



THE WINE AND SPIRIT TRADE ASSOCIATION

**Response to Wirral Minimum Pricing Consultation by the Wine and Spirit Trade Association
February 2011**

Submission by Sarah Davis on behalf of:

**Wine and Spirit Trade Association
International Wine & Spirit Centre
39-45 Bermondsey Street
LONDON, SE1 3XF
02070893871**

The Wine and Spirit Trade Association (WSTA) is the UK organisation for the wine and spirit industry representing over 330 companies producing, importing, transporting and selling wines and spirits. We campaign to promote the industry's interests with governments at home and abroad. We work with our members to promote the responsible production, marketing and sale of alcohol.

We are grateful for the opportunity to respond to this consultation.

To what extent do you agree with the following statements?

- **A minimum unit price should be introduced for alcohol sold in licensed premises in Merseyside and Halton.**
- **A minimum unit price should be introduced for alcohol sold in off license premises in Merseyside and Halton.**

Our concerns remain the same whether the proposal relates to all licensed premises or just the off-trade.

Minimum pricing has been discussed and rejected by the UK Government at a national level. We believe that a minimum pricing policy at a local level would have unintended consequences for local businesses and would not solve problems of underage drinking:

- There are also strong precedents that minimum alcohol pricing is illegal under European and UK law. For this reason, Statutory Guidance issued under the Licensing Act states warns against blanket conditions on alcohol pricing that are likely to breach competition law¹. The Department for Business has also released guidance to public bodies specifically stating that officials should not encourage businesses to make an agreement that places them in a position of potentially breaking competition law².
- Many politicians have raised concerns that minimum pricing would penalise responsible consumers and those on low incomes. The Secretary of State for Health has referred to its "*regressive impact on low income families*"³. The former Home Secretary and Shadow Chancellor, Alan Johnson, said in early 2010

¹ Section 182 Statutory Guidance, Paragraph 10.38

² Competition Law: Issues which arise for business when the Government or lobby groups seek to encourage businesses to work together to deliver desired policy outcomes, Department for Business, April 2009

³ Doctors should ask patients about their drinking more often, says NICE, 1st June 2010, The Telegraph



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"[minimum pricing] means those who⁴ are on low incomes who drink responsibly are affected"⁴.

- Opinion research consistently shows the public is not in favour of minimum pricing. For example, the Government's recent opinion research on public perceptions of alcohol pricing found a consensus of respondents not wanting to see an increase in the price of alcohol⁵.
- Developing and enforcing a local pricing policy would require a significant level of new expertise and resources from local authorities. The Local Government Association already estimates that enforcing the licensing regime has cost local government over £100 million⁶ more than their licensing income. This is a time of shrinking local Government budgets; councils will face an average loss of grant of 7.25%, in real terms, in each of the next four years. This is 26% in real terms between 2010-11 and 2014-15⁷. The burden of enforcement in an area of business where local authorities have not been involved before would be extremely large and it seems likely that enforcement officers would require new training on business and competition issues.
- Any local price intervention would most likely provoke legal challenges from businesses whose competitiveness is affected. This could result in large legal bills for the local authority with case law established over several years of uncertainty.
- Different local pricing measures would cause irritation for customers and chaos for business. Many large companies agree prices and discounts with suppliers nationally and even internationally. A patchwork of potentially hundreds of different prices across the UK would impose huge costs on national businesses.
- Local price restrictions would inevitably damage local businesses as consumers would seek alcohol at normal market prices from other sources. Many would travel to another area with different rules, potentially transferring their entire weekly grocery shop away from local stores. Equally, with internet sales, consumers can buy their alcohol online from a company based in area not subject to pricing restrictions, and still have it delivered to their door.

It is also worth noting that the Government is currently consulting on significant changes to licensing and is in process of working up a ban on selling alcohol below cost as well as considering changes to the UK alcohol taxation regime.

If you are opposed to minimum pricing, what alternatives would you like to see to tackle alcohol-related problems?

Price is not a silver bullet. As the Secretary of State for Health has stated, *"supply and price are far from the only factors in driving alcohol misuse. Demand and attitudes are crucial. We need to understand much better the psychology behind why different groups of people drink alcohol in excess."*

Experience shows that much can be achieved in co-operation with local businesses, who are part of the local community and the vast majority of whom will want to be part of the solution to any alcohol related problem. Community Alcohol Partnerships is a

⁴ Alan Johnson: Minimum alcohol price will not solve drinking problems, Evening Standard, 19th January 2010

⁵ The likely impacts of increasing alcohol price: a summary review of the evidence base, Home Office, January 2011, Pg. 15

⁶ "Unfinished Business", Local Government Association, 2008

⁷ Letter from Eric Pickles to Local Authority Leaders - Local Government and the Spending Review, 20 October 2010

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scheme whereby retailers work together with police and local authorities to share information and training. There are now 29 schemes in operation in 11 counties, and the model has achieved excellent results. For example, when the projects in Kent were independently evaluated by Kent University it was found that criminal damage reduced on average 6% more than in non pilot areas in Kent. CAP is the type of proven project that shows what can be achieved by using existing powers and the resources of a range of local interest groups to tackled underage drinking. There are similar schemes that proved just as successful for handling the night time economy.

We would suggest that the Council's objectives could be achieved through such schemes more efficiently than by taking actions such as setting a local minimum price.

