

SPEAKERS PANEL (LIQUOR LICENSING)

28 June 2022

Commenced: 10.10am

Terminated: 1.20pm

Present: Councillors Drennan (Chair), Bowden and Warrington

In Attendance:

James Horton	Regulatory Compliance Officer, TMBC
Sharon Campbell	Regulatory Compliance Officer, TMBC
Rifat Iqbal	Solicitor, TMBC
Timothy Watson	Trading Standards Officer, TMBC
James Mallion	Population Health
PC Foley	Greater Manchester Police
Iqbal Shamraiz	Licence Holder and DPS
Tony Dales	Representative of the Licence Holder
Naresh Mistry	Employee at Best One attended in capacity of interpreter and to address any queries as required

3. DECLARATIONS OF INTEREST

Councillor Bowden declared, on the grounds of public interest, that she was acquainted with PC Foley through a mutual family acquaintance. She further declared that this did not prejudice her professional integrity in hearing the licensing application and reaching a decision with panel members.

4. REVIEW OF A PREMISES LICENCE - BEST ONE, 39 CANTERBURY STREET, ASHTON UNDER LYNE OL6 6HX

Mr Horton presented the report to the Panel and identified the steps available to the Panel in determining the review (s52 (4) Licensing Act 2003). Mr Horton informed the Panel of the brief background to the review as set out in the report and summarised the representations received.

Timothy Watson, Trading Standards Officer, presented the Review application on behalf of Tameside MBC Trading Standards Service. Mr Watson referred the Panel to the Review Application, his witness statement and the exhibits identified in the statement (all appended to the Report to the Panel).

Mr Watson stated the following in response to questions:

- Mr Watson confirmed Mr Shamraiz was not present at the premises on 17 February 2022 and was present on 21 July 2021.
- Asked whether Iqbal Shamraiz and Shamraiz Hussain are the same person, Mr Watson confirmed he believes they are and was of the view the member of the public providing the intel may have made a mistake.

Mr Watson confirmed no chemical testing was carried out on the tobacco items seized, the fact was the labelling was incorrect and did not feel it necessary to carry out any testing.

James Mallion presented a representation on behalf of Tameside MBC Population Health. Mr Mallion referred the Panel to his written representation (appended to the Report to Panel).

No questions were asked of Mr Mallion and at this point Mr Mallion excused himself from the Panel hearing.

Regulatory Compliance Officer Sharon Campbell submitted a representation on behalf of the Licensing Authority. Ms Campbell referred the Panel to the content of the representation (appended to the report to Panel).

Ms Campbell stated the following in response to questions:

- Asked about the final compliance visit:
 - Ms Campbell stated the CCTV was operational but the footage could not be downloaded. Efforts were made by the staff to download the footage however a new member of staff had not had the training on how to use the system.
 - Ms Campbell stated high volume spirits containing 14% alcohol were next to the wines and beers and not behind the counter, this was raised with a member of staff who said it would be rectified and there was no reason to believe it wouldn't be
 - Ms Campbell confirmed no follow-up visit was undertaken.

Asked why it had taken so long to reach this stage, Ms Campbell stated they were unable to act on the first complaint and worked jointly with Trading Standards and the Police who had also received complaints, the full picture was required to take matters forward.

PC Foley presented a representation on behalf of Greater Manchester Police. PC Foley referred the Panel to his statement (appended to the report to Panel).

PC Cocks was not in attendance and PC Foley proceeded to read from the statement submitted by PC Cocks (appended to the report to Panel).

PC Foley stated the following in response to questions:

- Asked if they had identified the lady who brought a bunch of keys to the premises on 17 February 2022 and identified herself as Mr Shamraiz's wife, PC Foley stated she had identified herself as the proprietor but did not say whose wife she was.
- Asked the three incidents that PC Foley had referenced:
 - involved members of the public and not staff from the shop. Mr Dales requested a record be made that the panic button had been pressed in the premises and the Police had then attended.
- Had nothing to do with illicit tobacco

The following submissions were made by Mr Dales on behalf of the Licence Holder:

