

WITNESS STATEMENT

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN

Statement of: Sergeant Damien Smith 253NW

Age if under 18: over 18 (if over 18 insert 'over 18') Occupation: Police Officer

This statement (consisting of 8 page(s) each 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.

Witness Signature: *PS Damien Smith 253NW* Date: 19/1/2020

This statement refers to North Wembley News, 129 East Lane, Wembley HA9 7PB. North Wembley News currently have a licence to sell alcohol from 0600 hours every day until Midnight Monday, Tuesday, Wednesday, Thursday and Sunday. On Friday and Saturday can sell until 0100 Hours the next day. The store is open for the same hours for trading.

The premises licence holder is a company by the name of VNG Retails Limited, the directors are both PL Holders. Mr Gengatharan NAMASIVAYAM and the DPS Mr Namasivayam THIRUMAL. VNG Retails limited applied to become the premises licence holders on 10th April 2019. Mr Namasivayam THIRUMAL remains the DPS.

The store is situated on a busy road close to residential and industrial units. There have been numerous incidents of crime and ASB in the area – many of which are commonly linked or associated with drunkenness then reported to Police.

There are 23 Conditions attached to Annex 2 of the premises Licence. Those Conditions are:

- 1 CCTV shall be installed to Home Office Guidance standards and maintained in a good working condition and recordings shall be kept for 31 days and shall be made available to police and licensing officers if requested.**
- 2 A CCTV camera shall be installed to cover the entrance of the premises made available to police and licensing officers if requested.**
- 3 A sign stating "No proof of age, No sale" shall be displayed at the point of sale.**
- 4 A "Challenge 21" policy shall be adopted and adhered to.**
- 5 A refusal book shall be kept and maintained.**
- 6 Promotions that encourage irresponsible drinking shall not be permitted.**
- 7 No high strength beers, lagers, and ciders above 5.5% ABV shall be stocked with the exception of premium beers.**
- 8 "Raid Control" crime prevention measures shall be installed and all staff given suitable training.**
- 9 The licensee shall keep an incident book which shall be made available to the Police and Licensing Authority.**
- 10 Signs alerting customers to theft shall be displayed.**

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Signature Witnessed by Signature:

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11 A clear and unobstructed view into the premises shall be maintained at all times.

12 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.

13 Suitable intruder alarm complete with panic button shall be fitted and maintained.

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

15 On major event days at Wembley Stadium the following shall apply: - Customers shall not be allowed to congregate outside the premises. - The DPS shall work in partnership with the Police and if necessary comply with any direction given by the most senior Police Officer on duty at the event. - No alcohol or "alcopop" type drinks shall be displayed or sold in glass containers with the exception of wines and spirits.

16 All furniture and soft furnishings shall comply with relevant fire safety standards.

17 A fire detection and warning system together with suitable and sufficient fire extinguishers shall be installed and maintained.

18 Suitable and sufficient firefighting equipment shall be installed and properly maintained.

19 All deliveries shall take place during the normal working day (i.e. 09:0 to 18:00 daily).

20 Advertising, security and access lighting shall be designed, installed and maintained so as not to cause a nuisance to nearby properties.

21 Adequate illumination shall be provided and maintained to the external areas of the premises.

22 Suitable receptacles for rubbish shall be made available outside the premises for customers to use and they shall be emptied regularly to prevent overflow or odours.

23 The licensee shall ensure all public areas within 10 metres of the premises are cleared of litter arising from the premises daily.

On 9th April 2019 Brent Council Trading Standards officers informed their colleagues in Licensing that they had been to North Wembley News at 129 East Lane Wembley and made a seizure of illegal cigarettes and tobacco. While at the venue they recorded the fact that high strength alcohol was on sale in the venue. Condition 7 of their licence reads - **No high strength beers, lagers, and ciders above 5.5% ABV shall be stocked with the exception of premium beers.** While at the venue trading standards dealt with a male who identified himself as the owner Mr Gengatharan NAMASIVAYAM and he informed trading standards officers he had taken over the business in **January 2019**. The result and visit details were shared with the Police.

