

<b>Subject:</b>	<b>To determine an application for summary review under S53A – 53D of the Licensing Act 2003</b>		
<b>Premises:</b>	<b>Molly Malones 57 West Street Brighton East Sussex BN1 2RA</b>		
<b>Premises Licence Holder:</b>	<b>Indigo Leisure Limited</b>		
<b>Date of Meeting:</b>	<b>3 August 2021</b>		
<b>Report of:</b>	<b>Executive Director for Housing, Neighbourhoods &amp; Communities</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Becky Pratley</b>	<b>Tel: (01273) 292143</b>
	<b>Email:</b>	<b>Becky.pratley@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>Regency</b>		

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 To determine a summary review application made by Sussex Police in regard to the premises licence issued for Molly Malones.

**2. RECOMMENDATIONS:**

- 2.1 To determine a summary review application made by Sussex Police in regard to the premises licence issued for Molly Malones.

**3. CONTEXT/ BACKGROUND INFORMATION & CONSULTATION**

- 3.1 On 6 July 2021 the licensing authority received a summary review application from Sussex Police, under S53A of the Licensing Act 2003, regarding Molly Malones. The summary review application was accompanied by a certificate issued by a senior officer of the rank of Superintendent, who was of the opinion that the premises are associated with serious crime and serious disorder.
- 3.2 As per the requirements of S53A(2)(a) and 53B of the Licensing Act 2003, on 8 July 2021 the licensing authority considered whether it is necessary to take interim steps pending the determination of the review applied for. The licensing authority decision was to suspend the licence with immediate effect.

3.3 The grounds for the review are that Sussex Police are of the opinion that the premises are associated with serious disorder. The review application relates to the following licensing objectives:

- Prevention of Crime and Disorder
- Public Safety
- Protection of Children from Harm

#### **Documents received**

3.4 The current premises licence can be viewed at Appendix A.

3.5 The review application and the certificate that accompanied the application can be viewed at Appendix B. (Not for publication).

3.6 Additional information submitted by Police on 7<sup>th</sup> July can be viewed at Appendix C. (Not for publication)

3.7 The decision notice issued following the interim steps meeting that took place on 8 July 2021 can be viewed at Appendix D. (Not for publication).

#### **Representations received**

3.8 Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:

3.8.1 Two representations have been received from the Licensing Team & the Children's Safeguarding Team on the grounds of the Prevention of Crime & Disorder & Protection of Children from Harm supporting the application submitted by Brighton and Hove Police seeking the revocation of the licence.

3.8.2 Full details of the representations are attached at Appendix E (Not for publication). A map detailing the location of the premises is attached at Appendix F.

#### **COMMENTARY ON THE LICENSING ACT 2003 AND GUIDANCE ISSUED UNDER S182 OF THE ACT**

3.9 At this hearing the licensing authority must consider what steps are appropriate for the promotion of the licensing objectives taking into account any change in circumstances since any interim steps were imposed and;

- Consider the application made in accordance with Sections 53A-53D
- Consider any relevant representations
- Take such steps (if any) as are considered appropriate for the promotion of the Licensing objectives. These steps are:
  - to modify the conditions of the licence
  - to exclude a licensable activity
  - to remove the designated premises supervisor from the licence
  - to suspend the licence for a period not exceeding 3 months, or

- to revoke the licence.

And for this purpose, the conditions of a premises licence are modified if any of them are altered, omitted or any new condition is added. It may provide that the modification or exclusion have effect for a specified period not exceeding 3 months. The determination of the review application and interim steps review must be made at the conclusion of the hearing.

- 3.10 To ensure that there are appropriate and proportionate safeguards in place at all times, the licensing authority is required to review any interim steps that it has taken that are in place on the date of the hearing and consider whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn. The review of the interim steps should take place immediately after the determination under section 53C has been reached. In making its decision, the licensing authority must consider any relevant representations made.
- 3.11 Therefore, in conducting the review under this section, the relevant licensing authority must also under section 53D;
- (a) consider whether the interim steps are appropriate for the promotion of the licensing objectives.
  - (b) consider any relevant representations; and
  - (c) determine whether to withdraw or modify the interim steps taken.

The power of the relevant licensing authority on a review under this section includes a power to take any of the following interim steps—

- (a) the modification of the conditions of the premises licence.
- (b) the exclusion of the sale of alcohol by retail from the scope of the licence.
- (c) the removal of the designated premises supervisor from the licence.
- (d) the suspension of the licence

#### **4. COMMENTARY ON THE LICENSING POLICY**

- 4.1 The following extracts from Brighton & Hove City Council Statement of Licensing Policy are considered relevant to this application and **are numbered as they appear in the policy**:

##### **1 Introduction**

**1.1** This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and having regard to Guidance issued by the Home Office under Section 182 of the act. This policy takes effect from the 4th February 2021. The licensing authority is Brighton & Hove City Council.

The purpose of this statement is to promote the licensing objectives and set out a general approach to making licensing decisions. The discretion of the licensing authority in relation to applications under the act is only engaged if 'relevant representations' are made by other persons or responsible authorities. This

policy will inform the approach to be taken when deciding applications and imposing conditions when relevant representations are received. It is also intended as a guide for applicants as to what to include in their operating schedules, always recognising that if no representations are received, the application must be granted.

The licensing authority must carry out its functions with a view to promoting the licensing objectives and this policy is framed around those objectives. Each application will be given individual consideration on its merit. The scope of this policy covers the following:

- Retail sales of alcohol.
- The supply of alcohol by or on behalf of a club, or to the order of, a member of the club.
- The provision of regulated entertainment.
- The provision of late-night refreshment.