- Mr Dales stated he was representing Mr Shamraiz and with Mr Mistry in attendance who was at the premises on the dates when the incidents before the Panel took place and would be able to answer any questions
- No mitigation in buying and selling illicit cigarettes
- Mr Shamraiz's actions have put the business under threat.
- He is married with four children and has a single point of income
- Mr Shamraiz has not been in trouble before with the premises being run correctly until 2021 when these situations occurred
- Reference was made to Mr Dales' involvement at the premises post-February 2022 when he met with Mr Shamraiz and Mr Mistry. The premises were being run well, staff displayed a good knowledge of refusals policy and challenge 25 policy.
- Mr Mistry demonstrated good knowledge and was unhappy with Mr Shamraiz selling illicit cigarette.
- Mr Shamraiz is the DPS however Mr Mistry has assisted with the running of the business and has played a supporting role.
- Mr Dales stated he had conducted a licensing health check. The premises was operating satisfactorily, it was clear they needed a document. Mr Dales provided Mr Shamraiz with a due diligence folder and submitted this at the hearing for inspection. Staff have been trained on how to use the folder documents and on the licensing objectives.
- Mr Mistry was identified as supervisor when Mr Shamraiz is not present.

- Mr Dales had recommended Mr Mistry progress with obtaining his personal licence and has knowledge on selling alcohol and retail of age restricted products. Whilst Mr Mistry has only recently obtained his personal licence, he has 40 years' experience in the industry.
- The flavoured rum products and CCTV matter highlighted by Ms Campbell, Mr Dales had checked the location of the spirits and he had missed them, Mr Dales explained they are a cheaper version of Malibu products and contain 15% alcohol. It was a genuine error by staff who had put them there and not realised these items had to be behind the counter. This was rectified by the staff, it was a small number of bottles and not a large quantity.
- Regarding the CCTV on the compliance visit Mr Dales stated he had previously inspected the CCTV and it was in working order and shown how images are downloaded and this was demonstrated by Mr Shamraiz that images could be downloaded from his mobile phone. Mr Dales stated he had no idea what had happened on the day, however this had been rectified and the location of the hard drive has been moved enabling the signal from the wireless mouse to be picked up.
- In conclusion the issue of the illicit cigarettes Mr Shamraiz is responsible for his actions and is fully aware he must suffer the consequences and he accepts his days as the Designated Premises Supervisor are numbered.
- Mr Dales further stated Mr Mistry was in attendance today and an opportunity for the committee to remove Mr Shamraiz as opposed to a revocation of the licence and they would install Mr Mistry to take over the premises licence so that he has full responsibility of the shop and its running. Mr Mistry has extensive experience and was very much against what was going on. If Mr Mistry takes over he will be in control with Mr Shamraiz's role changing and Mr Dales would address his involvement in his submissions.

The Licence Holder addressed the Panel and stated:

- He was very sorry and had made a big mistake which was his first and last time
- He had got it wrong with someone and accepts this.
- He apologised for his actions and stated the shop was his only income and he had four children to support and it would not happen again.

The Licence Holder stated the following in response to questions:

- Mr Shamraiz stated he had only bought the illicit cigarettes one time and that it would not happen again
- Mr Mistry answered to a question asked of him that he had 23 years' experience of working at Tescos and various other supermarkets, he was able to state the licensing objectives and stated he had objected to the selling of the illicit cigarettes.
- Mr Mistry stated he was in attendance at some of the Council and Police visits and when asked for the key to the coffee cabinet, he was unable to provide this as it was not on the shelf where it was usually kept. Mr Mistry stated he was unaware the illicit cigarettes were in the coffee cabinet but was aware of Mr Shamraiz selling the illicit tobacco and had not personally sold any illicit tobacco.
- Mr Shamraiz when asked stated there is no high turnover of staff, there are four members of staff including Mr Shamraiz and Mr Mistry.
- It was noted the Police had said the members of staff at the shop were obstructive, when questioned why he thought he was an appropriate person when illicit tobacco was being sold at the premises, Mr Mistry stated he was unaware the illicit tobacco was there in the cabinet, he knew of Mr Shamraiz selling the illicit tobacco and had told Mr Shamraiz that it was not a good idea
- Mr Shamraiz stated he had only bought illicit tobacco on one occasion, Mr Horton challenged this assertion stating evidence stated on four occasions illicit cigarettes/ tobacco was on the premises. Mr Shamraiz stated he had retained a sample packet of illicit cigarettes to show Mr Dales when he attended at the premises to demonstrate what he had been offered.
- Mr Shamraiz stated there had been 100s of visits by the Council and the Police with no issues until this last year.
- Ms Campbell queried whether her last compliance visit form was included in the due diligence file. Mr Dales confirmed it was and stated he carries out an inspection visit every

