

**SUPPLEMENTARY REPORT BY THE
CHAIR OF THE REGULATORY AND CONSENTS COMMITTEE**

PART B - REPORTS FOR INFORMATION

1. CONTROLLED PURCHASE OPERATION - SUSPENSION OF OFF-LICENCES

Officer responsible Director of Legal & Secretariat Services	Author Peter Mitchell, DDI 941-8549
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The purpose of this report is to advise the Council of the outcome of the decision by the Court of Appeal in respect of seven off-licence premises in Christchurch City being suspended by the Liquor Licensing Authority following a controlled purchase operation involving the Police and the Council.

BACKGROUND

In 2001 the Police, licensing inspectors of the Council (as District Licensing Agency) and Crown Public Health became concerned at the apparent ease with which local young people were able to acquire liquor. They took a combined approach and arranged for a series of test purchases of liquor to be undertaken by under-aged persons in October 2001 of some 34 off-licence premises. In October sales had been made to under-aged volunteers at seven licensed premises and afterwards a letter was sent by the authorities to the licensees of the 150 off-licence premises in Christchurch explaining why the test purchase operation had been undertaken. The letter also advised that the October operation would be repeated and that the letter was to be treated as a warning.

Subsequently in December 2001 three volunteers were used to purchase liquor at a total of 30 off-licence premises in Christchurch and liquor was supplied from seven premises.

The Police and the District Licensing Agency inspector then applied under the Sale of Liquor Act 1989 to the Liquor Licensing Authority for the suspension of the off-premises licences of those seven premises.

In April 2002 the Liquor Licensing Authority granted those applications and suspended the off-premises licences of seven premises for periods of up to five working days. All told, the licences of three supermarkets, a Night and Day store and three taverns were suspended.

Subsequently five of those seven licensees appealed against the suspensions to the High Court and in July 2002 the High Court overturned the decision of the Liquor Licensing Authority. The High Court held that the Authority had erred in suspending the licences and held that the Police and the Council should have prosecuted the licensees in the District Court instead of applying to the Liquor Licensing Authority for suspension of the licences. The High Court based its decision on its interpretation of the relevant provisions of the Sale of Liquor Act 1989.

Subsequently the Police and the Council appealed to the Court of Appeal against that decision of the High Court. The Court of Appeal has now released its decision, allowed the appeals, and overturned the decision by the High Court.

The Court of Appeal stated that the purpose of the power of suspension and cancellation in section 132 of the Sale of Liquor Act 1989 was to enforce proper standards of conduct by licensees in the public interest. The Court stated:

"The purpose of Part VI in general and Section 132 in particular in the scheme of the Act is to maintain the integrity and effectiveness of the licensing system through management compliance with standards. Provided the use of the power is within the scope of that purpose it is authorised by the Act. Whether the effect, from a licensee's perception, is disciplinary or even punitive is then irrelevant as long as it is merely an incidental effect to the general use of the power for the authorised purpose. The offence provisions of Part VIII are of course an important part of the statutory framework.

They are separate from licensing enforcement and are administered by a court in its criminal jurisdiction rather than a statutory tribunal. The two sets of provisions in the respective parts of the Act operate in tandem and it is open to enforcement agencies such as the Police and licensing inspectorate to choose between them or even, when they consider the situation warrants, to invoke both.”

The Court referred to the 1986 Working Party on liquor whose proposals led to the more liberal licensing system of the Sale of Liquor Act 1989. The Court noted that the Working Party's firm views on the role of suspension and cancellation of licences and licensing enforcement reflected a perception that while licences giving the right to sell and supply liquor would be more easily obtained under the 1989 Act, it would be necessary to enforce the standards expected of licensees more rigorously than had been done in the past. The Court expressed the view that the suspension and cancellation powers of the Liquor Licensing Authority are to be given the broad meaning that is indicated by their language in its context according with what the Working Party saw as necessary and desirable to maintain the effectiveness of licensing controls. The Sale of Liquor Act puts the responsibility for the enforcement decisions largely in the hands of the Licensing Authority reflecting Parliament's view of its central importance to the licensing system.

The Court noted:

“The Licensing Authority's conclusion that the off-licences of the respondents should be suspended for a short period was reached on the basis that the grounds for suspension were made out and because of general concerns over the increasing degree of access by under-age persons to liquor often through direct purchases from licensees...The principal reasons reflected the Licensing Authority's judgment of what was required to uphold the integrity and effectiveness of the licensing system...For this reason the appeal against the judgment of the High Court must be allowed and the Licensing Authority's decision reinstated.”

OUTCOME

The Court of Appeal has remitted the matter to the Liquor Licensing Authority for it to set fresh starting dates for the period of suspension. The Police and Council have been awarded costs in both the High Court and the Court of Appeal at \$6,000 each together with disbursements, including reasonable travel and accommodation costs of counsel. The five licensees are each liable to meet an equal share of those costs and disbursements.

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Recommendation: That the information be received.

CONSIDERED THIS 26TH DAY OF JUNE 2003

MAYOR