

# EXTRACT FROM DH GUIDANCE

# TOBACCO PACKAGING



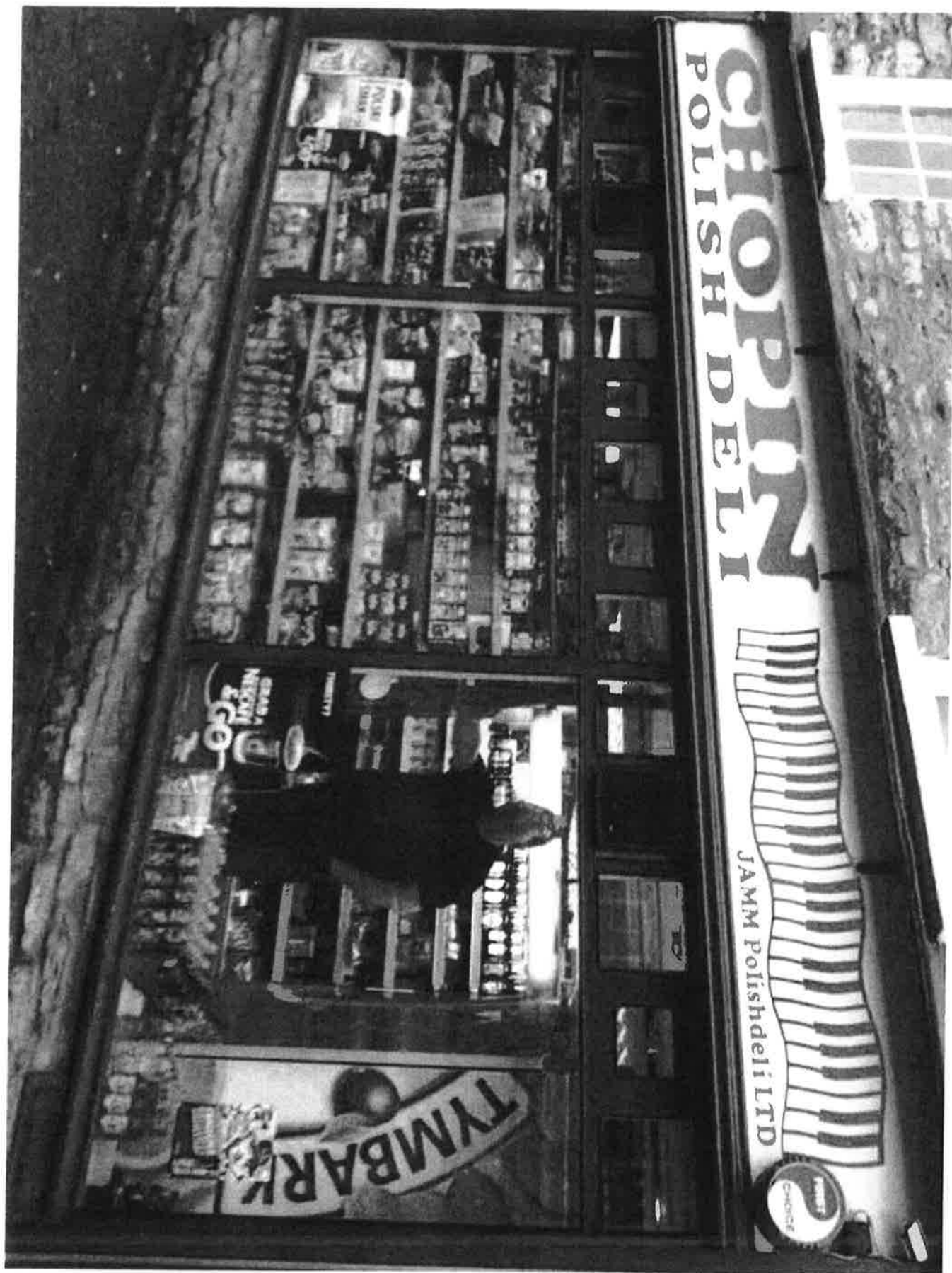
## Things cigarette packs **MUST** have:

- external packet colour Pantone 448C (a drab dark brown) with a matt finish
- cuboid shape (rounded edges allowed)
- a minimum of 20 cigarettes in each pack
- packet made of carton or soft material
- smooth surface with no texture or embossing
- specified picture and text health warnings
- UK Duty Paid mark
- compliance with the general conditions applicable to all tobacco (see Chapter 2)

## Things cigarette packs must **NOT** have:

- any other colours or markings
- promotional images or logos
- inserts
- onserts
- slim packets (but slim individual cigarette sticks are allowed)
- indication of flavour of cigarette (e.g. menthol - see Chapter 2)
- non-standard noises or smells
- features which change after sale

CHOPIN POLISH DELI, 37 CORN STREET



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WITNEY POLISH DELI, 62 CORN STREET  
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TEST PURCHASES &  
RECEIPT 25/02/18

SPRÓBUJ  
KULI TRIM  
249 G, 100






PALEŃCZY  
KPi/DP



**Palenie zwiększa  
ryzyko impotencji**

Dowiedz się jak rzucić palenie:  
801 108 108 [www.jakrzucicpalenie.pl](http://www.jakrzucicpalenie.pl)

 <p><b>Palenie zwiększa ryzyko utraty wzroku</b></p> <p><small>Dowiedz się jak rzucić palenie: 801 108 108 <a href="http://www.jakrzucicpalenie.pl">www.jakrzucicpalenie.pl</a></small></p>	 <p><b>Palenie powoduje 90% przypadków raka płuc</b></p> <p><small>Dowiedz się jak rzucić palenie: 801 108 108 <a href="http://www.jakrzucicpalenie.pl">www.jakrzucicpalenie.pl</a></small></p>	 <p><b>Palenie niszczy płuca</b></p> <p><small>Dowiedz się jak rzucić palenie: 801 108 108 <a href="http://www.jakrzucicpalenie.pl">www.jakrzucicpalenie.pl</a></small></p>	<p><b>Palenie jest przyczyną</b></p>														
<p><b>WITNEY POLISH</b></p> <p><b>DEU LTD</b></p> <p>62 Corn Street Witney Oxfordshire OX20 6BS M: 0777 3009006</p> <p>REG 25-02-2018 12:11 000021</p> <table border="0"> <tr> <td>1 Dry goods</td> <td>£0.99</td> </tr> <tr> <td>1 Dry goods</td> <td>£1.49</td> </tr> <tr> <td>1 Bread</td> <td>£0.95</td> </tr> <tr> <td>1 Meat &amp; Sausage</td> <td>£5.50</td> </tr> <tr> <td>CORR</td> <td>-5.50</td> </tr> <tr> <td>TL</td> <td>£3.43</td> </tr> <tr> <td>CASH</td> <td>£3.43</td> </tr> </table> <p>Opening hours: Mon-Sat 9am-8pm Sun 11am-4pm ***** THANK YOU *****</p>				1 Dry goods	£0.99	1 Dry goods	£1.49	1 Bread	£0.95	1 Meat & Sausage	£5.50	CORR	-5.50	TL	£3.43	CASH	£3.43
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1 Meat & Sausage	£5.50																
CORR	-5.50																
TL	£3.43																
CASH	£3.43																

TEST PURCHASE

23/04/18

OXFORDSHIRE COUNTY COUNCIL

Trading Standards Service

Exhibit: 203/18SD/1

Dated: 23/04/2018

Signed: [Redacted Signature]

TSD/LEG/32, Issue 3



PAPYROS  
KP/SP 058405012

**Palenie zwiększa  
ryzyko impotencji**

Dowiedz się jak rzucić palenie:  
801 108 108 [www.jakrzucicpalenie.pl](http://www.jakrzucicpalenie.pl)

RECEIPT ISSUED

23/04/18

Exhibit: 608/W10/2

Dated: 23 04 2018

Signed: [Redacted Signature]

