

LICENSING ACT 2003 SUB-COMMITTEE (A) - MONDAY, 28 NOVEMBER 2016

MINUTES OF A MEETING OF THE LICENSING ACT 2003 SUB-COMMITTEE (A) HELD IN COUNCIL CHAMBER, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON MONDAY, 28 NOVEMBER 2016 AT 10.00 AM

Present

Councillor – Chairperson

P James

Apologies for Absence

Officers:

Katie Brook	Senior Licensing Technical Officer
Katia Daw	Lawyer
Andrea Lee	Senior Lawyer
Andrew Rees	Senior Democratic Services Officer - Committees
Yvonne Witchell	Team Manager Licensing

21. APOLOGIES FOR ABSENCE

None.

22. DECLARATIONS OF INTEREST

None.

23. LICENSING ACT 2003: SECTION 51 APPLICATION FOR REVIEW OF PREMISES LICENCE CAERAU VILLAGE STORES PREMIER, 8-9 CAERAU ROAD, CAERAU, MAESTEG

The Legal Officer informed the Sub-Committee that the Premises Licence Holder's representative will be making an application for an adjournment of the hearing and asked the representative of the police if he had any objections to the request for adjournment. PC Ellis stated that he did not object to the application for an adjournment.

The Premises Licence Holder's representative confirmed that she had made an application for an adjournment, but her client was prepared for the hearing to proceed. The Legal Officer referred to the absence of information relating to the outcome of appeal on immigration matters and asked again whether the Premises Licence Holder was prepared for the hearing to proceed. The Premises Licence Holder's representative again confirmed that her client was prepared for the hearing to proceed.

The Sub-Committee adjourned at 10.27am and reconvened at 10.35am to consider whether to proceed with the hearing.

On reconvening the Sub-Committee determined that it would proceed with the hearing insofar as it could.

The Team Manager Licensing reported on an application for a review of the premises licence submitted by the Chief Officer of Police in relation to the premises known as Caerau Village Store Premier, 8-9 Caerau Road, Caerau, Maesteg. She stated that the Premises Licence Holder is Harminder Kaur Malhi and the licence authorised the supply of alcohol Monday to Saturday 0800 – 2300 hours and Sunday 1000 – 2230 hours. The Team Manager Licensing informed the Sub-Committee that the application had been advertised in accordance with the regulations and representations had been received from the Licensing Authority. She stated that additional documentation had been served by Hutton's Solicitors acting for the Premises Licence Holder seeking an adjournment and opposing the application for the review of the premises licence.

PC Ellis commenced his submission by stating that reviews must, not only have regard to Section 11 of the Home Office Guidance but also Section 12 of the Council's own "Statement of Licensing Policy. He stated that section 12 dictates that "reviews represent a key protection for the community if problems arise at licensed venues". Information highlighted within the review demonstrates a systematic and deliberate failure to promote 2 key objectives namely: the prevention of crime & disorder and the promotion of public safety. He also highlighted that "Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership". He stated that the Licensing Department of South Wales Police is an integral part of the Community Safety Partnership and that his statement had not emanated from the Chief Officer of Police but was emphasised at Section 2 of Home Office Guidance which relates to the licensing objectives and in particular Sub-section 2.1 Crime & Disorder.

PC Ellis informed the Sub-Committee that the shop is authorised to sell alcohol by a Premises Licence and Harminder Malhi is both the Premises Licence holder and Designated Premises Supervisor, the DPS. However; the address which she has given on the Premises Licence of Caerau Village Stores is that of Costcutter as she resides above the premises with her husband, Gurpreet Singh. He stated that significantly the 3 migrants found to be illegally in the UK, who are referred to in the review, had given this as their residence when arrested.

PC Ellis informed the Sub-Committee that the Premises Licence Holder of Costcutter is H&G Trading Ltd., and Harminder Malhi who is the secretary of that company, whilst the DPS is Mr Hardev Singh Johal. He stated that there is a strong association between both premises and disclosure of this information is relevant and necessary for the promotion of the licensing objectives. Harminder Malhi has an association with Costcutter dating back to at least 2007 when she first reported an incident to SWP and the context of the call was "two boys outside our shop Costcutters, they are banging on our shutters". PC Ellis stated that she refers to the premises as 'our shop'. He stated that since this date she has been subject of 35 reported incidents to South Wales Police where she is either the reporting person, victim or witness. He stated that what was significant is that 32 relate to Costcutter and only 3 the subject of occurrences at Caerau Village Stores, the first being on 26 June 2012, the second on 17 December 2012 and the last on 28 September 2013. Gurpreet Singh has reported 8 incidents to South Wales Police and again what was significant is that 6 relate to Costcutter. Mr Singh has only reported 2 occurrences at Caerau Village Stores. South Wales Police therefore submit that Harminder Malhi is effectively responsible for Costcutter as well as Caerau Village Stores and the representations are relevant as they refer to her role at both premises which she has managed for a prolonged period during which time she has failed to promote the licensing objectives. PC Ellis stated that for reasons outlined in the application Costcutter was also subject of a review application

and therefore the situation Harminder Malhi now finds herself in is entirely of her own making.

PC Ellis informed the Sub-Committee that Harminder Malhi has committed offences at both premises mainly the employment of migrants who have illegally entered the UK or have remained in the country illegally. He stated that the financial penalty on an employer for engaging in the employment of an illegal migrant worker was highlighted within the review. If the UK Border Agency was considering that such a fine should be imposed then the procedure on evidencing the offence is that a Referral Notice is served on the employer.