On 12th April 2019 Police were sent an application to transfer the premises licence to VNG Retails Limited, the application was dated the 10th April 2019.

On 19th December at 1200 hours, I visited the venue accompanied by Sergeant Mike Sullivan in plain clothes, where we found 14 licensing conditions breached.

Section 136 Licensing Act 2003 ... conducting licensable activities without authority:
The following conditions attached to annex 2 of the premises Licence were not being adhered to:

Condition 1: CCTV shall be installed to Home Office Guidance standards and maintained in a good working condition and recordings shall be kept for 31 days and shall be made available to police and licensing officers if requested.

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Condition 2 A CCTV camera shall be installed to cover the entrance of the premises made available to police and licensing officers if requested.

I asked the owner if he was the DPS and he said no, my brother is. He provided his brother's details as Mr Namasivayam Thirumal. He told me he lives near the premises and was involved in the running of the premises routinely and there most days. With that in mind, I requested that this be supported by the CCTV to prove the DPS attends the business and carry out his role. I pointed out that Conditions 1 & 2 are CCTV related and that I require footage from the last 31 days to show me when the DPS was in the store and I also requested that the live feed be rewound to show me entering the store. The owner stated the hard drive was situated upstairs. Despite several verbal requests this footage was never shown or produced. Due to the owner not producing a copy of his licence I accessed a copy on my laptop and systematically went through each of licensing conditions on it.

Condition 3: A sign stating "No proof of age, No sale" shall be displayed at the point of sale. There was no sign displayed at the point of sale, the closest reference to this was a sign specific to the sale of cigarettes, which was endorsed by a branded tobacco company.

Condition 5: A refusal book shall be kept and maintained. Upon requesting the refusal book for the premises, I was handed a writing pad that had a shopping list recorded on one page without any relevance to a refusal book. The owner and his colleague behind the counter could not produce a record/log.

Condition 7: No high strength beers, lagers, and ciders above 5.5% ABV shall be stocked with the exception of premium beers.

I can confirm the brands exceeding 5.5% ABV as;

PERLA MOCNA 7.8% ABV
 PERLA CHMIELOWA 6% ABV
 PERLA MIODWA 6% ABV
 ORANJEBOOM PREMIUM STRONG BEER 8.5% ABV
 DRAGON STOUT 7.5% ABV
 GUINNESS EXPORT 7.5% ABV
 DEBOWE 7% ABV
 WARKA 6.5% ABV
 O.J. PREMIUM 8.5% ABV
 KARPACKIE 9% ABV
 HALNE STRONG 7% ABV
 OKOCIM MOCNE 7.5% ABV
 SPECIAL BREW 9% ABV

Condition 8: "Raid Control" crime prevention measures shall be installed and all staff given suitable training. I pointed out to the owner that the visit wasn't going very well and explained the seriousness of not adhering to conditions that appeared on Annex 2 of the licence. I asked the owner if he could explain condition number 8 to me. Mr Namasaviyam did not have any idea what 'raid' was and from his response I doubt he had provided any of the staff the robbery awareness training, as stipulated in condition 8.

Condition 9: The licensee shall keep an incident book which shall be made available to the Police and Licensing Authority. As with the request for a refusals log, I asked the owner to provide me with his Incident log. This could not be produced.

Condition 10: Signs alerting customers to theft shall be displayed. I looked around the store and could not see any signage regarding 'theft'.

Condition 11: A clear and unobstructed view into the premises shall be maintained at all times. I asked the owner to join me outside the shop. Outside the store, I pointed the lack of clear visibility in or out of the store windows. I could not see my colleague, nor Mr Jegatheeswaran or the two customers he had been

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serving due to the posters on the windows, shelving racks full of products and advertising. I explained the significance of this condition in relation to preventing crime and disorder. In particular I pointed out that as much as we could not see into the venue, whoever was working could not see outside and if someone was intent on committing a crime in the venue the staff member should be afforded the opportunity to see who was approaching and if necessary allow time to trigger the panic alarm if required. Equally I pointed out that East Lane is a busy road and anyone passing with a clear and unobstructed view could see if anyone was attacking the staff and alert the Police.