WITNEY POUISH

DEU LTD

62 Corn Street Witney  
Oxfordshire OX28 6BS  
M:07773009006

REG 23-04-2018 13:52  
000057

1 Dry goods	£3.59
1 Dry goods	£5.50
-	-5.50
TL	£3.59
CASH	£3.59

Opening hours:  
Mon-Sat 9am-8pm  
Sun 11am-4pm

\*\*\*\*\* THANK YOU \*\*\*\*\*

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EXTRACT FROM COVERT FOOTAGE 20/05/18  
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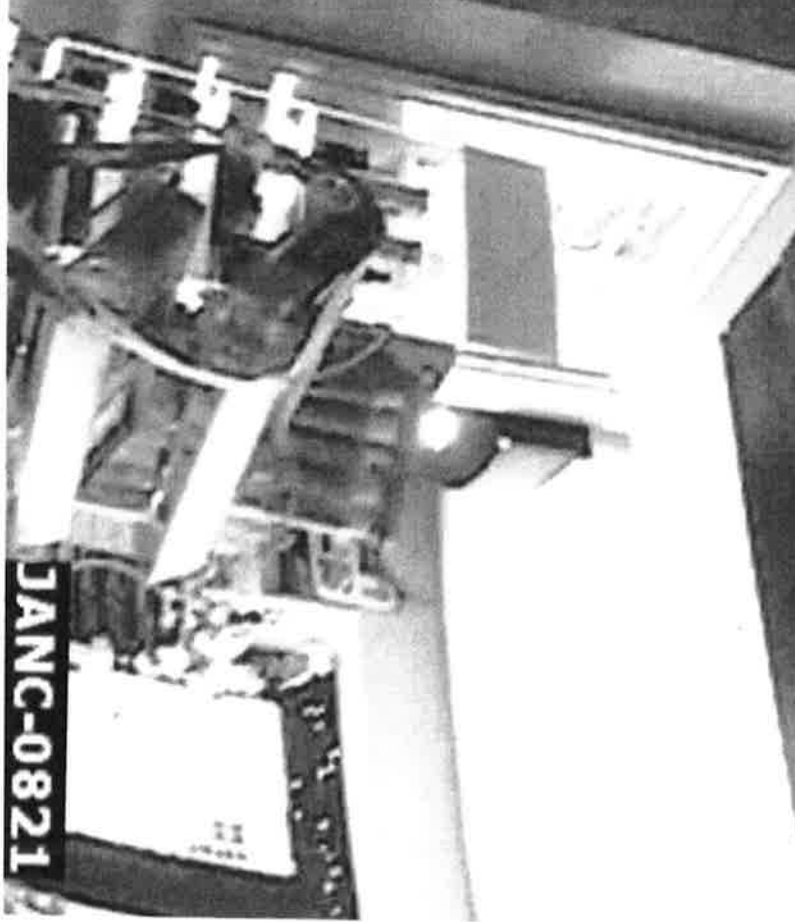
EXTRACT FROM COVERT FOOTAGE 29/09/18

009677

2018.09.29

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09:47:07



JANC-0821





009982

2018.09.29 09:47:19

JANC-0821

EXTRACT FROM COVERT FOOTAGE 29/09/18



010323

00/00  
00:00

2018.09.29

09:47:32

JANC-0821

MAP

Fat Lil's



Witney Polish Deli

Witney Nails



Swan Ct

Swan Ct

Cha

Corn St

Swan Ct

Corn St

Corn St



Chequers Smoke House



Oxford Vapours

On-One Ltd Ta  
The Chequers



The Crofts

The Crofts

The Crofts

Wychwood Brewery

Highworth Pl



PLACE ON 17/10/2018



SEIZURE FROM HIGHWORTH



# EXTRACT FROM STATUTORY GUIDANCE (1/2)

## Reviews arising in connection with crime

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. 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.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the 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 the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
  - 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;

## EXTRACT FROM STATUTORY GUIDANCE (2/2)

- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) 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.

### **Review of a premises licence following closure order or illegal working compliance order**

11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 or an illegal working compliance order under section 38 of and Schedule 6 to the Immigration Act 2016. The relevant time periods run concurrently and are as follows:

- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review – the determination must be made before the expiry of the 28th day after the day on which the notice is received;
- the hearing must be held within ten working days, the first of which is the day after the day the notice from the magistrates' court is received;
- notice of the hearing must be given no later than five working days before the first hearing day (there must be five clear working days between the giving of the notice and the start of the hearing).