PC Ellis informed the Sub-Committee that the evidence collated is subsequently examined by the Home Office Illegal Working Civil Penalty Compliance Team (IWCPCT) which determines whether the employer should be subject of a penalty notice under Section 15 of the Immigration, Asylum & Nationality Act 2006. He stated that Section 15 is referred to at page 16 of the application. To deter such criminality fines of up to £20,000 per worker can be served on employers by the Secretary of State. Prior to May 2014 this sum was £10,000, given that the penalty had since doubled, it provided a strong indication that the previous fine was insufficient and did not deter employees who continued to employ illegal migrants as a cheap alternative to lawful workers.

PC Ellis informed the Sub-Committee that there is vast amount of documentation available electronically and otherwise to help employers avoid committing immigration offences. There is also a help line manned by UK Border Agency staff. The stated there also exists a document titled, "Home Office checks to ascertain if someone can work in the UK" which was included at pages 19 to 21 in the agenda pack. This was a simplistic, staged and chronological check which enables employers to ascertain if a potential employee can work in the UK legally and asks pertinent questions for example such as: -

Does the worker have a UK passport?

Are they a British Citizen?

Do they possess a permit or visa showing that they have a right to work in the UK?

Do they have any other relevant documents entitling them to work in the UK?

PC Ellis stated that those relevant documents are listed in the guidance and if the answer to those questions is, "No" then the guidance is clear as it details that, "the worker may not be currently entitled to work in the UK". He stated that extracts from other UKBA guidance appear in the application and that in short employers are given every assistance to thoroughly scrutinise potential staff and there is no reason for any employer to employ migrants who are not permitted to work. If an employee produced documentation to suggest he is in the UK legally then those documents can be verified on the Home Office website or UKBA can be contacted on their helpline telephone. It was not just a case of merely accepting documentation provided to employers. That documentation must be checked in order to ascertain if it is legal or otherwise.

PC Ellis stated that licence holders who have previously been subject of the review procedure have informed previous Sub-Committee's that they were given documents which appeared credible. He commented that this was misleading and was not accepted or indeed acceptable as those credentials must be substantiated.

PC Ellis informed the Sub-Committee that in relation to immigration offending arrest warrants issued under the Immigration Act 1971 are sworn out by UK Border Agency Officers before a Justice of the Peace only if reliable information is received that immigration offences are being committed. They must have reliable intelligence to suggest that illegal migrants are employed at premises.

PC Ellis informed the Sub-Committee that when the review process commences the local authority has to affix a notice near to the premises which is a precis of the application and highlights to the public that the premises has failed to promote the objectives. He stated that after the service of the original reviews in October 2015 Harminder Malhi telephoned the Licensing Department wishing to know why South Wales Police were bringing a review. It was explained to her that it was due to the employment of illegal migrant workers whereupon she stated that all the relevant document checks had been conducted in respect of those migrants.

South Wales Police submit that, given all the help that is afforded employees, coupled with the disclosures detailed in the review this was not a credible statement. PC Ellis suggested that this was a complete fabrication and Harminder Malhi has employed those individuals with the full knowledge of their UK status.

PC Ellis informed the Sub-Committee of the enforcement visits undertaken by the UK Border Agency. He stated that South Wales Police work in conjunction with the UK Border Agency exchanging information and intelligence and often accompanying them on enforcement visits when immigration warrants are executed at premises. This partnership had evolved since an important part of Home Office licensing guidance relating to reviews was updated to specifically focus on enforcement around serious criminality involving the unlawful employment of illegal migrants.

He informed the Sub-Committee that the Immigration Compliance & Enforcement Team of the UK Border Agency has conducted intelligence led enforcement visits to the premises utilising power of entry immigration warrants granted at Swansea Magistrates Court under Section 17(2). The warrants could be broken down as follows in date order from when the original warrant was executed: -

1st Visit 25th August 2011 – Occurrence 62110285252 - Parvinder Singh

On 25 August 2011 the Immigration Compliance & Enforcement Team executed a warrant and a male Indian migrant (Subject 1) was found at Costcutter. Immigration checks detailed that he had illegally entered the country and had been previously served immigration papers and as he was likely to be deported he was arrested.

Further enquiries revealed subject 1 has been employed on a number of occasions. There were 11 occurrences involving Subject 1 which relate to incidents at Costcutter and those occurrences detail him as either the reporting person, the aggrieved, a witness, a suspect or a person arrested (which relates to the immigration arrest).

PC Ellis stated that what was significant is that the first incident took place on 5 June 2009 and 5 other incidents were recorded in 2009, which was 2 years before UK Border Agency officers executed the warrant and arrested him. Subject 1 had unlawfully been in the UK since 2009 at least. He stated that what was again significant is that 4 incidents have occurred since his arrest, 1 in 2013, 1 in 2014 and 2 in 2016 with the latest incident being reported on 16 April.