### **1.2 The licensing objectives are:**

- (a) the prevention of crime and disorder.
- (b) public safety.
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

### **1.3 Scope**

1.3.1 Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity.

Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any individual to apply under the terms of the act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the act.

## **3 Special Policies and Initiatives**

**3.1.3** The licensing authority, after careful consideration, has determined that the concentration of licensed premises in an area of the city centre is causing problems of crime and disorder and public nuisance, and that therefore an approach to 'Cumulative Impact' is necessary as part of its statement of licensing policy. The first Special Policy incorporating a Cumulative Impact Zone (CIZ) and Special Stress Areas (SSA's) was adopted in March 2008. Since that date, the licensing authority has kept the CIZ and SSA's under review. On 15 December 2011 Full Council resolved to expand the CIZ and the special stress area, covering 1.5% of the administrative area of Brighton & Hove City Council. On 20th November 2014 Licensing Committee resolved to confirm the current CIZ and SSA as defined in the current Statement of Licensing Policy. On the 29th

November 2018 Licensing Committee resolved to expand the SSA into Central Hove. It is now proposed to expand the SSA into Preston Road and Beaconsfield Road. The licensing authority has published a Cumulative Impact Assessment which can be found at Appendix E in our Statement of Licensing Policy from page 62.

### 3.3 The Matrix Approach

#### The Licensing Authority will support:

3.3.1 Diversity of premises: ensures that there is a mix of the different types of licensed premises and attracts a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This will have a positive effect in reducing people’s fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time may create opportunities for violent crime and public disorder and therefore supports mixed use venues encouraging a wider age balance.

3.3.2 A “matrix” approach to licensing decisions has been adopted and is set out below. It provides a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise to investor and businesses making applications.

Matrix approach for licensing decisions in a Statement of Licensing Policy (times relates to licensable activities)

	<b>Cumulative Impact Area</b>	<b>Special Stress Area</b>	<b>Other Areas</b>
<b>Restaurant</b>	Yes (midnight)	Yes (midnight)	Yes (midnight)
<b>Café</b>	Yes (10 pm)	Yes (10 pm)	Yes (10 pm)
<b>Late Night Takeaways</b>	No	Yes (midnight)	Yes (midnight)
<b>Night Club</b>	No	No	No
<b>Pub</b>	No	Yes (11pm)	Yes (midnight)
<b>Non-alcohol lead (e.g. Theatre)</b>	Yes (favourable)	Yes (favourable)	Yes (favourable)
<b>Off-licence</b>	No	No	Yes (Up to 11pm but if in densely residential area may be earlier – see note 7 below)

<b>Members Club (club premises certificate)</b>	Yes (<100 capacity) (11pm)	Yes (<100 capacity) (11pm)	Yes
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Notes on matrix

Subject to the following notes, the policy, as represented in the matrix, will be strictly adhered to:

- 1) Each application will be considered on individual merit
- 2) Applications within the CIZ are subject to the special policy on cumulative impact at para 3.1, and those within the special stress area to the special stress policy considerations at para 3.2.
- 3) Departure from the matrix policy is expected only in exceptional circumstances
- 4) Exceptional circumstances will not include quality of management or size of venue except where explicitly stated in policy matrix.
- 5) Exceptional circumstances may include consultation with and meeting requirements of responsible authorities, an appropriate corporate social responsibility policy, community contribution to offset impact (such as financial contribution to infrastructure), community support, alcohol sale ancillary to business activity (demonstrable to responsible authorities and licensing authority, for instance by licence condition allowing authorised officers access to sales accounts).
- 6) The following licensing activities are encouraged and valued by the licensing authority: outdoor regulated entertainment, community-based street parties, members clubs, traditional pubs outside the city centre and non-alcohol led licensable activities, particularly within city centre.
- 7) Other Areas; consideration will be given to the nature of the area and location in relation to any application. In a residential area for example the concerns of local residents will be relevant when considering applications for off-licences, pubs or cafes, especially if there is evidence of anti-social behaviour, street drinking or underage drinking. Earlier closing times may be appropriate. Regard will be had to the Public Health Framework for assessing alcohol licensing on our website [www.brighton-hove.gov.uk/licensingact](http://www.brighton-hove.gov.uk/licensingact).
- 8) In an area where there are already several existing off-licences or where the premises is situated within a parade with another off licence and where representations are received about negative cumulative impact on the licensing objectives of a further premises, the application may be refused on these grounds or restrictions placed on the terminal hour to reflect opening hours of other shops.
- 9) Outdoor events will be supported where arranged through the council's event planning process. Generally, regulated entertainment in the open air including tents and marquees should have a maximum closure hour of 2300. Earlier hours

may be imposed in sensitive open spaces or near residential areas. The licensing authority will have regard to Noise Council guidance.

10) Non-alcohol led category does not include “alcohol in shared workplaces”. It is recommended that sale of alcohol in shared workspaces should have a terminal hour of no later than 10pm.

### **3.4 Night-time Economy Safeguarding Initiatives**

The licensing authority continue to support safeguarding initiatives such as the Beach Patrol Quad bike, safe space and street pastors. The Community Safety Partnership Board continues to oversee the Community Safety Strategy and Safety in the Night Time Economy Action Plan as part of their remit. The action plan has been updated and recently the updated strategic assessment has been completed. In addition, the University of Sussex operates a “Good Night Owl” scheme which includes 40 volunteers and is currently funded by the Police Community Safety Fund. Licensed premises are being encouraged to use the “Ask 4 Angela” initiative.

