



**London Boroughs of Brent and Harrow
Trading Standards Joint Advisory Board**
21 March 2016

**Report from the Head of Regulatory
Service**

For
Action/Information

Wards affected:
ALL

UNDERAGE SALES REPORT 2015

1 SUMMARY

1.1 This report provides information about the Trading Standard's duties enforcing underage sales legislation and a summary of this year's underage sales work the Service has carried out.

2 RECOMMENDATIONS

2.1 That Members consider the report and comment where appropriate noting the contribution made by the Trading Standards Service preventing illegal underage sales and endorse the continued approach to enforcement.

3 DETAILS

3.1 This report is presented to the Trading Standards Joint Advisory Board to provide Members an overview of the work which the Service is carrying out in relation to preventing underage sales. We welcome any comments or questions.

Background to our Work

3.2 The impact of underage drinking and smoking can be devastating on the health and development of a young person whilst at the same time, communities can also be badly affected by groups of underage drinkers which can often lead to anti-social behaviour and a fear of crime.

3.3 As members are aware, in response to these issues, the Service maintains a regular programme of underage test purchasing operations throughout the year with our current work plan requiring 125 Brent underage test purchases and 135 in Harrow. The frequency of these visits is spread throughout the year but visits are increased during school holiday times.

- 3.4 Whilst the law regulates the sale of various age restricted items, we prioritise our operations to focus on the sale of alcohol, tobacco and fireworks, these being the items young people most likely will attempt purchase causing harm. By tackling underage sales, we are protecting this vulnerable group who are susceptible to peer pressure and are easily influenced.
- 3.5 The Health and Social Care Information Centre report titled 'Smoking, drinking and drug use among young people in England in 2013' monitored smoking, drinking and drug use among secondary school pupils aged 11 to 15. Information was obtained from 5,187 pupils in 174 schools throughout England in the autumn term of 2013.
- 3.6 Alarmingly, 48% of pupils said that they had tried smoking or drunk alcohol at least once in their lives. 16% had done one or more of these recently. They were most likely to have drunk alcohol in the last week (9%), rather than smoked in the last week (6%) despite the fact you need to be legally aged 18 or over to buy tobacco or alcohol products.
- 3.7 On the 1 October 2015 the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 SI 2015 No. 895 came into force. The regulations made under Part 5 of the Children and Families Act 2014, make it an offence to sell nicotine inhaling products commonly known as e Cigarettes to persons under 18.
- 3.8 The Regulations provide exemptions for nicotine inhaling products that are licensed as medicines so that they can be made available to children and young people if they have a doctor's prescription for such products or where it could lawfully be sold to a child as a medicinal product. Otherwise, a retailer found guilty of selling e-cigarettes to under 18s could be fined up to £2,500.
- 3.9 The same legislation also extended the law in relation to proxy purchases creating offences for an adult to purchase, or attempt to purchase, tobacco, cigarettes, e-cigarette devices and e-liquids on behalf of a person aged under 18. Whilst this legislation is welcomed, it is the adult making the purchase who would be committing the offence, not the retailer. In practical terms, this makes enforcement of the legislation difficult as apprehending members of the public in the street can not be done without Police assistance.
- 3.10 As with most underage sales legislation, the law provides those accused of an underage sale offence a due diligence defence, meaning that if it can be shown a business owner or sales person has done all that is reasonable to avoid committing the offence, then they should not be prosecuted.
- 3.11 Whilst our work focuses on the age restricted products that are most likely to cause harm to young people within Brent or Harrow, there are

many items which it is illegal to sell to persons under a particular age. These are shown in the table:

Product	Age restriction	Legislation	Maximum penalty	Enforcement Agency
Air Weapons	18 and over	The Firearms Act 1968	Unlimited fine and six months' imprisonment	Trading Standards/ Police
Aerosol Paint	16 and over	Anti-social Behaviour Act 2003	Fine of up to £2,500	Trading Standards
Alcohol	18 and over	The Licensing Act 2003	Unlimited fine and forfeit of licence	Trading Standards/ Police
Christmas Crackers	12 and over	The Pyrotechnic Articles (Safety) Regulations 2015	Unlimited fine and three months' imprisonment	Trading Standards
Crossbows	18 and over	Crossbows Act 1987	Unlimited fine and six months' imprisonment	Trading Standards
E Cigarettes	18 and over (unless licensed as a medicine)	Children and Families Act 2014 and Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015	Fine of up to £2,500	Trading Standards
Fireworks and sparklers	18 and over	The Pyrotechnic Articles (Safety) Regulations 2015	Unlimited fine and three months' imprisonment	Trading Standards
Gambling	18 and Over	Gambling Act of 2005	Unlimited fine and/or imprisoned for up to 51 weeks	Gambling Commission
Knives / Axes / Blades	18 and over	Criminal Justice Act 1988 (as amended by the Offensive Weapons Act 1996) and the Violent Crime Reduction Act 2006	Unlimited fine and six months' imprisonment	Trading Standards
Lighter refills containing butane	18 and over	The Cigarette Lighter Refill (Safety) Regulations 1999	Unlimited fine and six months' imprisonment	Trading Standards
Lottery tickets / 'instant win' cards	16 and over	The National Lottery etc Act 1993 / National Lottery Regulations 1994	Unlimited fine and two years' imprisonment	Trading Standards
Party poppers and similar low-hazard	16 and over	The Pyrotechnic Articles (Safety) Regulations 2015	Unlimited fine and three months' imprisonment	Trading Standards

low-noise fireworks				
Petrol	16 and over	Petroleum (Consolidation) Regulations 2014	Unlimited fine and 12 months' imprisonment	Trading Standards
Proxy Purchasing	Over 18	Children & Families Act 2014	Fixed Penalty Notice £90 discounted to £60 if paid within 15 days or legal proceedings if fine not paid punishable up to a fine of £2,500	Trading Standards
Sunbeds	18 and over	Sunbeds (Regulation) Act 2010	Fine of up to £20,000	Local Authority, (preferably Environmental Health)
Tattooing	18 and over	Tattooing of Minors Act 1969	Fine of up to £1,000	Police
Tobacco products	18 and over	Children and Young Persons (Protection from Tobacco) Act 1991 as amended	Fine of up to £2,500	Trading Standards
Video Recordings	Variable from 12 and over	Video Recordings Acts of 1984 and 2010	Unlimited fine and six months' imprisonment	Trading Standards
Video games: PEGI rating	Variable from 12 and over	Video Recordings Acts of 1984 and 2010	Unlimited fine and six months' imprisonment	Trading Standards
Volatile substances / solvents	18 and over	Intoxicating Substances (Supply) Act 1985	Unlimited fine and six months' imprisonment	Trading Standards

Method

3.12 The methods we use to test retailers vary depending on the item to be purchased, the retailer, their location and other sources of intelligence. In general terms, child volunteers who have received prior training, will be briefed to purchase a restricted product.

3.13 A risk assessment is carried out for the children in each shop to determine the method to be used. This takes into account things like the size and layout of the shop and whether the alcohol has to be requested from a member of staff if it is stored behind the sales counter or if the children can select it themselves. Volunteers are instructed to give their correct ages if challenged by a shop keeper and they do not have any identification with them.

- 3.14 If a sale takes place the children leave the shop and the age restricted item will be handed to an officer, who will take charge of it. The volunteers are then required to produce a written statement describing the events that took place. Whilst this is being done, officers will return to the shop to inform the seller what has just happened.
- 3.15 Child volunteers start as trainees at the age of 11 before retiring from the role, usually about the age of 15.

Working with Businesses

- 3.16 The Department of Business Innovation and Skills (BIS) is very keen to reduce regulatory burdens on businesses and the Better Regulation Delivery Office (BRDO, 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.
- 3.17 Proactive compliance checks with age restrictions is targeted based on any intelligence we received, those who have signed up to our Responsible Trader Scheme (see below for more information) and when considering other local risks based evidence.
- 3.18 We have a range of sanctions available following an illegal under-age sale. The most appropriate course of action after each illegal sale is always determined on a case-by-case basis taking into consideration the Council's enforcement policy. Careful consideration is made of all the facts and evidence in each case, the procedures and controls the business has in place, staff training, previous history, how far they have gone to meet any statutory defence available and any other mitigating factors.
- 3.19 If it is decided formal action should be taken, the following options are available
- Letter of Warning
 - Simple Caution
 - Prosecution
 - For any premises licensed to sell alcohol, we can also consider reviewing their licence as an additional sanction
- 3.20 For the last eight years, we have operated our free Responsible Trader Scheme that helps businesses to understand and comply with the various requirements of age restricted goods legislation. Members of the scheme receive a complementary training pack and materials to help them implement controls and procedures to prevent illegal sales.