2nd 15th March 2013 @ 12.16hrs Occurrence 62130076242 - Lakhvir Kaur Khosa

UK Border Agency executed a second warrant on 15th March 2013 and no arrests were made however; Kelly Griffiths, a Border Agency Officer who executed the warrant, was sufficiently concerned with the demeanour of Harminder Malhi that she e-mailed PC Ellis shortly after as follows: -

From: Griffiths Kelly (SWANSEA) UKBA South & West Wales
[mailto:Kelly.Griffiths28@homeoffice.gsi.gov.uk]

Sent: 22 March 2013 13:21
To: Ellis, Kevin swp2458

“We conducted an enforcement visit to Costcutter on 15th March 2013 and encountered two females on the premises one of which we believe to be working illegally but unfortunately we were unable to prove at the time..... The other female the owner Harminder Malhi was particularly unhelpful and quite obviously not being truthful with regards to the persons employment at the premises.

Is there anything in the licensing rules/regulations that states a person must be “employed” at the premises to be behind the counter which is selling alcohol and cigarettes? The owner stated that her friends/family including her young children always stand behind the counter and help her out when they come to visit”.

PC Ellis informed the Sub-Committee that this was the first occasion Harminder Malhi was evasive with the authorities and her responses suggest that she had ready-made answers for the authorities to circumvent the employment of migrants illegally in the UK.

14th July 2015 - Occurrence 1500254846 - Rocky Ahuga

PC Ellis stated that an incident then occurred on 14th July 2015 which was followed by an unconnected licensing enforcement visit to Costcutter 15 days later.

On 14th July 2015 a Caerau resident reported a suspicious incident to South Wales Police which concerned a male staff member at Costcutter (Subject 2). His details were obtained by the officer who attended at the premises and dealt with the matter.

On 29th July 2015 PC 5102 Rowlatt, a SWP Licensing Officer and Fiona Colwill, a Licensing Enforcement Officer with the local authority undertook a routine joint licensing visit at Costcutter and found Harminder Malhi working at the premises alongside a 31 year old female Indian migrant (subject 3) Nande Tajinder Kaur.

PC Ellis stated that he did not personally attend the premises but informed the Sub-Committee that Fiona Colwill and PC Rowlatt could provide details of this visit whilst Fiona Colwill can address matters in her submissions concerning the subsequent visit. However; both Mrs Malhi and subject 2 were dishonest and evasive in relation to the employee’s name, date of birth and UK status and furthermore even providing details of the college where she was supposedly a student. He stated that some students are permitted to work restricted hours and it was believed the information provided that (subject 3) was a student and was a further attempt to deceive the authorities. The college had ceased to operate at the time of the visit and continued to do so. He stated that both officers were so concerned with the answers given that they reported their findings to the UK Border Agency which led to the:

Third Visit On 20th August 2015 – Occurrence 1500302778

UK Border Agency Officers again executed a warrant and were accompanied by Mrs Colwill. On this occasion subject 3 was found to be working alone at the off-licence and she was equally dishonest and evasive with the immigration officers as she again provided a false name and date of birth. PC Ellis stated that she was so evasive that the only way her identification could be determined was by way of a hand-held fingerprint identification device. Enquiries revealed that she had remained in the country illegally after her visa expired and was classed as what UKBA describe as a Section 10 “overstayer”.

PC Ellis informed the Sub-Committee that significantly she had been served with documentation in July 2014 and had restrictions placed upon her in relation to reporting to the UK Border Agency but had absconded and had effectively been “on the run” ever since. She was also duly arrested as a person liable to be detained pending deportation.

PC Ellis informed the Sub-Committee that enquiries led the Immigration Team to Caerau Village Stores where subject 2, who was involved in the incident on 14th July 2015, was located. He was a 32 year old Indian migrant who had illegally entered the UK in the rear of a heavy goods vehicle. He admitted to working at Caerau Village Stores for about 3 months and was similarly arrested pending deportation and became the third illegal migrant worker to be detained. He stated that it was notable that during the July 2015 occurrence and the August 2015 visit both migrants were working unsupervised.

PC Ellis informed the Sub-Committee that employing an individual who had no authorisation to work, entering the UK illegally, “failing to observe immigration restrictions” and “overstaying” are contrary to immigration legislation and are separate offences which are highlighted in more detail within the review.

He stated that what should be of serious concern to the Licensing Sub-Committee is that serious offences had already been committed in 2011 but the very same immigration offences were then committed in 2013, 2014, 2015 and 2016. This was not only unacceptable and did not promote the licensing objectives but more importantly guidance dictated that the authorities should tackle such offending with the utmost rigour.

He stated that there was clearly an obvious need for persons to be employed but those job opportunities had been denied to individuals legally entitled to work and it could be argued that the vulnerability of such persons was being exploited. The exploitation aspect was corroborated in the questions an Immigration Officer put to the female employee (subject 2) during the visit and her subsequent responses

Q. What time do you start in the mornings? A. 6am I open the shop.

Q. What time do you finish? A. 10am

Q. What do you do in the shop? A. Serve customers, clean.

Q. How much do you get paid? A. I don't get paid she's my sister.

Q. Do you get food and accommodation for free? A. Yes.

PC Ellis stated that what was also significant is that even if British nationals did not wish to fill those vacancies they could be occupied by migrants who are in the UK legally and are lawfully able to work.

