

Trading Standards Summary – Yummy's Licence Review

1.0 Joint HMRC Operation – Planning and Execution

1.1 Trading Standards (TS) have worked with Her Majesty's Revenue and Customs (HMRC) over the last 2 years. This has been particularly beneficial due to the links between customs offences and counterfeit goods. Earlier this year (2011) TS discussed the possibility of entering into an Information Sharing Protocol. The purpose was to enable HMRC to share details which TS may wish to use for the purposes of calling a licence into review. HMRC are a credible government organisation who are experts in the field of enforcing customs and excise legislation. Officers are granted extensive powers to enable them to effectively carry out their law enforcement functions.

1.2 An Information sharing protocol was put into place between HMRC and TS enabling the sharing of information for the purpose of calling a licence into review if necessary.

1.3 Early in January 2011 HMRC approached TS regarding carrying out a joint operation to visit premises in order to establish whether they were in possession of counterfeit and non duty paid alcohol and tobacco products. The premises that were selected to be visited during the operation were chosen by virtue of intelligence that was considered to be relevant by the enforcement agencies. A number of premises were selected. A pre-meeting was held with HMRC on 24th March during which officers discussed and planned the operation.

1.4 The joint operation which was led by HMRC, took place on 19th and 20th April. Three officers from TS took part on these days: Karen Woods, Rob Edmunds and Steve Horsley. Due to the number of premises being visited, number of HMRC officers involved, and the fact that some were being visited simultaneously the TS officers were present at a number but not all of the premises. No TS officers were present at Yummy's on that day.

1.5 HMRC held briefings on each day and communication was maintained throughout the 2 days by radio and mobile phone. Any alcohol or tobacco products seized by HMRC were secured as evidence and taken into HMRC possession. HMRC provided transport and storage for the goods.

1.6 Following on from the operation telephone contact was held between HMRC and Karen Woods. An email was received by Karen Woods from Paul Cumberland on 6th May providing a breakdown of the premises visited and the goods seized.

1.7 18th May a meeting took place as a formal de-brief and review of the operation, during which the evidence was reviewed. Time was then allowed to lapse in line with HMRC protocol to allow opportunity for licence holders from whom items were seized to make appropriate appeals or provide documentation.

1.8 On 5th August a statement was received by email by Karen Woods from Paul Cumberland. On 9th August a signed copy of the statement was received by Karen Woods by email. This statement along with the application for review for Yummy's was submitted by Karen Woods on 10th August.

2.0 Law and Guidance

2.1 TS are a responsible authority under the Licensing Act 2003. This Act provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken: The prevention of crime and disorder, Public Safety; The prevention of public nuisance; The protection of children from harm.

2.2 The Guidance Issued under Section 182 of the Licensing Act 2003 (para 11.23) explains that reviews may arise in connection with crime. "Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of an individual but to ensure that the crime prevention objective is promoted. Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives."

2.3 Paragraph 11.26 of the Guidance states that there is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises (there is a list but I have only highlighted the relevant point)

- for the sale of smuggled tobacco and alcohol.

"It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered. We would also

encourage liaison with the local Crime and Disorder Reduction Partnership”

2.4 The Licensing Act 2003 itself recognises the criminality of smuggled goods and creates an offence under section 144 which in summary states that a person commits an offence if he knowingly keeps or allows to be kept on any relevant premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported.

2.5 Mr Wong has admitted knowledge of goods on the premise which HMRC believed to be smuggled. However another piece of criminal legislation has also been introduced into this case by HMRC and this is the Customs and Excise Management Act 1979. It is contended that breaches of this legislation as identified by HMRC have also called into question whether Mr Wong has upheld the licensing objective of the prevention of crime and disorder. The fact that HMRC had cause to seize large quantities of alcohol and tobacco from the premise has led trading standards as a responsible authority to question this. It is also noted that no documentation or explanations were produced to HMRC during the timescales that followed.

2.6 The tobacco products were taken by HMRC officers as they were not satisfied as to the legality of the goods. HMRC have in their statement identified that Mr/Mrs Wong have not been implicated in this specific offence. However HMRC had grounds to seize the items from the licensed premise by virtue of criminal legislation. This again raises concern over the use of the licensed premise and whether the licensing objectives are being upheld.

2.7 HMRC principally have used the Customs and Excise Management Act 1979 during the operation. This legislation gives them powers of forfeiture and seizure where they suspect an offence has been committed. The offences appear to be outlined in section 49 and 124.

3.0 The Tobacco products

3.1 The tobacco products that were found on the premise were as follows, according to statement of P Wright of HMRC:

- 2 black carrier bags, one containing 800 Ilpermbep cigarettes and one containing 2800 Ilpermbep. A black carrier bag placed within a white box marked Spavin containing 2kg Samson tobacco. The pouches had Benelux tax stamps on the back. 1 white Tesco bag which contained 0.500kg of Amberleaf tobacco with Benelux tax stamps on the back. All of these items were found in the rear stockroom amongst shelving and freezers containing stock.

