

Date: 12<sup>th</sup> February 2016

Your Ref:

Our Ref: J/LIC/3705/HB

The Clerk of the Licensing Board  
East Lothian Council  
John Muir House  
Haddington  
East Lothian  
EH41 3HA

The Lothians and Scottish Borders Division  
Dalkeith Police Station  
Newbattle Road  
Dalkeith EH22 3AX

Tel: +44 (0)131 663 2855  
Fax: +44 (0)131 654 5507  
Textphone: +44 (0)131 311 3944

Email: [LothianScotBordersLicensingEastMid@Scotland.pnn.police.uk](mailto:LothianScotBordersLicensingEastMid@Scotland.pnn.police.uk)  
Web: [www.scotland.police.uk](http://www.scotland.police.uk)

Dear Madam

**LICENSING (SCOTLAND) ACT 2005 – SECTION 36  
PREMISES LICENCE REVIEW APPLICATION  
CO OPERATIVE, MAIN STREET, ORMISTON**

The Chief Constable, in terms of Section 36(1) of the Licensing (Scotland) Act 2005, hereby makes application to the Licensing Board in terms of Section 36(3)(b) of the Act, for a review of the premises licence in respect of the premises known as the Co Op, Main Street, Ormiston.

- The Chief Constable makes application on the grounds that in terms of Section 36(3)(b) of the Act, on grounds relevant to one or more of the licensing objectives as articulated at Section 4(1) of the 2005 Act, namely;
- ***Preventing crime and disorder***

The premises operates as a licensed grocers and are licensed to sell alcohol Monday to Sunday 1000hrs until 2200hrs. The premises has been subject of 4 test purchases in the last year (2015), 2 of which they failed.

In support of this application, the following information is provided for consideration.

In terms of Section 105 of the Licensing (Scotland) Act 2005, the Chief Constable may authorise a young person to buy or attempt to buy alcohol to determine whether an offence is being committed.

The use of young persons to conduct test purchase operations provides police with an effective tool in the fight against underage sales and represents an important safeguard against underage drinking and the resultant antisocial behaviour that adversely affect many communities.

A standard operating procedure, which ensures operations are carried out safely, fairly and effectively, was prepared only after consultation with various stakeholders, including:

- Scotland's Commissioners for Children & Young People;
- Society of Chief Officers for Trading Standards in Scotland;
- Association of Chief Police Officers in Scotland;
- Convention of Scottish Local Authorities;
- Scottish Executive Enforcement Advisory Group on Age Restricted Sales; and
- Crown Office.

The operating procedure provides that a test purchase operation may be carried out on premises for any of the following reasons:

- Where there is intelligence to suggest that alcohol is being sold illegally to persons under 18 years of age from specific licensed premises;
- Where there is intelligence indicating that persons under 18 years of age are consuming alcohol in the locality where the licensed premises are situated; and/or
- Where the premises are in a locality in which all premises are being subjected to test purchase operations in a non-discriminatory manner, to raise awareness in relation to the illegal sale or purchase of alcohol in licensed premises.

Young persons recruited as test purchasers must be aged between 16 and 16½ years at the time of a test purchase operation and they are assessed on their appearance, level of maturity and general character prior to deployment. If the officer in charge of an operation believes that the young person looks older than 16½ years of age, the young person will not be used in the test purchase operation.

The test purchaser must not try to persuade or coerce staff to make a sale. In short, licensed premises will pass a Test Purchase Operation if they challenge the test purchaser regarding his or her age. In addition, compliance with the requirement for licensed premises to have an age verification or "Challenge 25" policy in place and the proper training of staff, in accordance with the legislative provision, will provide premises with further safeguards against failing a test purchase operation.

As such, it was decided to conduct a test purchase operation in the East Lothian area in a non-discriminatory manner, to raise awareness, and as part of that operation on the 27<sup>th</sup> March 2015, a total of 16 'off sale' licensed premises were tested within the Tranent, Prestonpans and Musselburgh areas, with 1 failing.

The test purchase operatives used were 16 year old females. They were given a full briefing prior to the operation and informed that they must answer any questions required of them by staff truthfully.

About 2000 hours on Friday 27<sup>th</sup> March 2015, plain clothes officers entered the premises trading as the Co Op, Main Street, Ormiston to carry out a risk assessment. One of the test purchasers then entered the shop and selected a bottle of blue WKD from open display and took it to the service counter. She was sold this alcohol by a female who was working behind the counter. The test purchaser was not asked her age or for identification. The test purchaser left the shop and surrendered the alcohol to plain clothes police officers outside.

Plain clothes police officers then entered the premises and spoke with the person in charge and the female member of staff. They were informed that they had failed a test purchase.