### **Review of a premises licence following persistent sales of alcohol to children**

11.29 The Government recognises that the majority of licensed premises operate responsibly and undertake due diligence checks on those who appear to be under the age of 18 at the point of sale (or 21 and 25 where they operate a Challenge 21 or 25 scheme). Where these systems are in place, licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol within very quick succession of one another (e.g., where a new cashier has not followed policy and conformed with a store's age verification procedures). However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this appropriate.

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RELEVANT CASE LAW (1/9)

----- CO/92J4/2007 -----

Neutral Citation Number: [2008] EWHC 3530 (Admin)  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE ADMINISTRATIVE COURT

Royal Courts of Justice  
Strand  
London WC2A 2LL

Friday, 7th November 2008

**Before:**

**MRS JUSTICE SLADE**

**Between:**

**THE QUEEN ON THE APPLICATION OF BASSETLAW DISTRICT COUNCIL**  
**Claimant**

v

**WORKSHOP MAGISTRATES COURT**

**Defendant**

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Computer-Aided Transcript of the Stenograph Notes of  
WordWave International Limited  
A Merrill Communications Company  
190 Fleet Street London EC4A 2AG  
Tel No: 020 7404 1400 Fax No: 020 7831 8838  
(Official Shorthand Writers to the Court)

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**MR J QUIRKE** appeared on behalf of the **Claimant**  
The **Defendant** did not appear in person and was not represented

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J U D G M E N T

1. 1.1. MRS JUSTICE SLADE: Bassetlaw District Council applies for judicial review of the judgment and decision of a district judge allowing an appeal from decisions made on a licensing authority's review of a licence held by Mr and Mrs Jones. The licensing committee of the district council had reviewed the premises licence of the premises where Mr and Mrs Jones operated, in the light of offences which had taken place on 10th March 2007 namely the unlawful sale of alcohol on the premises to two 14 year old girls. The girls were sent to the premises for test purchases in accordance with arrangements made by the trading standards office. The sales took place over a relatively short period of time. Each girl made a separate purchase or purchases, was served by one of two different young cashiers. Having regard to these matters, on review the licensing authority suspended the licence for the premises for one month. There was an appeal to the district judge. The district judge overturned the decision of the licensing authority and instead imposed what were said by him to be, "additional conditions on the licence".
2. 2.1. Mr Quirke appears for the licensing authority. The district judge has served two statements in connection with this hearing, but otherwise takes no further part in it. The interested parties, Mr and Mrs Jones, were served with the notice of application but have not served an acknowledgement of service. I am also told that the licensing authority are not going to seek to overturn the determination of the district judge as to penalty. They seek, however, declarations as to the correctness in law of the decision and the judgment of the district judge.
3. 3.1. The grounds for judicial review may be analysed as falling under five headings. As will become apparent later on in this judgment, two of those matters can, in my judgment, be taken together.
4. 4.1. First, it is said that the district judge erred in holding that, in accordance with the guidance issued by the Secretary of State, it is not the function of the licensing authority to punish licensees for an infringement of licensing law and provisions on its license. Further, it is said that the district judge was in error in holding that, on a proper construction of the licensing provisions and guidance applicable, the licensing authority powers were restricted to guidance or remedial action which was the approach of the district judge. It is said that the steps which the licensing authority and the district judge on appeal may take include a range of powers which must be deployed according to the particular circumstances of the case.
5. 5.1. Secondly, it is said that the orders made by the district judge which were in substitution for the suspension of the licence imposed by the licensing authority were, in effect, not additions to the conditions of the licence which applied up to that point. Save in one respect they were merely a reiteration of steps which were already being taken or were already in fact conditions of the licence.
6. 6.1. Thirdly, it is said that the district judge erred in his approach to his own decision making on appeal. It is said that he adopted a too generous approach to his powers on appeal in that he appears in page 2, paragraph 5 of his judgment to direct himself that he could take a decision standing in the shoes of the licensing authority having regard to the particular circumstances and considering whether the licensing



authority's decision was justified. It is said that the district judge failed to give proper regard to the guidance issued under section 182 of the Licensing Act 2003 in that he did not state that he was departing from such guidance in certain respects. Since, it is said, that he departed from such guidance, he erred in failing to state why he was departing from such guidance.

