



Alcohol and Entertainment Licensing Sub-Committee – Second Supplementary

Wednesday 1 August 2018 at 10.00 am
Members' Suite - 4th Floor, Brent Civic Centre,
Engineers Way, Wembley, HA9 0FJ

Membership:

Members

Councillors:

Allie (Chair)
Maurice
McLeish

Substitute Members

Councillors:

Hector, Kennelly, Long, W Mitchell Murray and R Patel

For further information contact: Devbai Bhanji, Governance Assistant
Tel: 020 8937 4011; Email: devbai.bhanji@brent.gov.uk

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www.brent.gov.uk/committees

The press and public are welcome to attend this meeting.

Notes for Members - Declarations of Interest:

If a Member is aware they have a Disclosable Pecuniary Interest* in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent and must leave the room without participating in discussion of the item.

If a Member is aware they have a Personal Interest** in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent.

If the Personal Interest is also significant enough to affect your judgement of a public interest and either it affects a financial position or relates to a regulatory matter then after disclosing the interest to the meeting the Member must leave the room without participating in discussion of the item, except that they may first make representations, answer questions or give evidence relating to the matter, provided that the public are allowed to attend the meeting for those purposes.

***Disclosable Pecuniary Interests:**

- (a) **Employment, etc.** - Any employment, office, trade, profession or vocation carried on for profit gain.
- (b) **Sponsorship** - Any payment or other financial benefit in respect of expenses in carrying out duties as a member, or of election; including from a trade union.
- (c) **Contracts** - Any current contract for goods, services or works, between the Councillors or their partner (or a body in which one has a beneficial interest) and the council.
- (d) **Land** - Any beneficial interest in land which is within the council's area.
- (e) **Licences**- Any licence to occupy land in the council's area for a month or longer.
- (f) **Corporate tenancies** - Any tenancy between the council and a body in which the Councillor or their partner have a beneficial interest.
- (g) **Securities** - Any beneficial interest in securities of a body which has a place of business or land in the council's area, if the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body or of any one class of its issued share capital.

****Personal Interests:**

The business relates to or affects:

- (a) Anybody of which you are a member or in a position of general control or management, and:
 - To which you are appointed by the council;
 - which exercises functions of a public nature;
 - which is directed is to charitable purposes;
 - whose principal purposes include the influence of public opinion or policy (including a political party or trade union).
- (b) The interests a of a person from whom you have received gifts or hospitality of at least £50 as a member in the municipal year;

or

A decision in relation to that business might reasonably be regarded as affecting the well-being or financial position of:

- You yourself;
- a member of your family or your friend or any person with whom you have a close association or any person or body who is the subject of a registrable personal interest.

Agenda

Item		Page
3	Application for the Review of Premises Licence by Metropolitan Police for the premises known as Shree Superstore 11 Wembley Hill Road HA9 8AF, pursuant to the provisions of the Licensing Act 2003	84 - 87
4	Application for the Review of Premises Licence by Metropolitan Police for the premises known as Bacovia Supermarket, 296 Neasden Lane, NW10 0AD, pursuant to the provisions of the Licensing Act 2003	88 - 109



Please remember to **SWITCH OFF** your mobile phone during the meeting.

- The meeting room is accessible by lift and seats will be provided for members of the public.

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Ankitkumar Bhatt
Sunny Supermarket/Shree Superstore
11 Wembley Hill Road
Wembley
HA9 8AF

11 July 2018

Your Ref: 12283

Licensing Representation for the Premises Licence Review for Sunny Supermarket/Shree Superstore, 11 Wembley Hill Road, Wembley, HA9 8AF

I certify that I have considered the application shown above and wish to make representations, which is detrimental to the Licensing Objectives for the reasons indicated below.

Officer: Susana Figueiredo– Licensing Inspector

An officer of the Licensing Authority, in whose area the premises are situated, who is authorised for the purposes of exercising its statutory function as a 'Responsible Authority' under the Licensing Act 2003.

The application has been made to review the premises licence under section 51 of the Act. The

Licensing Authority representations are primarily concerned with the four licensing objectives;

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

Licensing Visit

As a result of the review application made by the Licensing Police, a visit was undertaken at the premises on Monday 9th July 2018 at approximately 13.30hrs. The premise was open and Mr Antikumar Bhatt was at the premises at the time of my inspection. Based on my visit, the following outcome was found based on the existing conditions:

1. CCTV shall be installed and maintained in a working condition.

Satisfied

2. All CCTV recordings shall be kept for 31 days and shall be made available to police and licensing officers if requested.

A download of the CCTV was not requested at the time of the inspection.

3. 'Raid Control' crime prevention measures shall be installed and all staff given suitable training.

Mr Antikumar Bhatt confirmed that Raid Control measures were now installed.

4. A personal licence holder shall be present on the premises and supervise the sale of alcohol throughout the permitted hours for the sale of alcohol.

Mr Antikumar Bhatt, being the licence holder and Designated Premises Supervisor (DPS) for the premises, was present at the time of inspection.

5. A copy of the premises licence summary including the hours which licensable activities are permitted shall be visible from the outside of each entrance to the premises.

Satisfied.

6. Photographic proof of age shall be required from all persons appearing to be under the age of 21.

Satisfied

7. A sign stating 'No proof of age - No sale' shall be displayed at the point of sale.

Satisfied

8. A refusal book shall be kept and maintained.

Satisfied

9. On major event days at Wembley Stadium the following shall apply:

- Customers shall not be allowed to congregate outside the premises.

- No glass bottles shall be sold, all drinks shall be sold in plastic bottles or cans.

Unable to verify

Discussion

During my visit, I asked Mr Bhatt why he had failed to meet the conditions of his licence on a number of occasions. In summary Mr Bhatt replied by saying he felt he had been treated unfairly by comments made in the officer's review application in particular where it states that 'he did not bother to fill it and maintain it' in reference to the refusal book. Mr Bhatt stated that he could have been dishonest in stating that he hadn't had any refusals but instead chose to be honest and say that he had been busy when refusals took place and therefore hadn't managed to fill the refusal book in.