PC Ellis detailed the offences committed by the employees under the Immigration Act 1971, which are: -

Subject 1 - Enter or remain in the UK without leave is contrary to Section 24(1)(a)

Subject 2 - Knowingly remaining beyond the time limited by leave (i.e. “overstaying” in the UK) contrary to Section 24(1)(b)(i); Obstructing an Immigration Officer contrary to Section 26(1)(g) and Without reasonable excuse, fails to observe any restriction imposed on him under Schedule 2 or 3 to this Act as to residence or as to reporting to the police, an immigration officer or to the Secretary of State: contrary to Section 24(1)(e)

PC Ellis stated that a person commits the offence on the day when he or she first knows that leave to enter or remain has expired, and continues to commit it until such time as his or her position is regularised, for example through a further grant of leave in any

category. The aforesaid offences carry a penalty of 6 months imprisonment and / or a fine not exceeding £5,000.

Obstructing a constable: Police Act 1964 - Willfully obstructs a constable in the execution of their duty contrary to Section 15(3). This offence carries a penalty of a maximum one month imprisonment and / or a fine not exceeding £1,000.

PC Ellis outlined offences committed by the employer under the Immigration, Asylum & Nationality Act 2006, Employing an adult subject to control who had not been granted leave to enter or remain in UK contrary to Section 15 and employs another knowing that that person is an adult subject to immigration control contrary to Section 21. The penalties for an employee in respect of both offences are: - Upon indictment - imprisonment for a term not exceeding 2 years, a fine, or both. Summary – Imprisonment for a term not exceeding 12 months in England and Wales or a fine, or both.

PC Ellis informed the Sub-Committee that offences have also been committed by Harminder Malhi of wilfully obstructing a constable in the execution of their duty contrary to Section 15(3) Police Act 1964 and offences under the Licensing Act which concern 3 offences contrary to Section 57 of: failing to keep the Premises Licence at the premises; failing to produce the Premises Licence for inspection and failing to display a summary of the Premises Licence.

PC Ellis informed the Sub-Committee that in relation to the immigration offences the Immigration Compliance & Enforcement Team were unable to serve a Referral Notice on 20th August 2016 as there were no persons of responsibility at either premises which in itself presents as a serious failure to promote the objectives. The notice was subsequently posted to Harminder Malhi and the letter highlighted that the details of the visit would be passed onto the Home Office Illegal Working Civil Penalty Compliance Team (IWCPCT) for consideration.

PC Ellis informed the Sub-Committee that on 6th October 2015 the Home Office felt there was sufficient evidence to warrant a fine and a Civil Penalty Notice in the sum of £30,000 was served on the Premises Licence holder, H&G Trading Ltd., for the one worker at Costcutter and the other at Caerau Village Stores. He stated that the fine was not to be confused with various penalties just detailed and may be classed as a Home Office type of fixed penalty, albeit a substantial one. He stated that H&G objected but after a review of the case the penalty of £30,000 was maintained, with the Objection Outcome Notice issued on 30th November 2015. The employer submitted an appeal against the penalty at the beginning of January 2016 which is still ongoing and as far as he was aware no hearing date had been set yet.

He requested the Sub-Committee note the guidance relating to outstanding matters in relation to Sub-section 11.24 relates to Reviews arising 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. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective. The appeal relates solely to the warrants executed in August 2015 and had not been finalised, however; this was a matter not relevant to the Sub-Committee. He stated that the appeal is to the Home Office and not the courts and the nature of the appeal is unknown and it may be against the amount to be paid. If it was against the fact that persons were employed then that can be rebutted by evidence in the review which has been provided by officers of South Wales Police, the local authority and UK Border Agency. He stated that significantly the warrant executed in 2011 has been finalised and further evidence in the form of

recorded incidents highlight that this individual had been employed on a number of occasions since 2011 with the latest incident being reported in August 2016.

PC Ellis informed the Sub-Committee that in relation to the public safety objective absolutely nothing is known of the antecedent history of those migrants who have illegally entered the UK and as a consequence seriously impacts on the public safety objective. He stated that in relation to Home Office Guidance issued under Section 182 of the Licensing Act, Section 11 relates to reviews, Sub-section 11.5 support a number of key aims and purposes which include protecting the public from crime caused by irresponsible licensed premises. The Guidance in relation to the review process is specific and very clear. It focused on: "reviews arising in connection with crime". Sub-section 11.27 of the Guidance highlights that certain criminality should be treated particularly seriously. These activities include the use of licensed premises: -

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

He stated that these are serious offences and there is obviously a growing concern with the number of migrants entering the UK illegally or remaining in the country unlawfully after their visa has expired for example coupled with the fact that these individuals are also working illegally that the Home Office has since included alongside these serious criminal activities the offence of knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter.

PC Ellis informed the Sub-Committee that Sub-section 11.28 states "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." He stated that the aforesaid guidelines are extremely specific to this application as they have been ignored.

He informed the Sub-Committee that offences have been committed under the Immigration Act 1971 and the Immigration, Asylum & Nationality Act 2006. Additionally offences have been committed under the Licensing Act 2003. He stated that the guidelines issued by the Home Office in relation to immigration are clear and unambiguous and are freely available to all employers on the Home Office website. Similarly guidance under the Licensing Act requires a clear emphasis on promoting the licensing objectives.

PC Ellis informed the Sub-Committee that as individuals have been illegally employed at both Costcutter and Caerau Village Stores there are working opportunities available however; those chances had been denied to persons who are lawfully able to work. He stated that it was also arguable whether transient non-British nationals who speak very

little or no English and have little or indeed no knowledge of licensing law promotes the licensing objectives. He commented that in any event South Wales Police believe Harminder Malhi to have employed persons in the full knowledge that they are illegally in the UK.