More information on Community Alcohol Partnerships, can be found in the attachment.



Working together against underage drinking and associated anti-social behaviour

Underage drinking is a problem that can blight communities. The past five years have seen strides forward in training and investment by retailers to reduce sales of alcohol to the underage and surveys show that fewer young people are drinking. However, those who are drinking are consuming more and increasingly turning to other sources of alcohol, from getting it from older friends or relatives to asking strangers to 'proxy purchase' for them.

The complexity of this problem led retailers and local authorities to begin joint working on a project to address underage drinking from the demand side as well as the supply side.

Community Alcohol Partnership (CAP) projects bring together local retailers, trading standards, police, health, education and other local stakeholders to tackle the problem of underage drinking and associated anti-social behaviour.

CAP partners share information and training to encourage risk-based enforcement and resolve local problems swiftly and effectively. By acting as a first line of defence against underage sales of alcohol, retailers can help police and local authorities identify and tackle problem hotspots.

What started as a pilot in St Neots, Cambridgeshire is now being developed in a wide range of locations throughout the country. The independently evaluated project in Kent showed that CAP pilot areas saw a decline in offences of criminal damage some 6% greater than in non pilot areas in the county.



Working with retailers

CAPs operate under the banner of the Retail of Alcohol Standards Group (RASG), a group of high street retailers who have worked together since 2005 to drive down underage sales. RASG members develop best practice and make it available to all retailers, and developed and implemented the highly successful Challenge 21 and Challenge 25 schemes.

As it became clear that better test purchase results were not reducing levels of underage drinking in local areas, RASG began working on the first CAP with Cambridgeshire County Council, testing how retailers could liaise with other local groups to address young people's demand for alcohol and tackle difficult issues like proxy purchasing (when adults buy alcohol on behalf of children). RASG gives local authorities a

channel of communication with head office staff at each RASG member company, allowing any problems with their stores at a local level to be sorted out quickly.

Since 2009, RASG has funded a dedicated CAP Officer to help launch and manage CAP schemes.

The officer leads on the operation of partnerships, resolving any problems with retailers and offering support through toolkits, signage, event organisation and local media management.

Achievements so far

CAP was piloted in the market town of St Neots, Cambridgeshire and had a significant impact, substantially reducing the numbers of underage people found in possession of alcohol. Local police assessment indicated that incidents of anti-social behaviour declined by 42% over the course of the pilot period.

In 2009, Kent County Council launched pilot CAP projects in three areas: Edenbridge, Thanet and Canterbury. Independent evaluation by Kent University found criminal damage reduced on average 6% more than in non-pilot areas in Kent.

Public perception surveys also showed positive results on six identified measures: teenagers hanging around; people drunk and rowdy in public places; vandalism & graffiti; rubbish & litter; drugs; and anti-social behaviour.

The Kent University report found that CAP was a well managed solution to a difficult social problem. Encouraged by the results, Kent County Council are launching CAP projects county-wide.

There are now 20 CAP schemes running in 11 counties in England, as well as 1 in Scotland. All areas have differing local circumstances – but the key principles of CAPs are transferable to all towns and cities.

Working together with local groups

The multiple effects of underage alcohol consumption mean that there are many local interest groups – involved – in reducing underage drinking.

By aligning the resources and priorities of these interest groups, an effective partnership can be created.

We have learnt that strong partnerships are crucial, and would normally include:

- The County Council;
- The police;
- Trading Standards;
- Retailer Members of RASG;
- Children and Young People's Services;
- Local health and youth working groups;
- Safer Community teams;
- Drug & Alcohol Action Team;
- Local schools;
- Independent retailers and shops.

Setting up a new CAP Scheme

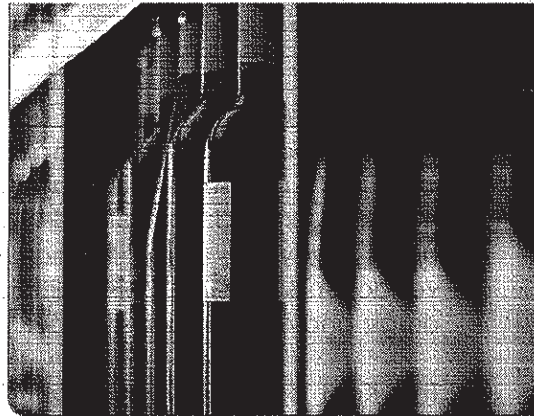
Experience has shown that good preparation, a full understanding of the issues and the selection of committed partners are key to providing the right foundation for a successful scheme.

Implementation of the proven CAP management structure is crucial.



Where to next?

There are many steps involved in setting up a successful CAP. RASG has produced a comprehensive guide, including draft plans, documentation and artwork, which can be used and adapted by local authorities as required. RASG staff are available to help in all aspects of the design and launch of the scheme.