#### **3.4.1 Operation Marble (Sussex Police)**

Due to the large concentration of licensed premises and night clubs in the centre of Brighton, a high proportion of the Division’s violent crime and serious sexual offences are committed within a relatively small area. The Division receives a large influx of visitors to the city centre at weekends. Many of these people attend the pubs and night-clubs during night time hours and as a result an enhanced policing operation is provided, called Op Marble. Traditionally this ran from 2100hrs through to 0400hrs on a Friday and Saturday night but since a review in 2017 has run from 20:00 to 06:00 between 1st May and 30th September. This was in response to pressures from the Night Time Economy as pubs and clubs remained open later and increases in crimes in the earlier hours of the morning. The emphasis of Op Marble is a highly visible presence of officers deployed on foot as well as focus on regularly updated hot spots to help reduce the risk of violent crimes.

In addition to the standard Friday and Saturday night, there are a number of standalone operations such as Bank Holidays, New Year’s Eve, Halloween and Pride. In the run up to Christmas, additional resources are at times deployed during the end of week to monitor Christmas Parties.

Op Marble covers an area between Preston Street to the West – The Level to the North – Kemptown to the East and the seafront between West Pier and Concorde 2 to the South. This covers the majority of the Cumulative Impact Zone defined in this policy at 3.1 and is regularly under review to ensure that limited Police resources are being used to their optimum.

#### **3.4.2 Doorstaff Briefing**

In association with BCRP – Business Crime Reduction Partnership – Police attend a weekly Friday night doorstaff briefing at Pryzm. Covered are persons of interest and share information on any events that might impact the city during that weekend – music events, football etc. Weekly meeting is held between

Police and BCRP. The previous weekend is reviewed and plan for the weekend ahead and any future events. Premises of concern are also discussed.

### **3.4.3 Vulnerability training**

Training delivered by Sussex Police to staff working within the night time economy to provide them with knowledge of vulnerability and ensure they understand their responsibilities and duty of care to vulnerable people including actions that must be taken to reduce identified risk. Training will include:

#### **Ask for Angela**

An initiative for persons that are on dates and they are feeling uneasy and need a safe way of leaving. The individual can approach a member of bar staff and ask for Angela and the staff will know this person needs some help getting out of a situation they don't feel safe or comfortable in. This could be calling them a taxi or a friend of family member to come and collect them.

#### **Op Bobcat**

How to identify a possible sexual predator within the night time economy. What kind of behaviour to look out for. What to do when you feel someone could be out to cause sexual harm to other individuals.

## **4 Prevention of Crime and Disorder**

- 4.1 The following details and measures are intended to address the need for the prevention of crime and disorder which may be associated with licensed premises and certificated club premises. Conditions attached to licences and certificates will, as far as possible, reflect local crime reduction strategies.
  - 4.1.1 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority expects that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all bar staff and door supervisors so that drug dealers and users will be deterred from using licensed premises for illegal purposes and that incidents of violence in licensed premises will be reduced. Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection. It is the duty of the designated premises supervisor (DPS) to train staff on induction concerning conditions on their premises licence.
  - 4.1.2 It is expected that the DPS will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises and that staff are authorised by the DPS.
  - 4.1.3 The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.

4.1.4 Measures put in place should support the intentions of Operation Marble (police operational order), which aims to prevent incidents of crime and disorder within the night time economy, at weekends. Operation Marble operates with a view to minimising the risk to the public of being a victim of public place violent crime; to reduce incidents of violent crime and public disorder within the city centre; to deal positively with offences and offenders; to secure and preserve evidence which will assist in the prosecution of offenders and to support the night time economy and the responsibly run businesses within it.

## 4.2 Sussex Police

4.2.1 Sussex Police have a specific Operation relating to the night time economy called Operation Marble (detailed in 3.4.1) and work closely with partners to ensure a safe and vibrant city centre. There continues to be an increasing demand for resources further into the early hours of the morning with the highest concentration of crimes occurring between 21:00 and 06:00 on a Friday into a Saturday and between 20:00 and 06:00 on a Saturday night into a Sunday. The data set used shows that up to 80% of arrests made in the timeframe 20:00 – 06:00 on these days were affected by alcohol. For full details of these statistics see the Cumulative Impact Assessment at Appendix E of the Statement of Licensing Policy.

4.2.2 The dealing and use of drugs remains an issue across the city and Sussex Police welcome proactive policies from licensed premises. A drug safe and seizure recording initiative is in place of which further details can be obtained by contacting Brighton & Hove Police Licensing ([brighton.licensing@sussex.pnn.police.uk](mailto:brighton.licensing@sussex.pnn.police.uk)). This initiative encourages licensed premises with Door Supervisors to search and seize drugs from persons attempting to enter their premises and ensures that once drugs are removed from persons, they can be safely collected and destroyed by Sussex Police.

4.2.3 Dispersal from the city centre during the late evening and early morning remains a policing challenge. Over recent years, there has been a proliferation of off-licences and late-night refreshment venues along the city's arterial routes. This has led to incident 'hot spots' where patrons from the night-time economy continue to interact, albeit away from any safety measures afforded by on-licences. As such, Sussex Police support the Council's Special Policy in offering guidance to both applicants and the Licensing Committee in relation to off-licences and late-night refreshment licences.