Mr Bhatt also stated that the comment relating to a 'consistent violation of licensing legislation' was also unfair because after the police's first visit he closed the shop for a week whilst he put the raid control measures in place. He indicated that to the contrary, he had taken the police officers request seriously and wanted to ensure that he ran his business ensuring he met what was required.

Throughout the duration of my time at the premises Mr Bhatt kept reiterating that he is 'learning' and whilst I understand that this may be the case, my question is to whose detriment. Despite Mr Bhatt's concerns about the police's comments in the review application, the facts of the case are stated, Mr Bhatt has failed to meet the conditions of his licence and on some occasions on multiple occasions.

For example Mr Bhatt who had worked with the previous licence holders for 6 months prior to becoming the premises licence holder and DPS for the premises, had failed to withdraw all glass bottles from sale on event days on 28th February 2018, 14th April 2018 and 26th May 2018. To be reminded once of licence conditions may be seen as acceptable but to be told on 3 occasions within the space of 3 months is totally unacceptable and my question of to whose detriment can now be answered. It is to those members of the public who would be in the presence of glass bottles during an event day which could potentially be used as weapons on the public highway. I'm not sure how much more 'learning' could be done by the licence holder in order to understand the responsibility of holding a premises licence and what it means to uphold the licensing objectives.

What I am sure of, is that based on Mr Bhatt failings to date, that if he is to continue being the licence holder of the premises licence, he will not be pro-active and/or not thinking ahead enough to ensure the requirements of the Licensing Act 2003 are met.

In relation to glass bottles not being displayed for sale on event days for customers to purchase, I asked Mr Bhatt why he didn't have more than one member of staff on event days. Mr Bhatt then stated that he would make sure to employ someone on future event days now that he'd understood how busy it could get. However, at the last 3 events he hadn't managed to work that out for himself.

When asked how customers had managed to attempt to purchase glass bottles on event days, Mr Bhatt told me that he had put the blinds down over the alcohol but that customers had simply opened the blinds up in order to reach for it. He explained that he was alone in the premises and therefore couldn't control what was being purchased but then stated that he refused the sales as the customers approached the tills. I pointed out my concern of customers being annoyed that they'd queued up to buy a glass bottle drink, only to be told they couldn't buy it and what the consequences of this may be.

Mr Bhatt then showed me the fridge where the glass bottles were and pulled the blind down to show me how the alcohol was normally covered, at which point it became very obvious as to why customers were able to access the alcohol. The blind was not secured in any way and the alcohol was visible and accessible from the side of the blind even when the blind was down. When I showed Mr Bhatt why customers were accessing alcohol and pointed out that he could have put all his glass bottles into the store room at the back during event days, he replied by stating that was a good idea, thanked me and said that in future he would place his alcohol in the store room. However, Mr Bhatt should have already been aware that this is how he should operate without me having to prompt him.

Summary

On the face of it, Mr Bhatt comes across as someone that says he wants to learn and put things in place but the facts of the review application cannot be ignored when there has been multiple issues and at times a repeat of the same issue. These issues of course being very serious and potentially having an adverse affect on the upholding of the Licensing objectives. I explained to Mr Bhatt that this wasn't the type of business to take lightly when there is such a great responsibility to take on, especially on event days when there are up to 90,000 persons in the area.

If the Licensing committee are to consider allowing the licence holder to keep the Premises Licence, my suggestion is that stringent conditions are put in place to ensure Mr Bhatt upholds the Licensing objectives. At this point, I am not confident that even with extra condtions, Mr Bhatt will be able uphold the licensing objectives and comply with his current licence conditions.

Yours faithfully,



Susana Figueiredo
Licensing Inspector
Planning, Transportation & Licensing

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Brent

Brent Civic Centre
Engineers Way
Wembley
Middlesex HA9 0FJ

TEL 020 8937 5641

EMAIL paul.harris@brent.gov.uk

WEB www.brent.gov.uk

To Brent Licensing by email

25th July 2018

Licensing Representation further to the Application for the review of Premises Licence for Bacovia Limited, 296 Neasden Lane, London, NW10 0AD Ref: 12304.

I certify that I have considered the application shown above and I wish to make a representation as an:

Officer of Brent and Harrow Trading Standards Service, Brent Civic Centre, Wembley HA9 0FJ, in whose area the premises are situated, which is authorised for the purposes of exercising its statutory function as a 'Responsible Authority' under the Licensing Act 2003.

It is noted that an application has been made for a review of the premises licence under section 51 of the Licensing Act 2003 by a third party.

The Brent and Harrow Trading Standards Service representation is concerned with the licensing objective; Prevention of Crime and Disorder.

REPRESENTATION

The Personal Licence Holder (PLH) at 296 Neasden Lane NW10 0AD is Mr Mihai LUPES. He is a director of the limited company Bacovia Ltd (company number 06877999). Incorporated on 15 April 2009.

Brent Trading Standards has the following records of activities at the premises of which Mihai Lupes is a director that indicate a lack of control in preventing crime and disorder.

On 25th August 2011- In an underage test purchasing exercise carried out by Brent Trading Standard Service at 296 Neasden Lane a 14 year old boy served alcohol to volunteers aged 14 years and 13 years old. This resulted in a prosecution on 29th May 2012 of both Mihai Lupes and Bacovia Ltd with fines of £500 and costs of £487.50 for Mihai Lupes and £900 with costs of £487.50 against the firm under the Licensing Act 2003. (**Document 1**)

It should be noted since 2011, three under age test purchase attempts have been made at 296 Neasden Lane by Brent Trading Standards and no sales have been made to the underage volunteers used (dates of test purchase attempts – 29th June 2012, 23rd August 2013 and 31st March 2015).