- three months which is documented and his fees are paid by Mr Shamraiz. Mr Dales stated he has been able to give good feedback on visits and ensure any problems have been rectified. The due diligence has come after February and it has taken place this year and has closed the loop on what was good licensing work but the selling of illicit cigarettes caused frustration.
- Asked by PC Foley in relation to the selling of the illicit tobacco, Mr Mistry stated he knew of Mr Shamraiz selling illicit tobacco, with the sleeve seen behind the counter once and on that occasion Mr Mistry had said to Mr Shamraiz to not sell the items. Mr Mistry stated he had not sold any of the illicit cigarettes in the shop and worked the morning shift from 7am, usually working 30 hours a week and coming to the shop to pass time. Mr Mistry stated when asked by members of the public for cheap cigarettes he would state they do not sell them. Mr Mistry stated they sell a lot of coffee from the premises and he changes the coffee machine and on that day the key was not in its place, apparently Mr Shamraiz had taken it home.
 - In response to questions asked by Councillor Warrington, Mr Shamraiz confirmed:
 - prior to the selling of illicit cigarettes and tobacco in 2021 the income was adequate for the needs of Mr Shamraiz and his family. Mr Shamraiz stated someone who had come to the shop and he bought the items and sold them and had made this one mistake selling one or two packets a week.
 - the public would ask for the cigarettes under the counter and confirmed he had never sold them to children stating he would not sell to those underage and that can included alcohol.
 - he would never again buy or sell these items in the future
 - Mr Dales stated Mr Shamraiz was not aware of how dangerous these types of cigarettes are not only from a chemical point of view but also that they stay lit and cause fires and can kill people. Mr Dales stated he has picked up on this in the training folder and sat the staff down and has noted the sale of these products is on an increase and the 'white van man' is on increase.
 - Mr Dales agreed with Councillor Warrington that this activity was exploiting vulnerable people. Mr Shamraiz stated he had been influenced by these people and added that his 9 year old daughter had passed away, he had been very sad by this and had made this mistake and wanted one more chance
 - In response to questions asked by Councillor Bowden, Mr Shamraiz confirmed he knew the licensing laws, the licensing objectives and knew what they mean. Mr Dales added the due diligence folder has a section on the training that has been delivered.
 - Mr Dales stated when he first attended the premises he expected to see a lot of issues and in relation to the licensing laws there were no issues and were in need of documenting matters.
 - In response to questions asked by Councillor Dearden:
 - Mr Mistry stated he had obtained his personal licence approximately three weeks ago from Tameside Council.
 - Mr Shamraiz confirmed someone had sold him the illicit cigarettes and he had brought them onto the premises.
 - Mr Shamraiz stated he would be at the shop 7 days. Mr Dales added the cash and carry took up a lot of time which is done by Mr Shamraiz

Councillor Bowden queried the intelligence alleging Mr Shamraiz sold tobacco from his car, which Mr Shamraiz denied. Councillor Bowden further stated the Panel's concern that it would carry on to which Mr Shamraiz confirmed he had not done such a thing and wouldn't do it.

All parties were provided with the opportunity to ask questions in relation to the representations made.

All parties were invited to provide a brief statement in summary.

Members of the Panel then retired to carefully consider the written submissions, representations and questions and answers during the hearing in addition to all the information provided. The

Panel were accompanied by the Legal Representative and the Principal Democratic Services Officer who provided legal and procedural advice only and took no part in the decision making process.

DECISION/REASONS

In determining this matter, the Panel had due regard to:

- The report to Panel
- The Review application and representations
- all oral and written evidence and submissions
- the Council's Statement of Licensing Policy,
- the relevant sections of the Licensing Act 2003 and Regulations made thereunder
- the Guidance issued by the Secretary of State under section 182 of that Act.

The Panel noted that in determining this review it must, having regard to the application and any relevant representations, take such steps as identified in s52(4) of the Licensing Act 2003 as it considers appropriate for the promotion of the licensing objectives, in particular, the protection of children from harm and the prevention of crime and disorder.

The Panel noted statutory guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 at section 11.27 advises that where licensed premises are involved in illegal activity such as the sale and storage of illicit tobacco, this should be treated particularly seriously. Also, in accordance with section 11.28 of the guidance, even if the criminal activity was a first instance occurrence, the Committee should consider revocation of the licence.