4.2.4 Sussex Police have continuing concerns that, despite staff training in age-restricted sales, under-age individuals are still being served alcohol both on and off the premises in some of the city's licensed premises. As such, regular intelligence-led 'test-purchase' operations are conducted to highlight premises where sales are taking place and ensure appropriate enforcement action is taken to prevent further sales. The introduction of identification scanning machines at premises throughout the city has proved successful in mitigating some risk, but operators must maintain vigilance regarding the fraudulent use of genuine IDs. Sussex Police continue to work alongside the Business Crime Reduction Partnership to tackle the problem of those who use false or another's identification to enter licensed premises and purchase alcohol.

- 4.2.5 Sussex Police work closely with venues and other organisations within the city to protect vulnerable people from becoming victims of crime. As well as work to prevent under age sales, vulnerability training is offered to identify persons who may have been made vulnerable through alcohol or drugs. Sussex Police also support initiatives such as (but not limited to) safe spaces, mobile teams of volunteers actively checking people's well-being and the Beach Patrol.
- 4.2.6 Public Space Protection Orders have proved an effective tool for Sussex Police in targeting enforcement action in problem areas of the city. It 'allows Police Officers and Police Community Support Officers to remove alcohol from any person in a public place if that person is involved in anti-social behaviour (ASB) or the officer believes that by having alcohol in their possession there is an increased risk of ASB. It is an offence to refuse to hand over alcohol when required to do so.' They have been particularly effective in the day time economy where members of the street community are causing ASB issues for members of the public and local businesses, especially during the summer months where there is a large influx of visitors to Brighton & Hove.
- 4.2.7 Policing the night time economy continues to provide a challenge and in the climate of limited resources and newly emerging problems, Sussex Police support maintaining the council's Special Policy which defines cumulative impact and special stress and will continue to take enforcement action where appropriate if the actions of a Premises Licence Holder, Designated Premises Supervisor, Door Supervisors or Staff have fallen below the high standard expected across the city.

Sussex Police also recognise and support businesses which are aware of their social responsibilities and as such, actively contribute towards keeping Brighton & Hove a safe and enjoyable city.

### **4.3 Care, control and supervision of premises**

- 4.3.1 The Licensing authority supports the Business Crime Reduction Partnership and other approved schemes. Where appropriate, premises licence holders should be members of the BCRP for the deterrence to violent crime that such membership provides. The BCRP NightSafe radio scheme is normally expected as an operational requirement for city centre bars, clubs and pubs and is an example of good practice in achieving the aim of reducing crime and disorder and improving public safety. Well managed pub-watch schemes provide information exchange between the premises licence holders and responsible authorities that reduce and deter violent crime and disorder. The council will support a responsible licensing scheme.
- 4.3.2 The effective management and supervision of a venue is a key factor in reducing crime and disorder, both within it and outside. The police will consider the applicants, objecting to the application where appropriate. The police may suggest crime prevention measures in relation to, for example, the internal layout of the premises, closed-circuit television, help points, lighting and security staff. The police may ask for conditions which support such measures to be imposed when licensing applications are granted, e.g. type of licence, capacity, operating hours restrictions.

- 4.3.3 Following the grant of a licence, the management and supervision of the premises, in so far as it might impact on crime and disorder, will continue to be monitored. Particular attention will be paid to any licensed premises where there is evidence of criminal activity or any association with racist or homophobic crime. The licensing authority will keep itself well briefed on the nature, location and type of premises where alcohol related violence and disorder are occurring so it can take full account of the facts and avoid exacerbating problems as required by the Community Safety Strategy. Where licensed premises are found to cause nuisance or be associated with disorder or unreasonable disturbance, the review process may be invoked, and powers of revocation or the imposition of conditions may be considered. Conditions may include use of closed-circuit television, licensed door supervisors and earlier closing times. Such action to restrict the operation may be taken for trial periods to allow businesses an opportunity to remedy existing disorder, nuisance or disturbance.
- 4.3.4 This policy recognises the use of registered Door Supervisors All Door Supervisors will be licensed by the Security Industry Authority. Mobile security units and similar systems are in use by some premises operators as a means of providing security cover at very short notice at premises which may not normally require a permanent security presence. This policy endorses the use of units following such guidance and standards in appropriate circumstances.
- 4.3.5 The development of codes of practice and general operating standards for security companies is encouraged for local businesses; premises operators are urged to ensure that security services, when engaged, are provided by suitably qualified businesses operating to recognised standards and who should be working towards SIA accreditation.
- 4.3.6 Enforcement will be achieved by the enforcement policy appended at the end of this report.

## **5 Public Safety**

- 5.1 The following details and measures are intended to address the need for the protection of public safety which may be associated with licensed premises and certificated club premises.
- 5.1.2 Normally in the city centre, pubs and clubs will be expected to operate using polycarbonate or toughened/shatterproof glass.
- 5.1.3 Conditions may be imposed in accordance with operating schedules to protect public safety including where justified:
- a. provision of closed-circuit television and panic buttons.
  - b. use of shatterproof drinking vessels; bottles requiring use of toughened glass or plastic should normally be required unless applicants can show exceptional reasons.
  - c. use of door supervisors, licensed by the Security Industry Authority.
  - d. requirement of a minimum of a licensed door supervisor for every 100 customers in nightclubs and large city centre pubs or as indicated by risk assessment.
  - e. occupant capacity conditions will be applied where appropriate.

f. the provision of designated and suitably trained first aiders.

## **7 Protection of Children from Harm**

7.1 The following details and measures are intended to address the need for the protection of children from harm; this includes emotional and physical harm which may be associated with licensed premises and certificated club premises (for example the exposure too early to strong language and sexual expletives, eg in the context of film exhibitions or where adult entertainment is provided). It is intended that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions (unless the 2003 Act itself imposes such conditions or there are good reasons to restrict entry or to exclude children completely).