Police officers found the staff to be cooperative throughout. The marked original £10 noted hand over by the test purchaser was recovered, CCTV was also in operation. A training record for the female member of staff was checked and found to be in order.

The female member of staff was then cautioned and charged with a contravention of Section 102 of the Licensing (Scotland) Act 2005. Staff were informed that the police would carry out a retest within the next 14 days. The circumstances of this test purchase failure was reported to the licensing officer.

On Tuesday 7<sup>th</sup> April 2015, the premises were subject to a re test and subsequently passed on this occasion.

On Thursday 30<sup>th</sup> April 2015 the premises was visited by the licensing officer following this test purchase failure and found to be compliant with licensing legislation, with all the processes in place as well as a very good till prompt system. The manager there explained that they were able to check the till prompt system to establish the history of a member of staff and any sales of age restricted items. She stated that there had been nothing uncovered about the female member of staff who had made the illegal sale and that they were happy with her training etc. As a result of the test purchase failure, the Co Op as a company, placed the store on 'lock down' for a month and the female member of staff was taken off the till point to carry out alternative duties within the store. 'Lock down' was explained to the police licensing officer as any age restricted sales were now to be 'authorised' by a supervisor/member of management.

It was noted at that time by the police licensing officer, that the alcohol display within the store did not reflect the layout plans held with the licence. This was highlighted to the store manager, Lisa Dickson. There were no other concerns.

On 28<sup>th</sup> May 2015 a letter was sent out to all 'off sale' premises in the East Lothian area as part of the ongoing process to heighten the awareness of underage sales and Police Scotland's commitment to utilising test purchasers. A copy of this letter is attached for your reference.

In the run up to Christmas, it was decided to conduct another test purchase operation in the East Lothian area and as part of that operation on the 10<sup>th</sup> and 11<sup>th</sup> December 2015, a total of 51 'off sale' licensed premises were tested within the Tranent, Prestonpans, Musselburgh, North Berwick, Dunbar and Haddington areas, with 5 failing.

The test purchase operative used in relation to the Co Op was a 16 year old male. He was given a full briefing prior to the operation and informed that he must answer any questions required of him by staff truthfully.

About 1825 hours on Thursday 10<sup>th</sup> December 2015, plain clothes officers entered the premises trading as the Co Op, Main Street, Ormiston to carry out a risk assessment. The test purchaser then entered the shop and selected a 4 pack of Budweiser from open display and took it to the service counter. He was sold this alcohol by a male who was working behind the counter. The test purchaser was not asked his age or for identification. The test purchaser left the shop and surrendered the alcohol to plain clothes police officers outside.

Plain clothes police officers then entered the premises and spoke with the person in charge and the male member of staff. They were informed that they had failed a test purchase.

Police officers found the staff to be cooperative throughout. The marked original £10 noted hand over by the test purchaser was recovered, CCTV was in operation but staff were unable to download this, at the time. A training record for the male member of staff was checked and found to be in order.

The male member of staff was then cautioned and charged with a contravention of Section 102 of the Licensing (Scotland) Act 2005. Staff were informed that the police would carry out a retest within the next 14 days. The circumstances of this test purchase failure was reported to the licensing officer.

On Tuesday 15<sup>th</sup> December 2015, the police licensing officer and the Licensing Standards Officer, Rudi Fruzynski visited the premises and spoke with one of the team managers about the test purchase failure. Again all signage, training records etc were checked and found to be in order. The member of staff informed us that the male member of staff who had made the sale had since resigned from his position and no longer worked for the Co Op. It was noted at this time that the till prompt system that was checked back in March had been modified to take out the approximate age of the customer. The team manger stated that this was done some time ago and that this was out with their control.

On Sunday 20<sup>th</sup> December 2015, the premises were subject to a re test and subsequently passed on this occasion.

On Wednesday 27<sup>th</sup> January 2016, a meeting was arranged at Tranent Police Station by the Area Risk Manager for the Co Op (Eddie McInally), the Area Manager (Graham Cranston), the police licensing officer and Insp Harborow (Sector Inspector) were all present.

Mr McInally gave reassurances that they were aware of the seriousness of the two test purchase failures and admitted that it was unacceptable. He also stated that there were now 5/6 personal licence holders within the store, he confirmed that the male member of staff who failed in December had since left the store, having tendered his resignation shortly afterwards.

There was a discussion about the Co Op's processes and it was acknowledged that their signage, staff training, till prompt system and CCTV were all satisfactory and that since the test purchase failures the Co Op have reviewed all their processes and placed more personal licence holders within the store. All of those processes with the exception of the additional personal licence holders were in place prior to the test purchase failures and should have prevented the sale of alcohol to the test purchaser but didn't, and a sale was made on two occasions.