If you would like to discuss CAP further or find out how it could help in your local area, please contact the RASG Community Alcohol Partnership Officer, Philip Loring, based at the Wine & Spirit Trade Association: philip@wsta.co.uk or go to www.communityalcoholpartnerships.co.uk

Retail of Alcohol Standards Group: list of members



Aldi UK	Musgrave
ASDA	Retail Partners
Association of Convenience Stores	Nisa-Today's
Bargain Booze	One Stop Stores
Booker Premier	Sainsburys
British Retail Consortium	Snax 24
The Co-Operative	SPAR
Lidl UK	Tesco
Marks and Spencer	Total
Mills Group	Waitrose
WM Morrisons	

From: Matthew Hughes [mailto:MatthewHughes@BargainBooze.co.uk]

Sent: 23 December 2010 14:55

To: O'Donnell, Margaret

Subject: RL/MOD - Consultation - Minimum Price for Alcohol

Dear Margaret

We are in receipt of your letter dated 10.12.10 inviting us to respond to Wirral Council's current consideration of the proposal to introduce a minimum price on alcohol.

Such a policy is fundamentally anti-competitive and would doubtless fall foul of the Competition Act and of European law, even if the Home Secretary were to 'sign off' on the introduction of a by-law, which – if I may - seems unlikely given that central Government has already ruled out 'minimum pricing' as a national strategy.

Irrespective of its legality (or otherwise), 'minimum pricing' as a strategy would not actually have the desired effect – on the contrary, there would be a number of unintended consequences such as the penalisation of legitimate consumers that do not have a problem relationship with alcohol, 'cross border' booze-cruises and damage to legitimate businesses in the local area.

We would all like to see an end to the sort of scenes that blight some of our town and city centres at the weekend when people have had too much to drink. It is appealing to imagine that there might be an easy answer to the problem.

The supporters of minimum unit pricing suggest that a price hike for alcohol would provide a solution by forcing people to drink less. It's a simple theory until you really think about the implications and the reality of problem drinking.

The truth is that most people in the UK have a perfectly normal relationship with alcohol. Most of us enjoy a drink with friends at the weekend or a glass of wine at home with our evening meal. Far from harming anyone it is a simple pleasure for you, your family and friends.

A minimum unit price of 50p would put the price of drinks up across the board.

Everybody pays more regardless of whether or not they have a problem with alcohol.

Many of us would say it simply isn't fair for the majority to face the same hit as the minority which has the problem. It's worse in fact. Self-evidently those on low and fixed incomes, such as pensioners and single parent families, would be hardest hit.

For those with less money to spend, forcing up the price of a bottle of wine from say £3.99 to £5 may mean the difference between being able to enjoy a bottle of wine at the weekend or not, particularly when household budgets are already stretched and fuel bills are rising.

But would that price rise persuade problem drinkers to change their behaviour?

Most of us would say no and indeed the overwhelming evidence supports that view.

Major international studies show that while people who drink excessively may switch to different drinks if the price of a particular product goes up they are least likely to cut back if prices go up generally. It's what you'd expect – heavy drinkers aren't likely to be deterred by a price hike because they are more determined to carry on drinking the amount they do.

The fact is that there is no evidence to suggest that minimum unit pricing of alcohol would stop problem drinkers drinking because it has never been tried anywhere in the world.

Addressing the price of alcohol is not of itself going to tackle problem drinking. The solution must be education and tougher enforcement of the raft of laws we have to tackle alcohol misuse and anti-social behaviour arising from it.

Putting the price up in Merseyside won't work. In particular it will be completely ineffective if you can get in your car and drive to Cheshire where prices are cheaper. And what about the internet? A local price rise wouldn't stop someone from buying their drink online. It seems more like a recipe for damaging local businesses than for curing problem alcohol consumption.

Our industry – producers and the major retailers of alcohol in the UK – support plans to ban the sale of alcohol below cost. Duty and VAT are consumer taxes and should rightly be paid by them. There are, however, a number of small businesses in the Wirral area that even now are selling alcohol below the sum of Duty and VAT.

The likelihood is that some of these businesses are utilising 'duty fraud' stock (i.e. – products on which the alcohol tax has not been paid) in order to maintain a competitive edge in the market.

We would urge Wirral Council to focus its efforts on working with HMRC to deal with those businesses in the Wirral area which may be funding their trading through criminal activity (duty fraud). This would be a far more effective strategy than attempting to implement 'minimum pricing' which is not only anti-competitive, but also likely to be ineffective in tackling the issue of drinkers that have a problem relationship with alcohol.

Via the WSTA (Wines and Spirits Trade Association) Bargain Booze is working with central Government to find a solution to the issue of problem drinkers and to agree a set of practical steps for ensuring consumers have the right information about the drinks they choose to buy and the risks if they drink too much.

Education is part of the answer and so too is enforcement. Merseyside has a good track record in this area.

Finally, you might be surprised to know that while reported alcohol-related hospital admissions continue to increase the Government's own figures show that alcohol consumption in the UK has been falling for the last few years. In fact overall consumption is down 12% since 2004.

The problem is not all of us who like a drink. It's a minority of people who continue to drink to excess, inflicting harm on themselves and others. We need policies that tackle this minority, not a blanket policy like minimum unit pricing which punishes all consumers, particularly the poor, while doing nothing to dissuade problem drinkers.

Yours sincerely

Matthew Hughes
Joint Managing Director
Bargain Booze Ltd.