7. 7.1. Fourthly, it is said that the district judge failed properly to apply and have regard to paragraph 5.115 of the guidance given under section 182 of the Licensing Act. This sets out and categorises as criminal certain activities which may arise in connection with licence premises and which the Secretary of State considers should be treated particularly seriously. Included in the use of licence premises for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and prosperity for crime of young people. It is said that the district judge failed to pay proper regard to that. Where there has been a compliant of an incident which is categorised rightly as criminal activity in connection with licence premises, it is said that the district judge failed to take into account paragraph 5.113 of the guidance. This provides that the licensing authority's duty, in circumstances such as these, is:

"... to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence."

8. 8.1. Finally, it is said that the district judge failed in his approach to pay proper regard to the guidance of Lord Goddard in the case of Stepney Borough Council v Joffe which the judge himself referred to at page 2 of his judgment, paragraph 5. In Joffe it was said that although on an appeal, such as this, there is a right to a rehearing. The appellate court should pay regard to the fact that the duly constituted and elected local authority have come to an opinion on the matter. The appellate body ought not lightly to reverse their opinion.

9. 9.1. Discussion.

10. 10.1. I will briefly outline some of the relevant statutory provisions and guidance. Pursuant to the Licensing Act 2003, section 4, the licensing authority must carry out its function under the Act with a view to promoting the licensing objectives. Subsection 2 provides that:

"The licensing objectives are:

"(a) the prevention of crime and disorder;

"(b) public safety;

"(c) the prevention of public nuisance; and

"(d) the protection of children from harm."

11. 11.1. Importantly, section 4(3) provides:

"In carrying out its licensing functions, a licensing authority must also have regard to...

"(b) any guidance issued by the Secretary of State under section 1.282."

12. 12.1. Section 52 of the 2003 Act applies where an application for a review of licence under section 51 has been made. Subsection 52(3) provides:

"The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection 4, if any, as it considers necessary for the promotion of the licensing objectives."

13. 13.1. Those objects are set out in section 4.

14. 14.1. Subsection 52(4) provides that the steps are:

"(a) to modify the conditions of the licence ...

"(d) to suspend the licence for the period not exceeding three months.

"(e) to revoke the licence.

"For this purpose the conditions of the licence are modified. If any of them is altered or omitted or any new condition is added."

15. 15.1. It is to be noted that section 146(1) of the 2003 Act provides:

"A person commits an offence if he sells alcohol to an individual aged under 18."

16. 16.1. Pursuant to section 182 of the 2003 Act guidance is issued. I have already outlined the requirement for the licensing authority in carrying out its functions to do so in accordance with the guidance and to have regard to it. The background and the approach which should be taken to that guidance is set out in paragraph 2.3 of the guidance itself which was applicable at the relevant date. The guidance was revised with effect from June 2007. Reference is made in paragraph 2.3 to section 4 of the 2003 Act which provides that:

"In carrying out its functions, a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent."

17. 17.1. It is recognised that the guidance cannot anticipate every possible scenario or set of circumstances that may arise. So long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it, if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their decisions. Departure from the guidance could give rise to an appeal or

judicial review and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

18. 18.1. I will set out here the passages in the guidance material to this application. Paragraph 5.99 provides:

"Proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licence by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises."

19. 19.1. The provisions relating to the power of the licensing authorities in conducting a review are set out in paragraph 5.107 and following. 5.107 provides:

"The 2003 Act provides a range of powers for the licensing authority on determining and review that it may exercise where it considers them necessary for the promotion of the licensing objectives."

20. 20.1. At 5.109, there are set out the steps which may be taken by the licensing authority where it considers that actions under its statutory powers are necessary. Those include modification of the condition of the premises licence, suspension of the licence and revocation of the licence; the suspension, being for a period not exceeding three months.

21. 21.1. Paragraph 5.110 provides that:

"In deciding which of the powers to invoke the licensing authority should so far as possibly seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response."

22. 22.1. Paragraph 5.111 refers to the need for any detrimental financial impact of a licensing authority's decision, in particular of suspension of a licence, to be considered.

