

# Borough Council of King's Lynn & West Norfolk

## Report to Licensing Sub-Committee under the Licensing Act 2003

Date of Hearing: 13<sup>th</sup> January 2017

### Application for Review of a Premises Licence

- Kubus, 119 London Road, King's Lynn, PE30 5ES
- Licence Holder: Mr Sarhad SALARI
- Premises Licence Number WNPL009461

### Introduction

1. At any stage, following the grant of a premises licence, a 'responsible authority' or 'other person' may apply to the licensing authority to review the premises licence because of matters arising at the premises in connection with any of the four licensing objectives. These four licensing objectives are:

- the prevention of crime & disorder,
- public safety,
- the prevention of public nuisance, and
- the protection of children from harm

### Current Premises Licence

2. The current premises licence for Kubus was granted on the 21<sup>st</sup> December 2011. A copy of this licence is attached to this report at Appendix 1 and shows the times and activities authorised along with the licence conditions.

### The Review Application

3. Mr Shaun Norris, Norfolk County Council Trading Standards has made an application to review the premises licence for Kubus, 119 London Road, King's Lynn under 'the prevention of crime and disorder' licensing objective. A copy of the review application and supporting evidence is attached at Appendix 2.

### Representation from Responsible Authorities

*Section 13(4) of the Act defines the 'Responsible Authorities' as the statutory bodies that must be sent copies of an application.*

4. Norfolk County Council Trading Standards, as a responsible authority has made the review application. Norfolk Constabulary supports the review application and a copy of their letter of the 5<sup>th</sup> December 2016 is attached at Appendix 3. Comments from the remaining responsible authorities are:

<b>Responsible Authority</b>	<b>Comments Received</b>
CS&NN (BCKLWN)	None
Norfolk Fire Service	None
Norfolk Trading Standards	None
Norfolk Safeguarding Children's Board	None
Public Health	None
Planning (BCKLWN)	None
Health & Safety (BCKLWN)	None
Licensing Authority (BCKLWN)	None

## **Representations from ‘Other Persons’**

*As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business that are entitled to make representations to applications. Representations made must relate to the licensing objectives.*

5. There are no representations from ‘other persons’ to consider.

## **Notices**

6. The Borough Council is responsible for advertising a review application by way of a notice in a specified form at the premises and on the Borough Council’s website. This notice has to be displayed for 28 consecutive days and should have been displayed on the premises between the 24<sup>th</sup> November 2016 and the 21<sup>st</sup> December. A notice was displayed on the Borough Council’s website and at the Council offices for the same period. A copy of this notice is attached to this report at Appendix 4.

## **Plans**

7. A location map is attached at Appendix 5 showing the general location of Kubus on London Road, King’s Lynn.

## **Borough Council of King’s Lynn & West Norfolk’s Licensing Policy**

8. The current Statement of Licensing Policy was approved by full Council on the 26<sup>th</sup> November 2015 and the following extracts may be relevant to this application:

### **3.0 Fundamental principles**

3.1 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

- (a) the prevention of crime and disorder,
- (b) public safety,
- (c) the prevention of public nuisance, and
- (d) the protection of children from harm.

3.2 Nothing in this ‘Statement of Policy’ will:

- (a) undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its own merits;
- (b) override the right of any person to make representations or to seek a review of a licence.

### **7.0 Review Process**

7.1 The review process represents a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence. At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

- 7.3 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 7.4 The Borough Council recognises that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holder's early warning of their concerns about problems identified at the premises concerned and of the need for improvement. A failure to respond to such warnings is expected to lead to a decision to request a review.
- 7.5 Where the request originates from other persons – e.g. a local resident, residents' association, local business or trade association – the Borough Council will first consider whether the complaint made is relevant, vexatious, frivolous or repetitious.

### **Guidance Issued Under Section 182 of the Licensing Act 2003**

*Under Section 4 of the Act, Licensing Authorities must have regard to guidance issued under Section 182. The current Guidance was issued by the Home Office in March 2015 and offers advice to Licensing authorities on the discharge of their functions under the Act.*

9. The following extracts may be relevant to this application and assist the Licensing Sub-Committee:

#### **Licence Conditions – General Principles**

- 1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will”, is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
  - must be precise and enforceable;
  - must be unambiguous and clear in what they intend to achieve;
  - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
  - must be tailored to the individual type, location and characteristics of the premises and events concerned;

- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

### **The review process**

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional

representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.

- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

#### **Powers of a licensing authority on the determination of a review**

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

#### **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 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 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;
  - for the organisation of racist activity or the promotion of racist attacks;
  - for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
  - for unlawful gambling; and
  - for the sale or storage of smuggled tobacco and alcohol.
- 11.28 It is envisaged that licensing authorities, the police 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.

### **Hearings**

- 9.36 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.
- 9.38 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.

### **Determination**

10. Having regard to the review application, the Licensing Sub-Committee are requested to consider this report and any submissions submitted by the licence holder and those making representations and take such steps as it considers appropriate for the promotion of the licensing objectives. These steps are:

- (a) To do nothing;
- (b) To modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition);
- (c) To exclude a licensable activity from the scope of the licence, for example, to exclude the sale of alcohol;
- (d) To remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- (e) To suspend the licence for a period not exceeding three months;
- (f) To revoke the licence.

Under Section 52(6) of the Licensing Act 2003 if the Sub-Committee takes a step mentioned in paragraph 11(b) of 11(c) above it may provide that the modification or exclusion is to have effect for only such a period (not exceeding three months) as it may specify.



11. The Sub-Committee are reminded that full reasons for its decision must be given as all parties have a right of appeal against that decision to the Magistrates' Court. Such an appeal must be made within 21-days beginning with the day on which the parties are notified by the Borough Council of the decision which is being appealed.

**John Gilbraith**

Licensing Manager

Environmental Health - Licensing

4<sup>th</sup> January 2017

Appendixes:

1. Copy of Current Premises Licence.
2. Copy of Review Application dated 23<sup>rd</sup> November 2016.
3. Police Letter dated 5<sup>th</sup> December 2016.
4. Copy of Review Notice.
5. Location Plan.

Background Papers:

1. The Licensing Act 2003
2. Borough Council's Statement of Licensing Policy (26 November 2016)
3. Guidance issued under Section 182 of the Licensing Act 2003 (March 2015)

# LICENSING ACT 2003 PREMISES LICENCE

## LICENSING AUTHORITY

Borough Council of  
**King's Lynn &  
West Norfolk**



Environmental Health – Licensing  
Kings Court  
Chapel Street  
Kings Lynn  
Norfolk  
PE30 1EX  
Tel: 01553 616200  
Fax: 01553 691663  
Web: [www.west-norfolk.gov.uk](http://www.west-norfolk.gov.uk)  
Email: [ehlicensing@west-norfolk.gov.uk](mailto:ehlicensing@west-norfolk.gov.uk)

### Part 1 – Premises Details

#### Kubus

119 London Road  
King's Lynn  
Norfolk  
PE30 5ES

Telephone Number:

Where the Licence is time limited the dates:

Not applicable

#### Licensable Activities authorised by the licence:

the sale of alcohol by retail

#### The times the licence authorises the carrying out of licensable activities:

the sale of alcohol by retail

Description	From	To
Monday to Sunday	09:00	23:00

#### The opening hours of the premises:

Monday to Sunday	09:00	23:00
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#### Where the licence authorises supplies of alcohol whether these are on and /or off supplies:

Alcohol is supplied for consumption **OFF** the Premises

### Part 2

#### Name, (registered) address, telephone number and email (where relevant) of holder of premises licence:

Mr Sarhad Salari

#### Registered number of holder, for example company number, charity number (where applicable)

**Name address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol:**

Mr Salari Sarhad Salari



**Personal Licence number and issuing authority of Personal Licence held by Designated Premises Supervisor (where the premises authorises for the supply of alcohol):**

**Personal licence Number:  
Licensing Authority:**

Licence Number: PA0843  
Licensing Authority: South Holland

**Manager  
Environmental Health (Commercial)**

**Original Issue date of Premises Licence: 21st December 2011**

**Date of last change: 30th May 2014**

**ANNEXES**

**ANNEX 1 – MANDATORY CONDITIONS**

1. Under Section 19(2) of the Licensing Act 2003, no supply of alcohol shall be made under this premises licence at a time when there is no designated premises supervisor in respect of the premises licence, or at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
2. Under Section 19(3) of the Licensing Act 2003 every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
3. The premises licence holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol. The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either a holographic mark, or an ultraviolet feature.
4. A relevant person shall ensure that no alcohol is sold or supplied for consumption off the premises for a price which is less than the permitted price. For the purposes of this condition:
  - “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
  - “permitted price” is the price found by applying the formula -  $P = D + (D \times V)$  where:
    - P is the permitted price;
    - D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol; and
    - V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
  - “relevant person” means the holder of the premises licence, the designated premises supervisor (if any) in respect of such a licence, or the personal licence holder who makes or authorises a supply of alcohol under such a licence;
  - “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.

The permitted price must be rounded up to the nearest penny.

A change to the permitted price which would apply as a result of a change to the rate of duty or VAT charged in relation to alcohol would not apply until the expiry of the period of 14 days beginning on the day on which the change in the rate of duty or VAT takes effect.