This email is from Bargain Booze Ltd
Registered Office: Unit 1 Weston Road, Crewe, Cheshire. CW1 6BP
Registered in England: No. 1801597 VAT Reg. GB 7287601 15

BARGAIN BOOZE

Head Office and Licensed Central Distribution,

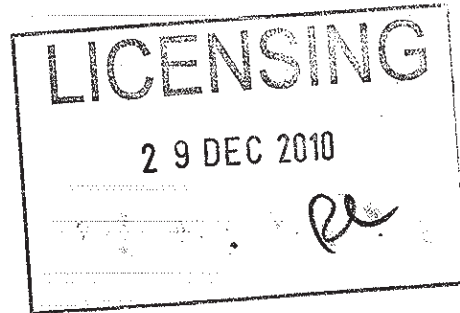
Registered Office: Unit 1, Weston Road, Crewe, Cheshire CW1 6BP

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Lo-call Rate (Distribution): 0845 345 0002

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Department of Law, HR and Asset Management
Margaret O'Donnell
Town Hall
Brighton Street
Wallasey
Wirral
Merseyside
CH44 8ED



23.12.10

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fact overall consumption is down 12% since 2004.

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Yours sincerely

A handwritten signature in black ink, appearing to read 'Matthew Hughes', written over a horizontal line.

Matthew Hughes
Joint Managing Director
Bargain Booze Ltd.

From: Deborah Jones [mailto:Deborah.Jones@cwp.nhs.uk]
Sent: 19 January 2011 11:44
To: Licensing
Subject:

Dear Margaret

I am responding to the consultation – Minimum price for alcohol, by implementing a minimum pricing of 50p per unit of alcohol. As a professional working with people who are alcohol dependent, I am concerned as to the wider impact such a strategy will have on this group of the community. Based upon the price per unit would mean such individuals would have to fine £30-£45 daily, to support the alcohol dependency.

The impact on the community could be significant also: The impact upon current health provision would result in this population having more acute hospital admissions due to possible imposed withdrawals due to being unable to meet their daily alcohol cost, dietary deficiency issues would arise as priority would be given to their alcohol as fear of withdrawal would be a worry, economically they may not be able to meet their needs for daily living rent, food, heating, council tax etc due to having to divert funds to meet their dependency needs and finally there is the potential cost to the criminal justice system as people attempt to prevent withdrawal and unable to find the means to fund their dependency other than through criminal activity. So the binge drinkers who this is aimed at will have some impact, but the biggest and most potential harm will be to those who are dependent drinkers.

Kind Regards

Deborah Jones

MINIMUM PRICING OF ALCOHOL

1.0 INTRODUCTION

1.1 This response is submitted on behalf of the Trading Standards Service of Wirral Council to a consultation concerning a proposal to implement a minimum price per unit of alcohol to reduce the negative impact excessive alcohol consumption has on individuals, communities and public services.

1.2 Wirral Council's Trading Standards service has statutory responsibility to enforce a wide range of legislation placing requiring retailers of goods to comply with legal provisions concerning the advertising, description, pricing and quality of goods. Failure to comply with those provisions is a criminal offence and can lead to prosecution.

1.3 This response is based on practical and legal experience gained in investigating and prosecuting criminal provisions designed to control the price and/or sale of specific products.

2.0 RECOMMENDATIONS

The following recommendations are made in the body of the response;

2.1 Any bye law introduced requiring minimum pricing of alcohol should be clear, unambiguous and clearly understood, enforceable and able to withstand legal challenge. (Part 3)

2.2 Any bye law introduced requiring minimum pricing of alcohol should provide sufficient powers to those charged with enforcing its provisions to gather sufficient admissible evidence to prove the commission of the offence. (Part 3)

2.3 Legal advice should be sought as the impact European law may have on the implementation of the bye law. (Part 4)

2.4 A joint fighting fund should be set up to enable legal challenges to be rebutted and to prevent a single local authority having to bear cost of lengthy and protracted legal proceedings. (Part 5)

2.5 A communications strategy, based on evidence of the health impact, should be prepared to rebut criticism of the introduction of a minimum price for alcohol, stressing the long term health benefits of such a policy. (Part 6)

3.0 STRUCTURE OF THE LOCAL BYE LAW

3.1 Trading Standards experience, influenced and guided by case law relating to the sale or supply of goods, reinforces the need to ensure that any legal provision designed to control the supply of goods is;

(a) Drafted in such a way that it is clear and unambiguous and be clearly understood, enforceable and able to withstand legal challenge.

(b) Provides sufficient powers to those charged with enforcing the provisions to gather admissible evidence to prove the commission of the offence

3.2 In relation to (a) above there is a wealth of precedent in consumer law cases concerning which person or legal entity is legally responsible for sale of goods and the means by which the goods are provided i.e. are the goods sold or supplied goods offered for sale or supply?

3.3 There are clear legal distinctions between each phrase and care should be taken to ensure that the correct term is used. It is essential any bye law should be clear as to who is responsible for ensuring that goods are priced in accordance with the minimum pricing policy and whether or not the goods are offered for sale or supply.

3.4 The cases briefly mentioned below indicate the need to ensure that any controls are correctly drafted. It is not intended as guidance as to how the

control should be drafted, as specialist legal advice would be needed, but merely as an indication of the need to ensure that the correct legal terminology concerning how the alcohol is supplied and who is responsible for its sale or supply.

3.5 A shopkeeper displayed in his shop window a knife with a price ticket behind it. He was charged with **offering for sale** a flick knife, contrary to s. 1 (1) of the Restriction of Offensive Weapons Act 1959.