23. 23.1. A separate section in the guidance deals with reviews arising in connection with crime. In my judgment these provisions are particularly material to this case. Paragraph 5.112 states:

"A number of reviews may arise in connection with crime that is not directly connected with licensable activities."

24. 24.1. It is agreed by Mr Quirke that the sale of alcohol on the premises to under age drinkers is connected with licensable activities. Indeed, in paragraph 5.115 such activity is expressly referred to in the following terms:

"There is certain criminal activity that may arise in connection with licence premises which the Secretary of State considers should be treated particularly seriously. These are the use of the licenced premises [and there are enumerated a number of crimes... which include] for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people."

25. 25.1. Of importance to the consideration of the case before me is also paragraph 5.113 which provides:

"Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps are necessary to be taken in connection with the premises licence for the promotion of the crime prevention objective."

26. 26.1. The paragraph continues:

"The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence."

27. 27.1. At paragraph 5.114, there is a reference to the fact that it is not the role of the licensing authority to determine guilt or innocence, but it is stated that:

"At the conclusion of the review, it will be for the licensing authority to determine, on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the licensing act objectives in respect of the licence in question regardless of any subsequent judgment in the courts about the behaviour of individuals."

28. 28.1. I now turn to a consideration of the various heads of challenge which Mr Quirke, on behalf of the licensing authority, makes to the judgment and determination of the district judge in this case. In the course of the discussion I may refer not just to the district judge's judgment but also, albeit maybe briefly, to a statement filed by him in these proceedings. Taking grounds 1 and 4 of challenge together, the main issue raised by those grounds is that the district judge misdirected himself in considering that the function of the authority and his function as the appellate body was not punitive but in effect was remedial. It is submitted that the approach of the district judge was to confine his consideration to remedy of the cause of the breach of the licence provisions and of the law.

29. 29.1. At paragraphs 4 and 5 of the judgment in the section headed, "Discussions", at page 10 the district judge said that:

"The function of the local authority, and now this court, must be first to establish why the four sales of the alcohol to girls A and B occurred on

10th March 2007. Secondly, to take such steps, if any, under section 52 of the Act as are necessary to ensure that no further sales occur thereby promoting the two licensing objectives principally engaged by this case: namely, the prevention of crime and disorder, and the protection of children from harm. The step or steps taken must be the minimum intervention necessary to achieve those aims. What is necessary is a question of value and judgment which will involve the local authority or the court taking account of all the circumstances of the case."

30. 30.1. In my judgment, the language of paragraph 5 indicates clearly that the district judge was considering solely the provisions of the guidance which were not specific to reviews arising in connection with crime. In my judgment, a proper reading and application of the guidance which governs the approach that a licensing authority must take in discharging its duties requires, where the circumstanceses render it applicable, the consideration of the paragraphs relating to reviews in connection with crime. Whilst it may be said that in reviews which do not engage a requirement to consider the paragraphs giving guidance on the approach where there is activity in connection with crime related to licenced premises, the general provisions which apply to all reviews may result in the approach outlined in paragraph 5 being the appropriate one to follow. Indeed, paragraph 5.110, which applies generally to the exercise by a licensing authority of its powers on review, does state a requirement, so far as possible, on the authority to establish the cause or causes of the concerns and that remedial action taken should be directed generally to these causes and should always be no more than a necessary and proportionate response. That observation, in my judgment, is directed to the overall approach to the exercise by the licensing authority of its powers on a review. When considering reviews arising in connection with crime, decisions of the licensing authority would have to be reasonable in all the circumstances and that would necessarily engage a requirement to consider necessity and proportionality.
31. 31.1. However, in my judgment was not borne in mind by the district judge failed to have regard to the requirement on a licensing authority conducting a review on the grounds that the premises had been used for criminal purposes to take steps with view to the promotion of licensing objectives in the interests of the wider community. That is a requirement set out in paragraph 5.113. For reasons given earlier, and in particular by reason of the fact that paragraph 5.115 clearly specifies criminal activity which may arise in connection with the use of the licence premises for the purchase and consumption of alcohol by minors, that provision is engaged in this case.
32. 32.1. Accordingly, in my judgment, the district judge misdirected himself by confining his consideration of the case to the test which would be appropriate where no criminal activity was concerned. Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State.
33. 33.1. The district judge held that the provisions are not to be used and cannot be used for punishment. That may strictly speaking be correct. However, in my judgment

deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable. Therefore, when the district judge confined himself, as in my judgment he did, to the considerations of remedying, and adopted only the language of paragraph 5.110 in his considerations, he erred in law. In my judgment, that error is sufficient to undermine the basis of his decision. On those two grounds alone, grounds 1 and 4 as I have outlined, I allow this application for judicial review.

