Business Support visits

In accordance with the BRDO Code of Practice on Age Restricted Products, the Trading Standards Division 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.

In the year 2015-16, officers visited 98 off-licence premises identified by the programme (compared to 111 in 2014-15).

Businesses were identified for a visit as a result of the following:

- Not having had a risk-assessment visit in the previous three years.
- Being a new licensed premises.
- The business having changed hands and a new Premises Licence Holder and/or Designated Premises Supervisor.
- Complaints about alleged underage sales or other concerns which suggest a visit is appropriate.

During the visits, advice is given to the business and its risk of breaching age-restriction compliance requirements is re-assessed. The visit also includes an examination of alcohol sold at the premises to check for suspected illicit or counterfeit product.

Table 1 - Risk assessment visits by District/Borough

Area	Visits to tobacconists and off-licences
Amber Valley	19
Bolsover	25
Chesterfield	17
Derbyshire Dales	7
Erewash	4
High Peak	7
North East Derbyshire	17
South Derbyshire	2
Total	98

Age Verification Checks

The BIS/BRDO Code of Practice 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 the RIPA, the Trading Standards Division 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.

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.

A total of 64 off-licence premises were visited (compared to 69 the previous year) and 23 (35%) resulted in a sale of alcohol to the volunteers without asking for proof of their age. Although this is not as good as the previous year when there were 14 sales following 69 checks, a failure rate of 20%, it is still an improvement from the previous year when 47 out of 79 premises checked (59.5%) made a sale to an 18 year-old despite operating a 'Challenge 25' policy. The full results, by District/Borough Council areas, are shown in the table below. Eleven of the businesses that did sell alcohol to a volunteer did so in breach of the licence conditions agreed by the District/Borough Council Licensing Authority. Although it is not a legal requirement to instruct staff to always seek proof of age if a young person appears to be aged less than 21 or 25, it is recognised as best practice and licensing authorities can require businesses to adopt such a policy as a condition of their licence.

Table 2 – Age verification checks by District/Borough

Area	Number of Premises Visited	Number of Sales	Sales (%)	Challenge 21/25 Licence Condition
Amber Valley	13	2	15	0
Bolsover	9	5	56	3
Chesterfield	9	3	33	2
Derbyshire Dales	3	2	66	1
Erewash	9	3	33	1
High Peak	6	1	17	1
North East Derbyshire	4	3	75	1
South Derbyshire	12	4	33	2
Total	65	23	35	11

All the Premises Licence Holders (PLH) and Designated Premises Supervisors (DPS) 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. The local licensing authority was notified of any premises that were in potential breach of their licence conditions. Premises that sold alcohol as a consequence of an age verification checks were prioritised for underage test purchase checks.

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 Trading Standards, risk score is based on:

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

There were 16 complaints from members of the public about 'off-trade' businesses selling alcohol to young people during 2015-16. A total of 15 attempted test purchases were made to 15 businesses throughout the county and no illegal sales were made. This compares to 5 sales from 15 attempted test purchases in 2014-15; a failure rate of 36%.

All PLH and 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.

On-Licence test purchasing by the Police

In addition to the range of activities to reduce the access of young people to alcohol from 'off-trade' premises (shops, supermarkets, etc) the Division also supports Derbyshire Police who are responsible for the 'on-trade' sector (pubs and clubs). The Division supports test purchasing exercises by providing and supervising volunteers to make the test purchase checks and through county-wide co-ordination with Community Safety and VAL partners. The selection of Premises visited on these exercises is determined by Derbyshire Police Licensing Officers.

On-Licence test purchasing

There were 12 complaints from members of the public about 'on-trade' businesses selling alcohol to young people during 2015-16. A total of 57 attempted test purchases were made which resulted in 17 sales which represents a failure rate of 30%. This compares to 17 sales from 76 attempts in 2014-15. Where a sale takes place, a second test purchase attempt is often made. Consequently, the number of businesses identified as having failed the test purchase check may be different. Some 16 premises were identified as

being in breach which represents a failure rate of 28%, compared to 24% in 2014-15.

Table 3 – On-licence test purchases by Derbyshire Police

Area	No. of test purchase attempts	No. of sales	(%)	No. of premises visited	No. of premises infringing	(%)
Amber Valley	10	5	50	6	4	67
Bolsover	1	0		1	0	
Chesterfield						
Derbyshire Dales	18	6	33	12	6	50
Erewash	12	4	33	12	4	33
High Peak	6	1	17	6	1	17
North East Derbyshire						
South Derbyshire	10	1	10	10	1	10
Total	57	17	30%	57	16	28%

Underage sales occurring at on-licence premises were investigated by Derbyshire Police Licensing officers.

Summary of investigation outcomes On-Licence Test Purchasing 2015 to 2016

Derbyshire Police have a similar range of sanctions to tackle breaches of alcohol harm requirements as Trading Standards and, in addition, can issue a Notice requiring the business not to sell alcohol for a specified time. Details of the sanctions imposed are provided in the table below

Table 4 – Police sanctions following underage sales from on-trade premises

Area	Closure notice for persistently selling	Premises action plan issued	Penalty notice disorder issued to seller
Amber Valley	1 x 48 hour	3	4
Derbyshire Dales	1 x 48 hour 1 x 72 hour	4	6
Erewash	0	3	1
High Peak	0	1	0
South Derbyshire	0	1	1
Total	3	12	12