3.2 Mr Wong informed HMRC Officer J Kett that the items belonged to the 2 girls who work in the shop and that they can't leave them at home. Ms Gilbride when asked claimed that the tobacco and about 15 cartons of cigarettes as being her property. When questioned again, Ms Gilbride then stated that all the goods belonged to her. Along with further details she claimed that the goods were at the shop to prevent her alcoholic partner selling them to buy drink. J Kett had sufficient suspicion that they were non UK duty paid and so she formally seized all the tobacco goods from Ms Gilbride under the CEMA 1979 provisions.

3.3 HMRC officers had sufficient doubt in the explanations offered that they seized the tobacco products. HMRC have stated that Mr Wong has not been implicated in the offence that Ms Gilbride had the tobacco in her possession. TS have considered that the presence of suspected non duty paid goods within the storage area of Mr Wong's shop in the context of the quantity of goods seized including alcohol, and known intelligence. TS therefore have concerns regarding the licensing objective of the prevention of crime and disorder being upheld.

4.0 The Alcohol Products

4.1 Alcohol was observed by HMRC officers as on sale behind the counter, and stored in the rear of the shop. Mr Wong claimed that he had placed a telephone order with a person known as Ahmed, a London wholesaler earlier the same week, with the goods being delivered on 19/4/11 by a Polish male in a plain red van. Officer J Kett was informed that no paperwork was supplied by either Ahmed or the driver. All items were detained that were supplied by Ahmed and not supported by an invoice pending production of the relevant invoices by Mr Wong. A detention notice was left at the premise detailing the goods that were detained. As no invoices were forthcoming the goods were then seized one month later on 20th May 2011, a warning letter was sent by HMRC to the premise on 20th May along with the notice of seizure letter. The alcohol seized was 549.2 litres of beer, 234 litres of wine and 75.55 litres of spirits.

4.2 The wine and beer would not have been marked with a UK duty stamp as this was not a requirement. HMRC are unable to confirm whether the spirits bottles all had a UK duty stamp. The officer was sufficiently suspicious due to the brands of alcohol, the circumstances in which they were believed to be purchased and the lack of paperwork or documentation provided at the time. No other evidence or documentation was supplied to HMRC afterwards despite being given the opportunity to do so.

4.3 Officer J Kett stated that some paperwork was shown to her during the inspection and that the goods to which the paperwork related were left in situ and not detained.

4.4 As a result of last week being provided with 3 invoices that were sent into PCC on Mr Wong's behalf, I asked HMRC to compare the items listed against

those seized. HMRC have confirmed that these invoices were not shown to them on the day or subsequently. It is HMRC opinion that the goods and quantities seized do not sufficiently correlate in terms of brand or quantity with those listed on the invoices. They have confirmed that they do not satisfy them that duty had been paid in respect of the goods seized. The invoices do not provide an address or telephone number, the business name is not traceable, no VAT number has been provided and VAT is being charged at the incorrect rate.

4.5 TS have also given consideration to these invoices, but for the above reasons have due concern that the company is not legitimate and no evidence has been provided that duty has been paid. We also notice that the invoices appear to suggest that Mr Wong has used the supplier on more than 3 occasions without being provided with proper documentation and without questioning the legitimacy of the business or products supplied.

4.6 Aside from good business practice, proper documentation relating to the goods purchased is a legal requirement for VAT purposes but is also imperative in respect of food and drink for traceability purposes. The General Food Law Regulation (EC) 178/2002 implemented by The General Food Regulations 2004, Regulation 178/2002, article 18 requires that food business operators shall be able to identify any person from whom they have been supplied with a food. This is particularly important in relation to food and alcohol to enable the business and/or competent authorities to be able to trace products back through the supply chain in the event of a problem. For this reason we would expect that Mr Wong would have knowledge and experience of what would constitute appropriate documentation for this purpose.

4.7 In consideration of all of the information being put forward TS remain sufficiently concerned that the licensing objective of the prevention of crime and disorder is not being upheld at the premise in question. In forming this opinion we have placed reasonable reliance on the statements provided by HMRC Officers who are the credible experts. We have also taken into consideration the intelligence and indeed all representations that have been put forward. The role of TS is to ensure a fair and safe trading environment. The purchase and onward sale of illicit tobacco and alcohol products is an identified problem within Peterborough that TS are supporting other agencies in tackling. TS believe that we have a duty to put this matter before the Licensing Committee. We therefore respectfully request that Members of the Committee consider this information to determine whether the actions of Mr Wong have promoted or failed to promote the licensing objective of the prevention of crime and disorder.

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