7.1.1 Licensees should note the concern of the authority that drink related disorder frequently involves under 18's. To prevent illegal purchases of alcohol by such persons, all licensees should work with a suitable 'proof of age' scheme and ensure that appropriate identification is requested prior to entry and when requesting alcohol, where appropriate. Appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the Licensing Strategy Group (eg passport, photo driving licence or pass card).

7.1.2 It is the licensing authority's expectation that all staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises. Licensed premises staff are required to take reasonable steps to prevent under-age sales. The licensing authority will not seek to limit the access of children to any premises unless it is necessary for the prevention of emotional or psychological harm to them. Each application will be considered on its own merit but particular areas that will give rise to concern in respect of children are to be found in section 7.1.4 below.

7.1.3 To reduce alcohol-induced problematic behaviour by under 18 year olds, to enforce underage purchase and drinking laws and to assist in the protection of children from harm, the licensing authority supports the following measures:-

a) Police should exercise powers (Confiscation of Alcohol (Young Persons) Act 1997) to remove alcohol from young people on the street

b) Police and trading standards should implement test purchasing to reduce sales to under 18s in on and off sales licensed premises

c) Further take-up of proof of age schemes will be promoted

d) In-house, mystery shopper type schemes operated by local businesses will be supported

e) Providers of events specifically catering for unaccompanied children should consider whether all staff at such events need to be DBS checked.

7.1.4 The licensing authority will not seek to require that access to any premises is given to children at all times – under normal circumstances this will be left to the

discretion of the licensee. The following areas give rise to concern in respect of children, who will normally be excluded from premises:

- where there have been convictions for serving alcohol to minors or with a reputation for underage drinking.
- with a known association with drug taking or dealing.
- where there is a strong element of gambling on the premises.
- where entertainment of an adult or sexual nature is commonly provided.
- where premises are used primarily or exclusively for the sale and consumption of alcohol and there is little or no seating for patrons.

Options may include:

- limitations on the hours when children may be present.
- age limitations (below 18).
- limitations or exclusions when certain activities are taking place.
- requirements for an accompanying adult.
- full exclusion of people under 18.

7.1.7 Trading standards and the police undertake ongoing enforcement operations around under-age sales and test purchasing. Sussex Police and BCRP undertake work concerning proxy purchases and counterfeit ID as part of the partnership support work with Community Safety and Trading Standards.

7.1.8 Trading standards have a programme of business support including training for local businesses to avoid under-age sales.

## **8 Integration of Strategies**

8.1.1 The licensing authority shall secure the proper integration of this policy with local crime prevention, planning policy, transport, tourism and cultural strategies by:-

- Liaising and consulting with the Sussex Police, Community Safety Forum, Sustainability Commission representatives and following the guidance in community safety and crime and disorder strategy
- Liaising and consulting with Public and Alcohol Programme Board
- Liaising and consulting with the East Sussex Fire & Rescue Service
- Liaising and consulting with the Local Strategic Partnership, Safety Advisory Group (Emergency Planning) and Equalities and Social Justice Consultation Forum
- Liaising and consulting with the Planning authority
- Liaising and consulting with the Highways authority
- Liaising and consulting with local business and business associations. Having regard to any future documents issued relating to the Private Security Industry Act 2001, for example liaison or information sharing protocols
- Liaising and consulting with the Trading Standards Team, for example with regard to test purchasing codes of practice

8.1.2 In line with statutory requirements and the council's Inclusion Policy, the Licensing Authority shall have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and positive relations between persons of diverse backgrounds, for example communities of interest

such as: lesbian, gay, bisexual and transgender people; disabled people; racial and ethnic groups; religious and faith groups.

- 8.1.3 This policy supports the aims of the tourism strategy, recognising the benefits for the tourism economy of creating a safer and more attractive city centre and improving competitiveness with other European cities. The Licensing Committee should receive any reports relevant to the needs of the local tourist economy and the cultural strategy for the area to ensure that it considers these matters.
- 8.1.4 The Licensing Committee should receive relevant information relating to the employment situation of the area and the need for new investment and employment where appropriate.
- 8.1.5 Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include the use of closed circuit television cameras, use of the NightSafe radio system or accredited scheme, the provision and use of shatterproof drinking receptacles, drugs and weapons search policy, the use of registered door supervisors, specialised lighting requirements, hours of opening. Certificates issued to club premises shall reflect local crime prevention strategies and may include any or all of the requirements listed above.
- 8.1.6 The licensing authority will have regard to the need to disperse people quickly and safely from the city centre to avoid concentrations which may produce disorder and disturbance.

### **8.3 Enforcement**

- 8.3.1 The Enforcement of licensing law and inspection of licensed premises is detailed in the Protocol between Sussex Police, the East Sussex Fire & Rescue Service and Brighton & Hove City Council. This protocol reflects the need for more efficient deployment of Police and Local Authority staff commonly engaged in licensing enforcement and can be found at Appendix D (Lead Agency Status) of the Statement of Licensing Policy. In addition, the Licensing Authority will have regard to its published Licensing Enforcement Policy in making enforcement decisions in accordance with Brighton & Hove City Council's Statement of Licensing Policy (Appendix B). In order to better target enforcement resources, inspections will be undertaken outside of normal office hours and the sharing of information between all enforcement agencies will be encouraged through joint meetings or similar arrangements.
- 8.3.2 Attention is drawn to the targeting of agreed problem and high-risk premises requiring greater attention as identified in the protocol. A number of other council and government policies, strategies and guidance documents must be taken into account to complement the policy, including:
- Community Safety & Crime Reduction Strategy
  - Drugs and alcohol strategies – local alcohol harm reduction strategy
  - Objectives of the Security Industry Authority
  - The Anti-Social Behaviour Act 2003/ASBPC Act 2014
  - The Health Act 2006
  - The Violent Crime Reduction Act 2006

