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Dear Ms Butler

### **Response to the Age Restricted Products and Services Consultation**

The Safer Stockton Partnership is a multi agency partnership that aims to improve the safety of the community in the borough of Stockton-on-Tees by:

- Reducing crime in the borough;
- Reducing disorder and anti-social behaviour in the borough;
- Reducing fear of crime in the borough;
- Reducing fear of disorder and anti-social behaviour in the borough.

In Stockton test purchasing is undertaken with the main objective being to safeguard children from the associated health risks and participation in risky behaviour and reduce alcohol related anti-social behaviour which blights the lives of many communities and individuals. These in turn support and promote the licensing objectives. Test purchasing is also seen as a tool which assists in ensuring that standards and compliance continue to improve.

The 'Background' section of the consultation clearly highlights the need for legislative simplification and standardisation. We would agree in the difficulty that the differing pieces of legislation on the many areas of age restricted products bring to staff and business. We would welcome information on what work the government is proposing to address this recommendation. Partners have recently responded to the 'Rebalancing the Licensing Act' consultation which we understand will provide greater powers to tackle the under-age sale of alcohol. The LBRO consultation appears to fly in the face of the Bill and it is confusing how two government departments can consult on proposals affecting the same legislation from such different perspectives and with such different aims.

#### **Question 1**

**Do you agree with our analysis that the most significant contributions to meeting the objectives of regulation in this area can be made by young people and their parents, and by businesses?**

The Safer Stockton Partnership fully supports the analysis that young people and their parents, together with businesses, have a significant contribution to make in meeting the objectives of regulation.

There is a wider and much more significant issue at play. It is incumbent on all of us to protect the most vulnerable in our communities and that includes children. With this focus on test purchasing we are ignoring the wider issue of social norms and the motivation of some of our young people to consume alcohol.

There is a strong international evidence base that indicates alcohol marketing is influential in encouraging children to drink at a younger age and consume more than those not exposed to such messaging (Under the Influence, BMA, 2009). What's more, alcohol continues to be sold at pocket money prices with alcohol in the North East being sold for as little as 12p per unit. A recent survey carried out by Balance and across the North East indicated that the Government's measure to ban the sale of alcohol below duty plus VAT would affect the price of only two of over 400 products. Finally, in a recent report released by Alcohol Concern there is clear evidence of a correlation between the density of off license premises and alcohol harm amongst young people (One on Every Corner, Alcohol Concern, 2009). Government has a responsibility to address these population level issues in a meaningful way, thus protecting vulnerable young people and helping businesses and regulators to meet their responsibilities.

## **Question 2**

**Do you agree with the proposition that the role of regulators is to encourage, support and reward responsible approaches to compliance, and to take firm action where businesses do not act responsibly?**

We agree fully that the role of regulators and enforcers is to encourage and support compliance, however we do not support that 'rewarding' business is appropriate. All regulators and enforcers are asking of business is to abide by their own policies which if significantly robust will result in no criminal offence being committed. We are not aware of any other individuals or organisations that are rewarded or expect to be rewarded for not committing a criminal offence.

## **Question 3**

**Do you agree that these points reflect the responsibilities of young people or are reasonable expectations for them to have in relation to age restricted products and services?**

While we agree that the points made in the consultation generally reflect the responsibilities of young people, we believe more could be done to make them aware of those responsibilities and to make them aware of the dangers of consuming alcohol. They should be able to have a reasonable expectation that robust and realistic test purchasing is carried out and that businesses have well trained staff who are vigilant and able to recognise valid proof of age schemes.

## **Question 4**

**Do you agree that these points reflect the responsibilities of parents or are reasonable expectations for them to have in relation to age restricted products and services?**

In addition to the responsibilities and expectations outlined, parents will reasonably expect that Government provide support in protecting their children from the dangers of alcohol. That means changing social norms by making alcohol less affordable, less available and less heavily promoted.

Furthermore, parents need to be educated about the dangers of alcohol to their children. Many parents see alcohol as a 'rite of passage' and part of growing up, without being aware of the physical damage being done to their children and the wider risks that can result from consumption at a young age.

