



Children's Charities' Coalition on Internet Safety

Safe. Sensible. Social. Selling alcohol responsibly

Response to Home Office Consultation

We refer to the section in the above consultation document which deals with "Mandatory Licensing Conditions and Food Safety Act Requirements". In particular we refer to paragraph 5 on page 22 where the sale of alcohol online and by mail order is discussed.

A growing volume of online sales

Substantial volumes of goods and services are ordered and paid for remotely, typically over the internet. The recent Government report on "Digital Britain" makes clear that online sales of a wide variety of goods and services will continue to grow at a rapid rate. The prices available online are frequently much better than those which can be obtained on the High Street and the customer has the added advantage of not having to travel to or from the shop, or of having to carry the goods home themselves.

Easy to avoid visual age checks

However, in the case of legal minors, where the sale of alcohol and other age restricted products and services are concerned, remote shopping also provides an opportunity to evade the visual age checks that routinely take place at the till or check out of High Street shops.

Proliferation of payments systems available to minors

A variety of payments methods are now available to legal minors. For many years the banks and financial institutions have routinely offered debit cards to persons less than 18 years old. Perhaps the best known are Solo and Visa Electron cards, both of which can be used to make online payments. More recently we have seen the emergence of pre-paid cards which utilise the Visa, Mastercard, Maestro and American Express payments systems. These can also be used online. In the Greenwich study referred to below it was one of these latter cards the 16 year old used to pay for the alcohol that was delivered to his home.

Some of the pre-paid cards can be bought for cash and effectively used anonymously. While a number of the cards available to minors are specifically blocked on sites which only sell alcohol or other age restricted goods or services, this does not happen with all of such cards. Moreover where alcohol is being sold on a mixed or general site e.g. a supermarket site, as we understand it none of the cards or payments systems associated with them are sophisticated enough to allow individual, restricted items to be identified and blocked.

Trading Standards Officers investigate

The activities of Trading Standards Officers around the country have repeatedly shown that minors are already using the internet to buy alcohol and other age restricted goods. They have also shown how easy it is for them so to do. A number of newspapers have undertaken their own independent investigations and come up with similar findings.

Greenwich Report

In a report published on 7th May 2009 by Trading Standards Officers of the London Borough of Greenwich, it was shown that M&S, Oddbins, Drinksdirect and Laithwaites all failed to detect that a 16 year old had ordered alcohol from them. They each delivered the goods to the young person's house without demur. These are not small companies but big, well known household brands. If they are not getting it right it is unlikely many smaller traders are doing much better. As more and more High Street vendors are persuaded to comply with the law and perform visual age checks it is extremely likely that, short of countervailing measures being taken, the volume of illegal purchases made by minors online will increase. The Government is therefore clearly right to be concerned about the remote sale of alcohol to legal minors.

Only for immediate consumption?

It is true that often young people will want to buy alcohol for immediate consumption, but that is by no means universally the case. The sometimes significantly lower costs that are available online, and the convenience of having the goods delivered by someone else, can be particularly attractive if you are planning, for example, a big party when your parents are away for the weekend.

Confusion

In preparing our response to this consultation we had discussions with various interests concerned with the sale of alcohol online. During these discussions it became apparent that there was considerable confusion about precisely what the law required, and of whom, in relation to different parts of the supply chain.

Some household name companies accepted they had an obligation to carry out an age verification check at the point of sale. Other equally well known brands contested this view. Another key difference of opinion turned on what was required at the point of delivery.

The law on age verification

We had always understood that at least one aspect of the law on the sale of alcohol is completely clear: an age verification check at the point of sale is required, whether the sale is made remotely or face to face.

It is imperative that this unambiguous legal principle is preserved.

Companies are not under any obligation to sell age restricted goods and services online. They are, however, under an obligation to sell them legally and not be careless or inattentive to compliance issues. If a company cannot satisfy itself as to this point, they should not be selling the goods online in the first place, to anyone.

Three views

Broadly there seems to be three different views of what the law requires.

1. As already indicated, some large companies accept that, in relation to the online sale of alcohol, they have a clear obligation to do an age check at the point of sale. The age check should determine that the person whose card is being used to make the purchase is a person who is verifiably over 18.

However, according to this view, once the check of the card's owner has been carried out at the point of sale, neither the vendor nor its agents e.g. the delivery company, has any further obligations to do any kind of checks on anyone when the goods are delivered.