- Policing and Crime Act 2009

## 9. Reviews

- 9.1 Reviews represent a key protection for the community. Where the licensing authority considers action necessary under its statutory powers it will take necessary steps to support the licensing objectives. Action following review will be informed by licensing enforcement policy - Appendix B of SoLP
- 9.2 Where style of operation of a premises leads to applications concerning likelihood of racist, religiously motivated, homophobic or transphobic crimes or incidents, the review process should also support the community safety policy. Action should be proportionate, and licences would normally be suspended or revoked in these circumstances to deter further incidents

## 5. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 5.1 The licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

*Finance Officer Consulted Michael Bentley*

*Date: 26/07/21*

### Legal Implications:

- 5.2 The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

*Lawyer Consulted: Rebecca Sidell*

*Date: 26/07/21*

### Equalities Implications:

- 5.3 Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

### Sustainability Implications:

- 5.4 Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

Appendix A - Part A of Premises Licence

Appendix B - The review application and the certificate that accompanied the application can be viewed at Appendix B. (Not for publication).

Appendix C - Additional information submitted by Police 07.07.21. (Not for publication)

Appendix D - The decision notice issued following the interim steps meeting that took place on 8 July 2021 (Not for publication)

Appendix E – Representations (Not for publication)

Appendix F - Map of area

### **Documents in Members' Rooms**

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, April 2018.

Public Health Framework for assessing Alcohol Licensing. Annual Report – Ward. 5<sup>th</sup> edition. Public Health Intelligence. January 2019

### **Background Documents**

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

# Appendix B - Licensing Enforcement Policy

## 1.0 Statement of objectives

The council as licensing authority and responsible authority is committed to the council's priorities and will inform the enforcement actions taken. Amendments to priorities will be embedded automatically.

### 1.1

This service policy promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.

### 1.2

In certain instances the service may conclude that a provision in the code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the code will be properly reasoned, based on material evidence and documented.

### 1.3

The service pursues a positive and proactive approach towards ensuring compliance by:

- Supporting the better regulation agenda;
- Helping make prosperity and protection a reality for the city's community;
- Helping and encouraging regulated entities to understand and meet regulatory requirements more easily;
- Responding proportionately to regulatory breaches; and
- Protecting and improving public health and the environment.

### 1.4

This policy is based on the seven 'Hampton Principles' of:

**Economic Progress:** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection;

**Risk Assessment:** Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most;

**Advice and Guidance:** Regulators should provide authoritative, accessible advice easily and cheaply;

**Inspections and other visits:** No inspection should take place without a reason;

**Information requirements:** Businesses should not have to give unnecessary information or give the same information twice;

**Compliance and enforcement actions:** The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions; and

**Accountability:** Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

## **1.6**

The rights and freedoms given under the Human Rights Act, particularly Article 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act.

## **2.0 Scope of the policy**

### **2.1**

This policy supports and supplements specific guidance on enforcement action contained in the Statutory Code of Practice for Regulators, Brighton & Hove City Council's Corporate Enforcement Policy, Statutory Codes of Practice and relevant guidance documents and guidelines issued by government departments and co-ordinating bodies.

### **2.2**

This policy relates to actions taken to educate and enforce legislation where non-compliances have been identified or have a realistic potential to occur.

### **2.3**

The policy is limited to those enforcement activities lead by the Head of Environmental Health & Licensing.

## **3.0 Training**

### **3.1**

Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure they are fully competent to undertake their enforcement activities.

## **4.0 Management systems**

### **4.1**

The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, so far as is reasonably practicable, uniformity and consistency.

## **5.0 Enforcement options**

### **5.1**

The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by government departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.

## 5.2

Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards that ensure individual's, public safety or the environment is adequately protected. The aim of sanctions and penalties are to:

- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- Proportionate to the nature of the offence and the harm caused; and
- Aim to deter future non-compliance.

## 5.3

Criteria to be taken into account when considering the most appropriate enforcement option include:

- the potential of the offence to cause harm;
- confidence in the offender;
- consequences of non compliance;
- likely effectiveness of the various enforcement options.

## 5.4

Having considered all the relevant options the choices for action are:

- **Informal Warning:** All advice issued will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. An informal warning may be included with the advice, and may accompany higher-level actions, such as Enforcement Notices or Voluntary Surrender:
- **Licence review:** Licence review power will be used where an application for review relates to one or more of the licensing objectives.
- **Taxi licence:** Taxi licence suspension or revocation will be used to protect public safety. Other sanctions such as DSA testing will be used to protect public safety and in accordance with the taxi licensing policy (Blue book).
- **Simple Caution:** The issue of a Simple Caution by an authorised officer may be undertaken as an alternative to prosecution where it is considered unnecessary to involve the courts, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of acceptance.
- **Prosecution:** A prosecution is appropriate where there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment or environmental amenity is adversely affected. The Crown Prosecutor's Code of Evidential and Public Interests tests must be met in all

cases. However, certain circumstances will normally justify prosecution to prevent the undermining of the service's enforcement responsibilities.