PC Ellis informed the Sub-Committee there are currently about 550 licensed premises located within the Bridgend County Borough and to understand the overall picture of enforcement since 2005 when the Licensing Act was introduced South Wales Police allowed a period of time for licence holders to acclimatise themselves with it and the first review application was not submitted until 2007. Since this time South Wales Police has had to review the authorisations of 27 other premises in order to promote the licensing objectives, which equated to 3 reviews each year.

PC Ellis informed the Sub-Committee that again taking into consideration the Home Office guidelines that, "Licensing authorities should look to the police as the main source of advice on crime and disorder it was strongly recommended to various Sub-Committees that 19 of those authorisations should be revoked. He stated that the police did not propose that authorisations should be forfeited unless it was felt absolutely necessary to do so to promote the licensing objectives.

He stated that what was extremely alarming is that since 2014 8 other reviews had been submitted which concerned the employment of migrants who were not permitted to work as: -

- they had entered the UK illegally
- they did not return to their country of origin after their visas had expired
- their visa did not authorise them to work

PC Ellis informed the Sub-Committee that there was therefore clearly an escalating problem of employing illegal migrants which had been recognised by the Home Office who had included measures in the licensing guidance. To combat these offences, the guidance unambiguously requires licensing committee's to address these matters very robustly.

PC Ellis drew the Sub-Committee's attention to the new immigration bill and Home Office Guidance highlights the following: -

"In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing".

PC Ellis informed the Sub-Committee that the grounds for review are based on promoting 2 objectives and the offending associated with the premises demonstrated that there had been an abject failure to promote those objectives and an unwillingness to remedy the situation. He stated that the representations made by the police within this review are reasonable and proportionate and the guidelines therefore dictate that they

should be readily accepted as such. In particular criminality associated with the premises which impacts on the objectives relates to offences of: -

- 1) Entering the UK without leave.
- 2) Knowingly remaining beyond the time limited by leave (i.e. "overstaying" in the UK).
- 3) Employing an adult subject to control who had not been granted leave to enter OR remain in the UK.
- 4) Knowingly employing another subject to control who had not been granted leave to enter OR remain in the UK.

PC Ellis stated that the penalty for employers who commit offences 3 and 4 are clearly severe and seriously impact on the prevention of crime and disorder and public safety objectives.

PC Ellis concluded that the following extract from the guidance was in two parts and was extremely important to the authorities and to the Sub-Committee: -

- Knowingly employing a person who is unlawfully in the UK or
- Who cannot lawfully be employed as a result of a condition on that person's leave to enter.

PC Ellis stated that these are offences which the Home Office guidelines dictate should trigger a review of the licence and when such an application is submitted the Sub-Committee should then consider revocation of the licence even in the first instance and that forfeiture of the licence is a measure the police are strongly recommending that the Sub-Committee take.

The Legal Officer asked whether the case by South Wales Police was based on a breach of the crime and disorder and public safety licensing objectives of employing illegal migrants. PC Ellis referred to a number of reported incidents to have taken place at both Costcutter and Caerau Village Stores. Eleven incidents are in relation to the employment of illegal migrants. The Legal Officer questioned whether any other crimes had been committed from the premises. PC Ellis informed the Sub-Committee that the main thrust of the review was based on the employment of illegal migrants. In response to a question from the Legal Officer, as to whether any prosecutions had taken place, PC Ellis stated that he was not aware of any other prosecutions, other than that relating to the immigration matters with the outstanding fine. The Legal Officer questioned whether the premises licence holder had received civil penalties. He informed the Sub-Committee that a referral notice had been given to Mrs Malhi and served on H&G Trading Limited. The Legal Officer questioned PC Ellis in relation to the email he had received from the Civil Penalties Compliance Team. PC Ellis confirmed that this was the last response he had received from the Civil Penalties Compliance Team which stated that the appeal had been granted but it was not known whether the appeal was in relation to the fine imposed or the conviction. The Legal Officer stated that the Sub-Committee would need to evidence of the appeal to assist in making a determination.

The Premises Licence Holder's representative questioned the link between the person arrested at the premises on 25 August 2011 and in 2016. PC Ellis stated that of the 12 incidents to have taken place at Caerau Village Stores and Costcutter all related to the employment of illegal migrants with the exception of one incident. The Legal Officer clarified that only 3 instances related to the employment of illegal migrants. The Premises Licence Holder's representative questioned how the other offences relate to

the employment of illegal migrants. PC Ellis stated that one incident involved an assault on a member of staff who was an illegal migrant. The Legal Officer advised the Sub-Committee that it needed to consider the 3 incidents of employment of illegal migrants at the premises and that the Premises Licence Holder would get an opportunity to respond. PC Ellis informed the Sub-Committee that South Wales Police relied on the incidents which involved the employment of illegal migrants at the premises and being the victim of an assault. The Legal Officer questioned PC Ellis how he knew the people are illegal migrants. PC Ellis stated that the incidents relate to people who have been arrested by the UK Border Agency who then returned to the premises to work. He stated that all the incidents at the premises involve Subjects 1, 2 and 3 who have been given travel documents to return to India, but those travel documents have never been used.