It was acknowledged that, in a remote environment, there was no way of determining that the person actually using the card to make the purchase was in fact its real owner. For example, a parent or other adult might knowingly lend a child their credit or debit card. If the child does not already have it, the adult may also give them any additional information that might be necessary to open an account with an online vendor e.g. their own date of birth, details of the address the card is registered to and so on. For all practical purposes it is impossible to detect this sort of behaviour, but it also raises different issues.

2. Other, equally large companies were adamant that, in respect of the online sales of alcohol, there was no legal or other requirement to check the would be purchaser's age at the point of sale. They insisted their only responsibility was to ensure that an age verification check was performed at the point of delivery.

Companies taking this view also accepted that the requirement to do the check at the point of delivery applied whether it was made directly by them through their own in-house delivery service, or by their agents, typically external couriers. However, there was then a further sub-division of opinion:

- a. Some companies in this group thought the purpose of the age check at the point of delivery was only to determine that a person aged 18 or above was present when the delivery was made. That person's relationship to the person whose payment card had been used to make the purchase of the goods being delivered was thought to be immaterial.
 - b. Another view was that whoever made the delivery had to determine that the person whose payment card had been used was verifiably over 18 and was also present.
3. The third school of thought was that an online vendor had an obligation to check both at the point of sale and at the point of delivery.

Jurisdiction

There was a related set of issues where we felt there was also a lack of clarity or certainty: this concerned the issue of jurisdiction.

With the advent of the internet it is not at all uncommon for several elements in a commercial supply chain to be contracted out to third parties or for them to be highly dispersed geographically, even within a single company. The vendor's head office may be in Cumbria, the web site is hosted in Northern Ireland, payments collection is in Luxembourg, the goods are put on the van of an external courier service in Hertfordshire and delivered in Hackney. If offences are committed in relation to age verification, where did the offence take place and which police forces, Trading Standards Officers or Magistrates' Courts have the power to act and against whom? What level of collaboration or agreement is needed between any or all of these agencies before a successful prosecution or other enforcement action can be taken?

Some companies also seem uncertain about what their responsibilities are if they are selling or delivering alcohol to addresses outside of the UK. What happens if alcohol is bought online from an overseas source, say a company based in France, and is delivered to a UK residential address?

Need for clarification and authoritative guidance

Whatever the outcome of this review, the Home Office should make it a priority to issue authoritative guidance to clarify what the law requires in relation to age verification for every link in the supply chain where alcohol is being sold online. The jurisdictional and enforcement issues should also be clarified, and if necessary simplified.

Checks at the point of delivery

Under our interpretation of the present law, where the company selling the goods online does not do an age check at the point of sale, but ensures that a check is carried out at the point of delivery, we can see that this may be a mitigating factor, but that is all it is.

No objection in principle

Clearly we have no objection in principle to the idea of checks being carried out at the point of delivery, and there may be specific circumstances where it ought to be required. However, because of the practical difficulties which we discuss below, we seriously doubt that checks made *only* at the point of delivery could ever be a complete substitute for, or an acceptable alternative to, doing age verification checks at the point of sale.

Who delivers?

Typically once goods have been ordered online they will be delivered in one of two ways: either the vendor company will have use of or own a fleet of trucks, normally carrying their own livery and using their own directly employed drivers, or the delivery work will be contracted out.

FedEx, UPS, DHL, and the Royal Mail

Where the delivery of the goods is contracted out, for all that some vendors of alcohol told us they accept that a check at the point of delivery is a legal necessity, at the time of writing there is nothing on any of the web sites of, for example, FedEx, UPS, DHL, or the Royal Mail which indicates any

special procedures that need to be followed in relation to them delivering alcohol within the UK. To confirm this we spoke to each company on the phone. They all said more or less the same thing:

“We have a list of prohibited items that we will not deliver at all or will not deliver without special arrangements being made. Alcohol is not among them. Our charges are based largely on weight, size, distance and speed. Once we have accepted the box from the customer we put it on the van then hand it over to whoever answers the door at the delivery address. We do not check the age of the person accepting delivery, neither do we check anything else about them, other than to ask their name when they sign for the goods, but actually we do not ask for any proof of that either.”

Who and what should be checked at the point of delivery?

If a check is to be done at the point of delivery, our view is that the check should establish that the adult vouching for or taking receipt of the goods is the actual purchaser, or is another adult expressly authorised to act on their behalf. Quite how a driver would establish either of these things is another matter, but it is not satisfactory to say that the only obligation the delivery person has is to determine that someone, anyone, over the age of 18 is present. What if such a third-party has no idea what is in the box? The driver may not know either, and it may not be obvious from the external appearance of the box that what is being delivered is alcohol. Alternatively someone might have used a box that previously contained alcohol to pack and send ordinary domestic items. Should the person apparently accepting delivery insist on the box first being opened so they can confirm that they are not being unwittingly dragged into a scheme to supply alcohol to minors? What happens if the box is opened, the third-party sees it is alcohol and refuses to take responsibility for it? Is the box then to be re-sealed and put back on the van?