- Failure to comply with an Enforcement Notice
- Declining a Simple Caution
- Continued, reckless, negligent or pre-meditated non-compliance.
- Failure to pay a fixed penalty.
- Non-cooperation, acts of obstruction or threats of physical harm or abuse.
- **Injunctions:** Injunctive action as a means of preventing an activity or course of action likely to result in significant risk to public or community safety or economic wellbeing of consumers and businesses.

## 5.5

If the department is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be referred to the appropriate local co-ordinating body.

## 6.0 Informal warning

### 6.1

Informal action may be taken when:

- the act or omission is not serious enough to warrant formal action, or
- from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance, or
- confidence in the individual/enterprise's management or ability to resolve the matter is high, or
- the consequences of non-compliance will not pose a significant risk to public health, public safety, animal welfare or the environment.

### 6.2

When an informal approach is used to secure compliance with regulations, written documentation issued will:

- contain all the information necessary to understand what is required and why;
- indicate the regulations contravened, measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen;
- clearly differentiate between legal requirements and recommendations of good practice. Such a differentiation will also be made when verbal advice is given.

## 7.0 Simple cautions

### 7.1

A Simple Caution may be issued as an alternative to a prosecution. Cautions may be issued to:

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;

- reduce the chances of repeat offences.

## **7.2**

The following factors will be considered when deciding whether a caution is appropriate:-

- evidence of the suspect's guilt
- has a clear and reliable admission of the offence been made either verbally or in writing
- is it in the public interest to use a caution as the appropriate means of disposal when taking into account the public interest principles set out in the Code for Crown Prosecutors.
- the suspected offender must understand the significance of a simple caution and give an informed consent to being cautioned.

## **7.3**

No pressure will be applied to a person to accept a Simple Caution.

## **7.4**

The 'cautioning officer' will be the most appropriate officer from Service Director, Service Assistant Director, Head of Service Environmental Health Manager or Licensing Manager. The Cautioning Officer must not have taken an active part in investigating the case.

## **7.5**

Should a person decline the offer of a simple caution a prosecution will be recommended.

## **8.0 Prosecution**

### **8.1**

The department recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

### **8.2**

The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The matters to be taken into account when deciding if the issue of proceedings is proportionate include:

- the seriousness and nature of the alleged offence;
- the role of the suspect in the commission of the offence;
- any explanation by the suspect or any agent or third party acting on their behalf;
- was the suspect in a position of trust, responsibility or authority in relation to the commission of the offence;

- is there evidence of premeditation or disregard of a legal requirement for financial reward;
- risk of harm to the public, an individual or the environment;
- relevant previous history of compliance;
- reliability of evidence and witnesses
- any mitigating or aggravating circumstances or the likelihood that the suspect will be able to establish a defence;
- suspect's willingness to prevent a recurrence of the offence;
- the need to influence future behaviour of the suspect;
- the likely penalty to be imposed; and
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

### **8.3**

All relevant evidence and information will be considered before deciding whether to instigate proceedings in order to enable a consistent, fair and objective decision to be made.

### **8.4**

Where an act or omission is capable of constituting both a summary and either way offence, when deciding which offence to charge the following will be considered:

- the gravity of the offence;
- the adequacy or otherwise of the powers of the summary court to punish the offence;
- the record of the suspect;
- the suspect's previous response to advice or other enforcement action;
- the magnitude of the hazard;
- any circumstances causing particularly great public alarm;
- comments from the council's Solicitor's Office.

### **8.5**

As a general rule an individual or business will be given a reasonable opportunity to comply with the law although in some circumstances prosecution may be undertaken without giving prior warning, e.g.

- the contravention is a particularly serious one;
- the integrity of the licensing framework is threatened.

## **9.0 Home Office and Government Advice: Problem premises on probation**

### **9.1**

The licensing authority supports the strategies of interventions and tough conditions to be assembled into packages released in 2008. The current version is appended (appendix A).

## 10.0 Appeals

If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant team manager, Head of Service or Assistant Director.

Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with corporate procedures and guidance.

Complaints that are not dealt with by the council's complaints procedure are listed in corporate policy and include:

- Complaints where the complainant or another person has commenced or intends to commence legal proceedings against the council.
- Complaints where the council has commenced or intends to commence legal proceedings against the complainant or another person relating to the matter of complaint

## 11.0 Shared enforcement roles

Lead agency status between Sussex Police, East Sussex Fire and Rescue Service and the council's trading standards, environmental health and licensing officers are determined between the agencies at county level.

# Annex A: "Problem premises on probation" - Red and yellow cards: How it would work

The problem

### Supporting enforcement agencies

1. In many cases, revocation of a premises licence effectively kills any business which is focussed on retailing alcohol. This means that not only the business owner suffers, but most people working there will lose their livelihoods. Many of these workers will be entirely innocent of any wrong-doing. There is also an impact on those who rely indirectly on income from the premises – such as local food suppliers or cleaning contractors, and the closure of a premises can deprive some communities of their local shop or restrict local consumer choice. Enforcement agencies that apply for reviews and local councillors sitting on licensing committees are well aware of this potential impact and it can lead to a reluctance to use the powers in the act to revoke the licence instantly for any failure to promote the licensing objectives. This risks patchy enforcement and uneven solutions to alcohol-related problems around the country.
2. In addition, in many cases, enforcement agencies will prefer to negotiate additional voluntary conditions with problem premises against the threat of review as an immediate, pragmatic and less bureaucratic solution. While this may be a reasonable approach in many cases, there is a risk that some premises are not being dealt with as firmly as necessary, particularly given the level of test

purchase failures. Nor are voluntary agreements particularly visible, lessening the deterrent effect on other premises.

