

Report No.  
ES18043

## London Borough of Bromley

### PART ONE - PUBLIC

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**Decision Maker:** PUBLIC PROTECTION AND ENFORCEMENT POLICY  
DEVELOPMENT & SCRUTINY COMMITTEE

**Date:** Tuesday 3 July 2018

**Decision Type:** Urgent Non-Executive Non-Key

**Title:** TRADING STANDARDS UPDATE ON UNDER AGE SALES

**Contact Officer:** Rob Vale, Trading Standards Manager  
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**Chief Officer:** Nigel Davies, Executive Director of Environment & Community Services

**Ward:** (All Wards);

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1. Reason for report

This report is prepared at the request of the Public Protection and Enforcement Policy Development & Scrutiny Committee to give an update on the work of trading standards and under age sales enforcement.

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2. **RECOMMENDATION(S)**

Members of the Public Protection and Enforcement Policy Development & Scrutiny Committee are asked to note the contents of this report.

## Impact on Vulnerable Adults and Children

### 1. Summary of Impact:

- 1.1 There is a range of consumer products which are controlled by age restrictions which are enforced by trading standards. These include tobacco, alcohol, fireworks, solvents, e cigarettes and knives. The underage sales programme seeks to restrict access to these products by maintaining high levels of business compliance, with robust action against traders who are caught selling to under age children.
- 1.2 Smoking is the primary cause of preventable death, disability and disease in the UK. Cigarettes and other tobacco products can be sold legally to anyone over the age 18 in the UK. Under age smokers face an increased risk of lifelong addiction and serious health problems. According to ASH (Action on Smoking and Health) most people start smoking and become addicted to nicotine when they are still children. Those whose parents or siblings smoke are around three times more likely to smoke than children living in non-smoking households. Children who start smoking at the youngest ages are more likely to smoke heavily and find it harder to give up.
- 1.1 The UK is a high prevalence country for underage alcohol use. The Bromley Joint Strategic Needs Assessment 2016 reported that people in Bromley are not thought to drink any more than the average for London or England. The alcohol-specific admission rate for under 18 year olds in Bromley has been gradually decreasing over the last two years and is comparable with the rate for London, but significantly lower than the rate for England.

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## Corporate Policy

1. Policy Status: Existing Policy:
2. BBB Priority: Children and Young People Excellent Council Safe Bromley Vibrant, Thriving Town Centres Healthy Bromley:

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## Financial

1. Cost of proposal: Not Applicable:
2. Ongoing costs: Not Applicable:
3. Budget head/performance centre: Trading Standards
4. Total current budget for this head: £315.5k
5. Source of funding: Existing controllable budget for 2018/19

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## Personnel

1. Number of staff (current and additional): 7.62fte plus 0.5fte Management
2. If from existing staff resources, number of staff hours: NA

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## Legal

1. Legal Requirement: Statutory Requirement:

2. Call-in: Applicable:

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Procurement

1. Summary of Procurement Implications: Not applicable

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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents, businesses and visitors to the borough.

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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: NA

### 3. COMMENTARY

- 3.1 The Bromley Trading Standards Control Strategy 2017-2019 sets out the following key priorities for the service:
- protecting and safeguarding vulnerable consumers from the fraudulent and financially abusive activities of rogue traders
  - combatting the trade in unsafe, illicit and counterfeit products and unfair trading
  - safeguarding the health and wellbeing of young people by ensuring underage children are not sold age restricted goods and services
  - working with regulatory partners to combat rogue landlords and letting agents
- 3.2 The strategy was presented to the Public Protection Portfolio Holder for approval and the Public Protection and Safety PDS Committee for pre decision scrutiny on 27<sup>th</sup> September 2017.
- 3.3 The information and guidance provided to Bromley businesses and their staff supports a clear and consistent message that valid proof of age must always be required where young people seek to purchase age restricted products through face to face transactions. This guidance is available to all businesses via the Bromley website or if requested by way of a hard copy pack.
- 3.4 The Trading Standards team is proactive in arranging underage test purchases throughout the Borough as part of the Council's children's safeguarding agenda and commitment to protecting children from harm. A risk assessment of the business is carried out taking into account all relevant, available information and intelligence in order that an informed assessment is made of the level of risk and the likelihood of compliance.
- 3.5 Trading Standards staff provide advice to traders about steps they can take to prevent underage sales, provide free materials for them to use and education and training opportunities at the very beginning of the process, with the aim of creating improvement in the businesses and minimising the occurrence of underage sales in the Borough.
- 3.6 These visits are followed up with Challenge 25 test purchases which aim to test the diligence system and the age verification policy of the business. An 18 year old volunteer is deployed to enter the shop and buy the age restricted product and there is an expectation that the shop will ask for proof of age as they are operating a Challenge 25 policy. The volunteer will not carry identification and should therefore be refused the sale.
- 3.7 In cases where the 18 year old is sold an age restricted product there is no offence committed by the seller. However, the business is put on notice that a failure to follow their own procedures has indicated a higher risk of sales to under age children. The traders are then tested by using underage volunteers attempting to purchase age restricted products. In most cases the volunteers are police cadets.
- 3.8 Complaints from local communities which give an indication of the source of age restricted products to young people is also considered and may be a trigger for a test purchase. The credibility, quality and quantity of the information is considered and further information may be sought from other sources, for example local police.