The Panel noted the recent history of relevant events at the premises, summarised as follows:

- Between June 2021 and February 2022 TMBC Trading Standards authority and the GMP
 - received 3 anonymous complaints that the premises were selling illicit/ counterfeit tobacco;
 - conducted 2 test purchases where illicit/counterfeit tobacco was sold to the test purchaser from the premises;
 - carried out 2 joint visits with an officer from the Licensing authority and on both occasions illicit/ counterfeit tobacco items were found
- a letter had been sent to the DPS in September 2021 advising him of the offences of selling illicit/ counterfeit tobacco and had been acknowledged by him however offences continued to be committed with illicit/ counterfeit tobacco being sold from the premises thereafter.
- A compliance visit was carried out on 28 May 2022 by the Licensing authority where it was noted a due diligence file was in place and up to date with a new refusals register, with staff training and authorisations in place. In the main it was noted the premises were compliant with the licensing objectives with advice given to move some high percentage alcohol products to behind the counter and resolve an issue with the CCTV download facility.

The Panel noted with concern the health statistics for the Borough/postcode area arising from the use of tobacco and the impact of tobacco consumption on young persons.

The Panel noted that:

- The DPS stated that he had made a mistake and through his interpreter Mr Mistry, that he had been influenced by those selling the illicit/ counterfeit tobacco.
- The DPS had recently taken steps to instruct a licensing consultant who had reviewed the operation of the premises and had implemented various steps and measures to improve the working practices at the premises.
- The DPS accepted as a result of his mistake he was aware the Panel may proceed to remove him from his position as DPS.
- Mr Mistry had experience in the off-licence trade and had been working at the premises as an employee for some six years and whilst he was aware of the Licence Holder selling illicit/ counterfeit tobacco and had advised him against this, Mr Mistry had not partaken in any such sales.

- Mr Mistry had recently obtained his personal licence with a view to stepping up his involvement and responsibilities at the premises.
- Mr Dales stated a number of conditions had already been adopted and implemented at the premises that the Licensing authority had requested in the statement of Ms Campbell.

The Panel concluded that:

There appears to have been a recent issue at the premises regarding age restricted products.

The Licence Holder/DPS is responsible for managing the premises and in doing so must promote the licensing objectives.

The Panel notes there are no conditions on the Premises Licence and notes the comments made by Ms Campbell and in her statement for conditions to be considered to be added to the Premises Licence.

Despite the advice letter being sent in September 2021 illicit/counterfeit tobacco continued to be sold from the premises.

The Panel has considered all available options.

The Panel notes the very recent measures taken by the Licence Holder. Whilst the Panel has, seriously considered revoking the premises licence, on balance, the Panel has concluded that the DPS be removed having lost all confidence in his ability to manage the premises and having regard to proportionality Mr Shamraiz be given a further opportunity to demonstrate that with:

- the additional measures identified by him and recently put into place
- a short licence suspension (to reflect the seriousness of the situation and allow the licence holder time to fully implement the required changes)
- the imposition of conditions to ensure that staff are fully/appropriately trained

he can promote the licensing objectives.

STEPS TAKEN PURSUANT TO S52(4) LICENSING ACT 2003

The steps to be taken that are considered appropriate to promote the licensing objectives are:

1. That the licence be suspended for a period of 3 months being appropriate and proportionate to promote the licensing objectives.
2. That the DPS be removed as a result of poor management at the premises
3. Conditions to be inserted in Annex 3 of the licence:
 - a. CCTV
 - i. Recorded CCTV footage must be provided to a representative of any responsible authority on request. Such footage must be provided in an immediately viewable format and must include any software etc. which is required to view the footage. Any discs, portable drives or other storage media onto which footage is transferred must be provided by the premises and sufficient stock of such storage media must be kept on the premises at all times.
 - ii. A member of staff who is trained to operate the system and supply footage must be present at the premises at all times when licensable activities are taking place.
 - iii. The Designated Premises Supervisor must ensure that the CCTV system is checked at least once every week by a suitably trained member of staff. This check must include the operation of the cameras, the recording facilities, the facilities for providing footage and the accuracy of the time & date. A written record of these checks must be kept, including a legible signature of the person carrying out the check. This written record must be kept on the premises at all times and made available to a representative of any responsible authority on request.