- 3.21 At the time of writing this report, we are in the process of printing a new supply of material after updating our training pack following legislative changes, feedback about the previous contents and to reflect new ways of working. This ensures all information is accurate and up to date whilst at the same time, we have taken the opportunity to modernise the scheme's logo and give everything a refreshing makeover to maintain its prominence and a professional appearance.
- 3.22 Scheme members are subject to periodic audits to ensure they are operating within the terms and conditions and to maintain membership standards. An audit requires an inspection at the business premises, takes approximately an hour to do or longer if the business is found to need assistance or be non compliant in some way. At present, the scheme has 248 members, down from 267 at April 2015, (132 Brent and 116 Harrow) of which 60 (37 Brent and 23 Harrow) have been audited this financial year.
- 3.23 Where non compliance with the membership criteria is identified, Officers will do their best to support businesses making the required change/s to become compliant. Such businesses would then receive audits more frequently than members who are found to be fully complying with the terms and condition and their systems will be tested via underage sales visits. If members do not wish to, or are unable to cooperate, then they can have their membership terminated although this is rare. Businesses changing hands and operating under new ownership is our most common reason to terminate a member and then we try to recruit the new owner to the scheme.
- 3.24 Membership of the scheme is voluntary but local businesses who sell age restricted goods are welcome to seek help and advice from us regardless of whether they are scheme members.
- 3.25 Everyone involved in sales from on-licensed and off-licensed premises should be aware of their obligations under the Licensing Act 2003 relating to the prevention of sales of alcohol to children as part of their training to become licence holders.
- 3.26 As a 'responsible authority' under the licensing legislation, we assess all premises alcohol license applications to check that the necessary steps have been taken to prevent underage sales. If we believe the standards and controls fall short, we can request the applicant makes improvements. Should these not be forthcoming, we can raise an objection with the licensing authority.
- 3.27 For a period of time several years ago, we started operating a 'Shop the Shop' scheme. This is an anonymous text messaging service which local businesses, school children and other members of the public, could use to send a text message alerting us to shops allegedly supplying products to those under the legal age to buy them. The idea of the initiative was to

provide a simple method for people to notify us of problems without the need to follow the process of logging a formal complaint.

3.28 This scheme assisted us to comply with the BRDO Code of Practice because it supplied us specific intelligence to focus where we carried out our enforcement. It also gave us an idea which wards in the boroughs were causing the greatest concern. Regrettably, the scheme does not currently operate due to a lack of resources.

Underage Sales Data in Brent & Harrow

3.29 Despite advice to businesses and the promotion of the scheme, there are still a small number of traders who continue to sell age-restricted goods to children.

3.30 The following table shows the results of our test-purchasing in 2014-15, with a direct comparison to the previous year.

Product	Test purchases (no.)				Sales (no.)				Failure rate (%)			
	Brent 2013-14	Brent 2014-15	Harrow 2013-14	Harrow 2014-15	Brent 2013-14	Brent 2014-15	Harrow 2013-14	Harrow 2014-15	Brent 2013-14	Brent 2014-15	Harrow 2013-14	Harrow 2014-15
Alcohol	78	35	104	88	4	0	10	2	5	0	9	2
Tobacco	31	73	17	22	1	3	1	5	3	4	6	18
Knife	6	5	1	4	1	0	0	0	16	0	0	0
Fireworks	25	0	1	27	0	0	1	0	0	0	4	0
Spray Paint	0	0	1	0	0	0	0	0	0	0	0	0
E-Cigarettes	0	12	0	0	0	0	0	0	0	0	0	0
Video	0	0	0	0	0	0	0	0	0	0	0	0
Total	140	125	144	141	6	3	12	7	4	2	8	5

3.31 These figures show a slight improvement compared to the previous year in both boroughs.

3.32 Obtaining accurate data to benchmark our performance against other local authorities is difficult because there is no central point or coordinating body to collate this information. However, figures obtained from the Trading Standards Institute's England 2013-14 Tobacco Control Survey, states that from statistics they had analysed, illegal sales of cigarettes occurred in 10% of test purchase operations which is much higher than what we have seen locally.