On 22nd September 2015 Brent Trading Standards visited 296 Neasden Lane NW10 0AD and 40 packets of cigarettes and 1 packet of hand rolling tobacco products were seized that did not have statutory health warnings on them. This was a criminal offence under the Tobacco Products (Manufacture, Presentation, and Sale) (Safety) Regulations 2002 and the Consumer Protection Act 1987. A seizure of 94 packs of cigarettes without the statutory health warnings was also made from another business premises where Bacovia Limited was trading on 28th May 2015, at 145 Cricklewood Broadway, London, NW2 3HX. As a result of both these seizures Bacovia Limited and Mihai Lupes in his role as a director were prosecuted under the Tobacco Products (Manufacture, Presentation, and Sale) (Safety) Regulations 2002 and the Consumer Protection Act 1987. The firm was fined £900 with £1,000 costs, the director was fined £650 with costs of £236 (**Document 2**). On 6th February 2018 following receipt of information from a tobacco firm brand agent that a test purchase of cigarettes without the correct health warnings had been made by an agent of the tobacco brand at 296 Neasden Lane, Brent Trading Standards visited the premises (**Document 3**).

During the visit the following tobacco products that did not have the correct health warnings and were not in standardised packaging were found and seized:

4,242 unit packs of tobacco products for smoking – 3,998 unit packs of cigs (= 79,960 sticks of cigs) and 244 unit packs of hand rolling tobacco (=12.27kg).

On 24th July 2018 Bacovia Ltd and Mihai Lupes were prosecuted for being in possession of the illegal tobacco products on 6th February 2018. Bacovia was fined £1450, with a victim surcharge of £145 and costs of £1446. Mihai Lupes was fined £100 and a victim surcharge of £100, a total of £4141. The offences were breaches of the Standardised Packaging of Tobacco Products Regulations 2015 and the Tobacco and Related Products Regulations 2016.

In addition, medicine packs that did not have instructions in English, including antibiotics, and including some which should have been restricted to prescription only issue were seized under the General Product Safety Regulations 2005 as they contravened the requirements for goods to be safe. These were later handed over to the Medicines and Healthcare products Regulatory Agency.

These were: 76 Packs of 10 500mg Amoxicillina ATB, 79 Packs of 100mg Amoksiklav (comprimate filmate), 22 Packs of 10 500mg Ampilicilina Sandoz capsules, 5 packs of Zinnat Comprimate Filmate 500mg, 43 Mixed products of different types including 5 tubes of Diflex, 1 pack Augmentin, 2 tubes of Triferment, 1 Pack of Thyrozol 10mg, 1 tube Travocort and 1 tube of Colebil, 20 Packs of 100mg Aulin and 9 sample packs of mixed products.

Mihai Lupes did not disclose to Trading Standards the source of the illicit products.

Conclusion

The seizures of illicit products from 296 Neasden Lane do not fall within the remit of the Licensing Act 2003 however they show a willingness to act in a criminal manner by the PLH, Mihai Lupes. Obtaining illicit products from an unknown source and having them in possession for supply are offences in themselves but also show a disregard for the health and well-being of the consumers who purchase them. This has particularly dangerous potential if illicit alcohol is also supplied. Mihai Lupes has continued to

have illicit products for supply and in large quantities despite being prosecuted. This shows a disregard for compliance with the legal requirements of a business. Because of the nature of the activities Mihai Lupes does not show control in the business of the licensing objective of preventing crime and disorder.

As a result I recommend that the licence for following conditions should be placed on the licence.

1. All stock shall be purchased only from established traders.
2. Copies of invoices and receipts for stock shall be kept for a minimum of 6 years and made available to authorised officers.

Paul Harris



Senior Enforcement Officer

List of Documents -.

Document 1 Copy of witness statement by Paul Harris dated 27th March 2018 in relation the sale of alcohol to a minor on 24th August 2011. NB this refers to exhibits and evidence numbers which were used in the prosecution of Mihai Lupes and Bacovia Limited and are not produced for this representation (3 Sheets).

Document 2 Copies of the witness statements of the officer in charge of the investigation relating to the seizures dated 5th June 2015, 20th October 2015 and 22nd October 2015. NB the witness statements refer to exhibits and evidence numbers which were used in the prosecution of Mihai Lupes and Bacovia Limited and are not produced for this representation (7 sheets).

Document 3. Copy of witness statement by Paul Harris dated 27th March 2018 in relation to the seizure on 6th February 2018. NB this refers to exhibits and evidence numbers which were used in the prosecution of Mihai Lupes and Bacovia Limited and are not produced for this representation (9 Sheets).

TRADING STANDARDS SERVICE

Witness Statement

(C.J.Act 1967 - S.9, M.C. Act 1980 – ss5A(3)(a) and 5B, M.C. Rules 1981 r.70)

Statement of: Paul Harris
Age if under 18: Over 18
Occupation: Enforcement Officer

This statement (consisting of three pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated 24th August 2011

Signature

My name is Paul Harris. I am an Enforcement Officer with Brent and Harrow Trading Standards Service. My duties include the investigation of sales of age restricted products to minors under the relevant age restricted legislation.

5

On Wednesday 24th August 2011, I took part in an operation to attempt to purchase age restricted goods with two under age volunteers. The volunteers were Nicholas Bookal, aged 13 years old and Chanel Anderson, aged 14 years old. The other officers taking part were Andrew Clooney, a Principal Officer with Brent and Harrow Trading Services and Ali Bandukwalla, an Assistant Enforcement Officer with Brent & Harrow Trading Standards Service. We attended seven business premises in the borough of Brent, where the volunteers attempted to purchase age restricted goods. Sales of alcohol took place at two of the premises we visited. This statement relates to the sale at Bacovia Supermarket, 296 Neasden Lane, London NW10 0AD.

10

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Signature

E31 Sept 2003

At about 12:30pm Andrew Clooney instructed Nicholas Bookal to attempt to purchase alcohol from Bacovia Supermarket. Chanel Anderson was given a covert camera that would be used to record images and anything that was said at the time of the sale. Both
 20 children were told to tell the truth if asked about their ages and to say they had no identification if asked to produce some. I waited outside the shop.

Andrew Clooney went into the shop shortly before the volunteers. He was carrying a covert camera to record details of any sale. Shortly after entering the shop Nicholas
 25 Bookal and Chanel Anderson came out. I saw that Nicholas Bookal was carrying a bag. He gave this to me. I looked inside the bag and there were two 500ml cans inside; one called Fosters and one called Becks. Andrew Clooney came out of the shop after the volunteers. Ali Bandukwalla took the volunteers to the Service's vehicle and Andrew Clooney and I went to the shop just after 12:30pm. I kept hold of the cans in the bag.