34. 34.1. However, I continue to consider under the various headings the other grounds raised. The orders made by the district judge are challenged. He added to the existing conditions of the licence six matters as to which I am told that five were already present but not properly implemented. The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14 year old girls. In effect this is a perversity challenge to the decision of the district judge. Even if the approach of the district judge had been correct, which in my judgment it was not, it may well be that the order he made was perversely minimal to meet the circumstances and gravity of the case.
35. 35.1. Under the third general head of challenge, it is said that the district judge failed to pay proper regard to the decision of the licensing authority. Whereas he directed himself in accordance with the dictum of Lord Goddard in the Stepney Borough Council v Joffe case which he set out at page 2, paragraph 5 of his judgment, nonetheless, it is said that he failed to pay regard to the initial decision of the licensing authority when coming to his decision. Since in my judgment the district judge erred in other respects I determine this judicial review challenge on other grounds.
36. 36.1. It is finally said that the district judge erred in that he departed from the guidance issued under section 182 of the Licensing Act but failed, as he was obliged to do, to state that he was so departing and failed to give reasons for so departing. The departure, it is said, is constituted by the failure to give recognition and carry into effect the provisions of paragraphs 5.113, 5.115 and 5.116.
37. 37.1. Earlier in this judgment I set out the basis upon which licensing authorities must pay regard and be governed by guidance issued. Plainly an appellate body must operate similar principles to those applicable to the licensing authority. The guidance contains specific provisions as to the approach to be adopted where criminal activity connected with licence premises is concerned. He failed to give reasons for a departure from applicable guidance. The district judge in reaching his decision simply referred to the circumstances of the case and the fact that what is necessary is a question of the valuation and judgment which will involve the local authority or the court taking into account all the circumstances of the case, that is at page 10 of his judgment, paragraph 5. The district judge in my judgment failed to identify why and in what respects he was

departing from the guidance. I find that the district judge erred in failing to give reasons for departing from the applicable guidance.

38. 38.1. Accordingly, for the reasons set out in this judgment I allow this application for judicial review and find that the district judge erred in law in his approach to determining the appeal of the licensees in this case.

Yes, Mr Quirke.

39. 39.1. MR QUIRKE: I do not think there is any need to formulate a declaration, I think your judgment, in effect, will do the declaration required and the guidance required.
40. 40.1. I am instructed to apply for costs.
41. 41.1. MRS JUSTICE SLADE: Yes.
42. 42.1. MR QUIRKE: It is a tricky one.
43. 43.1. MRS JUSTICE SLADE: It is rather. Can you help me a bit on this?
44. 44.1. MR QUIRKE: Well, ordinarily the usual rules as to the cost apply. If somebody does not turn up, and for example if it is case stated and the magistrates do not attend at court, the court does not usually make an order for costs, but this is a sort of half way house, where the submissions have been made, although nobody has turned up to make them.
45. 45.1. MRS JUSTICE SLADE: Yes. Who would you want your costs from?
46. 46.1. MR QUIRKE: The Magistrates' Court.
47. 47.1. MRS JUSTICE SLADE: Mr Quirke, as you say, there are certain approaches which may normally be adopted but they are within my discretion. In the circumstances, where one would hope that the Magistrates' courts hearing such cases in the future will adhere to the judgment on matters which may not have been apparent to the district judge when coming to his decision and the subsequent order; since he was exercising his judicial function and there is no suggestion of impropriety or anything of that sort, I will not make an order for costs.
48. 48.1. MR QUIRKE: I am grateful.
49. 49.1. MRS JUSTICE SLADE: Thank you.
50. 50.1. I would ask you, Mr Quirke, to draw up the order.
51. 51.1. Thank you for your assistance.