3. Government wishes to support the enforcement agencies and licensing authorities by providing clear guidance on a “yellow card / red card” system, which would ensure a firm response to problems, but which give premises an opportunity to reform. The intention is that such a system would be highly visible and send a clear message to alcohol retailers, and the public, that action will be taken against those who act contrary to the licensing objectives and the law.
4. The proposed interventions below would not prevent the giving of an instant red card in an appropriately serious case. It should be realised that a “test purchase” failure often masks multiple offences that have gone undetected.

### **Supporting enforcement agencies**

5. The government will encourage enforcement agencies – mainly the police, trading standards officers and environmental health officers – to seek more reviews in the knowledge of the yellow card/red card system described below. This will mean not giving formal warnings. It will mean that on identifying problem premises, the licensing authority will be engaged faster than it might have been in the past.
6. Enforcement agencies would be encouraged to seek reviews when local intelligence suggests that individual premises are selling to children or causing other crime problems or causing noise nuisance.
7. Under the law, the licensing authority must then hold a hearing so long as the application relates to one of the four licensing objectives and is made by a responsible authority or by other persons like a local resident or another local business.

### **First intervention**

8. Responsible authorities will be encouraged to propose a package of touch new conditions to be added to the existing conditions which are designed to combat the identified problem. The kinds of conditions that we have in mind are set out in Annex A. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises. Such action should be supplemented where appropriate by:
  - Removal of the designated premises supervisor and his/her replacement (the manager is removed)
  - Suspension of the licence for between one day and three months according to the circumstances.
  - Restriction on trading hours – cutting hours of trading in alcohol.
  - Clear warning that a further appearance will give rise to a presumption of revocation.
9. If appropriate following review, the licensing authority should consider these packages of conditions and actions to challenge problem premises more aggressively.
10. For example, requiring a major supermarket to make all alcohol sales through a single till manned by a person aged 25 years or older in order to tackle sales to

underage. Over a year, this would potentially cost such a supermarket £millions. It would also make them reflect on their levels of supervision at other stores.

11. In addition, enforcement agencies should make the premises in question a priority for test purchases and more regular inspections.
12. The aim would be to put the premises on probation. Effectively, they are given a yellow card. They are put on notice that the next offence or breach would mean an automatic second intervention – a red card.

### **Second intervention**

13. In the absence of improvement, enforcement agencies should seek another review. The licensing authority again must grant a hearing.
14. If satisfied on the issue of the lack of improvement, the licensing authority should look to revoke the licence. The action should be publicised in the area as an example to other retailers.

### **Implementation**

15. Requires:
  - Development with the Home Office of a toolkit and guidance for police, trading standards and ethos;
  - Initial letters to Leaders of local authorities and Chief Executives;
  - Ultimately, stronger statutory Guidance to be laid in Parliament for licensing authorities themselves.
16. Central Government cannot tell licensing authorities what to do. The review powers are devolved to them. Similarly, central government cannot direct enforcement agencies how to enforce the law. It would remain their judgement when and how to act.

## **Annex B: Possible tough conditions to be assembled into packages**

These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises.

### **Greater control over sale**

1. Designated checkout(s) for alcohol sales (supermarket). Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
2. Personal licence holder/DPS to be on site at all times during sales of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
3. Personal licence holder/DPS to supervise and authorise every individual sale of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
4. SIA registered security staff to be present at points of sales to support staff refusing sales to u-18s and drunks.

5. Alcohol sales only to be made only by person aged not less than 25 years. Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
6. CCTV installed at all points of sale and recorded. Recordings can be examined by a constable or trading standards officer to determine sales to minors or drunks.
7. The licensed premises shall join the Business Crime Reduction Partnership scheme.

### **Training**

8. All staff to read and sign a declaration that they understand the law every time they start a shift.
9. Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and training standards officers. Impact on all licensing objectives.

### **Alcohol sale banned at certain hours**

10. No alcohol sales Monday to Friday between 4pm and 8.30pm. Impact on protection of children from harm or targeted hours reflecting times when local intelligence indicates under 18s may be purchasing alcohol.
11. No alcohol sales – Friday to Sunday. Impact on all four licensing objectives

### **Alcohol Displays**

12. No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.
13. No alcohol stocks promoted alongside goods likely to appeal to children (eg confectionary, toys).

### **Cutting down on shoplifting**

14. SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.
15. Location of alcohol stocks/displays not to be sited near the entrance/exit to deter shoplifting.
16. No direct public access to alcohol products – like tobacco, alcohol to be kept behind a dedicated kiosk.

### **Naming and shaming**

17. Display an external sign/yellow card to state which of the licensing act objectives they have breached and what action has been taken against them.

### **Others**

18. Maintain a log of all under age attempted purchases from those who appear to be under 18 or drunk.

19. Children aged under [18 years] not to be present or (not more than one child at any one time) on premises (other than children living on the premises or of the people working on the premises); or only children under 18 accompanied by an adult to be permitted on the premises during retailing hours. Impact on protection of children from harm.
20. Products to be labelled (a label stuck to the bottle or can) to show the details of the shop from which it was bought. Purpose would be to provide evidence of unlawful sales if product found commonly in possession of persons under 18.
21. Designated single items – beer, alcopops and cider – not to be sold to any person. Impact on protection of children from harm. Purpose would be to reduce sales to children and drunks. Alternative would be to prescribe sales of beer, alcopops and cider in quantities of less than four.
22. CCTV installed, monitored and 24 hour recordings kept for a week and made available to constables and persons authorised under the 2003 Act to help identify attempted proxy purchasing.
23. Where there is no designated smoking area, readmission after midnight should normally be prohibited.

