

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE C 14 JUNE 2023</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 14 JUNE 2023 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Sam Forsyth in the Chair;

Councillors Zafar Iqbal and Penny Wagg.

### **ALSO PRESENT**

Bhapinder Nandhra – Licensing Section  
Joanne Swampillai – Legal Services  
Katy Townshend – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

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### 1/140623 **NOTICE OF RECORDING/WEBCAST**

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite ([please click this link](#)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

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### 2/140623 **DECLARATION OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an

interests flowchart which provides a simple guide to declaring interests at meetings.

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**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/140623 No apologies were submitted.

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**MINUTES**

4/140623 To note the public part of the Minutes of the meeting held on 24 May 2023 at 1000 hours.

To confirm and sign the Minutes of the meeting held on 24 May 2023 at 1200 hours.

To confirm and sign the Minutes of the meeting held on 31 May 2023 at 1000 hours.

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**LICENSING ACT 2003 PREMISES LICENCE – GRANT – REVIEW S & J STORES T/A BOOZE AND BEVERAGE, 314 SLADE ROAD, ERDINGTON, BIRMINGHAM, B23 7LU.**

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**On Behalf of the Applicant**

Paul Ellson – Trading Standards (TS)

**On Behalf of The Premises Licence Holder (PLH)**

David Dodds – Solicitor (on behalf of the PLH)  
Mr Singh - PLH

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The Chair introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

David Dodds advised that the licence was transferred yesterday with immediate effect and Mr Singh (PLH) was on another device in the same room as Mr Dodds.

There was a slight delay at this stage due to the Chair having technical difficulties, once the issues were resolved the Chair re-joined the meeting and apologised for the inconvenience.

At this stage, the Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present his report. Bhapinder Nandhra, Licensing Section, outlined the report.

At this stage the chair invited the applicant to make their presentation and Paul Ellson, on behalf of Trading Standards made the following points: -

- a) On 10<sup>th</sup> November 2022 TS visited the premises, during the visit they spoke with an employee at the premises about the legislation around e-cigarettes and vapes. They noticed that non-compliant vapes were on the premises. The issued the premises with four different addresses to find further information about compliance and asked him to check his stock and remove anything that cannot be sold under the current regulations.
- b) On 29<sup>th</sup> November 2022 TS visited the premises again to detect and seiz illicit, non-compliant tobacco products. The TS officer who visited the premises also had the assistance of a dog. Although, no illicit or non-compliant tobacco products were found at the premises, they did find 156 non-compliant, illegal vapes under the counter. These items were removed.
- c) The spoke with the previous licence holder Mrs Kaur, however the PLH had now changed.
- d) The licence was the old version and needed updating which is why he had recommended some conditions. At this stage Mr Ellson summarised the conditions (which can be found at page 35 of 48 (7) of the report). He advised that those conditions are what he would want on any licence.
- e) A test purchase was also carried out at the premises and the did refuse the sale, so all they need to do is tighten up the procedural aspects to comply with the licence.

At this stage the chair invited the PLH/their representative to make their presentation and David Dodds, Solicitor made the following points: -

- a) That he was utterly shocked by the position of TS and why they were even bringing this premises for review.
- b) From a legal point of view the issues that gave rise to the review were to do with children and underage sales, yet there is no evidence of vapes being sold to children and they passed the test purchase.
- c) The officer also states that they need to run premises in accordance with the licence, but they are. There is no suggestion of a breach of conditions. It is not reasonable to call a review just because the officer doesn't like the way the licence is drafted or worded.
- d) The officer said he would like the recommended conditions put on any licence, whilst he might like that it is not the law and conditions can only be placed on the licence if necessary and due to concerns or mischief.
- e) The problem the officer believes is that the licence doesn't have enough conditions, but it is not for him to make that judgement.

