

Fran Hughes

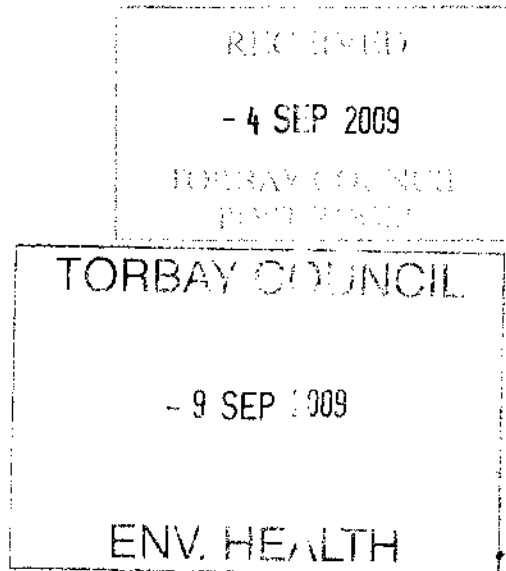
Department for Culture, Media and Sport
Gerry Sutcliffe MP
Minister for Sport

2-4 Cockspur Street
London SW1Y 5DH
www.culture.gov.uk

Tel 020 7211 6200
Fax 020 7211 6249

CMS 124212

Chief Executive
Torbay Council
Town Hall
Castle Circus
Torquay
TQ1 3DR



department for
culture, media
and sport

2 September 2009

Dear Chief Executive

I wrote in September last year to ask Authorities to consider adopting a 'Yellow and Red' card approach to licensing reviews. I am writing again to see what use has been made of this approach and to encourage those who have not done so, to think about how the licensing review powers under the Licensing Act 2003 (the 2003 Act) can best be used to tackle problem premises.

I explained then that the evaluation of the impact of the 2003 Act found that the extensive powers under the Act were not always being used. In particular, in some areas, there was a reluctance among responsible authorities to review licences and seek revocations without very strong evidence.

Since then, we have worked hard at regional seminars to encourage the police and trading standards officers to be more pro-active in seeking early reviews of premises causing problems in communities. Where reviews have been sought, the yellow and red card approach represents a tough response by licensing committees where it is found that the premises are failing to promote one or more of the four statutory licensing objectives. At the same time, it provides an opportunity to reform. A yellow card involves the imposition of tough new conditions that are appropriate to the problems at issue (for example, sales of alcohol to children) together with the warning that if a further review is necessary and matters have not improved, the premises licence would be revoked.

It is important that any "yellow card" should be highly visible in the community 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. It can make an important contribution to the community's confidence in their licensing committees.



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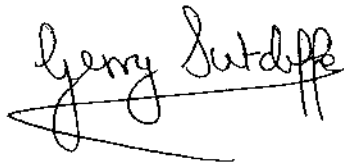
While the approach does not necessarily mean the physical issue of 'cards', I believe it is worth considering on first review, the imposition of a licence condition requiring the premises to display a visible notice at the premises detailing the outcome of that review and the warning it has been given. This visibility not only puts local people on alert to look out for breaches of conditions, but would help discourage under 18s from attempting to purchase alcohol at premises being closely monitored for improvement.

I am writing to you not only because of your authority's responsibilities for licensing, but also for the responsible authority functions of your environmental health, public safety, planning and child protection teams which all have a role to play in upholding the licensing objectives and may find the yellow and red card approach helpful. I am including for ease of reference the guidance which I enclosed last year and would be grateful if you could disseminate this information to relevant officers in your authority. It would be very helpful if you could also feed back your experience of using this, or indeed similar approach and how useful they have been.

This approach aims to help licensing authorities to use their powers in a robust but proportionate manner. We recently heard from a police force who said that they found this approach useful in reviews - "to ensure that all partners and the licensing panel understand the gravity of underage selling and why we are taking such a robust stance at a first offence stage."

My Department is also writing to the Association of Chief Police Officers (ACPO) and to the Chief Executive of the Trading Standards Institute to encourage the use of the red and yellow card approach by those responsible authorities.

Yours

A handwritten signature in black ink that reads "Gerry Sutcliffe". The signature is written in a cursive style with a long horizontal stroke at the bottom.

GERRY SUTCLIFFE



“PROBLEM PREMISES ON PROBATION” – RED AND YELLOW CARDS : HOW IT WOULD WORK

The problem

1. In many cases, revocation of a premises licences effectively kills any business which is focused on retailing alcohol. This means that the 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 informal 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 an interested party like a local resident or another local business.

First intervention

8. Responsible authorities will be encouraged to propose a package of tough 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 1 day and 3 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 A

POSSIBLE TOUGH CONDITIONS TO BE ASSEMBLED INTO PACKAGES

n.b. 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

TRAINING

7. All staff to read and sign a declaration that they understand the law every time they start a shift.
8. 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

9. No alcohol sales Mon – Fri 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.

10. No alcohol sales -- Friday to Sunday. Impact on all four licensing objectives.

ALCOHOL DISPLAYS

11. No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.

12. No alcohol stocks promoted alongside goods likely to appeal to children (eg. confectionary, toys).

CUTTING DOWN ON SHOPLIFTING

13. SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.

14. Location of alcohol stocks/displays not to be sited near the entrance/exit to deter shoplifting.

15. No direct public access to alcohol products – like tobacco, alcohol to be kept behind a dedicated kiosk.

NAMING AND SHAMING

16. 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

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

18. 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.

19. 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.

20 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.

21. 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.