- b. Challenge 25 - The premises must operate a "Challenge 25" scheme at the premise in relation to age verification for alcohol sales and other age-restricted products. Signs and/or posters must be displayed in prominent positions inside the premise to inform customers of this condition.
- c. Proxy Notices - The premise must display, in a prominent position, a notice or notices explaining that it is an offence for adults to purchase alcohol and other age-restricted products and then supply it to persons under 18.
- d. Refusals book - A refusals book must be kept at the premises and must be used to record all refusals to sell alcohol for any reason. Where other age restricted products are sold at the premise, any refusals to sell such items to underage persons or persons who appear underage must be recorded. The details to be recorded must be as follows:
 - (i) Time, day & date of refusal
 - (ii) Item refused
 - (iii) Name & address of customer (if given)
 - (iv) Description of customer
 - (v) Details of i.d. offered (if shown) - The refusals book must be made available for inspection by any responsible authorities on request.
- e. Staff training - Any staff employed at the premises will receive training by the Designated Premises Supervisor on first appointment and at least every three months thereafter. Training will include input on preventing underage sales, sales of alcohol to people who are drunk, application of the drugs policy, age-restricted products and any other relevant matters. A written record will be kept of all training carried out. This record must be kept on the premises and made available for inspection by any responsible authority.
- f. List of Authorised Persons - The Designated Premises Supervisor must maintain a written record of all members of staff who are authorised to sell alcohol and age-restricted products. This record must include a photograph of the relevant members of staff to be kept on the premises at all times and be made available to a representative of any responsible authority on request.
- g. Purchasing Policy - A purchasing of alcohol and tobacco policy must be implemented at the premises by the designated premises supervisor.
- h. Purchasing records - All purchases of alcohol and tobacco products must be made from reputable wholesalers and all purchases must be recorded. These records must be made available on request to the police or authorised officer

Any future issues may lead to the premises licence being revoked.

The Panel thanked those attending the hearing for their contribution and assisting the Panel in reaching its decision.

RESOLVED

That:

- (i) the licence be suspended for a period of 3 months;**
- (ii) the DPS be removed as a result of poor management at the premises; and**
- (iii) Conditions to be inserted in Annex 3 of the licence as follows:**
 - a. CCTV**
 - i. Recorded CCTV footage must be provided to a representative of any responsible authority on request. Such footage must be provided in an immediately viewable format and must include any software etc. which is required to view the footage. Any discs, portable drives or other storage media onto which footage is transferred must be provided by the premises and sufficient stock of such storage media must be kept on the premises at all times.**
 - ii. A member of staff who is trained to operate the system and supply footage must be present at the premises at all times when licensable activities are taking place.**

- iii. **The Designated Premises Supervisor must ensure that the CCTV system is checked at least once every week by a suitably trained member of staff. This check must include the operation of the cameras, the recording facilities, the facilities for providing footage and the accuracy of the time & date. A written record of these checks must be kept, including a legible signature of the person carrying out the check. This written record must be kept on the premises at all times and made available to a representative of any responsible authority on request.**
- b. **Challenge 25 - The premises must operate a "Challenge 25" scheme at the premise in relation to age verification for alcohol sales and other age-restricted products. Signs and/or posters must be displayed in prominent positions inside the premise to inform customers of this condition.**
- c. **Proxy Notices - The premise must display, in a prominent position, a notice or notices explaining that it is an offence for adults to purchase alcohol and other age-restricted products and then supply it to persons under 18.**
- d. **Refusals book - A refusals book must be kept at the premises and must be used to record all refusals to sell alcohol for any reason. Where other age restricted products are sold at the premise, any refusals to sell such items to underage persons or persons who appear underage must be recorded. The details to be recorded must be as follows:
 - (i) Time, day & date of refusal
 - (ii) Item refused
 - (iii) Name & address of customer (if given)
 - (iv) Description of customer
 - (v) Details of i.d. offered (if shown) - The refusals book must be made available for inspection by any responsible authorities on request.**
- e. **Staff training - Any staff employed at the premises will receive training by the Designated Premises Supervisor on first appointment and at least every three months thereafter. Training will include input on preventing underage sales, sales of alcohol to people who are drunk, application of the drugs policy, age-restricted products and any other relevant matters. A written record will be kept of all training carried out. This record must be kept on the premises and made available for inspection by any responsible authority.**
- f. **List of Authorised Persons - The Designated Premises Supervisor must maintain a written record of all members of staff who are authorised to sell alcohol and age-restricted products. This record must include a photograph of the relevant members of staff to be kept on the premises at all times and be made available to a representative of any responsible authority on request.**
- g. **Purchasing Policy - A purchasing of alcohol and tobacco policy must be implemented at the premises by the designated premises supervisor.**
- h. **Purchasing records - All purchases of alcohol and tobacco products must be made from reputable wholesalers and all purchases must be recorded. These records must be made available on request to the police or authorised officer.**

CHAIR