- f) The licence is valid and there is no issue with it. There are no issues with the sale of alcohol or issues with underage sales. The officer doesn't like the licence because it doesn't have the conditions on that he wants on all licences in the City, he requested that the Committee took advice from their legal officer.
- g) That during the first visit the officer said there were non-compliant products at the premises, yet that's the first he had heard of it. If there was non-compliant products the Council has an enforcement policy, which makes it very clear that there should be a graduated approach to enforcement and that involves openness, helpfulness, proportionality and transparency. Therefore, the officer shouldn't have just turned a blind eye and walked off she should have drawn attention to the shop keeper.
- h) He also suggests that the e-cig and vape law is rapidly changing, so it is important that retailers are spoken to and given guidance on how to be complaint in order to keep communities safe.
- i) The vapes that were non-compliant were under the counter and not offered for sale as they were complaint. There is no evidence of any sale made.
- j) It also took TS 5 months to bring a review forward, that doesn't suggest they were particularly concerned about public safety.
- k) The licence is nothing to do with tobacco and is just for alcohol for off sales only.
- l) There is also recognition that the premises operates correctly and refused an underage sale during a test purchase exercise carried out by TS themselves. Which indicates that there is no concern regarding the protection of children from harm objective.
- m) The ownness is on TS to bring evidence before the Committee that can withstand scrutiny. The application for review has no evidence of age-related issues.
- n) The evidence is that the premises passed the test purchase. The officer has a problem with the licence and wants standard conditions put on all licences in the City. That is not lawful or the purpose of a review.
- o) The Committee needed to consider the evidence and then consider the action that should be taken, which should be proportionate and appropriate.
- p) There is no breach of licence conditions and no concerns for any other persons, residents or responsible authorities.

The Chair invited all parties to make a closing submission.

The applicant Paul Ellson made the following closing statements: -

- That he had his position and Mr Dodds had his and it was up to the Committee to decide.

Mr Dodds made the following closing statements: -

- That the Committee had heard both submissions and they were differing on many points.
- It was up to the Committee to make their decision but it must be lawful, reasonable and in line with guidance.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the full written decision was sent to all parties as follows;

5/140623

**RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Kiranjeet Singh Chugh in respect of S&J Stores t/a Booze and Beverage, 314 Slade Road, Erdington, Birmingham B23 7LU, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that the conditions of the licence be modified, namely by adding all those conditions proposed by the Chief Officer of Weights and Measures, as per the document in the Report.

**GENERAL**

1. Alcoholic drinks in open containers may not be removed from the premises.
2. A digital Closed Circuit Television System (CCTV) will be installed and maintained in good working order and be correctly time and date stamped.
  - i The system will incorporate sufficient built-in hard-drive capacity to suit the number of cameras installed.
  - ii. CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition.
  - iii. Cameras will encompass all ingress and egress to the premises, the immediate area outside the frontage of the Premises and all areas where the sale/supply of alcohol occurs.
  - iv. The system will record and retain CCTV footage for a minimum of 28 days
  - v. The system will record at all times when the Premises are open.
  - vi. The system will incorporate a means of transferring images from the hard-drive to a format that can be played back on any desktop computer.
  - vii. The Digital recorder will be password protected to prevent

unauthorised access, tampering, or deletion of images.

viii. There will be at all times, when the premises is open, a member of staff on duty with access to the CCTV system who is trained in the use of the equipment.

ix. Upon receipt of a request for a copy of CCTV footage from Police, or Officers or any other Responsible Authority, the member of staff will produce the footage within 24 hours, or less if urgently

required for investigations of serious crime.

x. CCTV footage must be made available to be viewed by West Midlands Police or an Officer of a Responsible Authority upon request or during an inspection.

### **INCIDENT BOOK**

3. An incident book must be kept at the Premises and maintained up to date (no later than 24 hours after the incident) at all times and will record the following:

- i. Time date and details of all incidents/complaints of crime and disorder or anti-social behaviour
- ii. All crimes reported to the venue
- iii. Any faults in the CCTV system, equipment searching equipment or scanning
- iv. Any visit by a responsible authority or emergency service

The incident book must be kept at the premises and made available to West Midlands Police or an Officer of a Responsible Authority on request, or during an inspection.

### **REFUSALS REGISTER**

4. A refusals register must be kept at the Premises and maintained up to date at all times recording the date time, type of product refused, reasons for every refusal to sell alcohol/tobacco products/electronic cigarettes or any other age restricted products to a customer and the name and signature of member of staff refusing the sale.