#### Knife Crime Strategy

- 3.9 The London Knife Crime Strategy, published by the Mayor of London in June 2017 set out a number of recommendations in response to increasing knife crime with injury cases. They included the implementation of responsible retailers agreements, and test purchasing by trading standards to identify those businesses willing to sell knives to young people. Throughout

September and October visits were made to small retailers who sold knives and bladed articles and encouraged them to sign up to the Bromley responsible retailer scheme known as Bladesafe. Around 20 of these businesses agreed to sign the agreement, receiving an information pack and window sticker. These visits were followed up with test purchase attempts by an 18 year old to test the diligence of the business, who agreed to a Challenge 25 policy as part of the Bladesafe agreement. A further test purchase by an under age police cadet working with trading standards was carried out and none of the Bladesafe businesses sold.

### Enforcement outcomes

- 3.10 When a business fails a test purchase and sells to the volunteer there follows an investigation into the circumstances. In most cases the business owners will be invited to attend a formal interview which is conducted in compliance with the Police and Criminal Evidence Act 1984. Sales of alcohol to a minor may result in the Head of Trading Standards & Community Safety seeking the review of the alcohol licence, the outcome of which can result in additional conditions being imposed on the licence, a suspension of the licence, or a revocation. There are currently two outstanding licence reviews which were requested as a result of failed test purchases during the 2017/18 campaign.
- 3.11 One business was prosecuted for selling fireworks to an underage test purchaser in October 2017. The trader pleaded guilty and was fined by Bromley Magistrate's a total of £1,000, £100 Victim surcharge and £1,275 costs.
- 3.12 Two other businesses who failed the fireworks test purchase were interviewed and dealt with and received a written caution. +--+
- 3.13 Table 1 below sets out the outputs for the underage sales campaign of 2017/18, compared to the previous year. Staff sickness resulted in a lower number of business visits in 2017/18.

UA Sales	TOTAL 2017/18	TOTAL 2016/17	Target	Actions
Business Advice Visits	63	111	86	Carry out information visits to high risk traders and new traders to improve awareness and compliance with related legislation and help ensure effective due diligence exists. Written and verbal guidance will be provided, plus details about inexpensive on-line training
Bladesafe project	32	NA	34	Launch and operate Blade Safe, a free responsible retailer charter for knife retailers to join
CH25 TPs	79	NA	120	Test purchase traders which have received an information visit
UAS TPs	97	197	100%	Test purchase all CH25 failures and complaints
UA Sales	7	26	NA	Failures included 3 fireworks sales and 2 alcohol sales. 2 businesses are now subject to a review of their alcohol licence.

### Regulation of Investigatory Powers Act 2000

- 3.14 The enforcement of age restricted sales offences is particularly reliant upon the power to make test purchases. This will often involve young people entering the business on the instruction of the Trading Standards Officer to purchase the age restricted product. In Bromley, covert recording equipment is often used to record the sale as evidence. If appropriate, an officer may also be in the premises. Guidance published by the Office of Surveillance Commissioners advises it is desirable to obtain a directed surveillance authorisation under the regulation of Investigatory Powers Act 2000 if covert recording equipment is worn by the test purchaser or there is an adult observing the test purchase.
- 3.15 Decisions not to apply for a RIPA authorisation in these circumstances would need to be justifiable. In most cases, a business which is targeted to be test purchased by an underage volunteer will already have received notice of intent, by way of a letter either that it had

previously failed a Challenge 25 purchase, or as a result of a complaint or other intelligence, thus making any test purchase, provided it is carried out within an reasonable length of time from receipt of the letter, an overt operation – and therefore not within the remit of RIPA. However, for completeness, a RIPA authorisation is sought, which is agreed by the local authority responsible officer and then judicial approval at the local Magistrates’ Court.

3.16 The Trading Standards team has regard to the non-statutory code of practice for regulators on the enforcement of age restricted products which was updated in 2014.

#### 4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

4.1 Young people can be particularly vulnerable to harmful products and Trading Standards plays a role in reducing the availability of a range of age restricted products through test purchasing and supporting responsible retailers. Access to illicit tobacco, alcohol, fireworks and e cigarettes can contribute to poor health and anti-social behaviour. Knife crime with injury has been on the increase for three years across the UK with significant increases seen in Bromley. We are working closely with retailers in Bromley to stop children accessing knives which forms part of a London wide response to support the Mayors Knife Control Strategy.

4.2 The purpose of this work is to help protect young people from harm, keep communities safe and support vibrant businesses.

#### 5. POLICY IMPLICATIONS

5.1 The Trading Standards Control Strategy 2017-2019 seeks to contribute to a wide range of the significant priorities for the Council, and in particular links directly with the Building a Better Bromley priority 2016-18: “For a Safe Bromley we will continue to protect the elderly and vulnerable from scams and doorstep crime.”

#### 6. FINANCIAL IMPLICATIONS

6.1 The table below provides the budget and fte’s for the Trading Standards Team for 2018/19:

	<b>£</b>
Staffing	381,300
Running expenses	44,760
One-off grant expenditure	48,130
One-off grant income	-48,130
Recharge to Public Health	<u>-110,560</u>
<b>Total controllable budget</b>	<b><u>315,500</u></b>
 <b>FTEs</b>	 <b>7.62</b>

#### 7. LEGAL IMPLICATIONS

7.1 The role of trading standards services is to protect consumers from unfair trading and support business growth by enforcing national legislation at a local level and maintaining a level playing field for legitimate business. There are presently more than 250 pieces of legislation assigning separate statutory duties to trading standards authorities

<b>Non-Applicable Sections:</b>	Personnel Implications Procurement Implications
Background Documents: (Access via Contact Officer)	Age restricted products and services: a code of practice for regulatory delivery/updated April 2014