Van drivers in court?

Whether the goods are delivered by a courier company or by the company's own employees, we are not sure how satisfactory it is to make legal compliance in this area hang solely on the driver. What would the consequences be for the driver if it turns out an error had been made and alcohol was handed over to a minor or to someone intent on passing it on to a minor? Would drivers start getting dragged into court cases as witnesses or as the accused?

Pressure to deliver

Once the goods have been paid for online and are handed over to an in-house driver, or a courier company for that matter, all the pressure within the system is to get the goods delivered, not brought back. The driver may well be on a bonus for finishing their round quickly or for coming back empty-handed, or both. Some may be penalised or lose bonuses if they fail to complete their round within a given period. Maybe the driver will also be anxious about being parked illegally or about blocking or restricting other traffic while being compelled to park inconveniently in order to complete a delivery. Entirely understandably the driver will not be keen to hang about on a doorstep while someone in the house finds a document to prove who they are or how old they are, let alone what relationship they are to the owner of the card that was used to make the purchase. Some companies specifically allow online customers to say in advance that the goods can be left at another house, usually a neighbour's, or secreted in a particular part of the garden. It is unclear how checks would work in these circumstances.

Trade union perspective – risk of further stress or violence

More particularly, and this point was made to us with some force by the trade union Unite, if drivers get embroiled in age verification on the doorstep, there may be a substantial risk of them also getting involved in arguments about a person's true age or identity, and that would carry with it the risk of violence, or considerable additional stress.

The gambling industry shows the way

In parts of the online retail world there seems to be resistance to the idea of carrying out online age verification checks at the point of sale because of a belief that the technology to allow it to happen either does not exist or that it is disproportionately difficult or expensive to implement. The experience of the gambling industry suggests otherwise.

Under-age gambling

Following a growing number of complaints from parents about their children developing problematic gambling habits through online gambling web sites, in 2004 NCH carried out research into the matter. NCH found that 30 out of 37 UK centred gambling web sites were unable to detect a 16 year old coming to their site to gamble. She simply ticked a box to affirm she was 18 and got through.

The law was clear. Enforcement was weak.

In the case of gambling, then as now, there was no doubt about the law. With the exception of the National Lottery, under 18s are not allowed to gamble. All the gambling companies said they were aware of the problem of children improperly using their web sites. They said they were concerned about it. Trading Standards Officers and the police appeared already to have the necessary powers but it was quite clear that uncertainty about jurisdictional issues and the scale of non-compliance meant that, in effect, they were incapable of ensuring the law was being observed.

No more complaints about children going online to gamble

In relation to gambling Parliament intervened. They did this via the Gambling Act, 2005. This made installing a robust online age verification system a condition of obtaining a licence to operate a gambling web site. Several new companies sprang up in order to provide the technology or the service. Since the regulations came into effect in September 2007, the children's charities are not aware of a single instance where the rules have been breached by a child. It is true that no system is ever going to be entirely foolproof but some can work to a very high level of efficiency. If such systems are good enough for gambling they ought to be good enough for alcohol.

Striking parallels

The parallels with the current position on the online sale of alcohol are rather striking. We have little doubt, for example, that some companies selling alcohol online are perfectly well aware that they ought to be doing online age checks at the point of sale. They are not doing so only because, quite simply, they believe the likelihood of being prosecuted is remote or, if they are prosecuted, the consequences are very easy to live with. We appreciate that in these straitened times many companies are seeking to delay expenditure on all manner of things for as long as possible but that should not be at the expense of young people's safety or legal compliance.

A level playing field

For all the statements about corporate social responsibility, about wanting to do the right thing, not intentionally breaking the law and the rest of it, many online gambling companies only finally acted when they were compelled to do so by law. Up until then they were worried that if they moved first or early they would lose business to less fastidious or more lethargic competitors. The regulations which the Gambling Act introduced created a level playing field. Everyone had to change, so everyone did.

Licensed to sell alcohol online?

As with gambling, would it not be possible to attach specific terms to whatever licence is required to sell alcohol? This might take the form of an additional provision which would affect only those selling alcohol remotely. Such terms could broadly mirror those used in the licences given to online gambling concerns. We fear that unless and until companies selling alcohol online are compelled by law to introduce age verification systems, many will continue to drag their feet or do nothing at all. That is not acceptable.

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