5. The refusals record must be made available to West Midlands Police or an Officer of a Responsible Authority on request, or during an inspection.

6. The Premises Licence Holder or the Designated Premises Supervisor must monitor the Refusals Register every month and must sign and date the Refusals Register when this has been completed, or if the Refusals Register is electronic the check and date and time of the check must be clearly recorded.

### **TRAINING**

7. Training in relation to the Licensing Objectives and the conditions on the premises licence, Challenge 25, under age sales,

sales to adults on behalf of minor (proxy sales), sales to intoxicated persons, refusals registers and incident records must be provided and undertaken by all members of staff (whether paid or unpaid) before he/she makes a sale or supply of alcohol/tobacco products /electronic cigarettes and at least every six months thereafter.

8. Documented training records must be completed in respect of every member of staff and must include the name of the member of staff trained date, time and content of the training.

The record must be signed by the member of staff who has received the training, the Designated Premises Supervisor, the Premises Licence Holder or external training providers.

9. Documented training records must be kept at the premises and made available to West Midlands Police

### **THE PREVENTION OF CRIME AND DISORDER**

10. Invoices and receipts must be provided for alcohol/tobacco/electronic cigarettes purchased by the Premises Licence Holder or the Designated Premises Supervisor or any person authorised to purchase alcohol/tobacco products/electronic cigarettes on their behalf for sale at the Premises. All Invoices and receipts of alcohol/tobacco products/electronic cigarettes purchased for sale at the Premises must be retained for a period of at least twelve months from the date of the Invoice or receipt. All invoices and receipts of alcohol/tobacco products/electronic cigarettes purchased for sale at the Premises are to be made available to authorised officers of responsible authorities within 48 hours of such a request.

11. The Premises Licence Holder shall maintain a list of suppliers it approves alcohol/tobacco products/electronic cigarettes to be purchased from. That list must include the name, address, AWRS number or reason why there is no such number and contact details. That document to be made available to authorised officers of responsible authorities on request or during an inspection.

### **THE PREVENTION OF PUBLIC NUISANCE**

12. The Premises Licence Holder shall ensure notices are displayed at all entrances and exits of the premises advising customers to have respect for the nearby residents and keep noise levels to a minimum as they depart.

### **PUBLIC SAFETY**

13. The Licence Holder shall ensure that all emergency lighting is checked on a weekly basis. Entrances, exits and passageways shall be kept clear.

### **THE PROTECTION OF CHILDREN FROM HARM**

14. The premises licence holder shall adopt the Challenge 25 scheme and appropriate signage and age restricted identity poster will

be placed at the entrance to the premises and throughout the store. The premises will operate a policy whereby any person attempting to buy alcohol//tobacco products /electronic cigarettes or any person attempting to gain entry for premises who appears to be under 25 will be asked for photographic ID to prove their age. The ID that will be accepted is a passport or driving licence with a photograph.

15. The premises licence holder shall display Challenge 25 posters in prominent positions within the premises, including at the point of sale and the entrance to the premises.

The Sub-Committee came to this resolution in order to promote the licensing objectives in the Act of the protection of children from harm and public safety. The Sub-Committee's reasons for modifying the conditions in the manner suggested were due to concerns expressed on behalf of the Chief Inspector of Weights and Measures (Trading Standards department of the City Council), as outlined fully in the Report.

The Sub-Committee heard that an application to transfer the licence with immediate effect had been made the day before the meeting. The new premises licence holder was now Kiranjeet Singh Chugh. He was also the new designated premises supervisor.

An officer of the Trading Standards department of the City Council attended the meeting to address the Sub-Committee. The new licence holder Kiranjeet Singh Chugh was represented in the meeting by his solicitor.

The Report summarised recent events in full. The Trading Standards officer explained that on the 10<sup>th</sup> November 2022 an Enforcement Officer had visited the premises and had spoken to an employee of the business regarding the legislation surrounding the sale of nicotine inhaling products (commonly known as e-cigs or vapes). This was ongoing programme throughout the city, in which officers were visiting shops to give them an information letter about which vapes were legal and could be sold under the Tobacco and Related Products Regulations 2016, and information about the age restrictions under the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015.