#### **ANNEX 2 – CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE**

5. A refusal book shall be maintained to record all instances/persons that have been refused the sale of alcohol. The book shall be made available to the police and authorised officers of the Borough Council upon reasonable request.
6. Either (i) security blinds or (ii) security shutters or (iii) permanent robust infilling of window areas on the internal side of any glazing must be installed to protect all glazing forming part of the shop windows and front and rear doors OR (iv) security display cages must be used for the storage and display of your alcohol stock within the shop area. Other windows or skylights must be protected using the benefit of internal security bars.
7. External doors must be secured by using internal security shutters installed at the premises. Any single external electronic switching mechanisms controlling security shutters must be secured to walls without exposing any wires and by using at least 4 x substantial anchor bolts. Any switch housings must be secured with a substantial padlock.
8. Any alcohol on display in the shop must be in a position that provides staff with the easiest surveillance opportunities and control. Spirits must be adjacent to the service counter and served to customers.
9. A CCTV system must be installed at the premises. Cameras will be positioned to provide cover of the front entrance and alcohol displays. A TV monitor must be positioned for staff to clearly view areas they cannot supervise and the cameras themselves should be robust and tamper proof. The CCTV system must be regularly maintained and shop staff must be trained to use it. The System must have hard drive storage facility of at least 14 days worth of images and be stored securely away from the Shop Floor. Clear signage must be displayed in the shop informing visitors that a CCTV Recording System is in place. A certificate of installation must be available for inspection upon reasonable request.

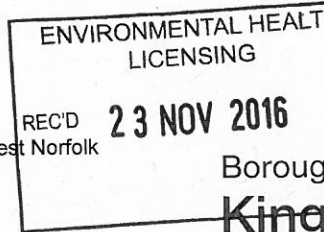
#### **ANNEX 3 – CONDITIONS ATTACHED AFTER A HEARING**

N/A – no hearing held

#### **ANNEX 4 – AUTHORISED PLANS**

Attached

Environmental Health - Licensing  
Borough Council of King's Lynn & West Norfolk  
King's Court  
Chapel Street  
King's Lynn, PE30 1EX  
Tel: 01553 616600  
Email: [ehlicensing@west-norfolk.gov.uk](mailto:ehlicensing@west-norfolk.gov.uk)  
[www.west-norfolk.gov.uk](http://www.west-norfolk.gov.uk)



Appendix 2 to  
Report to Licensing Sub-Committee  
Re: Kubus, 119 London Road, King's Lynn  
Dated 4th January 2017

Borough Council of  
**King's Lynn &  
West Norfolk**



## Licensing Act 2003

### Application for the review of a premises licence or club premises certificate

#### PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

Once completed, send your **original** application to:

- **The Licensing Team**, Environmental Health & Housing, Borough Council of King's Lynn and West Norfolk, King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX.
- and **copies** to the following:-
- **Norfolk Constabulary Licensing Team**, Bethel Street Police Station, Bethel Street, Norwich, Norfolk, NR2 1NN.
  - **Fire Safety Office**, Norfolk Fire Service Western Area, Kilhams Way, King's Lynn, PE30 2HY
  - **Norfolk Children's Safeguarding Board**, Room 60, Lower Ground, County Hall, Martineau Lane, Norwich NR1 2DH
  - **Consumer Operations Manager, Norfolk County Council Trading Standards**, County Hall, Martineau Lane, Norwich, Norfolk, NR1 2UD
  - **Development Services**, Borough Council of King's Lynn and West Norfolk, King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX
  - **Health & Safety**, Environmental Health & Housing, Borough Council of King's Lynn and West Norfolk, King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX
  - **Community Safety & Neighbourhood Nuisance**, Environmental Health & Housing, Borough Council of King's Lynn and West Norfolk, King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX
  - **Public Health Director**, Norfolk County Council, County Hall, Martineau Lane, Norwich, NR1 2DH
  - The premises at the premises to which the application relates

**I, Shaun Norris, apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1**

#### Part 1 – Premises or club premises details

Postal address of premises or club premise, or if none, ordnance survey map reference or description	
Kubus 119 London Road	
Post town Kings Lynn	Postcode PE30 5ES
Name of premises licence holder or club holding club premises certificate (if known)	
Mr Sarhad SALARI	

Number of premises or club premises certificate (if known) WNPL009461

## Part 2 – Applicants Details

I am

please tick ✓ yes

- 1) An individual, body or business which is not a responsible authority  
(please read guidance note 1, and complete (A) or (B) below)
- 2) A responsible authority  
(please complete (c) below)
- 3) A member of the club to which this application relates  
(please complete (A) below)

### (A) Details of Individual Applicant (fill in as applicable)

Title (Mr/Mrs/Miss/Ms/Other .....

Please circle the title which applies or if **Other** applies please add in title.

Surname

First names

I am 18 years old or over

please tick ✓ yes

Current address:

Post Town:

Postcode:

Daytime contact telephone number:

E-mail address (optional):

**(B) Details of other applicants**

Name and address
Telephone number (if any)
E-mail (optional)

**(C) Details of Responsible Authority Applicant**

Name and address  Norfolk County Council Trading Standards Service County Hall Martineau Lane Norwich NR1 2DH
Telephone number (if any) 01603 638078
E-mail address (optional) trading.standards@norfolk.gov.uk

**This application to review relates to the following licensing objective(s)**

Please tick one or more boxes ✓

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please state the ground(s) for review (please read guidance note 2)

The premises has been granted a premises license by Kings Lynn & West Norfolk Council authorising the sale of alcohol for consumption off premises Monday to Sunday 9am to 11pm. The premises is a general convenience store selling alcohol, tobacco and food items. Since 21 January 2014 the premises License holder has been Mr Sarhad SALARI and he is currently the Designated Premises Supervisor.

Trading Standards have obtained evidence that SALARI has been operating the premises in a manner which undermines the Crime & Disorder Licensing objective.

Please provide as much information as possible to support the application (please read guidance note 3)

SALARI has been involved with the premises since at least 31 October 2013 when he applied to transfer the Premises License and Designated Premises Supervisor to himself.

Since 13 November 2013 Trading Standards have received intelligence that the premises is involved in the sale and storage of smuggled tobacco products.

On 5 December 2014 a Trading Standards Officer purchased 50g Golden Virginia tobacco for £4.00. It was not labelled in English. This represents an extremely low retail price for such a product, see duty comments below.

On 23 January 2015 a Trading Standards Officer purchased Marlboro Gold cigarettes for £4.10 and tobacco for £2.87. These represent extremely low retail prices for such products, see duty comments below.

On 27 September 2016 during a joint inspection by Norfolk Trading Standards & Norfolk Constabulary, 5000 illegal cigarettes and 1.1kg of illegal hand rolling tobacco were seized from a concealed compartment under the counter in the store.

The majority of the tobacco products did not contain English warnings so do not comply with the labelling requirements of the Tobacco & Related Products Regulations 2016.

Some of the tobacco products were sent off for examination to the Trade Mark holders and so far, one trade mark holder has responded and confirmed that the Golden Virginia tobacco seized from the store is counterfeit contrary to the Trade Marks Act 1994.

The Golden Virginia tobacco seized was all 50g pouches. These generally retail at £19.66. The total duty & VAT should be around £13.00. It was purchased in December 2014 for £4.

20 Marlboro Gold generally retail at around £9.60 per 20 pack. The total duty & VAT should be around £7.29. A pack was purchased for £4.10 in January 2015.

It is therefore very unlikely for anyone in the supply chain of these products to be paying the correct amount of UK duty based on the low prices alleged to have been charged.

It is Norfolk Trading Standards opinion that all of the tobacco products seized on 27 September 2016 was smuggled and cannot legally be sold. Even if the correct duty was paid counterfeit products cannot ever be legally sold.

Please see Appendix A for a summary of intelligence received about the premises, Appendix B for the witness statement of Lead Trading Standards Officer Katryn Harris, Appendix C for images of the concealed stock in the shop, Appendix D for the witness statement of PC Thomas Munday, Appendix



E for the witness statement of Neil Ferguson, Imperial Tobacco & Appendix F for the witness statement of Kathryn Sweeney, JTI tobacco.

The keeping of smuggled goods on the relevant premises is an offence under section 144 of the Licensing Act 2003.

The Revised Guidance issued under section 182 of the Licensing Act 2003 states-

11:24- A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example... the sale of contraband or stolen goods. 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.

11:26- 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 licence holder.

11:27- There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. This includes the use of the licensed premises: for the sale or storage of smuggled tobacco and alcohol.

11:28- 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.

Norfolk County Council Trading Standards submit their reasonable belief that Kubus has been storing and selling smuggled tobacco products in contravention to the Licensing Act 2003, Customs & Excise Management Act 1979 Tobacco & Related Products Regulations 2016.

Mr Salari was made aware of the offences of selling counterfeit and incorrectly labelled tobacco products on numerous occasions previously when his store had been visited, in particular on 21 April 2015 when he received a written warning. Despite this, further intelligence regarding the sale of illegal tobacco products has been received and illegal tobacco was found on 27 September 2016. The tobacco products were found by the tobacco detection dog in a very sophisticated concealment which had been constructed under the counter in the store. Trading Standards further submit that SALARI has demonstrated he is wholly unsuitable to manage such licensed premises.

In the circumstances Norfolk County Council Trading Standards feel it is appropriate and proportionate to request a review of the Premises License and in light of the evidence provided and section 11.28 of the Revised Guidance issued under section 182 of the Licensing Act 2003, request that serious consideration is given to revoking the license.

A criminal investigation is also underway in respect of the seized tobacco products.

Please tick ✓ yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

...../...../.....