Government has a responsibility to both make parents aware of those risks and dangers and to give them help in having conversations about alcohol with their children. This is critical given the fact that little is being done in this area and families and friends are the major suppliers of alcohol to children.

## **Question 5**

**Do you agree that these points reflect the responsibilities of businesses or are reasonable expectations for them to have in relation to age restricted products and services?**

### **E4. To provide effective training to their employees**

The consultation suggests that business are wishing for consistency from regulators and enforcers. We would strongly advise that consideration be given to a national set of standards which could be developed by LBRO for businesses outside the remit of this guidance. The training could be tiered so as to address the training requirements of businesses, whether they are a single outlet or national supermarket chain.

### **E5. To support their employees so that they feel able to check proof of age and to refuse sales**

See E4.

### **E6. To mutually share information with regulators and enforcers on local problems with age restricted products and services, within the context of collaborative working arrangements**

Members of the Safer Stockton Partnership do believe that they already have established good working relationships with responsible businesses in our Borough. Before we feel able to answer this question in any detail, we would require a definition of what 'collaborative working arrangements' would look like.

### **E7. To have particular regard to the welfare of young employees who may need additional support in checking proof of age and refusing sales**

We believe that the current 'Health and Safety at Work Act', which legislates the requirements of employers to ensure that staff have a safe working environment, already covers this proposal. The Act clearly includes the responsibility to provide training and support. Again we feel that this responsibility lies with business itself and that the guidance should not bind regulators and enforcers into providing this area of support.

### **E8. To implement their policy on dealing with 'false' proof of age**

Again, we feel it would be beneficial for a national standard to be set. We would recommend that the forthcoming Home Office guidance on false ID and Challenge 21/25 be adopted by all business rather than individual policies.

### **F3. To receive compliance support from regulators and enforcers that is appropriate to their needs and resources**

We believe that the end of the sentence 'that is appropriate to their needs and resources' should be replaced with simply 'where' appropriate. Regulators and enforcers are always willing to provide support however we do believe that training and support should be the responsibility of business itself. We do not believe that regulators and enforcers should be bound to providing support that the business itself should provide.

### **F4. To be given an opportunity by enforcers to address issues using their own compliance management systems, where those systems have been demonstrated to be effective.**

We assume by this proposal that business wishes to self-manage their compliance however we would also interpret this as a barrier to enforcement. Before providing further comment we would

need to know who would define what is or isn't an effective system as well as who would decide whether enforcement or internal compliance systems should be used.

We would also argue that this is creating further bureaucracy rather than simplification. It must be remembered that if a business has taken all reasonable precautions and exercised all due diligence then sales would rarely occur. We would prefer businesses to target their resources at preventing sales in the first place rather than concentrating on dealing with failures as a result of these precautions not being undertaken.

**F5. To be informed in a timely manner of the outcome of a check on their compliance, for example by test purchase, other than in exceptional circumstances**

As already identified within the consultation, the protection of the child volunteer is paramount, as is any information which would prejudice operational tactics. Again, before we can answer this question, we require a definition of the word timely and to also understand the need for and the use of this information by business.

We understood the purpose of this consultation is to simplify present procedures for test purchasing however having binding guidance which would require regulators and enforcers to inform business after each test purchase is adding bureaucracy when it is not required. Information in relation to test purchasing is available to anyone at any time.

Should it be considered necessary to supply such information then the preferred method would be by the introduction of a notification scheme in a similar format to Section 178 of the Licensing Act 2003. This would require businesses to register their interests in obtaining the results of test purchase attempts on any particular premise on an annual basis with regulators and the regulator would then provide them with such details. To offset the cost of the regulator for undertaking this additional task a fee should be charged. The current Licensing Act fee of £21 per premise would appear to be appropriate.

**F6. To be treated in a consistent manner by different enforcement agencies dealing with similar provisions**

Any guidance which is seen to oversee the test purchasing work of both regulators and enforcers will provide a level of consistency. However, the importance of dealing with local issues at a local level should not be underestimated. The localism bill is very much based on this ethos, therefore we have to be very clear exactly what the guidance is aiming to achieve.