3.6 Held: the shopkeeper was not guilty of the offense with which he was charged because the displaying of the knife in the shop window was merely an invitation to treat and the shopkeeper had not thereby offered the knife for sale, within the meaning of s. 1 (1) of the Act of 1959. **Fisher v Bell [1961] 1 QB 394**

3.7 The defendants, Boots Cash Chemists, operated a self-serve pharmacy where customers selected the articles from the shelf and then proceeded to the cashier to pay for them. Among the articles for sale were pharmaceutical products which, according to the Pharmacy and Poisons Act, were required to be **sold** only under the supervision or, or authorization by, a pharmacist. On April 13, 1951, two customers purchased a pharmaceutical product governed by the Act.

3.8 Held; A display of items in a store is an invitation to treat, that is, a non-binding invitation to receive offers. The presentation of the item by the customer to the cashier constitutes an offer to purchase the item. The contract is completed with the cashier's acceptance of the customer's offer. Therefore, the sales in question were completed under the pharmacist's supervision and, as such, were legal sales under the Act. **Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd [1953] 1 QB 401, Court of Appeal**

3.9 Whether a **sale** of alcoholic beverages for the purposes of section 14 of the Food Safety Act 1990 can be made only by the licensee authorised under the Licensing Act 1964, or whether it can also be made by the owner of

the alcoholic beverages, where such a person also owns the premises from which they are sold and employs the licensee?

3.10 Held; In my judgment the words of section 14 of the Food Safety Act 1990 should be given their ordinary meaning and should not be restricted as Mr Wise contends and as the District Judge accepted, simply because the food in question is an alcoholic drink. Apart from the clarity of the statutory wording it seems to me that a powerful reason for arriving at that conclusion is that section 14 applies to all foods, and it is obviously desirable for the achievement of the legislative purpose that it should be possible to hold to account the owner of the goods prior to the sale. **Nottingham City Council v. Wolverhampton & Dudley Breweries Ltd. [2004] 1 QB 1274.**

3.11 The defendant, a store manager, was charged with giving 'in the course of a business of his' a price indication by means of a notice which was misleading, contrary to section 20(1) of the Consumer Protection Act 1987 Act. The justices decided that the defendant was acting 'in the course of a business of his'

3.12 Held; However a study of the legislation had led to the conclusion that the words 'in the course of any business of his' must mean any business of which the defendant was either the owner or in which he had a controlling interest. Therefore for the purposes of section 20(2) (a) of the Act an employed branch manager who failed to comply with a price indication so that it was misleading did not do so 'in the course of any business of his'. **Regina - v- Warwickshire County Council, ex parte Johnson [1993] WLR 1 HL; [1991] UKHL 11; [1993] AC 583; [1993] All ER 299**

3.13 The above examples, generated by the enforcement of a variety of statutory provisions, give an indication of the legal arguments which can ensue from a relatively simple transaction and reinforce the need to ensure that the bye law is carefully drafted.

4.0 EUROPEAN LAW CONSIDERATIONS

4.1 Whilst a minimum price for alcohol may have support from the medical profession there may not be similar enthusiasm for a minimum price within the alcohol industry. Consideration needs to be given to ensuring that any local bye laws do not contravene either competition law in relation to fixing prices or European law, concerning the free movement of goods.

4.2 From a Trading Standards enforcement perspective there is recent experience of how European law can impact on domestic legislation intended to control the supply of goods.

4.3 The Video Recordings Act 1984 was intended to prevent the supply of "video nasties" by implementing a classification system overseen by the British Board of Film Classification and an enforcement regime, regulated by local authorities. In order to comply with EU requirements the UK should have notified the Commission of the classification and labelling requirements of the Act under article 12(1) of Technical Standards and Regulations Directive 1983/189 (now replaced by Directive 98/34). This did not happen.

4.4 This omission did not come to light until 2009 during the Department of Culture, Media and Sport Digital Britain project. The correct submission was then made to the EU and the legislation was reviewed leading to the implementation of the Video Recordings Act 2010. However during the period between the defect being noticed and the implementation of the 2010 Act local authorities were unable to prosecute, cases were withdrawn and appeals against previous convictions lodged.

4.5 Legal advice should be sought as to the impact EU law may have on the implementation of a minimum price for alcohol.

5.0 LEGAL CHALLENGES BY THE DRINKS INDUSTRY

5.1 As stated at there may be a medical consensus that a minimum price for alcohol may reduce harm but the alcohol industry may not share that view.

Trading Standards have experience of enforcing section 7(1) of the Children and Young Persons Act intended to prevent the sale of tobacco to a person under 18. There are very strong health reasons to prohibit the sale of tobacco to children.

5.2 There is strong evidence that one source of supply of cigarettes to young people is from unsupervised, or loosely supervised, cigarette machines. The Department of Health have acted upon this evidence and, through sections 22 and 23 of the Health Act 2009 made the Protection from Tobacco (Sales from Vending Machines) Regulations 2010, whose effect is to ban, from 1st October 2011 the sale of tobacco from automatic vending machines.

5.3 Enforcement of the Act and the proposal to implement the regulations to ban the sale of cigarettes from automatic machines has led to considerable and, no doubt, expensive litigation.

5.4 In the case of **London Borough of Merton v Sinclair Collis Ltd [2010] EWHC 3089 (Admin)** the local authority prosecuted Sinclair Collis (the owners of the vending machine) and appealed to the High Court against a judgement by the District Judge that section 7(1) of the Children and Young Persons Act did not apply to a purchase from a vending machine. The appeal was allowed and the case remitted back to the Magistrates Court for rehearing.