If you have made representations before relating to this premises please state what they were and when you made them

**Checklist**

please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate. ✓
- I understand that if I do not comply with the above requirements my application will be rejected ✓

**It is an offence, liable on conviction to a fine up to level 5 on the standard scale, under section 158 of the Licensing Act 2003 to make a false statement in or in connection with this application.**

**The council is registered under the Data Protection Act 1998 for the purpose of processing personal data in the performance of its legitimate business. Any**

information held by the council will be processed in compliance with the eight principles of the Act. Information you have provided may be shared with other public sector organisations for the prevention of crime and detection of fraud. Further information relating to your rights under the Data Protection Act can be sent to you on request.

**Part 3 – Signatures** (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 4). If signing on behalf of the applicant please state in what capacity

Signature: .....  .....

Date: 23 November 2016

Capacity: Trading Standards Section Manager

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 6)	
Vicky Conlon	
As above	
Post town	Postcode
Telephone number (if any)	
E-mail address (optional)	

**Guidance Notes**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

**Intelligence and history on Kubus, 119 London Road, Kings Lynn**

13/11/2013 (C238842) C claims T are selling fake tobacco. 3 days ago C bought a packet of Golden Virginia tobacco. Paid £3.50 via cash. C claims the labelling/packaging does not appear correct. Also the labelling is in a foreign language.

16/1/14 (C241201) C stated just been in a queue for up to 10-15 minutes outside the Kubus shop in Kings Lynn to get his cheap cigarettes. He had bought some packets of Marlboro at £3.50 for twenty.

21/8/14 (C250105) The KUBOS shop in London Rd Kings Lynn deals in counterfeit tobacco and it is sold under the counter and retrieved from a special container.

26/8/14 (C250242) Week commencing 18082014 the KUBOS store in London Road Kings Lynn continues to sell counterfeit tobacco products. Cigarettes are sold in yellow packaging for £3.00 per pack.

24/10/14 (C252461) Young adults are buying "really cheap" tobacco from a shop called "KUBUS" on London Road, Kings Lynn. Reports are that the products are making persons behave strangely with side effects incl. dilated pupils that can last for two days.

5/12/14 Trading Standards Officer purchased 50g Golden Virginia tobacco for £4.00. It was not labelled in English.

20/1/15 (C255919) KUBUS Convenience Store, 119 London Road, KINGS LYNN, PE30 5ES is supplying and selling imported duty free illegal tobacco over the counter to customers including children under 16. It is believed it is sold for between £3-£5 per pouch.

23/1/15 Trading Standards Officer purchased Marlboro Gold cigarettes for £4.10 and tobacco for £2.87.

27/3/15 During an inspection the tobacco detection dog indicated the presence of tobacco behind the counter but officers did not find any. On the same visit, foreign labelled tobacco was seen in a car parked behind the store belonging to a Mr Jamshid Ahmad Ali. Mr Salari denied knowledge that there was any link between his shop and the tobacco (NB documents were found in the store in Mr Ali's name. Further note that Mr Ali has been present in both Kubus and Lynn Express when Kings Lynn & West Norfolk district Council have inspected them.

21/4/15 Mr Salari received a written warning in respect of the illegal tobacco products seen in the car during the inspection.

18/8/15 (C264523) Kubus Shop on 119 London Road, Kings Lynn is selling counterfeit cigarettes. C saw a Middle Eastern male pull a box of "Jinling" cigarettes out from under the counter and sell them. C felt that this was odd due to the display

of cigarettes and tobacco at the back of the store. He said the packets had Russian type writing on it.

6/11/15 (C267609) stuff being sold from behind the counter and only being sold to people of certain origin. (tobacco)

10/2/16 (C270788) C wishes to report a shop selling illegal cigarette & tobacco. T is also selling them to underage consumers. The cigarette & tobacco has foreign writing on the packets & is too cheap at approx £2 - £3. The brand concerned is Amber leaf, Golden Virginia loose leaf tobacco & Marlboro Cigarette. T may also sell other counterfeit brands but C doesn't have names. T is hiding these behind counter & in other part of shop.

18/8/16- Visit to store by Trading Standards and Norfolk Constabulary, no illegal tobacco was found but advice was left about selling illegal tobacco

27/9/16 Visit to store by Trading Standards and Norfolk Constabulary, 5000 illegal cigarettes and 1.1kg of illegal tobacco was seized.

7/11/2016 (C280456) C wants to report local shop selling counterfeit alcohol and cigarettes under the counter. C states this is all brands. C states all staff are selling the illegal cigarettes.

# Statement of Witness

(Criminal Procedure Rules, r. 16.2;  
Criminal Justice Act 1967, s. 9;  
Magistrates' Courts Act 1980, s. 5B)

## STATEMENT OF KATRYN ALEXANDRA HARRIS

Age of witness (if over 18 enter 'Over 18'): OVER 18

Occupation of witness: LEAD TRADING STANDARDS OFFICER

This statement, (consisting of 4 pages) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signed: *Katrina* (witness)

Date: 19 OCTOBER 2016

I am a Lead Trading Standards Officer, employed by Norfolk County Council. I am authorised under The Trade Marks Act 1994, The Consumer Protection from Unfair Trading Regulations 2008, The General Product Safety Regulations 2005 and The Consumer Rights Act 2015.

On Tuesday 27 September 2016 I visited the premises of KUBUS, London Road, Kings Lynn accompanied by Trading Standards Officers Gary YOUNG and Peter HOLMAN, Police Constables Jeremy BROWN and Tom MUNDAY and tobacco search dog Scamp with his handler Stuart. I had with me my departmental issued camera with a clear SD card inserted.

We entered at 10:15. Upon entering I saw a female with a pricing machine at the shelves immediately in front of me. To my right was a counter, behind which was a male who I now know to be Sarhad SALARI. I introduced myself and my colleagues to Mr SALARI and showed him my credentials. I explained that we were there with the tobacco dog following information that there may be illicit tobacco stored on this premises. Peter HOLMAN handed to me a complete Consumer Rights Act 2015 notice regarding our visit and I handed this to Mr SALARI together with information on our powers and rights.

The dog went behind the counter and within a few seconds began to indicate and bark at the corner where the counter met the wall behind the door. The handler explained to me that

Signed: *Katrina*

Statement of KATRYN ALEXANDRA HARRIS Continuation Sheet No 1

Scamp had indicated that there may be tobacco hidden behind a shelving unit. I went round and looked at the area. I could see a number of what looked like new shiny screws in a piece of upright wood against the side of the shelving unit. I could not see how else to get into this apparent hidden void as there were no visible hinges or catches. I explained to Mr SALARI that the dog had indicated that there was tobacco behind the unit and asked how to get in. He said he knew nothing about it. I found a screw driver above this area on top of the counter. Wearing gloves I began to take out these screws and was photographed doing so by Gary YOUNG. Gary YOUNG then took over taking the screws out and I continued taking photographs including some of the tobacco gantry situated next to this area which had open sleeves of cigarettes.

I returned to the other side of the counter and left Gary YOUNG to continue removing the screws. A short time later Gary YOUNG told me he had managed to remove the panel and out came a drawer unit with shelves stocked full on tobacco and cigarettes. I went round to have a look and saw for myself that the unit was neatly and tightly packed with cigarette packets, sleeves and hand rolling tobacco pouches. I took two photographs of this and one of Scamp with the concealed void. During this time I was aware that Scamp was inspecting the rest of the shop, including the stock room and container in the yard together with the Police Officers.

Gary YOUNG then proceeded to remove the items and pass them to me over the counter. The brands were separated out and trade-marked items were kept separate from the foreign labelled tobacco. All tobacco bearing foreign labelling or appearing to not be labelled in accordance with the Tobacco and Related Products Regulations 2016 were passed to the Police Officers in bags for them to record and seize.

I sealed items suspected of being counterfeit in bags and gave them the following identifying marks:

ID mark	Description
KSH1	Sleeve of 20 Rothman Cigarette packs
KSH2	Open Pack of 12 blue Mayfair kingsize cigarette packs

Signed: 

Statement of KATRYN ALEXANDRA HARRIS Continuation Sheet No 2

KSH3	15 Windsor Blue cigarette packs and open sleeve
KSH4	Closed sleeve of 20 Pall Mall cigarette packs
KSH8	Open sleeve and 13 L&M cigarette packs
KSH13	12 West end cigarette packs
KSH15	Sleeve of 10 x L&M cigarette packs
KSH16	14 x Mayfair Blue cigarette packs
KSH17	1 sleeve Mayfair kingsize cigarette packs
KSH18	1 sleeve Marlborough Cigarette packs
KSH22	19 x Marlboro Cigarette packs

During this process, I heard a crash from behind the counter. Gary YOUNG informed me that he had worked out how the concealed void opened without having to take the screws out. He took the drawer out and I saw a magnet at the top. Gary YOUNG continued taking photographs during this time.

Once all my items were sealed I passed them to Peter HOLMAN who recorded the details on the record of property. When this was complete I took the record of property to Mr SALARI and explained this was a record of all the items being seized today. I signed the bottom and Mr SALARI also signed. I also handed to him a completed notice of powers and rights form which had been completed by Peter HOLMAN also. I then handed Mr SALARI a visit sheet which he again signed. All carbon copies of these forms were retained by me.

Once the police officers had done the same thing, PC Tom MUNDAY signed all items over to the control of Trading Standards. To do this, I recorded the identifying marks in my notebook and PC Munday signed at 11:23. I signed his notebook too.