30 In the shop there were two counters on either side of the door. There was a female in the shop and a male. Andrew Clooney and I identified ourselves to the female by showing our Trading Standards warrant cards. Andrew Clooney said that a sale of alcohol had just taken place in the shop to two under age children and he had seen the male serve the
 35 children. The female said her name was Miss Lazar Oana and her date of birth was 11th April 1991. She said her place of birth was in Romania. Miss Oana said her address was 298b Neasden Lane NW10 0AE.

The male was unable to speak English. Miss Oana said that his name was Mr Vlad Lupes;
 40 his date of birth was 11th October 1997. Miss Oana said that Mr Lupes was the son of the

Signature

E31 Sept 2003

owner of the business and that he was due to return to Romania on 6th September 2011. Miss Oana made a telephone call and said that she was speaking to the owner of the business. I tried to speak to the person but I was unable to understand him. Miss Oana then spoke on the telephone in a foreign language whilst I asked questions. She told me
45 that the owner was Mr Mihai Lupes. His home address was 296A Neasden Lane, London NW10 0AD and his date of birth was 1st July 1964.

Andrew Clooney took photographs of the male and female in the shop. I wrote out a notice (number PRH/103) asking Mr Mihai Lupes to contact me to arrange a formal interview to
50 discuss this matter and issued it to Miss Oana.

Andrew Clooney and I left the shop at about 1:05pm and returned to the service's vehicle. I labelled the can of Fosters and produced it as exhibit PRH/BS/1. I labelled the can of Becks and produced it as exhibit PRH/BS/2. I put the cans and the black plastic bag in a
55 sealed bag using the seal D02279. Ali Bandukwalla took digital photographs of the volunteers and me.

On our return to our offices later on that day I booked into secure storage the sealed bag D02279 containing the cans of drink.
60

Signature

E31 Sept 2003

TRADING STANDARDS SERVICE

Witness Statement

(C.J.Act 1967 - S.9, M.C. Act 1980 – ss5A(3)(a) and 5B, M.C. Rules 1981 r.70)

Statement of: Andreas Kirschner

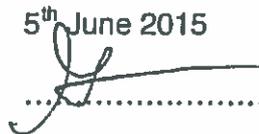
Age if under 18:

Occupation: Enforcement Officer

This statement (consisting of 2 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated 5th June 2015

Signature


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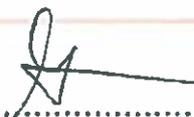
My name is Andreas Kirschner and I am an Enforcement Officer with Brent Council's Trading Standards Services. Amongst others, I am authorised to investigate offences against the Tobacco Products (Manufacture, Presentation and Sale)(Safety) Regulations 2002. On 28th May 2015 I visited a shop called Bacovia at 145 Cricklewood Broadway, London, NW2 3HY. I was accompanied by Jon Ashby, Senior Enforcement Officer and Ali Bandukwalla, Assistant Trading Standards Officer. The visit was part of a joint operation with HMRC, which was represented by officers Ken Nwabuzor, Alison Smith, David Wray and Paul Owers.

10

My colleagues Ali Bandukwalla and HMRC officers went into the shop before me and found 2 blue plastic bags filled with cigarettes where the health warning was not in English language. These products are illegal to sell in the UK under The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002.

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Signature

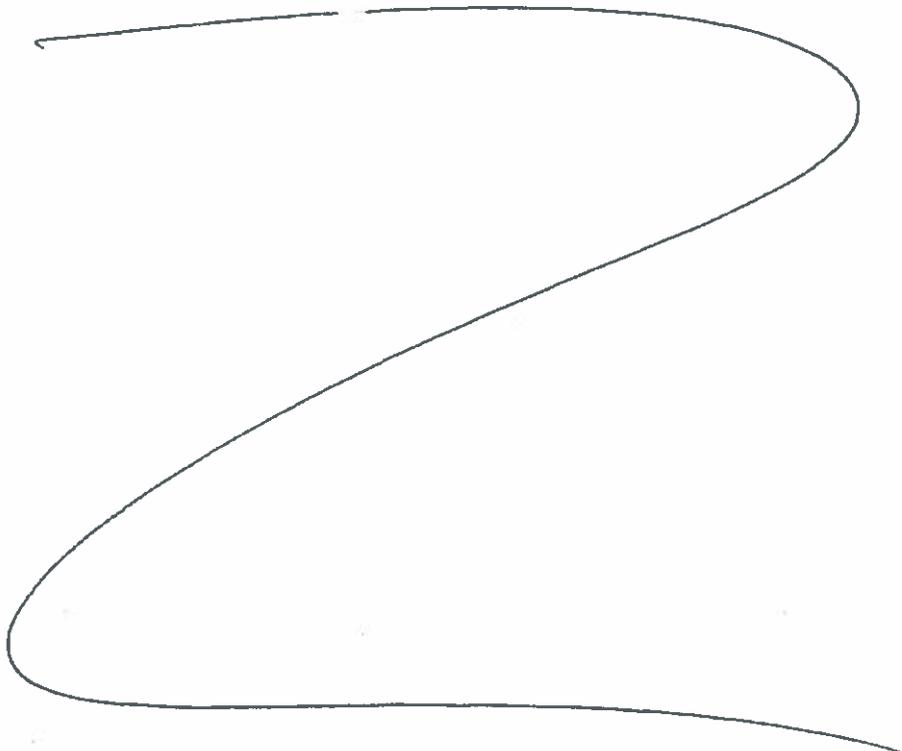

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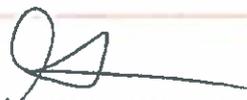
E31 Sept 2003

Continuation of witness statement of : Andreas Kirschner

I took a photograph of the licence details, which were displayed at the counter and introduce in evidence Exhibit AK2/1.