The Premises Licence Holder's representative informed the Sub-Committee that the review was based on 2 cases of the employment of illegal migrants at the premises which completely changes everything. She stated that an adjournment may be necessary as the 2011 matter was still ongoing as South Wales Police had now suggested that other matters relate to the same people found at the premises. PC Ellis stated that the first incident at the premises was in relation to subject 1.

The Sub-Committee adjourned at 11.30am and reconvened at 12.00noon.

The Legal Officer advised the Sub-Committee that she was led to believe that South Wales Police wish to have further time. PC Ellis informed the Sub-Committee that he was not seeking an adjournment as he was clear that Subjects 2 and 3 relate to the Orders, while Subject 1 was not the subject to a fine. The Premises Licence Holder's representative informed the Sub-Committee that she was happy for the hearing to continue.

The Premises Licence Holder's representative informed the Sub-Committee in response to a question from the Legal Officer in relation to the email from the Civil Penalties Compliance Team that it had been clarified there was a link between the Subject arrested in 2011 and 2016.

The Licensing Enforcement Officer presented the case in support of the application for the review of the premises licence of Caerau Village Stores. She stated that Licensing Enforcement shared the concern of South Wales Police that the management at Caerau Village Stores had failed to promote the licensing objectives. The Premises Licence Holder and Designated Premise Supervisor is Harminder Malhi who took responsibility on 24 April 2012 and who also manages Costcutter and above which she resides. A joint routine licensing inspection was carried out at Costcutter on 29 July 2015, where a lone female was serving behind the counter. Enquiries were made with Harminder Malhi as to the personal details and immigration status of the female and concerns were passed to the UK Border Agency on 6 August 2015. Harminder Malhi confirmed that the female lived above the premises and advised that she was from Punjab and in the UK on a student visa.

The Licensing Enforcement Officer informed the Sub-Committee on 20 August 2015, she accompanied the UK Border Agency on a visit to Costcutter and afterwards attended Caerau Village Stores where a lone female was behind the counter. She stated that while she discusses licensing issues with the female, the UK Border Agency officers were given permission to enter the upstairs of the property in order to look for any paperwork. On entering the upstairs, officers discovered and detained a male of Indian origin on suspicion of being in the country illegally.

The Licensing Enforcement Officer informed the Sub-Committee that even though there had been no further visits to the premises, mainly due to not interfering or hampering

any immigration investigation, it was clear information given to officers by Harminder Malhi on 29 July 2015 was false. She stated that it was concerning that two persons who were illegal in country were residing in both premises managed and run by Harminder Malhi and there was also no authority in place for staff to hold a personal licence. She concluded that Licensing enforcement has no confidence that management at Caerau Village Stores is effectively promoting the licensing objectives and that the review of the licence was welcomed as a means of identifying the most appropriate way to ensure these concerns are addressed.

In response to a question from the Sub-Committee as to whether the people found illegally at both premises had received training, the Licensing Enforcement Officer confirmed that they had not received training.

The Premises Licence Holder's representative questioned the Licensing Enforcement Officer that Harminder Malhi had been obstructive and knowingly gave false information at the enforcement visit. The Licensing Enforcement Officer stated that Harminder Malhi was initially obstructive and then provided a different name for the same person to the one provided at the previous enforcement visit. The Premises Licence Holder's representative questioned the Licensing Enforcement Officer whether Harminder Malhi was present at the second enforcement visit. The Licensing Enforcement Officer stated that Harminder Malhi was not present during the second enforcement visit, but the female serving at the premises was able to provide documentation confirming her identity which was given to the UK Border Agency officers but said very little. In response to a question from the Sub-Committee, the Licensing Enforcement Officer confirmed that it is a criminal offence to give false information to the UKBA and informed the Sub-Committee that the name of the college which the female was to attend was no longer in existence.

The Premises Licence Holder's representative commented that the review application relied solely on immigration matters and that her client had not received information from the Home Office. She stated that the immigration matters had been dismissed by a Judge, which had been confirmed by the solicitor acting for the premises licence holder at the time. She also stated that the Home Office had not appealed against this decision as H&G Trading Limited and Harminder Malhi would have been served with a notice of appeal. She informed the Sub-Committee that it could not ignore that Judgment had been granted in favour of her client.

The Premises Licence Holder's representative informed the Sub-Committee that Subject 1 who had been involved in incidents 1, 2, 4 and 8 is Harminder Malhi's cousin and visits her regularly. He sign in regularly with the Home Office and is to return to India on 5 December 2016 which he had arranged himself. She stated that the cousin had never worked at the premises and while he may be present in the shop has not served there. She also stated that is Harminder Malhi had been the member of staff making a complaint of racially aggravated assault on 11 March 20145 referred to as incident 5. She stated that Harminder Malhi could not confirm who had been the member of staff reporting the theft from the premises without having further information. She stated that her client could not comment on the offences listed.

The Premises Licence Holder's representative informed the Sub-Committee that there had been no further incidents from the premises since last year's review application and the enforcement visit by the UK Border Agency. The business now employs local people and full training procedures were now in place. The Premises Licence Holder was also fully aware of procedures for employing people and checked their rights to employment. She stated that the Sub-Committee may be in some difficulty in reaching a decision today as she was still in the process of obtaining information on the matters the subject of appeal, which also included the fine. She confirmed that she was awaiting

authority from the solicitor who had acted for the Premises Licence Holder previously in order that she could request information from the Court. She stated that an immigration specialist had previously acted for the Premises Licence Holder.