This resulted in the following items being transferred into the custody of Norfolk Trading Standards:

KSH19, KSH5, KSH12, KSH11, KSH6, KSH10, KSH9, KSH7, KSH14, KSH21, KSH20.

Signed: 



We then ensured we had everything with us and had handed all paperwork required to Mr SALARI and then left the premises at 11:40hrs.

We travelled back to Priory House, Kings Lynn where I asked Peter HOLMAN to create a disc of the photographs for me. He handed a disc to me together with my SD card at 12:15.

Later that day, following some media engagement, I returned to County Hall with Stewart Adams who assisted in bringing all items into the office. I then asked a colleague Alan OGG to assist me in booking the items into our secure store.

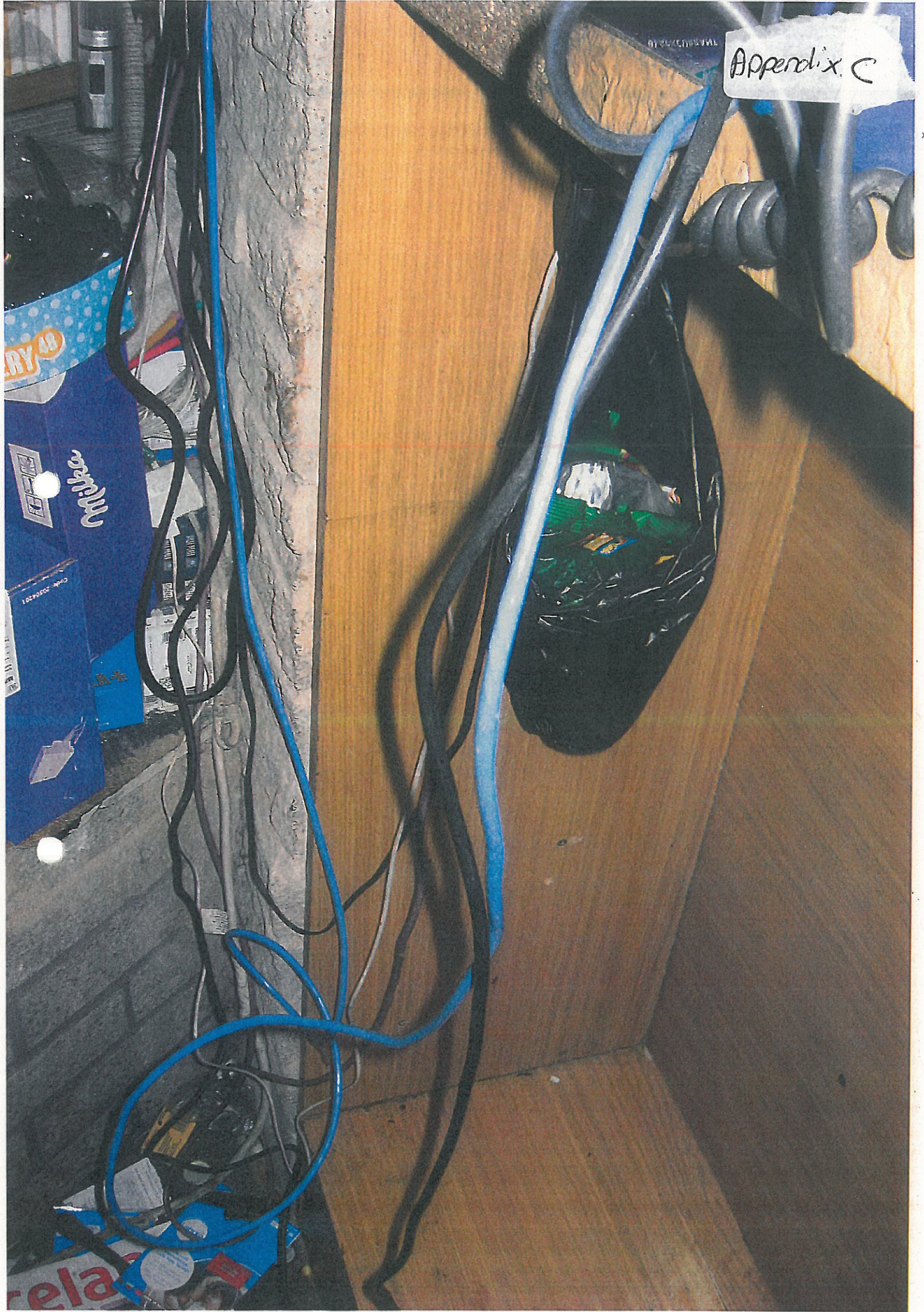
All items KSH1-22 were booked into secure store and we locked it at 16:23hrs.

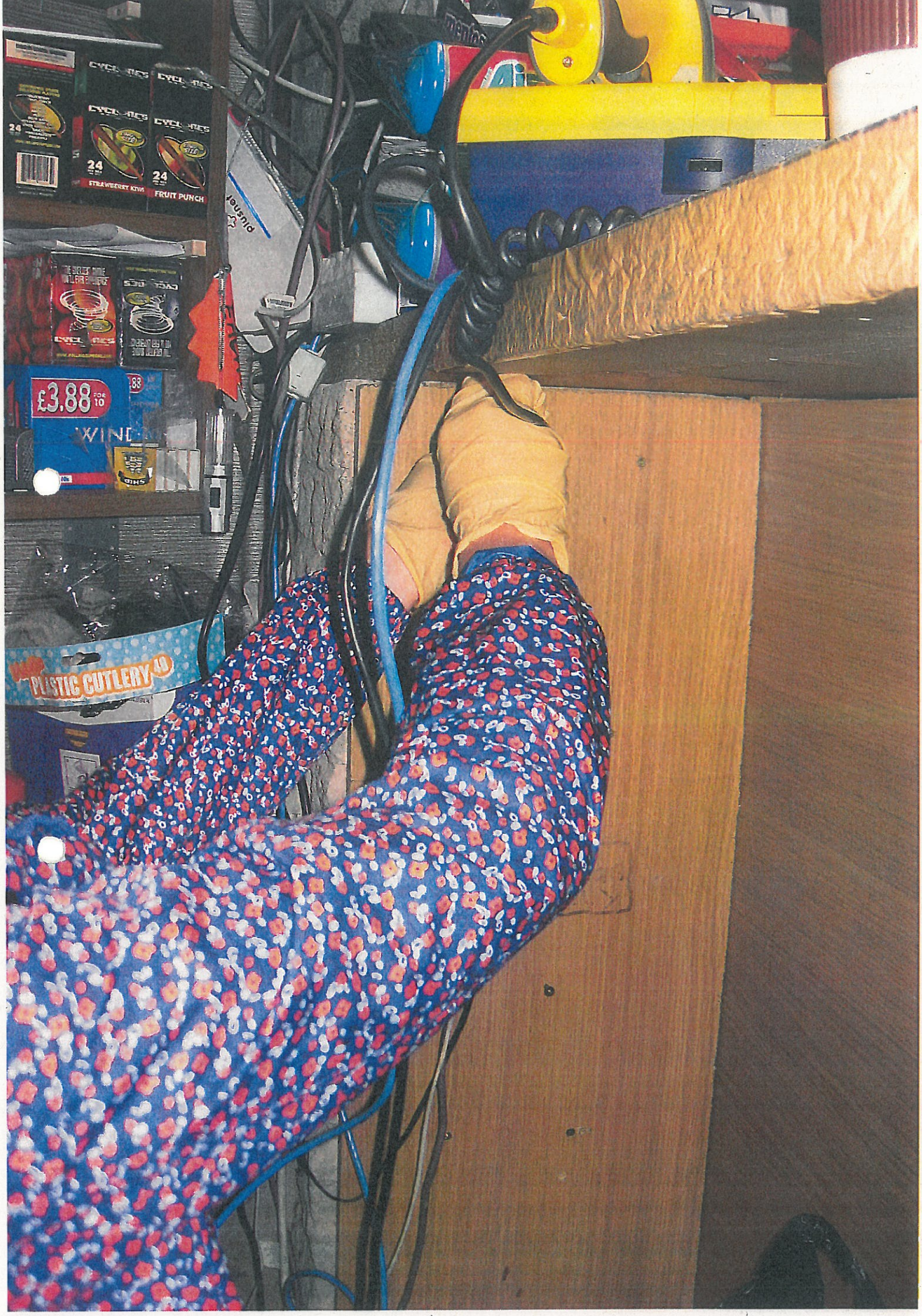
On 28 September 2016 I removed the DVD that was created for me by Peter HOLMAN which had been stored in my work bag in a secure cupboard overnight. I copied the disc using the departmental disc copier to create a working copy. I checked the images had been recorded correctly and then sealed the master disc in an evidence bag bearing seal number M00379877 identifying mark KSH23. I then handed all paperwork copies and discs to Vicky CONLON.