I spoke to the shop assistant and ask her for her identification. She gave me an
20 identification card stating Mrs Georgiana Madalina Ichim, NR844340 dob 03-03-1986,
Romania. I asked her where the cigarettes are from and she said she did not bring the
cigarettes and the bags were already there when she arrived. She said she sells the pack
for £3.00 each. The owner was a Mihai Lupes and his telephone number 0787 232 0809.
The company was called Bacovia Ltd. and registered at 296 Neasden Lane NW10 0AD. I
25 completed the receipt and Mrs Ichim signed it. I introduce Exhibit AK2/0404 as evidence.
I gave her a copy and I left around 14.22hrs.



Signature 

E31 Sept 2003

TRADING STANDARDS SERVICE

Witness Statement

(C.J.Act 1967 - S.9, M.C. Act 1980 – ss5A(3)(a) and 5B, M.C. Rules 1981 r.70)

Statement of: Andreas Kirschner

Age if under 18: Over 18

Occupation: Enforcement Officer

This statement (consisting of 3 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated 20th October 2015

Signature [Handwritten Signature]

My name is Andreas Kirschner and I am an Authorised Enforcement Officer with Brent Council's Regulatory Services. Amongst other legislations I am authorized to investigate offences against the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 and the Consumer Protection Act 1987.

I visited a premise called Bacovia, at 296 Neasden Lane, London NW10 0AD with Senior Trading Standards Officer Paul Lee on 22nd September 2015 following an anonymous complaint regarding the sale of illegal tobacco products. We arrived around 11.30hrs and I showed my warrant card to the shop assistant, explaining the purpose of our visit. Bacovia is a convenience store selling mostly products of Romanian origin, but also cigarettes and alcohol.

A delivery of bread was in progress and I had to wait for a little while before I could have a look behind the counter. At around 11.37hrs I found a blue plastic carrier bag filled with

Signature [Handwritten Signature]

E31 Sept 2003

Continuation of witness statement of: A Kirschner

cigarettes where the health warning was not in English language. From experience I knew that the writing was Romanian. This bag hung just behind the counter. To have in possession for supply tobacco products where the health warning is not in English language is an offence under the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002. I took a photograph of the bag and introduce in evidence Exhibit AK2/4. Under the counter I found more cigarettes where the health warning was not in English language and took more photographs. I introduce in evidence Exhibit AK2/5 and Exhibit AK2/6. I informed Officer Lee and he started to fill out a Code B notice.

25 I asked the shop assistant for her personal details and she said her name was Jonela Lupea, date of birth 19/11/1990 and living at 7 Severn Way NW10 2UU. She said she was not the manager but just working in the shop. She said that she started at 7.00hrs and that the shop opened at 7.00hrs too. I asked her who the illegal cigarettes belong to and she said 'my boss' and that she is supposed to sell them for 5 Pound. She said sometimes
30 there are these sort of cigarettes there but not always. I then found some medicinal products also behind the counter. Ms Lupea said they are for toothache.

I brought all products to the area at the rear and laid them out on a freezer top for counting and exhibiting. I counted in total 45 packs containing 20 cigarettes each of illegal
35 cigarettes, 40 with the health warning not in the prescribed format, 1 pouch of hand rolling tobacco and 5 packs which were for duty free sale only. I bagged and sealed with tag E01958 the 5 packs of Marlboro, duty free sale and introduce in evidence Exhibit AK2/Bac/1. I bagged and sealed with tag E01959 1 pack Marlboro Red, 1 pack Kent and 1 pouch Golden Virginia hand rolling tobacco, also with the health warning in a foreign
40 language and introduce in evidence Exhibit AK2/Bac/2. I bagged the remaining cigarettes

Signature 

E31 Sept 2003

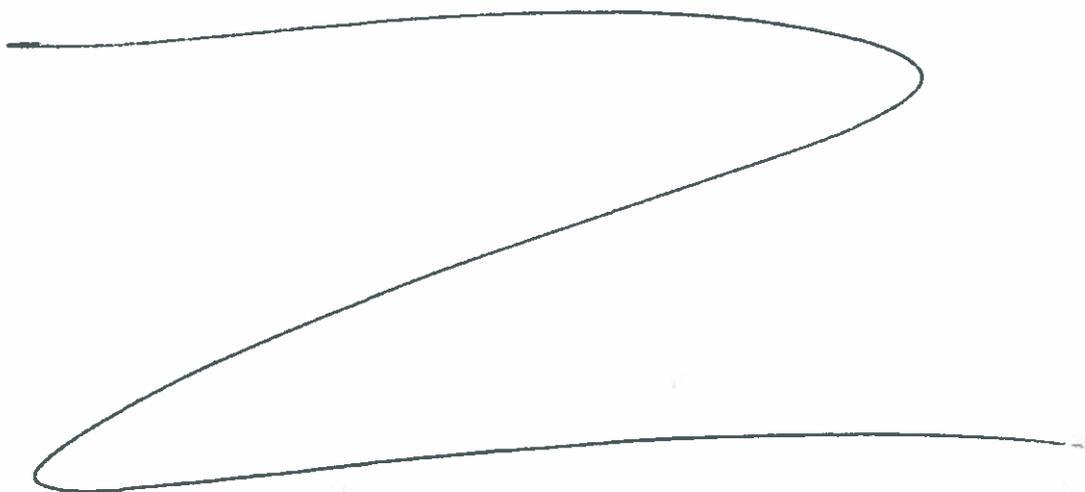
Continuation of witness statement of: A Kirschner

of 5 packs Kent, 4 packs Palace, 6 packs Dunhill Bleu, 2 packs Marlboro Gold, 6 packs Vogue, 9 packs with Russian writing, 6 packs Dunhill Black, sealed them with tag E01960 and I introduce in evidence Exhibit AK2/Bac/3. I then completed the Record of Exhibits.

45 Officer Lee explained the Code B notice and the receipt for the seized goods which Ms Lupea signed. I left my business card and we left the premise at around 12.30hrs.

On arriving at our secure storage site I signed in all evidence with officer Karia.