The letter required the licence holder to immediately remove the items from sale, return them to the supplier and notify Trading Standards of where the stock had been purchased. It explained that it was the premises' responsibility to check that its stock complied fully with Regulations, and to ensure that it was able to provide proof of purchase when and if requested. Included was a list of four contact addresses where further compliance information could be found. The member of staff on duty was also verbally advised to check that all the e-cig and vaping stock on the premises was compliant, and to remove any which were not registered with the Medicines Healthcare Products Agency, which held a special list and regulated the sale of all vaping

and e-cig products within the UK.

Trading Standards reminded the Sub-Committee that the letter would have been issued because the officer would have observed non-compliant vape products on the premises.

On the 29<sup>th</sup> November 2022, officers visited as part of an operation to detect and seize illicit and non-compliant tobacco products, using tobacco detection dogs. No illicit tobacco product was found on the premises at all – however, 156 non-compliant (and therefore illegal) e-cig/vape products were found under the counter. These products were removed and recorded on the seizure log.

Trading Standards observed that the licence was a “conversion”-style licence, which dated back to the old system of premises licensing (before the 2003 Act), and had few conditions attached. The application for Review, which was in the Committee Report, had therefore included a suite of conditions recommended by Trading Standards. The Sub-Committee examined these suggested conditions carefully.

The Trading Standards officer concluded by noting that there had quite clearly been something of “a lack of observance” with regards to some of the licensing objectives; however, he considered it to have been “fairly minimal in this case”. He further noted that during a recent test purchasing exercise at the premises in February 2023, in which an underage volunteer had attempted to buy alcohol, the premises had refused the sale properly, and in so doing had complied with its obligations under the Licensing Act 2003.

Leaving that aside, a letter had been issued telling the premises how to comply with the Regulations relating to vape products, but for whatever reason that had not happened; whilst the officer considered that it probably was not a fundamental breach of the licence, he felt that it was something which ought to be addressed. He advised the Sub-Committee that having the new set of conditions would address the issue satisfactorily.

The officer asked the Sub-Committee to note that the modified conditions would also be beneficial to the trader, as well as to the Erdington community at large. He concluded by remarking that “all they need to do is just tighten up on some of the procedural aspects of running the business in accordance with a licence”.

The Sub-Committee then heard submissions from the solicitor acting for the licence holder. He began by expressing shock at the position taken by Trading Standards, and indeed queried why they had even brought the Review before the Sub-Committee. He had noted that the officer had told the Sub-Committee that the pertinent issue was underage sales, and therefore the risks to the protection of children from harm objective; yet the officer had adduced no evidence that any

vape products had been sold to children - on the contrary, a test purchase attempt to buy alcohol had rightly and correctly been refused.

The solicitor took issue with the officer's remark that the problem with the shop was that the operator needed to run the premises in accordance with the licence, observing that this was precisely what the licence holder had in fact been doing. The solicitor observed that there had been no suggestion of any breach of condition.

The solicitor reminded the Sub-Committee that a Review of a licence could not be made where an officer simply did not like the way the licence was drafted; he noted that the officer had stated to the Members that he would like the suggested conditions "to be put on any licence". The solicitor looked askance at this, reminding the Sub-Committee that it could only place conditions on the licence where necessary, and that such a decision had to be evidence based, rather than based on generalities.

The solicitor further noted that the officer's view had been that the licence did not have enough conditions, and observed that it was not for Trading Standards to make such a decision. He reminded the Sub-Committee that the licence was valid, was in force, and moreover there had been no breach of any condition of the licence. He added that there had been no issue arising with the sale of alcohol or with underage sales.

The solicitor considered that Trading Standards perceived that there was a problem with the licence simply because it did not have all the conditions that they would like to see on any licence in the city, and remarked to the Sub-Committee that this was not grounds for a Review. Regarding the advice letter which had been given, the solicitor said that Trading Standards had been incorrect to suggest that there had been a failure to comply, and asked Members to keep an open mind. He repeated that it had been inappropriate to have made an application for a Review of the licence.