Signed: 

Appendix C





CYCL-DES  
24  
STRAWBERRY KIWI  
FRUIT PUNCH

THE SILENT WINE  
500 YOGURT  
DESSERT IN  
200 ML BOTTLE

£3.88 FOR 10  
WINE

PLASTIC CUTLERY



ΦΑΚΤ  
LDEΦ

Expert  
FAIR  
FAIR

MAYFAIR  
MAYFAIR  
MAYFAIR

Winston  
Winston  
Winston  
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Winston

PAL MAIL  
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West  
West

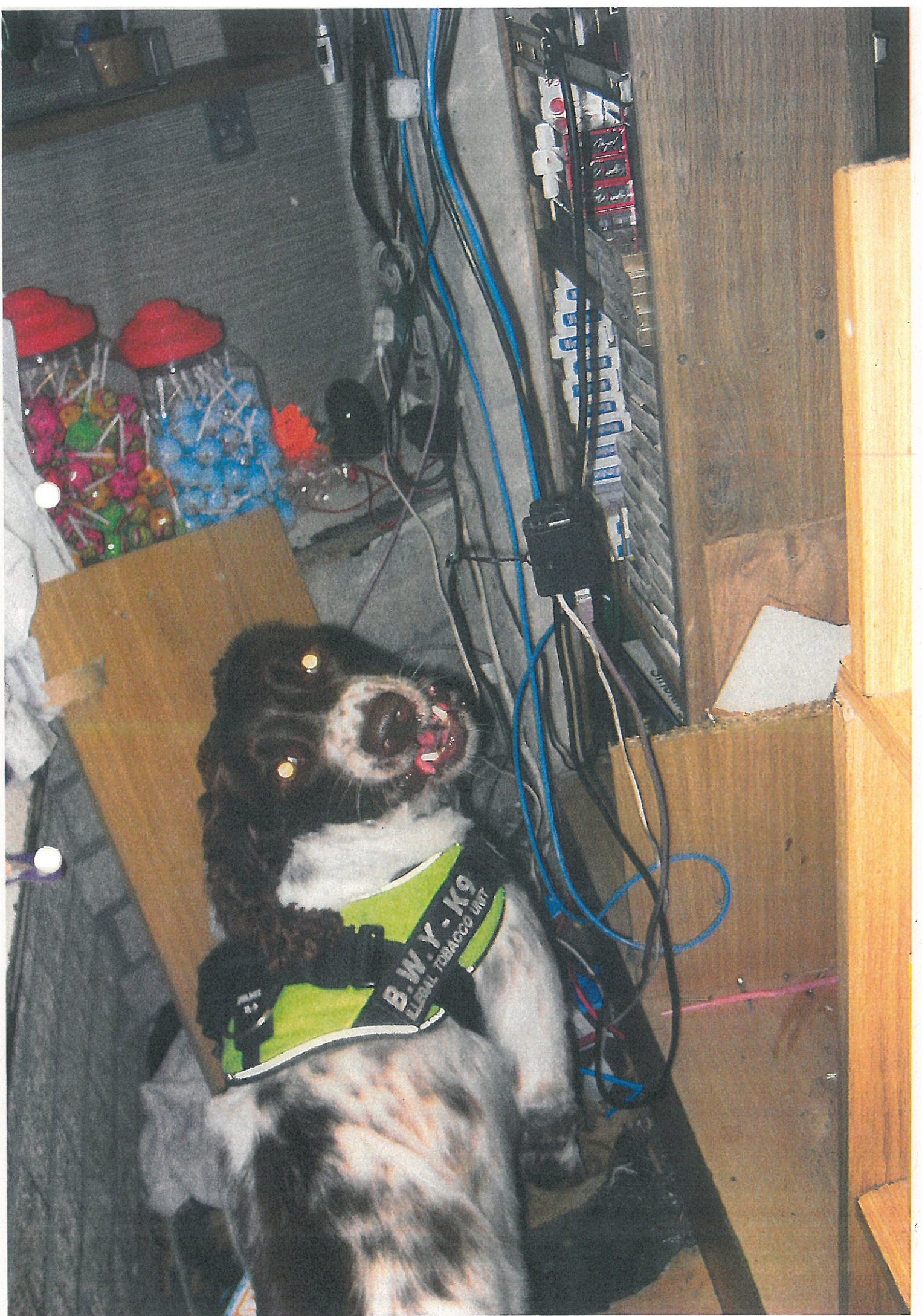
W  
W  
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Рукымас зудо -  
мешк рүкүйи  
туојад пат

Рукымас  
Синдиге

Smoking  
FAIR

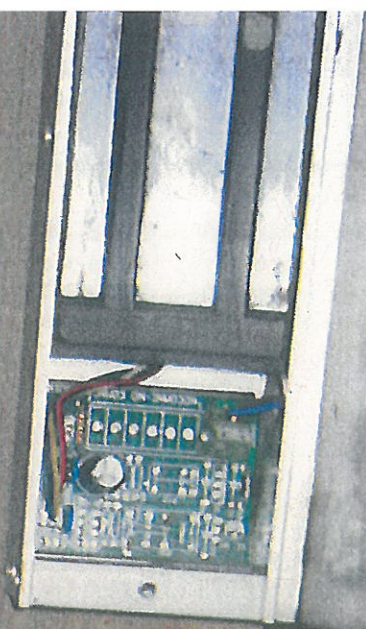












**RESTRICTED (when complete)**

**WITNESS STATEMENT**

**Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B**

[Click here for guidance](#)

URN:				
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Statement of: Thomas MUNDAY PC 348

Age : Over 18 (if over 18 insert 'over 18') Occupation: Police Constable

This statement (consisting of 2 pages(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature: Thomas MUNDAY

Date (dd/mm/yyyy): 18/10/2016

*(This statement is digitally signed)*

I am Police Constable Thomas MUNDAY collar number 348 of Norfolk Constabulary, currently attached to the Licensing team based at Bethel Street Police Station.

Approximately 1015hrs on Thursday 27<sup>th</sup> September 2016 I was on full uniform duty in company with PC 1376 BROWN and officers from Norfolk Trading Standards when I attended KUBUS STORES, 119 LONDON ROAD, KINGS LYNN, NORFOLK, PE30 5ES for the purpose of a licensing inspection:

On arrival a male identified himself as Sarhad SALARI b.9/12/88, SALARI stated he was the owner, PLH and DPS of the premises.

PC 1376 BROWN went through the licensing inspection with Mr SALARI while I assisted Trading Standards who had located a substantial quantity of cigarettes hidden behind a wooden panel behind the till counter. The cigarettes that had been hidden were foreign import/labelled and illegal to sell in the UK due to noncompliance with the tobacco & regulated Products Regulations 2016.

PC BROWN seized the cigarettes, exhibit numbers KSH/1-KSH/21 which i recorded in the premises search book exhibit TM/1. The search concluded at 1120hrs where I then handed all exhibits to Trading Standards officer HARRIS who signed my PNB as receiving(exhibit TM/2).

**RESTRICTED (when complete)**

**RESTRICTED (when complete)**

Continuation of Statement:

Page 2 of 2

REDACTED

These notes were made at 1200hrs Tuesday 18<sup>th</sup> October 2016 from notes made at the time in my PNB.

Signed: Thomas MUNDAY

**RESTRICTED (when complete)**



**WITNESS STATEMENT**

*(Criminal Procedure Rules, r27.1 (1);  
Criminal Justice Act 1967, s.9, Magistrates Courts Act 1980, s5B)*

Statement of James Neil Ferguson

Age of witness: over 18

Occupation of witness: Anti-Illicit Trade Executive

I am employed by Imperial Tobacco Ltd as an Anti-Illicit Trade Executive. As part of my duties I am responsible for working with Trading Standards Officers and other Law Enforcement Agencies to identify counterfeits of our cigarette and hand rolling tobacco brands.

I am authorised to make this declaration on behalf of Imperial Tobacco Ltd. and I do so from my own knowledge unless otherwise indicated.

On Thursday 3<sup>rd</sup> November 2016, I received the following exhibit from Vicky Conlon from Norfolk Trading Standards.

**Exhibit KSH6/1**

**Sealed evidence bag number P00744980 containing 1 X 50gm pouch of branded Golden Virginia Classic hand rolling tobacco.**

I made a visual examination of the pouch of tobacco.

The print and materials used in the manufacture of the pouch of tobacco was not consistent with Imperial Tobacco Ltd specifications.

Consequently, I can state that the pouch of tobacco which I have examined was not made by Imperial Tobacco Ltd nor did Imperial Tobacco Ltd authorise its manufacture or sale.

It is in fact counterfeit.

I can confirm that Imperial Tobacco Ltd owns the registered trademark for Golden Virginia.

I produce a copy of the Trade Mark certificate in respect of this brand.  
(Exhibit JNF1)

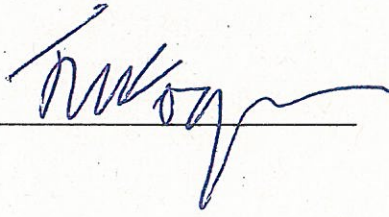
I returned the exhibit to Vicky Conlon in the same bag sealed with seal number NCC05398

I can say that while our tobacco is produced to certain consistent standards as regards Nicotine and Carbon Monoxide content, the content of counterfeit tobacco is unregulated.

This statement, (consisting of 2 pages each signed by me,) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or not believe to be true.

Dated the 4<sup>th</sup> November 2016

Signed \_\_\_\_\_

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to be 'M. King'.

TRADE MARKS  
REGISTRY



Registration  
Certificate

Trade Marks Act 1938 of Great Britain and Northern Ireland

GOLDEN VIRGINIA

The Mark shown above has been registered in Part A under  
No.1421021 as of the date 03.04.1990 in respect of:

Class 34:

Tobacco, whether manufactured or unmanufactured; substances for smoking, sold separately, or blended with tobacco, none being for medicinal or curative purposes; cigarette paper and books of cigarette paper; smokers' articles and matches; all included in Class 34 and all for sale in the United Kingdom and for export to and sale in all countries of the world with the exception of Bangladesh, Benin, Barbados, Canada, Caymen Islands, Cyprus, Falkland Islands, Ghana, Guadeloupe, India, Israel, Ivory Coast, Martinique, Mauritius, New Zealand, Nigeria, Oman, Pakistan, Paraguay, Qatar, Seychelles, Singapore, Sri Lanka, St. Martin (French), St. Martin (Dutch), Taiwan, Thailand, Togo, Trinidad, Turkey and Zimbabwe.