5.5 In the case of **Sinclair Collis Ltd [2010] EWHC 3112 Admin and the Secretary of State for Health** (with the members of the national association of cigarette machine operators as an interested party) Sinclair Collis Ltd sought judicial review of the Secretary of state's intention to implement the Protection from Tobacco (Sales from Vending Machines Regulations) 2010. In a carefully argued judgement the Court considered the rationale behind the regulations (the protection of the nation's health) and the proportionality of the regulations.

5.6 In this instance the Court dismissed the claims against the Secretary of State. The judgement may be useful when considering the aim behind the reason to introduce a bye law and the proportionality of such a bye law.

5.7 Additionally these two cases may give an indication of the perfectly legitimate lengths to which businesses will go when threatened by restrictions on their ability to trade. Litigation of this type is costly and it may be worthwhile for all those local authorities and agencies supporting the implementation of the bye law to consider setting up a fighting fund to resist any subsequent legal challenge. This will prevent one local authority having to pay substantial legal costs, if the bye law is taken to judicial review or if any subsequent legal action taken is challenged in the High Court.

6.0 ADVERSE PUBLICITY

6.1 Whilst some will see this proposal as a laudable public health measure sections of the press will see it as another nanny state measure infringing the rights of the responsible individual to use the free market to source their purchases at the lowest price possible. Cogent arguments need to be ready to rebut these views.

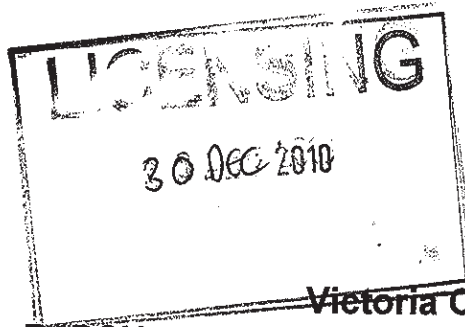
7.0 THE SALE OF ILLICIT ALCOHOL

7.1 Successive Governments have used taxation levied upon tobacco products to increase the price making the product less attractive to smokers and increasing the likelihood that they will give up smoking and improve their health. This has had a beneficial health affect for those smokers who, deterred by the higher price, gave up smoking but it has also lead to an increase in the supply of illicit tobacco products (counterfeit, illegally imported or non duty paid) to those determined to pay as little as possible for their cigarettes or hand rolling tobacco. Trading Standards experience is that illicit tobacco is sold, literally, under the counter to those seeking this type of product.

7.2 This experience is being replicated in the less reputable end of the alcohol business with officers seizing counterfeit or non duty paid spirits, again hidden from plain view.

7.3 It is almost a mathematical certainty that this end of the alcohol supply chain will apparently comply with any minimum price conditions for their legitimate product but will be able to supply cheap non minimum price compliant product to those in the know - probably to those whose health needs a higher level of protection.

7.4 This craftiness reinforces the need to ensure that any minimum price control regime is effective and capable of effective enforcement and that officers have sufficient powers to effectively tackle those transgressing the requirements.



Dr S A Kidd
B Sc (Hons) MB, Ch B, DCH

Mill Lane Surgery
Victoria Central Health Centre
Mill Lane
Wallasey
CH44 5UF

Tel: 0151 630 4747
Fax: 0151 639 7395

23 December 2010

SK/JOB
Your Ref: RL/MOD

Margaret O'Donnell
Licensing Manager
Department of Law, HR
and Asset Management
Town Hall
Brighton Street
Wallasey
CH44 8ED

Dear Ms O'Donnell

Many thanks for your letter enquiring about my views on a minimum price for alcohol. As a GP I would say it is important to consider measures that would have an impact on reducing excess alcohol consumption in my patients, and I do think that having a minimum price per unit would help in that role.

Yours sincerely

Dr S A Kidd

From: Lewin Denise (WIRRAL PCT) [mailto:denise.lewin@nhs.net]
Sent: 20 December 2010 09:55
To: Licensing
Subject: minimum price for alcohol

To whom it may concern

No i do not agree with a minimum price for alcohol. Why should we all be punished for the irresponsible actions of a few. i enjoy a few glasses of wine at the weekend which is a treat for me. Why should I be charged more?? Surely the logical thing to do would be to higher the legal age for drinking to 21. To stop 24 hour opening of pubs and clubs and to go back to the old hours. To stop the purchasing of alcohol in supermarkets and shops etc after closing hours. Come on government start showing a bit of sense for a change.

Denise Lewin

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Rec'd 10/12
(R)

Minimum pricing of alcohol

Wirral Council and its partners – including public health agencies – are looking at ways to reduce the negative impacts of excess alcohol consumption on individuals, local communities and public services.

One option being considered is to introduce a minimum price for alcohol. The Council is asking local people, businesses, partner organisations and community & voluntary groups, what they think about a proposal to introduce a minimum price.

Any comments received will be reported to the Council's Licensing, Health & Safety and General Purposes Committee. The Committee will then consider whether or not to recommend to the Council's Cabinet that they should support the campaign for a minimum price per unit of alcohol.

Further information is available on the Council website at www.wirral.gov.uk/alcoholpricing
Your comments are important to us and are much appreciated.

This survey will close on 18th February 2011.