Police Scotland have serious concerns in relation to the Co Op failing 2 test purchase operations in succession. We have been reassured that the Co Op as an organisation have processes in place, both pre and in response to the test purchase failures. But it is for the Board to consider at a local level, whether these processes are being followed. It is for that reason that Police Scotland are bringing these failures to the Board's attention.

The Chief Constable requests that the Licensing Board consider the aforementioned grounds for review and take such steps as it considers necessary or appropriate for the purposes of the licensing objectives under the terms of Section 39(2) of the Act.

Yours faithfully

Inspector Harborow

Date: 28<sup>th</sup> May 2015

Your Ref:

Our Ref:

The Manager  
Co Operative  
Main Street  
Ormiston  
EH35 5HS

Matt Paden  
Chief Inspector  
Local Area Commander  
The Lothians and Scottish Borders Division  
Haddington Police Station  
Court Street  
Haddington  
EH41 3AE  
Tel: 01620 826 147

Email: [LothianScotBordersLicensingEastMid@Scotland.pnn.police.uk](mailto:LothianScotBordersLicensingEastMid@Scotland.pnn.police.uk)

Web: [www.scotland.police.uk](http://www.scotland.police.uk)

Dear Sir / Madam

## **LICENSING (SCOTLAND) ACT 2005 - TEST PURCHASING**

In line with the Licensing (Scotland) Act 2005 licensing objectives, Police Scotland utilise the use of Test Purchasers.

Test Purchasing involves the use of authorised young persons, aged 16 years, entering licensed premises and attempting to purchase alcohol. This is an efficient and effective way of ensuring premises are complying with their responsibilities and have in place sufficient measures to prevent the sale of alcohol to children and young persons.

Our primary aim in using Test Purchasing is to try and reduce the availability of alcohol to persons under 18 years of age and thereby reduce the associated antisocial behaviour and criminality which can occur when young persons have access to and consume excessive quantities of alcohol.

I appreciate that you may well have sufficient measures in place and would ask that you take this opportunity to ensure that all your staff are fully aware of the legislation in relation to the sale of alcohol and the steps required to ensure that alcohol is only sold to persons 18 years of age and over. Emphasis should be placed upon obtaining proper proof of age identification from any person who may be under 25 years of age.

If you require any assistance or guidance in relation to your processes and preventative measures, please do not hesitate to contact your local licensing department on the above email or telephone number.

Your premises may or may not be subject of a Test Purchase operation in the future.

Yours faithfully

PC Heather Bowsher  
Licensing Officer

# EAST LoTHIAN COUNCIL

## LICENSING, ADMINISTRATION AND DEMOCRATIC SERVICES

**Rudi Fruzynski**  
Licensing Standards Officer

**Kirstie MacNeill**  
Clerk to the Licensing Board

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Date: 02 March 2016

**Subject: LICENSING (SCOTLAND) ACT 2005 - PREMISES LICENCE REVIEW**  
**CO-OPERATIVE, MAIN STREET, ORMISTON**

On Friday 19<sup>th</sup> February 2016 I received official intimation in terms of Section 38(3)(b) of the licensing (Scotland) Act 2009 that the Licensing Board had accepted an application from the Police to review the Premises Licence in respect of the above premises.

In terms of Section 38(4) of the Act I have prepared a report into the circumstances of the request for this review for the consideration and information of Licensing Board Members. My observations are as follows:-

I refer the Board to the Police report on this subject dated 12<sup>th</sup> February 2016 and do not intend to expressly repeat the content of same in this report.

Over the years the LSO has made numerous inspection visits to the Co-op premises in Ormiston and noted that the Licensing compliance processes in place have always been in order. The computerised staff training system is excellent and staff are required to undertake refresher training every six months. The signage, challenge 25 checkout prompts and sales refusals system is of a high standard.

As in any system, it can be the best there is, but unless all staff follow company procedures, processes and their training then the due diligence put in place to prevent problems from occurring, in this case the sale of alcohol to young persons, can result if offences occurring, outwith the control of management. This is what happened on the two occasions test purchase failures were experienced in 2015.

In March 2015, after the first failure, management put the shop under lock down for one month requiring all age restricted sales to be authorised and all staff were retrained.

In December, after a further test purchase failure, the member of staff resigned. Again all staff were retrained.

During both problem periods, management and staff were reported to have been co-operative and helpful.



Lisa Dickson, the current premises manager, and her supervisors are experienced personal licence holders who I am confident do their best to ensure their company due diligence alcohol sales processes are implemented in such a way as to prevent licensing offences occurring and to protect the public from harm.

R. Fruzynski  
Licensing Standards Officer