In the name of:

Imperial Tobacco limited.

It is a condition of registration that the mark, when used in respect to tobacco or products made from tobacco shall be used in relation only to Virginia tobacco or products made wholly or principally from Virginia tobacco.

Registration of this mark shall give no right to the exclusive use of the word "Virginia".

Sealed this day at my direction

*[Signature]*

H. H. BARNACK, REGISTRAR

DATE: 06 MARCH 1992

(JNFI)

*[Signature]*

TRADE MARKS  
REGISTRY



RENEWAL  
CERTIFICATE

The Trade Mark No. 1421021 in Class(es) :-

34

registered in the name of Imperial Tobacco Limited  
has been renewed for a period of 10 years from the 3 April 2007  
and was advertised as renewed in Trade Mark Journal 6669.

Sealed this day at my direction

RON MARCHANT, REGISTRAR

DATE

29 December 2006



**WITNESS STATEMENT**  
**(CJ Act 1967, s.9; MC Act 1980, ss.5A(3) (a) and 5B;**  
**MC Rules 1981, r.70)**

Statement of: .....Kathryn Sweeney.....

Age if under 18: .....over 18..... (if over 18 enter "over 18")

Occupation:.....Seizures Manager.....

This statement (consisting of four pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

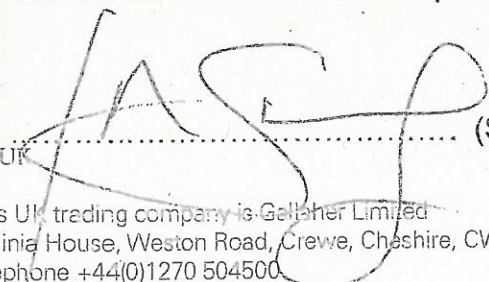
Signature.......... Date.....10/11/16.....

I am employed by Gallaher Limited, as a Seizures Manager, at their office at Virginia House, Weston Road, Crewe, Cheshire CW1 6GH. Gallaher Limited is a member of the JT International group of companies. Part of my role as a Seizures Manager includes identifying counterfeit and genuine tobacco products bearing trademarks owned by the JT International Group of companies, including JT International SA, Japan Tobacco Inc. and Gallaher Limited. As part of my employment responsibilities, my employer has directed me to assist regulatory and enforcement bodies, upon their request, in matters relating to the supply of tobacco products by Gallaher Limited and its affiliate companies by providing technical analysis of suspected counterfeit products. I liaise frequently with regulatory and enforcement bodies advising on how to identify counterfeit tobacco products.

From my experience as a Seizures Manager, I am familiar with tobacco products produced by the JT International group of companies, including the methods of manufacture and packaging of those products and the trademarks that are applied to them. I am therefore able to examine and identify counterfeit tobacco products from genuine tobacco products manufactured by the JT International group of companies.

The JT International group of companies marks their products at the time of manufacture for commercial purposes.

I have been provided with samples of a seizure by Vicky Conlon, Norfolk Trading Standards. I received the samples on 26 October 2016. The contents were as follows:

 (Signature of Witness)

JTI UK

JTI's UK trading company is Gallaher Limited  
Virginia House, Weston Road, Crewe, Cheshire, CW1 6GH, UK  
Telephone +44(0)1270 504500  
Registered in England: Number 01501573  
Registered Office: Members Hill, Brooklands Road, Weybridge, Surrey, KT13 0QU, UK  
Telephone +44(0)1932 372000



Continuation of Statement of: .....Kathryn Sweeney.....

Transit Seal	Exhibit	Description
P00747743	KSH10/1	5 x 20 Winston Blue cigarettes
P00744981	KSH7/1	2 x 50g Amber Leaf Hand Rolling Tobacco
NCC08909	KSH17	1 x 200 Mayfair King Size cigarettes
P00747742	KSH16/1	2 x 20 Mayfair King Size cigarettes

The samples were held in secure storage at Gallaher Limited Crewe until I examined the samples on 14 November 2016.

Transit Seal	Exhibit	Description	Pack code
P00747743	KSH10/1	1 x 20 Winston Blue cigarettes	No Code
		4 x 20 Winston Blue cigarettes	SAE19A17

Based on my examination of the sample, I can confirm that the product in question was not manufactured by or with the authorisation of JT International SA, Japan Tobacco Inc. or Gallaher Limited and that Gallaher Limited did not authorise its sale or importation into the United Kingdom.

Further, having conducted a number of examinations of the product, including a comparison of the construction of the cigarettes and packaging, I can confirm that these packs do not conform to genuine Winston product.

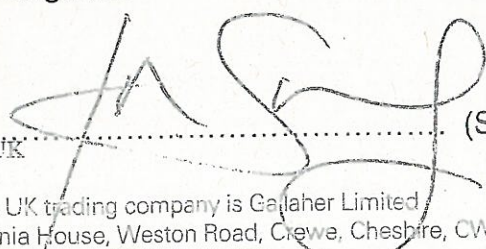
The product in question is therefore counterfeit.

I can state that Trade Mark **WINSTON** covering tobacco products in class 34 is owned in the UK by JT International SA (UK Registration No 1084827) which is a member of JT International Group of companies; while International Registration No 1057817 covering the European Union is owned by Japan Tobacco Inc.

Extracts of the following UK Trade Mark Registrations: 1084827 and International Registration No 1057817 are attached as exhibits 16/TS338/KS1 and 16/TS338/KS2.

Transit Seal	Exhibit	Description	Pack Code	Outer Code
NCC08909	KSH17	1 x 200 Mayfair King Size cigarettes	LID4BG2	LCCFDG1
P00747742	KSH16/1	2 x 20 Mayfair King Size cigarettes	LID4BG2	-

Based on my examination of the sample, I can confirm that the product in question was not manufactured by or with the authorisation of JT International SA or Gallaher Limited and that Gallaher Limited did not authorise its sale or importation into the United Kingdom.



(Signature of Witness)

JTI UK

JTI's UK trading company is Gallaher Limited  
 Virginia House, Weston Road, Crewe, Cheshire, CW1 6GH, UK  
 Telephone +44(0)1270 504500  
 Registered in England: Number 01501573  
 Registered Office: Members Hill, Brooklands Road, Weybridge, Surrey, KT13 0QU, UK  
 Telephone +44(0)1932 372000



Page No.....3....of.....4.....

Continuation of Statement of: .....Kathryn Sweeney.....

Further, having conducted a number of examinations of the product, including a comparison of the construction of the cigarettes and packaging, I can confirm that these packs do not conform to genuine Mayfair product.

The product in question is therefore counterfeit.

I can state that the Trade Mark **MAYFAIR** for cigarettes and tobacco products is owned in the UK by Gallaher Limited and used extensively in the UK by Gallaher Limited or its associated companies.

Extracts of the following UK Trade Mark Registrations: 2216236, 2521137 and 3065809 are attached as exhibits 16/TS338/KS3, 16/TS338/KS4 and 16/TS338/KS5.

Transit Seal	Exhibit	Description	Pouch Code
P00744981	KSH7/1	2 x 50g Amber Leaf Hand Rolling Tobacco	No Code

Based on my examination of the sample, I can confirm that the product in question was not manufactured by or with the authorisation of JT International SA or Gallaher Limited and that Gallaher Limited did not authorise its sale or importation into the United Kingdom.

The product in question is therefore counterfeit.

I can state that the Trade Mark **AMBER LEAF** for cigarettes and tobacco products is owned in the UK by JT International SA (a member of the JT International group of companies and an affiliate of Gallaher Limited) and used extensively in the UK by Gallaher Limited or its associated companies.

Extracts of the following UK Trade Mark Registrations: 1435131, 1571764, 2448892 and 2444963 are attached as exhibits 16/TS338/KS6, 16/TS338/KS7, 16/TS338/KS8 and 16/TS338/KS9.

In the process of analysing these samples I destroyed three individual Winston Blue cigarettes, two complete packs of 20 Winston Blue cigarettes, two individual Mayfair King Size cigarettes and two complete packs of 20 Mayfair King Size cigarettes.

On completion of my examination, I returned the samples under the seal numbers shown in the table below by post to Vicky Conlon, Norfolk Trading Standards on 16 November 2016:

(Signature of Witness)

JTI UK

JTI's UK trading company is Gallaher Limited  
Virginia House, Weston Road, Crewe, Cheshire, CW1 6GH, UK  
Telephone +44(0)1270 504500  
Registered in England: Number 01501573  
Registered Office: Members Hill, Brooklands Road, Weybridge, Surrey, KT13 0QU, UK  
Telephone +44(0)1932 372000

[jti.com/uk](http://jti.com/uk)



Page No.....4....of.....4.....

Continuation of Statement of: .....Kathryn Sweeney.....

Exhibit	Transit Seal	Description	Return Seal
KSH10/1.	P00747743	5 x 20 Winston Blue cigarettes	A592015
KSH7/1	P00744891	2 x 50g Amber Leaf Hand Rolling Tobacco	A592016
KSH17	NCC08909	1 x 200 Mayfair King Size cigarettes	A592017
KSH16/1	P00747742	2 x 20 Mayfair King Size cigarettes	A592018

(Signature of witness) .....