Condition 13: suitable intruder alarm complete with panic button shall be fitted and maintained. When asked about an alarm, he nodded and stated "I don't think the Panic button is connected."

Condition 17: A fire detection and warning system together with suitable and sufficient fire extinguishers shall be installed and maintained.

AND

Condition 18: Suitable and sufficient firefighting equipment shall be installed and properly maintained.

Back inside the venue, I asked the owner what system did he have installed to warn of fire and he pointed to a single smoke alarm. I asked the owner if he had any fire extinguishers and he got the male behind the counter to move a few items and he lifted an extinguisher covered in dust and displaying a label indicating it was last checked in 2012.

Condition 22: Suitable receptacles for rubbish shall be made available outside the premises for customers to use and they shall be emptied regularly to prevent overflow or odours. I checked outside once again and could not see any bin provided for litter.

I recorded some of my findings of the breaches on a form 694. Such was the extent of breaches, I could not fit them all on the form. This was signed by Mr Jegathaswaran. I explained to him and the owner that the purpose of the form is to notify them that failure to comply with the Licensing Act 2003 may result in criminal proceedings or a fine could be issued against the DPS, Premises Licence Holder or both. The notification could also be used to support a review of the premises licence pursuant to section 51 of the Licensing Act 2003.

For closer inspection of the high strength alcohol stored, Police requested access to the store room accessed by a single door to the rear. The owner showed officers into a rear extension would describe as a shed and immediately noticed it was crammed with a large number of boxes of alcohol. I have visited many premises but not seen the amount of alcohol stored in relation to shops of similar size. Upon closer inspection, PS Sullivan noticed a black plastic bag with what appeared to be tobacco inside. The bag was opened in the presence of the owner Mr Namasaviyam. It contained approximately 30 packets of foreign tobacco not displaying any duty paid notice. Mr Namasaviyam became very defensive and mentioned a Chinese man left that three years ago. This was not an answer I expected. PS Sullivan asked the owner if there was any more illegal tobacco or cigarettes in the store. He replied no, but then seemed hesitant and admitted there were more. Trading standards were contacted and they informed police they were able to attend the premises. The off licence is at 129 East Lane approximately 15 minutes away from the Civic centre where trading standards operate from. While in this store room the owner made a significant comment by admitting he purchased bulk alcohol from a white van and not from an approved wholesaler.

While waiting for the trading standards officers to arrive, two large crisp boxes were discovered with sleeves of packaged cigarettes that did not appear to have any UK Duty paid. These cigarettes had deliberately been concealed by loose packets of crisps. There were a considerable amount of food boxes that had been chewed by rodents and the air smelt strongly of urine and dampness. In the middle of the floor was a bucket and rain water was pouring through the roof section into the bucket. The storage is not what I would expect for products that are for human consumption. At this point the owner expressed his concern at making a living and how hard it is. He made reference to other business' having to do the same thing. Both PS Sullivan and I were quick to remind him that he should be concentrating on his own business model and operation.

Trading standards officers arrived and identified themselves with their ID Cards. Upon examining the tobacco, they confirmed the tobacco and cigarettes were illegal and set about making a seizure of the products. This mirrors their visit in April and it would seem that what they discovered back in April, illegal cigarettes, tobacco and high strength alcohol was still in place and no lessons had been learnt.

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While trading standards and the Police were present there was another door at the rear of the store room. It appeared that it would lead into the rear garden. Mr Namasivayam opened the door and it did lead out into the garden. I estimate the garden to be around 70ft long by 24 ft wide. There was a large gate and timber panels all the way around the perimeter. 129 East Lane is the end of the terrace and the rear garden is easily accessible. The owner pointed out it was covered by CCTV. I was astonished to see that all the way along the fence were boxes and boxes of bottled water and alcohol. In the centre of the garden there were large tarpaulins and under the tarpaulin were pallets of alcohol that were stacked a metre high. It is no exaggeration to state that the amount of alcohol stored is excessive and although under cover is exposed to the elements and rodents and vermin that freely roam in that space.