The Sub-Committee questioned in relation to the female found at the premises. The Premises Licence Holder's representative informed the Sub-Committee that the female living at the premises was staying there as she was in the process of changing colleges. The Sub-Committee questioned whether the female was receiving pay while working at the premises. The Premises Licence Holder's representative confirmed that the female working at the premises did receive pay with payment arrangements being made through the accountant who held information on payments and did the book keeping for the business. PC Ellis questioned whether the female came from. Harminder Malhi stated that she has family who live in London and they contacted her as the female was applying to attend college in Wales and she was asked whether she could help her out by offering a few hours of employment. PC Ellis asked whether checks were made of her status to work in the UK. Harminder Malhi stated that the female had shown her a card with a visa number and national insurance number on it which she gave to her accountant for payment purposes. She stated that Mr Johal employed the female.

The Legal Officer requested information of Subject 3. The Premises Licence Holder's representative stated that he stayed at the premises and is a friend of Mr Singh. PC Ellis asked whether checks had been made in relation to Subject 3. The Premises Licence Holder's representative stated that no checks were made of Subject 3 as he was a friend of Mr Singh and he was staying at the premises above Costcutter. PC Ellis referred to the comment made by the Premises Licence Holder that Subject 3 was not living there but commented that Harminder Malhi has a pivotal role at both premises.

The Legal Officer questioned in relation to the employment of the female. The Premises Licence Holder's representative stated that the female was employed at Costcutter which is managed by Mr Johal. She stated that Harminder Malhi has a secondary role at Costcutter as her primary role is to manage Caerau Village Stores. The Legal Officer asked the Premises Licence Holder's representative in relation to her request for more time to produce documentation. The Premises Licence Holder's representative stated that the Sub-Committee does need to consider the information arising from the court Judgment prior to making a decision on the review of the premises licence.

The Sub-Committee questioned in relation to the checks made of the rights of the female to work in the UK. Harminder Malhi stated that Mr Johal would have made the relevant checks and that he is at the premises on Monday to Friday.

PC Ellis questioned whether checks had been made that the male found at the premises had entered the UK lawfully. The Premises Licence Holder's representative stated that he signs every 3-4 weeks and that he was returning to India on 5 December 2016. PC Ellis stated that there had been reporting restrictions on the male found at the premises as he had absconded. The Legal Officer questioned whether the male was subject to a fine. PC Ellis stated that South Wales Police had the male recorded as working at the premises and that they could evidence that he was working in the UK illegally and had been given travel documents to return to India.

In response to a question from the Licensing Enforcement Officer, Harminder Malhi stated that Subject 1 is not her sister. The Licensing Enforcement Officer stated that Bennett International College where Subject 1 was studying was no longer in existence and as she had only 5 months left on her visa at the time could not have studying at college. Harminder Malhi stated that this was the information given to her by the Subject 1. The Licensing Enforcement officer questioned why Harminder Malhi was aware of the appeal status of the immigration matters when she was company secretary of H&G

Trading Limited. The Premises Licence Holder's representative stated that her client may have a different understanding of the appeal. In response to a question from the Licensing Enforcement Officer as to where Subject 3 lives, the Premises Licence Holder's representative stated that Subject 3 lives at Caerau Village Stores.

In response to a question from the Licensing Enforcement Officer, the Premises Licence Holder's clarified that Mr Johal is DPS of Costcutter and that Mrs Malhi resides at the premises. The Licensing Enforcement Officer questioned the access arrangements to Costcutter. Mrs Malhi stated that the main door to the premises leads to Costcutter, she and her husband enter the shop briefly to go into their flat. The Licensing Enforcement Officer questioned whether Mrs Malhi had access to documentation relating to Costcutter. Mrs Malhi stated that she only had access to documents relating to Costcutter which Mr Johal allowed her to see, such as bank statements, cheques and bills. The Licensing Enforcement Officer asked whether Mr Johal gave Mrs Malhi access to training records relating to the premises. Mrs Malhi stated that Mr Johal has access to all documentation relating to the business and only allows her access to certain documents.

The Licensing Enforcement Officer questioned Mrs Malhi in relation to the enforcement visit undertaken which took place on a Wednesday when Mr Johal was not present, but Mrs Malhi was able to produce documentation relating to the business. Mrs Malhi stated that she had access to certain documents but did not have access to training records.

The Legal Officer advised the Sub-Committee that it may need to adjourn before it could proceed to a conclusion for it to be presented with information on the application for appeal, a copy of the Judgment and documentation relating to the employment of the female at the premises held by the accountant.

The Sub-Committee adjourned at 1.00pm and re-convened at 1.03pm.

RESOLVED: That the Sub-Committee stand adjourned and reconvene on Monday 16 January 2017 at 10.00am.

The meeting closed at 1.07pm.

The meeting re-convened at 10.20am on Monday 16 January 2017.