JTI UK

JTI's UK trading company is Gallaher Limited  
Virginia House, Weston Road, Crewe, Cheshire, CW1 6GH, UK  
Telephone +44(0)1270 504500  
Registered in England: Number 01501573  
Registered Office: Members Hill, Brooklands Road, Weybridge, Surrey, KT13 0QU, UK  
Telephone +44(0)1932 372000

[jti.com/uk](http://jti.com/uk)



# Current case details for UK Trade Mark Number: UK00001084827

Printed On: 15 November 2016

## Trade mark

**Trade mark:** WINSTON

**Status:** Registered

## Relevant dates

**Filing date:** 10 October 1977

**Date of entry in register:** 10 October 1977

**Renewal date:** 10 October 2018

## List of goods

**Class 34:** Cigarettes.

## Name and Address details

**Owner(s) name:** JT International S.A.  
Rue Kazem-Radjavi 8, 1202 Geneva,  
Switzerland

**Country of Incorporation:** Switzerland

[View owner's other trade marks](#)

**IPO representative name:** Marks & Clerk LLP  
1 New York Street, Manchester, United  
Kingdom, M1 4HD

## Publication details

**First advert:** Journal : 5287 Date of publication :  
28 December 1979

## Case details for trade mark WE00001057817

### Trade mark



Status: Protected

### Relevant dates

International registration date: 25 October 2010  
Date of Designation of the EU: 25 October 2010  
Date Protection Granted in EU: 11 October 2011  
Office of origin: Switzerland  
Renewal date: 25 October 2020

### Priority details

Priority date: 06 August 2010  
Priority country: Switzerland  
TM from which priority is claimed: 606014

### List of goods

Class 34: Raw or manufactured tobacco; smoking tobacco, pipe tobacco, rolling tobacco, chewing tobacco; snus; cigarettes, cigars, cigarillos; substances for smoking sold separately or mixed with tobacco for non-medical and non-therapeutic purposes; snuff; smokers' articles included in this class; cigarette paper, cigarette tubes and matches.

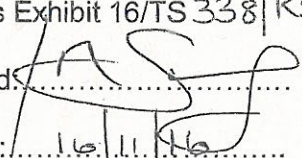
### Name and Address details

Holder's name: Japan Tobacco Inc.  
2-2-1 Toranomom, Minato-ku, Tokyo,  
Japan

WIPO representative name: JT International S.A., Intellectual  
Property

Rue de la Gabelle 1, CH-1211 Geneva 26, Switzerland

This is Exhibit 16/TS 338 | KS 2

Signed:  .....

Dated: 16/11/16 .....

Referred to in my Statement

The information displayed is our version of the details supplied by WIPO. For the official register of the case please refer to the WIPO website ([Click here](#)).



## Case details for trade mark UK00002216236

### Trade mark

Trade mark: MAYFAIR

Status: Registered

### Relevant dates

Filing date: 03 December 1999

Date of entry in register: 16 June 2000

Renewal date: 03 December 2019

### List of goods

Class 34: Tobacco, smoking substances; snuff; smokers' articles; cigarette papers; cigarette tubes; matches

### Name and Address details

Owner(s) name: Gallaher Limited

Members Hill, Brooklands Road,  
Weybridge, Surrey, KT13 0QU, United  
Kingdom

Country of Incorporation: United Kingdom

[View owner's other trade marks](#)

IPO representative name: Marks & Clerk LLP

1 New York Street, Manchester, United  
Kingdom, M1 4HD

### Publication details

First advert: Journal : 6317 Date of publication :  
01 March 2000

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Signed: 

Dated: 16/11/16

Referred to in my Statement

Case details for trade mark UK00002521137



Mark Description/Limitation: MARK DESCRIPTION: blue, light blue, silver

Status: Registered

Relevant dates

Filing date: 16 July 2009

Date of entry in register: 23 October 2009

Renewal date: 16 July 2019

List of goods

Class 34: Tobacco; whether manufactured or unmanufactured; smoking tobacco, pipe tobacco, hand rolling tobacco, chewing tobacco, snus tobacco; cigarettes, cigars, cigarillos; substances for smoking sold separately or blended with tobacco, none being for medicinal or curative purposes; snuff; smokers' articles included in class 34; cigarette papers, cigarette tubes and matches.

Name and Address details

Owner(s) name: Gallaher Limited  
Members Hill, Brooklands Road,  
Weybridge, Surrey, KT13 0QU, United Kingdom

Country of Incorporation: United Kingdom

[View owner's other trade marks](#)

IPO representative name: Marks & Clerk LLP  
1 New York Street, Manchester, United Kingdom, M1 4HD

Publication details

First advert: Journal 6798 Date of publication 14 August 2009

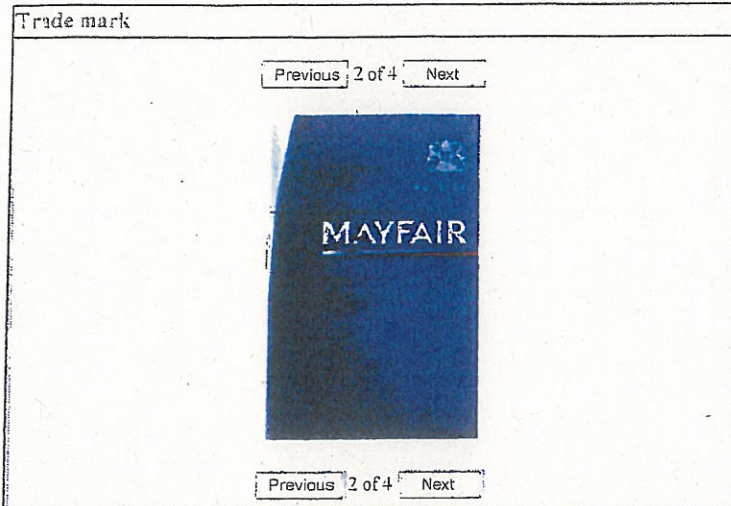
This is Exhibit 16/TS 338 | KS4

Signed:

Dated: 16/11/16

Referred to in my Statement

Case details for trade mark UK00003065809



Number of marks in series: 4

Status: Registered

Relevant dates

Filing date: 25 July 2014

Date of entry in register: 23 January 2015

Renewal date: 25 July 2024

List of goods

Class 34: Tobacco, whether manufactured or unmanufactured; smoking tobacco, pipe tobacco, hand rolling tobacco, chewing tobacco, snus tobacco; cigarettes, electronic cigarettes, cigars, cigarillos; snuff; smokers' articles; cigarette papers, cigarette tubes and matches.

Name and Address details

Owner(s) name: Gallaher Limited  
Members Hill, Brooklands Road,  
Weybridge, Surrey, KT13 0QU, United  
Kingdom

Country of incorporation: United Kingdom

[View owner's other trade marks](#)

IPO representative name: Marks & Clerk LLP  
1 New York Street, Manchester, United  
Kingdom, M1 4HD


Publication details

First advert: Journal : 2014/047 Date of  
publication : 14 November 2014

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Signed: 

Dated: 16.11.16

Referred to in my Statement





### Case details for trade mark UK00001435131

**Trade mark**

**Trade mark:** AMBER  
LEAF

**Disclaimer:** Registration of this mark shall give no right to the exclusive use, separately, of the words "Amber" and "Leaf".

**Status:** Registered

**Relevant dates**

**Filing date:** 03 August 1990

**Date of entry in register:** 21 February 1992

**Renewal date:** 03 August 2017

**List of goods**

**Class 34:** Tobacco, whether manufactured or unmanufactured; substances for smoking sold separately or blended with tobacco, none being for medicinal or curative purposes; smokers' articles and matches; all included in Class 34; all for export from the United Kingdom other than to the Republic of Ireland; but not including cigars and cigarillos.

**Name and Address details**

**Owner(s) name:** JT International S.A.  
Rue Kazem-Radjavi 8, 1202 Geneva, Switzerland

**Country of Incorporation:** Switzerland

[View owner's other trade marks](#)

**IPO representative name:** Marks & Clerk LLP  
1 New York Street, Manchester, United Kingdom, M1 4HD

**Publication details**

**First advert:** Journal : 5892 Date of publication : 25 September 1991

This is Exhibit 16/TS338/K56

Signed: *[Signature]*

Dated: 16/11/16

Referred to in my Statement

## Case details for trade mark UK00001571764

### Trade mark

**Trade mark:** AMBER  
LEAF

**Disclaimer:** Registration of this mark shall give no right to the exclusive use, separately, of the words "Amber" and "Leaf".

**Status:** Registered

### Relevant dates

**Filing date:** 11 May 1994

**Date of entry in register:** 29 August 1995

**Renewal date:** 11 May 2021

### List of goods

**Class 34:** Tobacco, whether manufactured or unmanufactured; smokers' articles and matches; all included in Class 34 and all for sale in the United Kingdom and for export to the Republic of Ireland; but not including cigars and cigarillos.