We would ask that consideration be given to government funding to support the role of co-ordinators who could ensure that all partners are kept up to date with best practice and who could nurture working relationships between partners and business.

**Question 6**

**What requirements should the code of practice make in respect to notifications following a test purchase?**

See F5.

### **Question 7**

**Do you agree that these points reflect the responsibilities of employees or are reasonable expectations for them to have in relation to age restricted products and services?**

The Safer Stockton Partnership supports the responsibilities and believe that they are a reasonable expectation. From an employee's perspective, we believe the suggestion of a set of national standards in training would be warmly welcomed as it would allow a certain level of challenge to their employers should employees deem that they are not receiving the necessary level of training for their role.

### **Question 8**

**Do you agree that these points reflect the responsibilities of regulators and enforcers in relation to age restricted products and services?**

It was noted with considerable interest that young people, parents, employees and businesses have both 'Responsibilities' and 'What they can reasonably expect' points, whereas regulators and enforcers do not. Could we therefore ask where the 'Can reasonably expect' points are for regulators and enforcers?

**I1. To promote a clear and consistent message in relation to asking for valid proof of age, to businesses, employees and customers**

As identified in our response to E8, the proposed Home Office guidance on fake I.D. together with a national set of standards on age verification, i.e. Challenge 21 / 25 should be introduced.

Any training should highlight the compulsory need to request and check authenticity of age identification rather than simply ask for age. If this was complied with, the likelihood of an underage sale would be virtually removed. What simpler regulation could there be? This is an area of consistency which would benefit all partners.

**I2. To promote the message that acceptable forms of proof of age are: PASS cards; passports; and photocard driving licences.**

As I1 above.

**I4. To take a risk based approach that recognises business's compliance systems and work with them, including through the Primary Authority scheme**

We would ask that recognition be given to a specific premises compliance system but not a company as a whole as primary authority dictates of trading standards. It should be of no consequence what name is above the door.

What is relevant is the compliance system that each premise not only has but more importantly implements. It cannot be accepted that because a large company has an excellent compliance system in place that every store chooses to implement it as can be supported by our partners who can evidence large supermarket chains having failed test purchases. Therefore, surely the testing of that compliance by regulators and enforcers should be welcomed by major businesses who invest significant amounts of money in the training of age restricted products.

We understand that the counter argument is that businesses already have in place both internal and sometimes external means of checking compliance. However, our response would be that we will continue to undertake test purchasing, as it is our responsibility to safeguard children.

**15. To prioritise their resource allocation on appropriate activities beyond test purchasing that encourage businesses to improve and maintain their compliance and share good practice that has been evaluated and found to be effective**

Although support to businesses to improve and maintain their compliance is frequently undertaken by regulators and enforcers, it should not be included in binding guidance. To reiterate, our response to F3, it is the responsibility of business to train staff to ensure understanding and compliance with regard to the legislation.

**16. To work in partnership with businesses and local communities to tackle issues of access to age restricted products and target enforcement activities on those businesses that pose a significant risk to regulatory outcomes**

The Safer Stockton Partnership would always support partnership working; however we reiterate that training should be the responsibility of business and not lie solely with regulators and enforcers.

We currently work together as partners to assist the trade through schemes such as our Think B4U Drink campaigns and our 'We Don't Overlook Underage' retailer training and information packs.

The working in partnership with the trade should occur at a local level based on local needs and information and should not be bound by national guidance or primary authority arrangements.

**18. To communicate the results of all test purchase attempts to businesses in a timely manner other than in exceptional circumstances**

See response to question 6.

**Test Purchasing**

The consultation identifies the unprecedented level of test purchasing activity (implying a level of negativity) but provides no recognition of the success and the role that same activity has played in driving down the number of failed test purchases.

Likewise, the consultation seems to imply that business believes that test purchasing is not used in appropriate ways, yet there is no evidence to support this. If this is the case, any business has a statutory right of appeal.