Present:-

Councillors
R Williams -
Chairperson
P James
D Patel

Officers:

Y Witchell - Team Manager Licensing
K Brook - Senior Licensing Officer Technical
A Lee - Legal Officer
A Rees - Senior Democratic Services Officer - Committees

Representing the Responsible Authorities

Sgt A Bennett - South Wales Police
PC S Rowlett - South Wales Police

F Colwill - Licensing Enforcement Officer, BCBC

Representing Premises Licence Holder and Designated Premises Supervisor

Mr S Panchal - Representing Premises Licence Holder and Designated Premises Supervisor

Mrs H Malhi - Premises Licence Holder and Designated Premises Supervisor

The Team Manager Licensing reported that this was a continuation of a hearing which was adjourned on 28 November 2016 in order that the Sub-Committee receives further information. She stated that both parties wished to address the Sub-Committee to update it following discussions held immediately prior to the re-commencement of this hearing.

Mr Panchal representing the Premises Licence Holder and Designated Premises Supervisor stated that he was very grateful for the discussions held with South Wales Police which had led to an agreement of proposed conditions as a way forward. The proposed conditions were as follows:

- The Personal Licence Holder to be present on the premises at all times when Licensable activities are taking place.
- There would be a change of DPS at the premises who will be trained to Level 2 BIIAB.
- There would be a training manual kept at the premises and made available and be produced on request by the Police, or the Licensing Enforcement Officers.
- Every member of staff will undertake Licensing Training/refresher training within six weeks by an accredited training company and will produce the training certificates to the Police and the Licensing Enforcement Officer after the expiration of the six week period.
- The Premises Licence Holder will check each and every employee at the premises that they are legally entitled to work in the UK and will keep copies of their documentation for inspection by the Police, Licensing Enforcement Officers and Border Control.
- An alcohol authorisation document will be kept and displayed at the premises which will be dated and signed by the staff and the DPS.
- The training of all Staff at the premises will be carried out by an accredited Licensing Company.

The Premises Licence Holder and Designated Premises Supervisor's representative informed the Sub-Committee that the training of staff working at the premises would be undertaken by his company. He stated that the six staff employed at the premises will hold personal licences and the most appropriate person would be selected from the staff to be the DPS.

The Sub-Committee adjourned at 10.30am to consider the proposed conditions and reconvened at 11.02am.

PC Rowlatt informed the Sub-Committee that it had part heard this case previously and since that time discussions had taken place with the respondent in order to start afresh with the Responsible Authorities. She stated that the Responsible Authorities had brought this case which was basically an immigration case involved the employment of illegal immigrants at another premises which was inextricably linked to these premises. Discussions had been held with the Premises Licence Holder and Designated Premises Supervisors and representative on proposed conditions where it was proposed to put in place a new DPS to have day to day control for the management of the premises. Other

conditions had been agreed relating to the training of staff by an accredited licensing training company and every member of staff will be checked as to their right to work in the UK. This gives the police, licensing enforcement and border staff the ability to check records at the premises when visits are made to the premises. PC Rowlatt informed the Sub-Committee that the proposed conditions gives all the parties the best structure to work with and allows the enforcement of conditions and gives an opportunity to work together to ensure the premises are well run.

The Sub-Committee adjourned at 11.10am and reconvened at 12.15pm wherein it was:

RESOLVED: That this is an application by the Police for a review of a Premises Licence in respect of Caerau Village Stores.
This matter was opened on the 28th November 2016 when the Sub-Committee heard evidence in full from Police and was subsequently adjourned for the Licence Holder to produce further information.

The Sub-Committee has heard from the Police, Licensing Enforcement and the Licence Holder that they have now reached an agreement and put forward 7 conditions that they agree should be placed on the Licence to rectify the problems at the premises; all parties have signed an agreement which is annexed to this decision.

The main problem at these premises is the employment of migrants who are not authorised to work in this Country and the Licence Holders connection with Cost Cutter also in Maesteg who also have been caught by the Border Agency employing illegal migrants. The concern of the Police is that these migrants are not trained under the Licensing Act and nothing is known about their antecedent history as they have entered the Country illegally.

The Sub-Committee has considered the Licensing Act and the guidance thereunder especially 11.27 which states that certain criminal activity that may arise which should be treated particularly seriously and one of the grounds is "for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter". It further states that if 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.

The Sub-Committee has considered this and the representations made by the Police and Licensing Enforcement Officer that the additional conditions should resolve the problems on the premises and on that basis the Sub-Committee has decided to give the Licence Holder a chance to rectify the problems at the premises and in order to promote the Licensing objectives have resolved to add the following conditions to the Licence which have been slightly amended from the agreed conditions:

1. The Personal Licence Holder to be present on the premises at all times when Licensable activities are taking place.
2. The DPS at the premises will be trained to Level 2 BIIAB.

3. The Licence Holder will ensure that a training manual will be kept at the premise and made available and be produced on request by the Police, or the Licensing Enforcement Officers. The Manual will contain the names and full training records of all staff at the premise and each entry will be signed by the member of staff trained and the DPS.
4. Each and every member of staff will undertake Licensing Training/refresher training within six weeks of the date of this decision by an accredited training company and will produce the training certificates to the Police and the Licensing Enforcement officer after the expiration of the six week period. All staff will receive refresher training every six months and in future all new staff employed at the premise will receive accredited licensing training within six weeks of their employment.
5. The Premises Licence Holder will check each and every employee at the premises that they are legally entitled to work in the UK and will keep copies of their documentation and produce the same to the Police, Licensing Enforcement Officers and Border Control.
6. An alcohol authorisation document will be kept and displayed at the premise which will be dated and signed by the staff and the DPS.
7. The training of all Staff at the premises will be carried out by an accredited Licensing Company.

The meeting closed at 12.20 pm