Regarding the 10<sup>th</sup> November visit, the solicitor had been surprised to hear that non-compliant products had been found, as it was the first time he had heard this. He considered that the proper course would have been for Trading Standards to use their own enforcement policy, which made it clear that there should always be a graduated approach to enforcement, involving engagement and education.

He drew the attention of the Sub-Committee to paragraph 1.8 of the policy which said that regarding enforcement, there should be openness, helpfulness, proportionality, consistency, accountability and transparency. He considered that if the officer who visited believed that there were non-compliant products on the shelf, he should have brought it to the attention of the trader, and endeavoured to educate and assist. The law generally regarding e-cigs and vapes was rapidly

changing, and it was important that retailers were given assistance to help them achieve compliance. This would keep communities safe.

He observed that Trading Standards had not brought these issues to the attention of the premises licence holder, but instead had left a letter of advice; he remarked that it was not a warning, but merely advice. Regarding the advice, the solicitor said that the advice to remove products from sale and return them to the supplier was not something that Trading Standards could direct; it was, he said, a matter for the shopkeeper, once the products were immediately removed from sale.

He explained that what had happened was that the licence holder did have some vape products in the premises which he thought might not be compliant, and had therefore removed them from sale, put them in a box, and then put them under a counter waiting for the sales representative to return. There was no evidence at all of any sale of any vape thereafter.

He also took issue with the length of time taken to issue the review (five months), and considered that this was not indicative of a pressing concern relating to the upholding of the public safety objective. He queried why Trading Standards wanted to take action regarding alcohol and tobacco, noting that the premises was not an “on”-licensed premises, but an off-licence shop. Regarding alcohol sales, there had been no complaint – indeed, the premises had been shown to be operating correctly by refusing a sale to an underage volunteer. The solicitor therefore was unsure why Trading Standards had stated that the pertinent issue was protecting children from harm, remarking that there was no evidence supporting this.

He reminded the Sub-Committee that the onus was on Trading Standards to bring evidence which could withstand scrutiny, but that they had adduced no evidence of any issue relating to children, and in fact a test purchase attempt had been refused. The second ground for Review had been the risks to the public safety objective; on this point he reminded the Sub-Committee of the statutory guidance issued by the Secretary of State under s182 of the Act. The Guidance at paragraph 2.7 said, in relation to public safety, that this concerned the safety of persons using the relevant premises, rather than public health which was addressed in other legislation. He noted that there was no evidence about the physical building.

The solicitor remarked that in his opinion the Review application had been brought because Trading Standards believed or perceived that there was some problem with the licence, and had wanted to redraft it to include the standard conditions that Trading Standards would like to see on any licence in Birmingham, but to do this was not the lawful purpose of bringing a review. An application for Review required a concern that something was undermining the licensing objectives; even then, the Sub-Committee should only do what was necessary and proportionate to achieve that aim.

He considered that it would be inappropriate for the Sub-Committee to take any action, asking that the starting position should be that the Members consider the evidence before them and decide whether any action should be taken at all; only if they were satisfied that some action should be taken, they could do so, but even then they should ensure whatever action was taken was appropriate and proportionate to deal with the concerns raised.

He observed that there had been no evidence of underage sales, no breaches of the licence conditions, no representations from Licensing Enforcement, West Midlands Police or Environmental Health; nor had there been any representations from Ward Councillors or local residents.

He reminded the Sub-Committee that vapes were not a standard consumer product, but were regulated by the Medicines and Healthcare Products regulatory authority, and therefore he considered that the bringing of a Review was not appropriate. It had been lawfully made, and the Sub-Committee was entitled to consider it, but on the evidence, he recommended that the Sub-Committee take no action.

When deliberating, the Sub-Committee bore in mind that its decision had to be appropriate, reasonable and proportionate, and be made in accordance with the law and the statutory Guidance issued under s182 of the Act.

The Members noted the solicitor's submission that the starting point should be to take no action. However, given the circumstances, namely the stock of illegal products which had been found under the counter by Trading Standards on 29<sup>th</sup> November 2022, that course was not in fact appropriate. The Members of the Sub-Committee were not satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any determination which permitted the premises to operate in the style seen during the second visit by Trading Standards officers.