Given the amount of alcohol I am concerned at how the owner proposes to sell that volume via the store he operates. Parked across the gate was a large silver van. I went outside with the owner. The rear tyres of the van were bulging, a clear indicator that the van was loaded with something heavy. The owner contacted the DPS Mr Namasaviyam (His brother) and he came with the keys. He opened the van and it had more cigarettes and alcohol in the van. The DPS had supporting invoices and receipts from DHAMECHA cash and carry for the van's contents.

At this point my visit had come to its conclusion. I handed the owner his copies of the form 694 and requested he start tackling the issues raised. I asked him to remove all the high strength alcohol from display and to stop selling anything above 5.5% ABV, as per condition number 7. I advised him that I would return at some point unannounced to conduct a follow up visit.

On 7th January 2020 at 1209 Hours Police attended the venue to see if any of the concerns discussed/raised on the 19/12/19 had been addressed. On this visit 11 licensing conditions were found to be breached.

I was equipped with a copy of the premises Licence and introduced my colleagues to the two males working in the store. Mr Gengatharan Namasivayam came from the rear section while Mr Namasavasivayam Jegatheeswaran was working at the till area as per the last visit. I wished both males a Happy New Year and explained I Was there as a follow up to the last visit.

Mr Namasivayam was able to show me the CCTV from the room upstairs and addressed conditions 1 & 2 on the premises Licence.

At the till area in the store there was no challenge 21 Policy in place and no sign relating to 'no proof of age – no sale in relation to alcohol sales' This breaches **Conditions 3 & 4 of the licence**.

Neither Male could produce a refusals log or an incident log, breaching **conditions 5 & 9**

There was no signage relating to 'THEFT' breaching **condition 10**

Neither Male could explain about RAID Control – or provide any proof of training in robbery awareness, breaching **condition number 8**

Neither male could demonstrate or show the intruder alarm with panic button worked, breaching **condition 13**

In the fridges there were still numerous brands of alcohol available above 5.5% ABV breaching **condition number 7**

I can confirm the brands exceeding 5.5% ABV as;

PERLA MOCNA 7.8% ABV
 PERLA CHMIELOWA 6% ABV
 PERLA MIODWA 6% ABV
 ORANJEBOOM PEMIUM STRONG BEER 8.5% ABV
 DRAGON STOUT 7.5% ABV
 GUINNESS EXPORT 7.5% ABV
 DEBOWE 7% ABV
 WARKA 6.5% ABV

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O.J. PREMIUM 8.5% ABV
KARPACKIE 9% ABV
HALNE STRONG 7% ABV
OKOCIM MOCNE 7.5% ABV
SPECIAL BREW 9% ABV

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There were still posters, adverts and large racking obstructing the view into and out of the store, breaching **condition number 11**

There was no premises licence summary copy available or visible, including licensable hours, breaching **condition number 12**

No new fire equipment was in use or acquired. On the 19th December it was pointed out that the extinguisher had last been checked in November 2011. Today's visit revealed the extinguisher was still there and out of date **breaching condition 17.**

The male working on the till was the same male present on the last visit. It did not appear to officers that he is fluent in English. **This breaches condition number 14.**

On the last visit in December there was no bin outside. The council have a bin literally 12 feet away from the entrance next to the bus stop, this would negate any breach of **condition number 22.**

This visit was captured on body worn video. Footage is available if required.

Both males were advised to obtain the most up to date licence from the council and provided with the contact details for the council team. Both males were informed they must step up and take the matter more seriously. They were advised to immediately remove the high strength alcohol above 5.5% abv and address all the other matters identified.

Prior to leaving the venue, I pointed out that there were too many breaches of the licence. It transpired the only difference between the visit on the 19th December 2019 and the visit on the 7th January was that CCTV was accessible and the bin outside, not through any deliberate amendments or attempts by the owners to improve the running of the premises or to adhere to the conditions on annexe 2 of the premises licence.