Printed copies of this survey should be returned before this date to:
Head of Regulation
Wirral Council
North Annexe
Town Hall
Wallasey, CH44 8ED

If you would like us to report back directly to you please provide your contact details below so we can get back in touch.

1. Contact details:

Name:

E-mail address:

2. If you don't have an e-mail address please provide your postal address:

Address 1:

Address 2:

Town:

Postcode:

3. Email updates

Please tick here if you would like to receive e-mail updates on Council services. Wirral Council will not disclose your information to any unauthorised third party. To unsubscribe please email unsubscribe@wirral.gov.uk

Minimum pricing of alcohol

4. Which of Wirral's neighbourhoods do you live in?

- | | |
|---|---|
| <input type="radio"/> Bebington or Clatterbridge | <input type="radio"/> Liscard or Seacombe |
| <input checked="" type="radio"/> Bidston, St James or Claughton | <input type="radio"/> New Brighton or Wallasey |
| <input type="radio"/> Birkenhead, Tranmere or Rock Ferry | <input type="radio"/> Prenton or Oxtan |
| <input type="radio"/> Bromborough or Eastham | <input type="radio"/> Woodchurch, Greasby, Frankby, Irby or Upton |
| <input type="radio"/> Heswall, Pensby or Thingwall | <input type="radio"/> I am visiting Wirral |
| <input type="radio"/> Hoylake, Meols, West Kirby or Thurstaston | <input type="radio"/> I work in Wirral but don't live here |
| <input type="radio"/> Leasowe, Moreton or Saughall Massie | |
| <input type="radio"/> Other (please specify) | |

5. What is your relationship to Wirral Council?

(Tick all that apply)

- Resident
- Member of staff
- Licensed premises
- Off-license premises
- Partner agency/organisation
- Voluntary/community organisation
- Other (please state)

Bebington Councillor

6. If you are answering on behalf of a business or organisation please tell us its name

Minimum pricing of alcohol

7. To what extent do you agree with the following statement?

A minimum unit price should be introduced for alcohol sold in licensed premises in Merseyside and Halton.

- Agree strongly
- Agree
- No strong opinion
- Disagree
- Disagree strongly

8. To what extent do you agree with the following statement?

A minimum unit price should be introduced for alcohol sold in off license premises in Merseyside and Halton.

- Agree strongly
- Agree
- No strong opinion
- Disagree
- Disagree strongly

9. What do you think are the main issues arising from alcohol in your neighbourhood? (tick all that apply)

- | | |
|--|--|
| <input checked="" type="checkbox"/> No issues | <input type="checkbox"/> Violence |
| <input type="checkbox"/> Anti-social behaviour | <input type="checkbox"/> Noise disturbance |
| <input type="checkbox"/> Young people drinking outside | <input type="checkbox"/> Criminal damage |

Other (please specify)

Minimum pricing of alcohol

10. If you support minimum alcohol pricing how do you think it will benefit your community?

11. If you are opposed to minimum pricing, what alternatives would you like to see to tackle alcohol-related problems?

More police patrols who take firm action against those who become violent and anti-social due to over indulgence in drink, Pub landlords must also play their part in helping to stop drunkenness.

12. Do you have any other comments you would like to add?

Why should the vast majority of us have to pay pay more for our occasional tittle for something that I consider is already expensive. I find that I am already paying more for my odd bottle of scotch and my week-end bottle of wine is more expensive. To make the policy work alcohol would have to be very highly priced and would further penalise most of us.

The following questions help to ensure that we have gathered the views from as broad a range of people within Wirral as possible. All the information you give will be kept completely confidential.

Minimum pricing of alcohol

13. Are you?

- Male
 Female

14. What was your age on your last birthday?

- Under 16
 16-24
 25-44
 45-64
 65+
 Prefer not to say

15. Do you consider yourself to be a disabled person?

- Yes
 No
 Prefer not to say

16. Please tell us to which of the following ethnic groups you belong:

- | | |
|---|---|
| <input checked="" type="radio"/> White English | <input type="radio"/> Asian or Asian British (Bangladeshi) |
| <input type="radio"/> White Other British | <input type="radio"/> Asian or Asian British (Chinese) |
| <input type="radio"/> White Irish | <input type="radio"/> Any other Asian background (please state below) |
| <input type="radio"/> Any other White background (please state below) | <input type="radio"/> Black or Black British (Caribbean) |
| <input type="radio"/> Mixed White & Black Caribbean | <input type="radio"/> Black or Black British (African) |
| <input type="radio"/> Mixed White & Black African | <input type="radio"/> Any other Black background (please state below) |
| <input type="radio"/> Mixed White & Asian | <input type="radio"/> Arab |
| <input type="radio"/> Any other Mixed background (please state below) | <input type="radio"/> Gypsy/Romany/Irish Traveller |
| <input type="radio"/> Asian or Asian British (Indian) | <input type="radio"/> Any other Ethnic Group (please state below) |
| <input type="radio"/> Asian or Asian British (Pakistani) | <input type="radio"/> Prefer not to say |

Other (please specify)

Leyland, Richard K.

From: Anne O'Marah [anneomarah@wirralark.org.uk]
Sent: 04 October 2010 08:50
To: Leyland, Richard K.
Subject: Alcohol minimum pricing

Hi Richard,

My name is Anne O'Marah and I am CEO at Wirral Churches' Ark Project in Birkenhead

I was given your e-mail in a letter from Beverley McAteer.