50 I formally interview Mr Mihai Lupes, director Bacovia Limited on 12th October 2015 at Brent Civic Centre. I was assisted by Officer Lee and an approved interpreter Mr Daniel Zotek from Pearl Linguistics. The interview was recorded and carried out in compliance with PACE Code of Practise requirements, started at 13.39hrs and finished at 14.08hrs. I introduce in evidence the CD master copy as Exhibit AK2/PACE2. I transcribed a
55 summery of this recording which I introduce in evidence as Exhibit AK2/7



Signature



E31 Sept 2003

Witness Statement-additional

(C.J.Act 1967 - S.9, M.C. Act 1980 – ss5A(3)(a) and 5B, M.C. Rules 1981 r.70)

Statement of: Andreas Kirschner

Age if under 18:

Occupation: Enforcement Officer

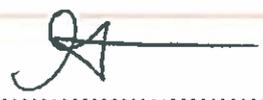
This statement (consisting of 2 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated 22nd October 2015

Signature 

My name is Andreas Kirschner and I am an Enforcement Officer with Brent Council's Trading Standards Services and authorised to investigate offences against the Tobacco Products (Manufacture, Presentation and Sale)(Safety) Regulations 2002. This statement
5 is in addition to my statement of 5th June 2015.

On 9th June 2015 booked out evidence reference number ESO5113 for Bacovia Limited trading as Bacovia at 145 Cricklewood Broadway, London, NW2 3HY sealed bag E01319 and took photographs. I introduce Exhibits AK2/2 and AK2/3 as evidence. I counted and
10 exhibited all evidence with Ali Bandukwalla, Assistant Enforcement. We found 16 Kent, 15 Marlboro Red, 6 Jin Ling, 8 Marlboro Gold, 3 Regal, 8 Russian style of writing, 8 L&M, 10 Viceroy, 6 Vogue Super Slim, 3 Bahman, 5 Vogue Blue, 4 NZ, 1 Kant, 1 Minzk. All 94 packets contained 20 cigarettes each. On 10th June I booked in the aforementioned cigarettes in sealed bag with tag number E01985 and introduce Exhibit AK2/Bacovia/1 in
15 evidence.

Signature 

E31 Sept 2003

Continuation of witness statement of: A Kirschner

I also checked company details with Company House and I found Mr Mihai Lupes, dob 01/07/1964 to be the listed as director since 15/04/2009 for Bacovia Limited. The company was registered at 296 Neasden Lane London, NW10 0AD, where another Bacovia shop is located. I introduce the company records in evidence Exhibit AK2/companyhouse1.

On 9th July 2015 I interview in compliance with PACE code of practise Mr Mihae Lupes. The interview started at around 15.24hrs and finished at around 15.29hrs. I introduce in evidence the master CD as Exhibit AK2/ML/BACOVIA/PACE1. I transcribed the recording and introduce in evidence this transcript as Exhibit AK2/4.

On 9th July 2015 after the PACE interview was stopped the solicitor of Mr Lupes gave me a prepared, hand written statement, which was signed by him, Alex Major and Mihai Lupes. I introduce in evidence this statement as Exhibit AK2/5

Signature

E31 Sept 2003

Witness Statement

(C.J.Act 1967 - S.9, M.C. Act 1980 – ss5A(3)(a) and 5B, M.C. Rules 1981 r.70)

Statement of: Paul Harris

Age if under 18: Over 18

Occupation: Enforcement Officer

This statement (consisting of nine pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated 27th March 2018

Signature

My name is Paul Harris. I am a Senior Enforcement Officer with Brent and Harrow Trading Standards Service. I am authorised to enforce, The Consumer Rights Act 2015, The Tobacco and Related Products Regulations 2016, The Standardised Packaging of Tobacco Products Regulations 2015 and the General Product Safety Regulations 2005.

On 17th January 2018 this Service received information from Steve Horsey of Imperial Tobacco (our reference 235570) that an Imperial Tobacco brand representative had visited the branch of a shop called Bacovia at 145 Cricklewood Broadway NW2 3HY at an unspecified date. The information noted that the representative had reported there was a constant stream of customers asking for Kent (a brand of cigarettes) and cheap Marlboro cigarettes.

On 18th January 2018 this Service received information dated 8th January 2018 from Will O'Reilly of the tobacco firm Philip Morris (our reference 235566). The information was that a purchase had been made by an agent of Philip Morris on 22nd November 2017 of two
Signature

packets of Kent cigarettes which had Bulgarian health warnings on them and were the product of the tobacco firm BAT. The cigarettes were bought from a shop called Bacovia Supermarket in Neasden Lane.

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Using this information I checked the history of premises that we held records for and noted that Brent and Harrow Trading Standards had prosecuted a limited company called Bacovia Ltd along with its director, Mihai Lupes. The prosecution took place following seizures of tobacco products from the trading premises of Bacovia Ltd at 145 Cricklewood Broadway, London, NW2 3HX on 28th May 2015 and at 296 Neasden Lane, London, NW10 0AD on 22nd September 2015. The prosecution was for possession for supply of tobacco products that did not have the necessary health warning in accordance with Regulation 7(1) of the Tobacco Products (Manufacture, Presentation, and Sale) (Safety) Regulations 2002, contrary to Regulation 14(1), and section 12(1) of the Consumer Protection Act 1987. This legislation for warnings on tobacco products has now been replaced with The Tobacco and Related Products Regulations 2016 and standardised packaging for some tobacco products has been introduced by The Standardised Packaging of Tobacco Products Regulations 2015.

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The information supplied to Brent and Harrow Trading Standards by the tobacco firms indicated that cigarettes not intended for the UK market, and therefore not bearing the required health warnings, had been purchased from one shop in Neasden Lane and were likely to be present in the other shop. In addition, there had been a previous history of illicit tobacco products being held in possession for supply at these premises. I therefore arranged for myself and Assistant Enforcement Officer, Ali Bandukwalla to visit the Bacovia Supermarket which is at 296 Neasden Lane, London, NW10 0AD and two Enforcement officers Paul Lee and Christine White to visit 145 Cricklewood Broadway, London, NW2 3HX at the same time and conduct searches of the premises.