I informed Mr Gentharan Namasivayam I would be applying for a review of the premises licence with the Local authority. Mr Namasivayam indicated he would appoint a Solicitor to represent him.

I expected better from the owners especially as the conditions breached in December were explained in full to the staff and the sheer seriousness to the conditions being aligned to the licensing objectives. On 8th January I submitted a review application to the Council. I am of the opinion that the application for a review is absolutely necessary to ensure public safety, prevent crime and disorder and prevent children from harm. The owners have had sufficient time since April 2019 to amend their attitude and approach to running their store in a legal manner aligned to the licensing objectives. There are 23 conditions on Annex 2 already, 14 of which have been breached and discovered by Police on the visit on the 19th December 2019 and 11 discovered upon the visit on 7th January 2020. By his own words, the Director of VNG Retails Ltd, Mr Gengatharan Namasivayam, manages his premises' to make money at any costs and ignores important licensing responsibilities that are key to having/running these businesses.

In my opinion these breaches aren't as a consequence of operational hours, but purely down to ignorance to the licensing legislation. I on behalf of the Police have no confidence in the owner, the DPS or the other PLH that was serving in the store when attended. With my review application I requested the subcommittee revoke the licence.

My rationale being there was a previous visit in April 2019, highlighting breaches of conditions and exposing a period of trading whereby the premises licence had not been transferred and illegal tobacco/cigarettes were seized. That means 8 months have passed and no change has been implemented by the owner or VNG Retails

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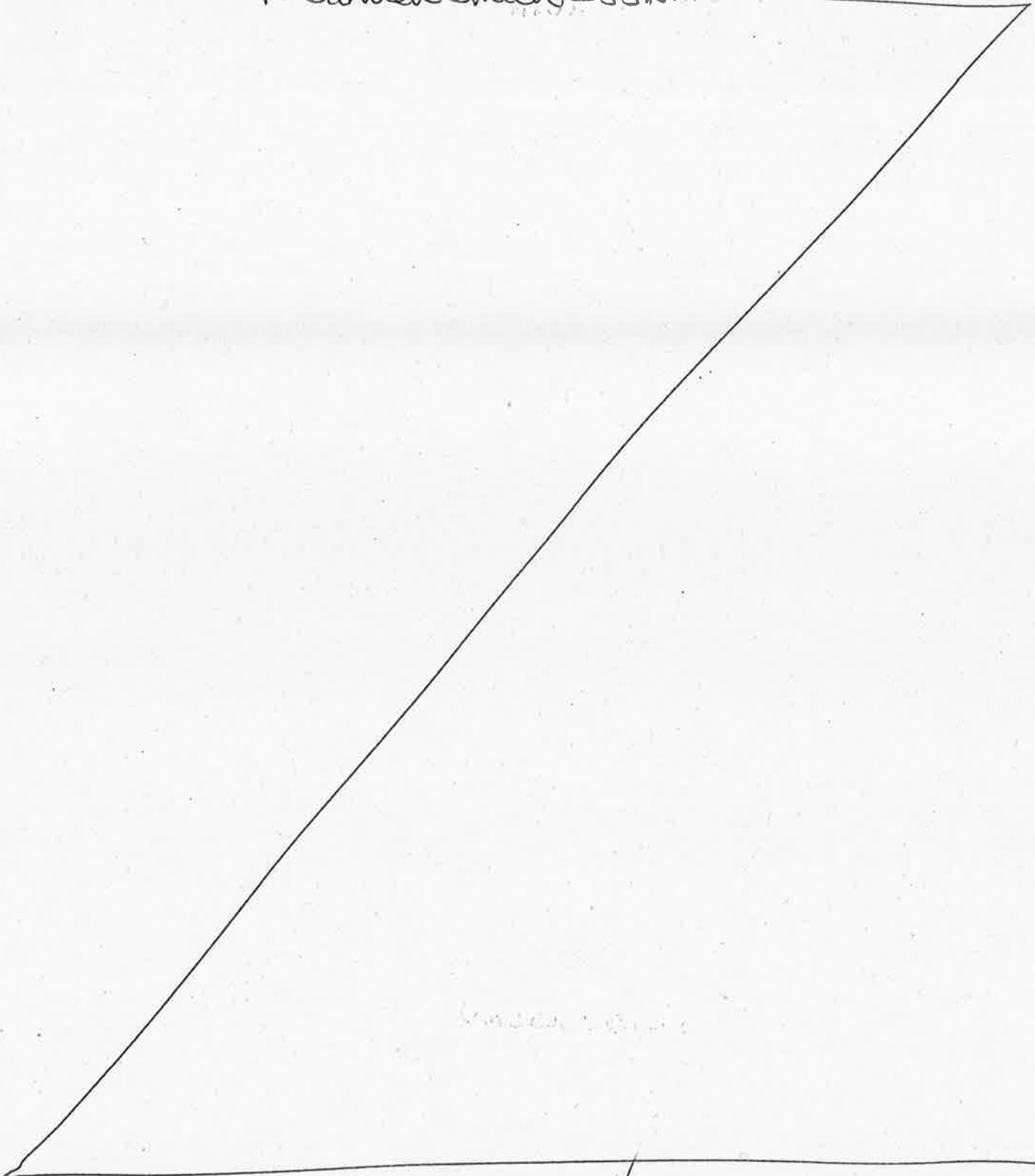
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Continuation of Statement of:

Limited. I see little point in reducing hours or adding other conditions, thus leaving the only plausible option from the police is a revocation.

Of course the decision rests with the Sub Committee Panel. The Police are a responsible authority and feel they have been left with no choice but to bring their concerns to the attention of the Licensing Committee.

PS Damien Smith 253NW *PS Damien Smith 253NW*



Witness Signature: *PS Damien Smith 253NW*

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Signature Witnessed by Signature:

Witness contact details

URN

Name of witness: PS Damien Smith 253NW
 Home Address: C/O Harrow Police Station
 E-mail address: damien.smith@met.police.uk
 Home Telephone Number:

Postcode:
 Mobile:
 Work Telephone Number: 02087335008

Preferred means of contact (specify details for vulnerable/intimidated victims and witnesses only):

Gender: Date and place of birth:
 Former name: Ethnicity Code (16 + 1):

DATES OF WITNESS NON-AVAILABILITY:

Witness care

- a) Is the witness willing to attend court? YES If 'No', include reason(s) on form **MG6**.
- b) What can be done to ensure attendance? Advanced notice
- c) Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness? (youth under 18; witness with mental disorder, learning or physical disability; or witness in fear of giving evidence or witness is the complainant in a sexual offence case) If 'Yes' submit **MG2** with file in anticipated not guilty, contested or indictable only cases.
- d) Does the witness have any particular needs? If 'Yes' what are they? (Disability, healthcare, childcare, transport, disability, language difficulties, visually impaired, restricted mobility or other concerns?).

Witness Consent (for witness completion)

- a) The Victim Personal Statement scheme (victims only) has been explained to me Yes No
- b) I have been given the Victim Personal Statement leaflet Yes No
- c) I have been given the leaflet "Giving a witness statement to the police..." Yes No
- d) I consent to police having access to my medical record(s) in relation to this matter (obtained in accordance with local practice) Yes No N/A
- e) I consent to my medical record in relation to this matter being disclosed to the defence Yes No N/A
- f) I consent to the statement being disclosed for the purposes of civil, or other proceedings if applicable, e.g. child care proceedings, CICA Yes No N/A

'I understand that the information recorded above will be passed on to the Witness Service, which offers help and support to witnesses pre-trial and at court.'

Signature of witness: *PS Damien Smith 253NW* PRINT NAME:

Signature of parent/guardian/appropriate adult: PRINT NAME:

Address and telephone number (of parent etc.), if different from above:

Statement compiled by: *PS Damien Smith 253NW* Station: Harrow -P&P

Time and place statement taken: Harrow Police Station 19/1/2020

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