One of the biggest issues we face with our clients in the hostel in particular is heavy drinking. We take people directly from the streets and more often than not they are street drinkers.

The sheer volume of alcohol they can purchase for relatively little money is a huge issue to us. The very cheap cider and sherry is so awful the only people who drink it are the street drinkers...they must be their target market.

An increase in price would, we believe, at least go some way to addressing the problem.

Please contact me if I can be of any assistance.

My direct dial number is 0151 650 6858

Anne O'Marah

Leyland, Richard K.

From: O'Donnell, Margaret
Sent: 27 September 2010 15:21
To: Leyland, Richard K.
Subject: FW:

Richard

Please include email below with responses to consultation on minimum pricing.

Thank you

Margaret O'Donnell
Licensing Manager

Wirral Council

0151 691 8606

email: margaretodonnell@wirral.gov.uk

Fax: 0151 691 8215

Visit our website: www.wirral.gov.uk

Please save paper and print out only what is necessary

From: Ann Conroy [mailto:annconroy@live.com]

Sent: 27 September 2010 15:19

To: O'Donnell, Margaret

Subject:

Dear Margaret,

I'm emailing you after our conversation on the phone this morning about alcohol prices.

My opinion, as I said, is that an increase in the price of alcohol will do absolutely nothing to solve the problems of those who tend to drink excessively; on the contrary, such an increase will simply exacerbate the problems that such people, and their families, already suffer. The desperate need to drink felt by the drinking alcoholic will not be affected by price!

The open meetings of Alcoholics Anonymous in the Wirral are as follows:

Last Tuesday of month: YMCA, Whetstone Lane, Birkenhead, 7.30.

Last Wednesday of month: Arrowe Park Hospital, Eye Dept., Clinic A, 7.30.

This Thursday (30th) only: St. Peter's Church Hall, St. Peter's Road, Rock Ferry, 7.30.

2nd Sunday of month: St. John Ambulance Hall, New Chester Road, Bromborough, 7.30.

3rd Wednesday of month: Trinity Methodist Church Hall, Whitby Road, Ellesmere Port, 7.30.

You're likely to find attendance at one of these meetings both interesting and informative.

Sincerely,
Ann Conroy.

Leyland, Richard K.

From: Williams, Chris D.
Sent: 23 September 2010 09:43
To: Leyland, Richard K.
Subject: FW: Minimum Booze

Regards

Chris Williams
Licensing Assistant
Wirral Council
0151 691 8019
email: chriswilliams@wirral.gov.uk
fax: 0151 691 8215
Visit our website: www.wirral.gov.uk

Please save paper and print only what is necessary

From: Castleton Marilyn (WESTERN CHESHIRE PCT) [<mailto:mcastleton@nhs.net>]
Sent: 23 September 2010 09:18
To: Licensing
Subject: Minimum Booze

Dear Mr Green

Licensing, Health and Safety

I am in favour of a minimum price of 50p per unit for alcohol and am very surprised when I see Tesco's and the Ravenscroft pub in Heswall promoting cheap drinking, which is extremely irresponsible of them. Heavy drinking is the most serious problem the North West of England faces and costs the NHS vast sums.

Could you ban the tasteless advertising scrawlings on the windows and outside pubs which I am sure put people off going into the pubs (myself included) in any case.

Thank you for all your hard work in making the Wirral a place to be proud of.

Kind Regards

Marilyn Castleton

Clinic Clerical Officer
NHS Western Cheshire
Author of The Elvis and Marilyn Story
and Committee Member WSCA
Neston Clinic
Mellock Lane
Little Neston
Neston CH66 3NZ
Cheshire, T: 0151 336 2189
F: 0151 353 1873
mcastleton@nhs.net

23/09/2010

Leyland, Richard K.

From: Calvert, Margaret on behalf of Licensing
Sent: 20 September 2010 11:10
To: Leyland, Richard K.; O'Donnell, Margaret
Subject: FW: minimum pricing for alcohol

From: peter burdett-smith [mailto:peterburdettsmith@hotmail.com]
Sent: 19 September 2010 15:41
To: Licensing
Subject: minimum pricing for alcohol

Dear Sir

I am writing to support a minimum price per unit of alcohol. As a consultant in the Emergency department at the Royal Liverpool university hospital I see the results of alcohol abuse every day. 40% of admissions to hospital are as a direct result of alcohol abuse, whether acute, leading to falls and fights, acute intoxication and even death from alcohol poisoning, or chronic leading to ascites, cirrhosis, pancreatitis and liver cancers. Unfortunately, Liverpool and Birkenhead are among the worst areas in the country in this regard. We expect large numbers of attendances to the Emergency department next week as a result of students drinking to excess during freshers week. Apart from the personal cost to individuals and their families, the cost to the economy in terms of working days lost and health care is enormous. We have seen the positive effects on health from the reduction in cigarette smoking. Alcohol abuse is the single most common, easily addressed health issue in society that could make a big difference to all concerned, both sufferers and those who have to care for them. I understand that Liverpool council are considering similar measures and it is obviously important that if a minimum price is adopted, that it is the same on both sides of the Mersey.

yours sincerely

Peter Burdett-Smith
Consultant emergency physician
Divisional medical director (medicine)