



## **ACS Submission: Magistrates' Court sentencing guidelines**

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Sentencing Council's consultation on Magistrates' court sentencing guidelines in relation to alcohol sale offences. ACS represents over 33,500 local shops trading at the heart of communities across the UK, including the Co-Op, Costcutter, Spar UK and thousands of independent retailers. There are 51,524 convenience stores across mainland UK, which employ 407,000 people. Convenience stores provide a range of products and services, including Post Offices, bill payment services and ATMs to local communities.

Retailers have a considerable interest in the sentencing of the sale of alcohol offences as 88% of convenience stores hold an alcohol licence<sup>1</sup>. Alcohol sales in the UK convenience market, on average, account for 13.8% of total sales<sup>2</sup>. Retailers take their responsibility for the sale of alcohol very seriously and have proactively engaged with partnerships and age verification schemes including 'Challenge 25', Community Alcohol Partnerships and the Retail of Alcohol Standards Group's responsible retailing best practice guide.

Polling of ACS members in 2012 showed that 70% of retailers had an age verification policy in store and it was found that more than a quarter of retailers refused age restricted sales more than ten times a week<sup>3</sup>. This has helped to significantly reduce the number of underage people purchasing alcohol. HSCIC data suggests that now the most common way pupils (11-15 year olds) bought alcohol was from friends or relatives rather than a shop or supermarket<sup>4</sup>.

However, retailers can often find refusing sales of alcohol challenging. There were an estimated 10,945 violent incidents resulting in injury in the convenience sector last year<sup>5</sup>. The top triggers for violence and verbal abuse are when staff members are enforcing age restricted sales or refusing to serve intoxicated persons<sup>6</sup>. The likelihood of being a victim of violence and verbal abuse is too high, and as such, staff members and retailers can be intimidated and need to know they will back up by the justice system when refusing sales.

ACS supports the Sentencing Council's revised sentencing guidelines for Magistrate's court for alcohol sale offences, which include the sale of alcohol to a drunk person, sale of alcohol to children, and allowing sale of alcohol to children. While we have reservations of the inclusion of the "few entries in refusals/ incident log" as a higher culpability factor, we welcome the clarity that the guidelines brings by providing a step by step guide, which will ensure the appropriate sentence is given.

Please see ACS' responses to the consultation questions below.

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<sup>1</sup> [ACS Local Shop Report 2015](#)

<sup>2</sup> [ACS Local Shop Report 2015](#)

<sup>3</sup> ACS Voice of Local Shops May 2012

<sup>4</sup> HSCIC: Smoking, Drinking and Drug Use Among Young People in England 2014

<sup>5</sup> ACS Crime Report 2016

<sup>6</sup> ACS Crime Report 2016

**Do you agree conditional discharge is an appropriate option at the lower end of the range for category 3 cases?**

ACS believe that a conditional discharge is an appropriate option for the lower end of the range for category 3 cases. We welcome the clear distinction between categories to ensure penalties are appropriate to the harm caused and the culpability of the offender. Offenders who demonstrate higher culpability, such as repeat offenders, must face harsher penalties than offenders who have mitigating factors and lower culpability.

**Do you agree “few entries in refusals/ incident book” should remain a higher culpability factor as drafted?**

ACS does not agree that “few entries in refusals/ incident book” should remain a higher culpability factor. Including reference to the number of entries in refusals/ incident book makes the assumption that the number of entries can directly suggest whether the offender has been due diligent, however, this is not the case. For example, a retailer may only make a low number of alcohol sales, which would mean that only a few entries have been made in the refusals log. Few entries in a retailer’s refusals log is likely to be the result of having robust procedures in stores over a long period of time. This would deter people attempting to purchase alcohol underage and result in few entries in a refusals log.

We do not believe that the local licensing authority is best placed to “gauge what would be typical level entries in the refusals/incidents books for the premises” as their level of engagement with the premise may vary depending on the licensing authority. Local authorities have limited resources and this can lead to limited engagement, in the case of local trading standards officers, retailers have experienced varied levels of engagement. ACS’ Voice of Local Shops survey found that 38% of convenience retailers had no engagement with any trading standards officer in any capacity in the last year, while 24% of retailers responded that a trading standards officer regularly visits their store to discuss regulatory compliance and the challenges facing their business<sup>7</sup>.

Moreover, ACS also does not believe that “many/recent entries in refusal log” should be a lower culpability factor. As detailed above, there are challenges to including reference to a refusal log in sentencing guidelines. If “many/ recent entries in refusal log” remains as a lower culpability factor, these challenges would remain.

**Do you have any other comments about any of the factors and/or ranges for this offence?**

Repeat Offenders

We welcome the inclusion of repeat offenders as a statutory aggravating factor, which increases the seriousness of the offence. We also welcome the use of category bands which act as a sliding scale, depending on the culpability of the offender and the harm caused. The sliding scale would have the ability to issue stricter penalties if it was a repeat offender.

ACS believe the sentencing guidelines could go one step further to address repeat offenders by stipulating an additional statutory aggravating factor. An additional aggravating factor should address repeat offenders of other alcohol offences, specifically, retailers which have participated in the sale of duty fraud alcohol. Research from Portsmouth Council has shown a strong correlation between retail premises selling non-duty paid alcohol at low costs and breaching other licensing conditions.

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<sup>7</sup> ACS Voice of Local Shops Survey February 2016

ACS would welcome further clarification in the guidance to stipulate that if the offence has been committed by a repeat offender, there should be additional consideration to whether factors which would reduce seriousness, or suggest lower culpability should be taken into account.

#### Factors Indicating Greater Harm

While we welcome “factors indicating greater harm”, which will provide courts clarity on the seriousness of the offence, we believe interpreting “large quantity of alcohol supplied” factor may be challenging. There must be a clear definition of what is deemed a large quantity of alcohol, and whether this refers to the alcohol’s strength or volume.

While we believe selling a large quantity of alcohol does not directly suggest that the retailer knew they were making the offence, we acknowledge that it does increase the potential harm if sold to an intoxicated person or someone under 18.

#### Compensation and Ancillary Orders

ACS welcomes the guideline’s reference in step 6 which encourages courts to consider whether to revoke or suspend the personal licence. We believe removing irresponsible retailers from the market by removing their alcohol licence acts as a more effective deterrent than prosecution.

Alcohol licensing authorities have the power to remove premises alcohol licences from retailers who breach their licence conditions. Therefore, we believe it may be more effective to remove retailers’ that persistently ignore alcohol licensing objectives, viability to trade by initially using the powers of the Licensing Act to remove their alcohol premises licence rather than seek prosecution.

**For more information on this submission, please contact Julie Byers, ACS Public Affairs Executive at [Julie.Byers@acs.org.uk](mailto:Julie.Byers@acs.org.uk) or call 01252 515001.**