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On 6th February 2018 at 10:26am I entered the premises of Bacovia Ltd at 296 Neasden Lane, London, NW10 0AD Road with Ali Bandukwalla. The premises is a convenience shop with a serving counter at the left hand side on entry and towards the back of the public area there is serving area for fresh food products. At the back of the premises there is a storage

Signature

50 area and a door which leads out into an uncovered yard in which there are individual storage units which are covered and have their own doors.

55 As I entered the shop there was a female behind the counter display. I introduced myself and Ali Bandukwalla to her, showed her my warrant and said that we were going to conduct a search of the premises for illicit tobacco which did not have the required standard packaging and correct health warnings. I issued a notice of entry form and notice of powers and rights to occupiers form to the female at 10:30am. When I said I was going to search the premises for illicit tobacco the female called out in a language that was not English. Ali Bandukwalla had gone to the rear of the premises and I could hear movement in the rear area of the shop by an unseen number of people.

60 I searched the counter area of the shop and did not find any illicit tobacco. Ali Bandukwalla telephoned me and told me that he had seen tobacco without the correct health warnings on packs of cigarettes in a storage area at the rear of the premises and he had asked the person in charge to come out and see me why he stayed in control of the items. I went 65 through the shop, past the inside storage area to the outside area where the storage unit was. I introduced myself to a man and showed him my warrant card. I asked him who he was and he told me he was Mihai Lupes. I recognised this name as being the director of Bacovia Ltd. Mr Lupes did not speak English fluently. I asked to see if he had any identification and he showed me his driving licence. This said his date and place of birth was 70 1st July 1964 in Romania and his address was 296A Neasden Lane, London NW10 0EP.

In the storage area I could see packs of tobacco that did not have the correct health warnings on them and were not in standardised packaging. These were in boxes. There were

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75 cigarettes and hand rolling tobacco. I told Mr Lupes I would seize these as they were non-compliant. He said "please" repeatedly to me whilst he watched the search. Ali Bandukwalla took photographs and counted the items into bags whilst I noted the details on record of exhibits sheets. The bags were then sealed and I recorded the seal numbers on the record of exhibit sheets. I have produced the sheets numbered 1 to 4 as evidence with the exhibit number PRH/BAC/25. The storage area had shelving round it and had an internal door
80 which led into another storage area.

When we had finished searching the first part of the storage area I went into the second part with Ali Bandukwalla. Mr Lupes was also present. This area had shelving storage around the edges. I saw there were unit packs of cigarettes and hand rolling tobacco of various
85 brands in boxes and plastic bags without the correct health warnings and in non standardised packaging. Because there was a large amount of items I called Paul Lee on the telephone and asked him and Christine White to come to the premises and help us. When these officers arrived they assisted with the search and counting and putting items into bags. Ali Bandukwalla continued to search and found unit packs of cigarettes wrapped
90 in black plastic. He took photographs and counted the items into bags whilst I noted the details on record of exhibits sheets. All the bags were then sealed and I recorded the seal numbers on the record of exhibit sheets. As noted above I have produced the sheets numbered 1 to 4 as evidence with the exhibit number PRH/BAC/25. 3,998 unit packs of cigarettes were taken (equivalent to 79,960 cigarette sticks). 244 unit packs of hand rolling
95 tobacco (equivalent to 12.27kg of tobacco) were seized.

During the search of the second area of the storage unit various types of medicine were found. Paul Lee telephoned the Medicine and Healthcare products Regulatory Agency

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100 (MHRA). Paul Lee told me, following his conversation with MHRA, that antibiotics were a
 prescription only medicine and medicine packs needed to have English wording on their
 labels. As there were products that referred to "antibiotice" (which appears on an online
 translation as Romanian for "antibiotics") on the packaging and there were no English on
 the boxes I issued instructions to seize the medicines under the General Product Safety
 Regulations 2005 as the products could not be classed as being a safe product due to lack
 105 of warnings and instructions for use, with particular high risks associated with the products
 being used on children and or the elderly. Ali Bandukwalla, Paul Lee and Christine White
 searched for the medicines and counted the items into bags whilst I noted the details on
 record of exhibits sheets. The total number of medicine packets taken were 254. The bags
 were then sealed and I recorded the seal numbers on the record of exhibit sheets. As noted
 110 above I have produced the sheets numbered 1 to 4 as evidence with the exhibit number
 PRH/BAC/25.

When the search was finished I recorded the sealed bags onto two receipts numbered
 PRH/1506 and PRH/1507. Mr Lupes signed the receipts and I gave him copies. At 13:05
 115 I gave the copy of the notice of entry form and notice of powers and rights to occupiers form
 to Mr Lupes. I assisted in removing the sealed bags from the premises to the Service's
 vehicle. This was finished at 13:10 and I went back to our office where the sealed bags were
 placed into secure storage and the exhibits sheets were put into the case file.

120 On 19th February 2018 I booked out of secure storage sealed bags E00770 and cc0009212
 to refer to in a planned interview of Mr Lupes at my office. His solicitor was unable to attend
 on that day so the interview did not take place. The items were booked back into storage
 with no seal changes. On 27th February 2018 I booked out of secure storage sealed bags

Signature

cc0009212, containing tobacco products, sealed bags HSL6162, HSI4177 and 006138,
 125 containing medicine, to refer to in an interview with Mr Lupes at my office. After the interview
 I booked the sealed bags back into secure storage with the seals unchanged. The interview
 took place at Brent Civic Centre. It was recorded and conducted in accordance with the
 Police and Criminal Evidence Act 1984. I was assisted by Ali Bandukwalla. Also present
 were a Romanian interpreter, Angelica Pinte from DA Language and Bruno Haine,
 130 representing Mr Lupes, from Andrew Storch Solicitors. It started at 10:59am. I issued a
 caution to Mr Lupes at 11:05am and the interview finished at 11:36am. The two CDs of the
 interview were noted as PRH/BAC/PACE. One CD was sealed, signed by me, Ali
 Bandukwalla and Mr Lupes and then placed in secure storage. The other copy was kept on
 the case file. I have produced as evidence with the exhibit reference PRH/BAC/PACE the
 135 CD records of the survey Ali Bandukwalla later produced a summary of the interview which
 he has exhibited.