**Question 9**

**Do you agree that it would be helpful to structure the code around the different considerations that apply in these two scenarios? What would be the key characteristics of each approach in terms of planning, conduct and outcomes?**

The consultation's purpose is to simplify procedures yet what is proposed is a two tier system which will create confusion. More importantly, we believe that this is simply not necessary.

We would ask:

- Why business feels it is necessary to distinguish between the two different types of test purchasing?
- What would be the benefits to both business and regulators and enforcers?
- Where is the evidence of the analysis to support this proposal?

**Question 10**

**If test purchasing is being used only to gather information how should businesses be engaged as part of the process?**

Please refer to question 9

**Question 11**

**Where test purchasing is used as an evidence gathering tool, should its use always be intelligence-led? If so, is there a need for guidance on what constitutes 'sufficient' intelligence, both in terms of quality and quantity?**

Test purchasing is a tool to ensure compliance both in present and future terms. We believe that regulators and enforcers should not be limited to only conducting test purchasing based on intelligence. Intelligence at times can be limited as those young people who purchase alcohol are not very forthcoming in informing regulators and enforcers as to where the alcohol was obtained as they wish to protect their source.

A decision on which premises to test purchase should be based on local priorities and concerns which may or may not be intelligence led. We can evidence failed test purchases where the initial operation was not intelligence led. Again, we reiterate that test purchasing is a tool to ensure compliance, not purely a means to prosecute those that choose not to abide by the legislation.

We would also strongly disagree with the need for the term 'sufficient' in relation to intelligence. This term is not used within the National Intelligence Model which many regulators and all police enforcers use to grade the intelligence they receive. The 5x5x5 system, grades intelligence whilst taking into consideration quality and quantity.

**Question 12**

**In what circumstances do you think it would be acceptable for young people conducting test purchases to lie about their age? Should this practice be specifically authorised?**

We believe there is a danger in focusing on business asking an individual their age. The purchaser, in real life, may well lie about their age. This may lull the seller into a false sense of security.

If sellers are not 100% certain that the person they are selling to meets the necessary age requirement they should not be asking their age, but should be asking for appropriate id as confirmation.

It is our view, that where necessary and proportionate that lying should be allowed. The reality is that those who attempt to purchase alcohol will without doubt lie about their age. Many businesses are aware when test purchasing has been conducted as it is only volunteers who provide their true age when challenged.

The issue here is not about a volunteer lying but about proof of age. Should a volunteer be asked to lie, how can that be seen as unacceptable when the business should then be asking for proof of age in support of their own policies?

We would suggest that authorisation should be required by a senior officer before lying is allowed.

**Question 13**

**Do you think that the use of 'false' id by young people conducting test purchases is ever a legitimate practice? Should this practice be specifically authorised?**

The Safer Stockton Partnership believes that the ability to utilise fake I.D should not be exempt from any new guidance but again it should only be used where it is necessary and appropriate.

Again we would suggest that authorisation should be required by a senior officer

**Question 14**

**Do you feel that there are circumstances in which a single sale or test purchase provides sufficient evidence to warrant enforcement action? If so, what are these circumstances?**

The Safer Stockton Partnership believes that there are circumstances when a single sale provides sufficient evidence to warrant enforcement action. Each individual case should be dealt with on an individual basis. There are safety nets already in place which protect business against unnecessary enforcement action whether that be independent decision makers and CPS within the police service or local authority solicitors for trading standards. Ultimately business also has the right of appeal against any decisions.

**Conclusion**

The present LACORS guidance has stood the test of time and legal challenge. Why therefore, have such extreme amendments been proposed? The benefits to business are clear but as no evidence was included within the consultation of the need for change, understandably partners are sceptical as to whether there is a genuine need for this new guidance.

As mentioned earlier in our response, we do believe that certain aspects of LACORS could be updated to accommodate all enforcement partners so that there is consistency in working arrangements and would welcome further opportunity to discuss these in further detail.

The Safer Stockton Partnership trust that you find this response to the consultation useful, however should you wish to discuss any part of the response in more detail, please do not hesitate to contact me.

Yours sincerely

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