It was correct that there was no bad history attached to the premises, but the discovery of 156 non-compliant (and therefore illegal) e-cig/vape products under the counter was not in any way acceptable, and was not the standard expected of licence holders in the city – especially not given that an advice letter had been issued. These were items which posed a potential harm to children in Birmingham. The Sub-Committee could not condone this, and felt that it was a clear risk to the upholding of the licensing objectives for these items to have been placed under the counter after clear advice had been given by Trading Standards.

After examining paragraph 1.8 of the enforcement policy, the Sub-Committee considered that appropriate engagement and advice had indeed been given by Trading Standards, in the form of the advice

letter. It was not the case that officers had not endeavoured to educate and assist; if the steps required in the letter had been followed properly the premises would not have been brought before the Sub-Committee at all. The Members were satisfied that the letter itself had been a clear attempt to educate and assist, as it set out the steps required for compliance.

The Sub-Committee was also unsure as to why the solicitor felt that Trading Standards' recommendation that the licence holder should return the illegal products to the supplier was not good advice, or that Trading Standards should not have advised him to do so; again, to have followed such a course would have ensured that there was no need for a Review.

The Sub-Committee looked at all options when making its decision, and placed particular emphasis on the need to ensure that it had confidence that the management style of the shop would uphold the licensing objectives. The Sub-Committee looked carefully at what was required to ensure that the premises would trade to the high standards expected in Birmingham; on this point, the Members considered whether the old-style licence had perhaps been a contributory factor to the unsatisfactory style of operation which had caused illegal products to be found under the counter.

The Sub-Committee determined that to update the licence with conditions tailored to the promotion of the licensing objectives would be an important safety feature, which would enable the premises to trade in a manner which ensured that careful management was prioritised; in particular, the Members agreed with Trading Standards that a modification of the conditions would benefit the licence holder himself, as well as the wider community.

Looking at the proposed conditions, the Members agreed with the submissions of Trading Standards. They did not accept the view of the solicitor, that Trading Standards simply wanted the premises to adopt the same standards as other licensed premises. The premises had been found to have a sizeable quantity of illegal product under the shop counter; all of the proposed conditions were appropriate, reasonable and proportionate to address the risk of harm.

Under the general category, provisions regarding the CCTV, incident book, refusals register and ID checks/Challenge 25, staff training with documented training (especially in view of the rapidly changing enforcement environment around vape products), retention of invoices and receipts (to guard against counterfeit alcohol, illicit tobacco and non-compliant vape products, and ensure traceability), and maintenance of a list of suppliers were all sensible measures which were proportionate.

Display of notices and weekly checks of emergency lights would encourage good practice generally, were entirely reasonable, and

would ensure that the licence holder was operating in a manner which would uphold the licensing objectives. The Sub-Committee considered that this was proportionate as it was apparent from Trading Standards' evidence that the management style could indeed benefit from a general "tightening up" after the discovery of illegal products under the counter.

The Sub-Committee noted that the solicitor had made submissions to the effect that provisions relating to alcohol and tobacco were not relevant, and were disproportionate, but disagreed with this view. The 156 illegal vape products under the counter, after advice had been given, had made it clear that the licence holder would benefit from provisions tailored to ensure safe sales of alcohol and age-restricted products; to adopt the suggested measures would remove the likelihood of a repeat of the unsatisfactory practice seen during Trading Standards' second visit.

A determination to modify the conditions in the terms suggested by Trading Standards, which were reasonable and proportionate to address concerns raised, would follow the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003. To take some other course (and in particular to take no action at all) ran the risk of sending a message that the discovery of 156 illegal products was not a serious matter, or that there would be no consequences for such a failure, which the Sub-Committee was not prepared to do. The suggested conditions would give the licence holder a comprehensive framework for operation, which would ensure that he could promote the licensing objectives properly, for the benefit of those in Erdington.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under section 182 of the Licensing Act 2003 by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by the Chief Inspector of Weights and Measures (Trading Standards), and by the licence holder via his solicitor.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

The determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the appeal is determined.

**EXCLUSION OF THE PUBLIC**

6/140623    **RESOLVED:-**

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

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CHAIR.....