3.33 The table overleaf shows the results of our underage test purchasing operations which have taken place this financial year 2015-2016.

Product	Test purchases (no.)		Sales (no.)		Failure rate (%)	
	Brent 2015-16	Harrow 2015-16	Brent 2015-16	Harrow 2015-16	Brent 2015-16	Harrow 2015-16
Alcohol	65	54	4	2	6	3
Tobacco	51	23	25	0	0	0
Knife	14	7	1	2	7	29
Fireworks	0	21	0	0	0	0
Spray Paint	0	0	0	0	0	0
E-Cigarettes	0	2	0	2	0	100
Video	1	0	0	0	0	0
Total	131	107	6	6	5	6

Examples of offending

- 3.34 A Brent business owner was given a 12 month conditional discharge and ordered to pay more than £850 in costs, after his untrained employee sold a packet of cigarettes to a child of 16. The volunteer wasn't asked their age or for identification and it later transpired the employee had never received any training from the business owner on the law relating to the sale of age restricted products.
- 3.35 In September 2015, another Brent shopkeeper was ordered to pay over £1,500 after being caught selling alcohol to a 13 year old girl who was accompanied by a 12-year-old. The defendant did not ask what age the girl was or for any identification, and sold the alcohol to her, later claiming that he was distracted at the time of sale as he was on the telephone and, as the girl was wearing nail polish, assumed that she was an adult.
- 3.36 Harrow team concluded an investigation in November 2015 where the sales person sold cigarettes to children despite knowing they were underage and passing comment that 14 year olds should not be smoking! The trader admitted he sold the cigarettes but claimed he was distracted at the time of the sale. The court, ordered him to pay fines and costs totalling £985.00.
- 3.37 During March 2016, a Harrow off-licence owner was ordered to pay in excess of £6,000 after he sold a bottle of Famous Grouse whisky to a 13 year old boy. Whilst at the shop, Officers discovered cigarettes that did not carry the correct health warnings which had been hidden under the counter. The defendant failed to appear at the Magistrates Court on two occasions despite an Officer speaking to him after he missed the first Court appearance. The case went ahead in his absence.

3.38 In summary, underage test purchasing will remain a priority area for the Service as I strongly believe that our low number of non complaint businesses is directly attributable to the work we carry out to prevent illegal sales. Our advisory work with traders, promoting the Responsible Trader Scheme, regular test purchasing operations and publicity of the formal action taken against those who do offend, sends out a clear message that this legislation is taken seriously and we will check to make certain that all businesses are fully complying with the law.

4 FINANCIAL IMPLICATIONS

4.1 There are no additional financial implications as this work formed part of our agreed work plan for 2015-2016.

5 STAFF IMPLICATIONS

5.1 Our work plan guides us to undertake 125 underage sales visits in Brent and 135 underage sales visits in Harrow each year. Each visit takes approximately one hour when you include preparation and travel and requires three officers. This permits two Officers to return to the business if a sale is made, whilst the third Officer can remain with the child volunteers. This totals approximately 375 hours of work in Brent and 405 hours of work in Harrow.

5.2 If an illegal sale takes place, then this requires investigation. Last year 2014-15, 208 hours of staff time were spent in Brent and 231 hours of staff time in Harrow investigating underage sales offences and where appropriate pursuing formal action.

5.3 This means that underage sales work equates to approximately seventeen weeks worth of work each year, per borough.

6 BACKGROUND INFORMATION

6.1 Any person wishing to obtain more information should contact Simon Legg, Senior Regulatory Services Manager, Brent Civic Centre, Engineers Way, Wembley Middlesex HA9 0FJ. Telephone: (020) 8937 5522.

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