### Name and Address details

**Owner(s) name:** JT International S.A.  
Rue Kazem-Radjavi 8, 1202 Geneva,  
Switzerland

**Country of Incorporation:** Switzerland

[View owner's other trade marks](#)

**IPO representative name:** Marks & Clerk LLP  
1 New York Street, Manchester, United  
Kingdom, M1 4HD

### Publication details

**First advert:** Journal : 6074 Date of publication :  
10 May 1995

## Case details for trade mark UK00002448892

<b>Trade mark</b>
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**Trade mark:** AMBER  
LEAF

**Status:** Registered

<b>Relevant dates</b>
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**Filing date:** 08 March 2007

**Date of entry in register:** 31 August 2007

**Renewal date:** 08 March 2017

<b>List of goods</b>
----------------------

**Class 34:** Tobacco, hand rolling tobacco, cigarettes, smokers' articles included in Class 34; but not including cigars and cigarillos.

<b>Name and Address details</b>
---------------------------------

**Owner(s) name:** JT International S.A.  
Rue Kazem-Radjavi 8, 1202 Geneva,  
Switzerland

**Country of Incorporation:** Switzerland

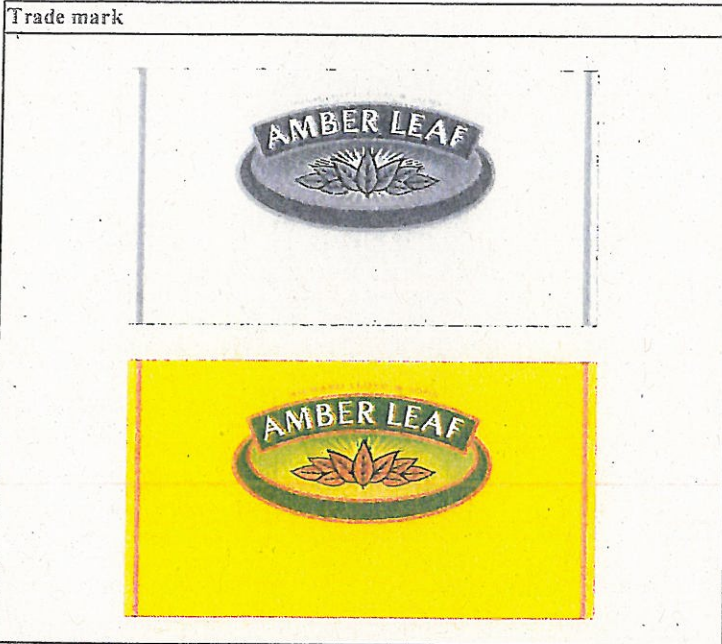
[View owner's other trade marks](#)

**IPO representative name:** Marks & Clerk LLP  
1 New York Street, Manchester, United  
Kingdom, M1 4HD

<b>Publication details</b>
----------------------------

**First advert:** Journal : 6684      Date of publication :  
18 May 2007

Case details for trade mark UK00002444963



Number of marks in series: 2  
Status: Registered

Relevant dates

Filing date: 29 January 2007  
Date of entry in register: 07 September 2007  
Renewal date: 29 January 2017

List of goods

Class 34: Tobacco, hand rolling tobacco, cigarettes; smokers' articles included in Class 34; but not including cigars and cigarillos.

Name and Address details

Owner(s) name: JT International S.A.  
Rue Kazem-Radjavi 8, 1202 Geneva, Switzerland  
Country of Incorporation: Switzerland

[View owner's other trade marks](#)

EPO representative name: Marks & Clerk LLP  
1 New York Street, Manchester, United Kingdom, M1 4HD

Publication details

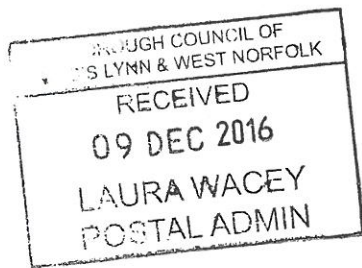
First advert: Journal : 6685 Date of publication : 25 May 2007

This is Exhibit 16/TS 338/KS9

Signed: 

Dated: 16/11/16

Referred to in my Statement



Appendix 3 to  
Report to Licensing Sub-Committee  
Re: Kubus 119 London Road, King's Lynn  
Dated 4th January 2016

**CON ST A B U L A R Y**  
*Our Priority is You*

Kings Lynn and West Norfolk District  
Council,  
Kings Court,  
Chapel Street,  
Kings Lynn,  
Norfolk,  
NR30 1EX

5<sup>th</sup> December 2016

Norfolk Constabulary

Licensing Team  
Bethel Street Police Station  
Bethel Street  
Norwich  
NR2 1NN

Tel: 01603 276024  
Fax: 01603 276025  
Email: [licensingteam@norfolk.pnn.police](mailto:licensingteam@norfolk.pnn.police)

[www.norfolk.police.uk](http://www.norfolk.police.uk)  
Non-Emergency Tel: 101

**Kubus, 119 London Road, Kings Lynn**

Dear Licensing Team,

Police have received the review application from trading standards for the above premises. The Licensing Inspection was conducted by trading standards and police and the evidence presented is the same from both authorities. To that end this letter is in support of the objection raised by Trading Standards regarding the crime and disorder licensing objective. The premises are being used for the sale and storage of smuggled goods namely illegally imported cigarettes.

Yours sincerely

Chris Brooks,  
Police licensing officer

Borough Council of  
**King's Lynn &  
West Norfolk**



## **Licensing Act 2003**

### **Notice of Application for Review of a Premises Licence**

<b>Premises:</b>	<b>Kubus 119 London Road King's Lynn PE30 5ES</b>
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**Notice is hereby given that the Borough Council of King's Lynn & West Norfolk has received an application for a Review of the Premises Licence in respect of the above named premises under Section 51 of the Licensing Act 2003.**

**The Grounds of the application for review are:**

**That the 'Prevention of Crime & Disorder' licensing objective is undermined because Trading Standards have received intelligence that the premises is involved in the sale and storage of smuggled tobacco products.**

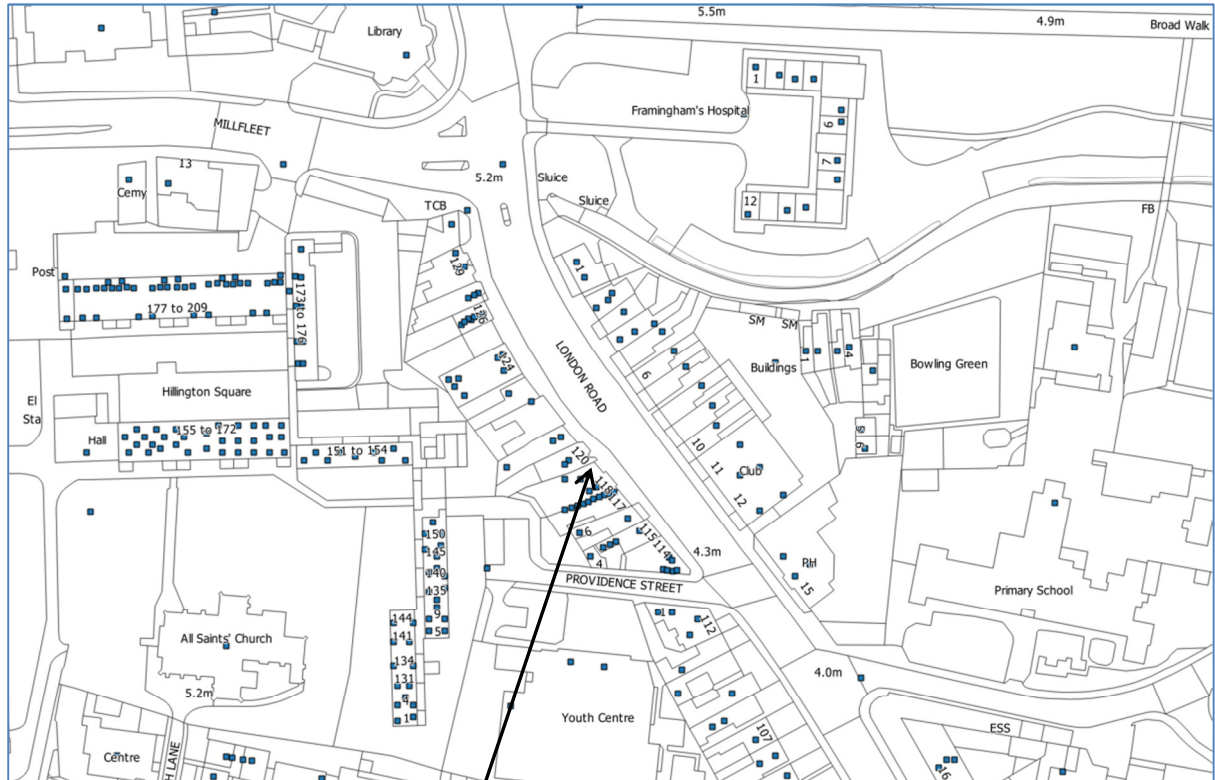
**Anyone who wishes to make representations regarding this application should do so in writing to Environmental Health – Licensing, Borough Council of King's Lynn & West Norfolk, King's Court, Chapel Street, King's Lynn PE30 1EX no later than the 21<sup>st</sup> December 2016.**

**The application can be viewed on arrangement with the Licensing Team at the Council's Office on (01553) 616200.**

**It is an offence under Section 158 of the Licensing Act 2003, knowingly or recklessly to make a false statement in connection with an application to which a maximum fine of £5000 is liable on summary conviction.**

Appendix 5 to  
Report to Licensing Sub-Committee  
Re: Kubus, 119 London Road, KL  
Dated 4<sup>th</sup> January 2017

**Location Map – Kubus, 119 London Road, King’s Lynn**



**Kubus**