On 14th March 2018 at our offices I exhibited and produced as evidence the sealed bags
 containing the tobacco products seized from 296 Neasden Lane on 6th February 2018 with
 140 the following exhibit references:

cc0009212	cc0009211	cc0009228	cc0009569	cc0009227	cc0009223	cc0009226
PRH/BAC/3	PRH/BAC/4	PRH/BAC/5	PRH/BAC/6	PRH/BAC/7	PRH/BAC/8	PRH/BAC/9
cc0009225	cc0009224	cc0009229	HSL4178	HSL6161	HSL6164	HSL4179
PRH/BAC/10	PRH/BAC/11	PRH/BAC/13	PRH/BAC/14	PRH/BAC/15	PRH/BAC/16	PRH/BAC/17

One container box containing 500 unit packs of Kent (BAT) cigarettes had been exhibited
 at the premises on 6th February 2018 as PRH/BAC/1 and I produce this as evidence with
 the same exhibit reference.

Signature

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One container box containing 500 unit packs of Kent (BAT) cigarettes had a seal numbered cc0009230 put through it to identify it at the premises on 6th February 2018 and on 14th March 2018 I exhibited this as PRH/BAC/12 and produced this as evidence with this reference.

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One container box containing 500 unit packs of Kent (BAT) cigarettes had been exhibited at the premises on 6th February 2018 as PRH/BAC/2. On 14th March 2018 I opened this box and confirmed it contained 500 unit packs. I put a seal through the outer container box cc0009779 and produce it as evidence with the same exhibit number PRH/BAC/2.

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On 14th March 2018 at our offices I exhibited the sealed bags containing medicine seized on 6th February as follows:

HSL4177	HSL6163	HSL6162	006139	E00770	006138	D03118
PRH/BAC/18	PRH/BAC/19	PRH/BAC/20	PRH/BAC/21	PRH/BAC/22	PRH/BAC/23	PRH/BAC/24.

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It should be noted that the seal HSL4177 was incorrectly recorded on the record of exhibits sheet as HSL4100. The correct seal number was recorded in Paul Lee's officer note book on 6th February 2018.

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On 19th March 2018 I calculated a retail sale value for some of the cigarettes seized from Bacovia Ltd. I excluded Fest (80 unit packs), Jin Ling (4 unit packs) and Superking (1 unit pack) as I was unable to obtain retail prices for these items. The following figures were used. Price obtained from the website mysupermarket.co.uk for Tesco, Dunhill 160 unit packs x £11.30 = £1,808. Price from mysupermarket.co.uk for Tesco, Pall Mall 952 unit packs x £7.80 = £7,425.60. Price from johnnystobacconist.co.uk for Davidoff, 62 unit packs x £12 =

Signature

170 £744. Price from tobacconline.co.uk was £455.95 for 5 cartons of 50 packs of Kent which I converted to £9 per unit pack x 2,468 = £22,212.

Price from mysupermarket.co.uk for Tesco, Marlboro Red 253 unit packs x £10.70 = £2,707.

Price from mysupermarket.co.uk for Tesco, Marlboro Gold 5 unit packs x £10.70 = £53.50.

Price from smoke-king.co.uk for Vogue, 4 unit packs x £11.28 = £45.12.

Price from smokersheavenshop.co.uk for Sobranie, 2 unit packs x £15.89 =£31.78.

175 Price from mysupermarket.co.uk for Tesco Marlboro Touch of £7.99 used for 7 unit packs of various brands including Marlboro Touch = £55.93.

Using these figures I calculated a conservative retail value of £35, 082.93 for the cigarettes seized from Bacovia Ltd.

180 On 19th March 2018 I calculated a retail sale value for some of the hand rolling tobacco seized from Bacovia Ltd. I excluded the 120g unit pack of Multifilter Blue as I was unable to obtain a retail price for this item.

Price from mysupermarket.co.uk for Morrisons, Golden Virginia 173 unit packs x £20.85 = £3,607.05.

Price from mysupermarket.co.uk for Tesco, Drum 59 unit packs x £21.19 = £1,250.21.

185 Price from mysupermarket.co.uk for Tesco, Amberleaf 11 unit packs x £20.37 = £224.07.

Using these figures I calculated a retail value of £5,081.33 for the hand rolling tobacco seized from Bacovia Ltd.

I calculated a combined total for the tobacco products as £40,164.26 if they had been legitimately labelled.

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The sale price of tobacco products that are not correctly labelled for sale in the UK are discounted from legitimately available product. Using figures from the record of 35 test purchases made in Brent in November 2017 by the tobacco firm, Philip Morris, which were

Signature

Continuation of witness statement of: Paul Harris

sent to us in January 2018 with the information about the test purchase at Bacovia Ltd on

195 22nd March 2018 I calculated a guide price for discounted rates as follows.

The cheapest price for two unit packs of any brand was £8. The most expensive for two unit packs was £12.

Using the value of £4 per unit pack the discounted retail value of 3,998 unit packs of cigs would be £15,992.

200 Using £6 per pack the discounted retail value would be £23,988.

The information for hand rolling tobacco was £8 for a 50g unit pack of Golden Virginia and £9 for a 50g unit pack of Amber Leaf.

205 Using these figures I calculated the hand rolling tobacco would be: 173 x £8 for Golden Virginia, 11 x £9 of Amber Leaf, plus £8 for 59 Drum. The hand rolling total was therefore, £1,955.

210 The discounted tobacco total retail price would be £17,947 at the cheapest discounted rate I used or £25,943 at the higher.

On 27th March 2018 MHRA collected the medicines from our office that had been seized on 6th February 2018. I recorded the following sealed bags on receipt slip reference PRH/1513;

215 HSL4177, HSL6163, HSL6162, 006139, E00770, 006138 and D03118 labelled as PRH/BAC/18 to PRH/BAC/24. I handed them to Luke Bland of MHRA.

Signature

E31 Sept 2003