

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

URN

Statement of: Jacqueline BOOTH

Age if under 18: Over 18 (*if over 18 insert 'over 18'*)

Occupation: POLICE OFFICER

This statement (consisting of six page(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: J Booth (witness)

Date: 1st September 2022

I am the Force Licensing Manager for North Yorkshire Police and have responsibility for managing a team of Police staff who deliver front-line operational services to over 6,500 premises across eight Licensing Authority areas within North Yorkshire and the City of York.

I am authorised to act on behalf of the Chief Constable of North Yorkshire Police in matters relating to the Licensing Act 2003, Gambling Act 2005, Scrap Metal Dealers Act 2014 and Local Government (Miscellaneous Provisions) Act 1982.

I have completed the Institute of Licensing Professional Licensing Practitioner's Qualification and the British Institute of Inn keeping Awarding Body's Award for Licensing Practitioner's (Alcohol).

My role involves working with statutory partners and key stakeholders to ensure the promotion of the four Licensing objectives, The Prevention of Crime and Disorder, The Prevention of Public Nuisance, Public Safety, and the Protection of Children from harm, alongside compliance with the Licensing Act 2003.

On Monday 8th June 2020, I was on duty when I participated and represented North Yorkshire Police at a remote Licensing Hearing arranged by City of York Council in relation to the review of Premises Licences for the following premise:-

Regency Restaurant 16 Barbican Road York.

Members of the Licensing sub-committee heard representations from the Licensing Authority, and North Yorkshire Police and the determination from the hearing was that the Premises Licence at 16 Barbican Road should be revoked.

On 10th March 2021 North Yorkshire Police received notification from City of York Licensing Authority in respect of an application for a new Premises Licence for a restaurant, takeaway and karaoke bar at 16 Barbican Road York, Sky Blue. The applicant being Mr Kheng Koay. Mr Koay provided information that there would be "wholly new management team in place" and following negotiations robust and enforceable conditions to mitigate risks were agreed with the applicant.

On 29th April 2021 a remote hearing was held in respect of the application for Sky Blue, and the full hearing is available in the public domain on the City of York Council Website under Licensing Hearing Webcasts. I will return to this aspect later in my statement.

On 14th February 2022, I had sight of an email regarding an Operation Night investigation (operation night is North Yorkshire Police's response to investigations relating to reports of drink or needle spiking). The investigation advised that an allegation had been made from a female victim aged 16 years of age who believed she had been spiked whilst attending Karaoke at 16 Barbican Road York Sky Blue. (Appendix 8 refers to police incident and Appendix 9 refers to statement from victim).

The investigating officer PC1665 Souster advised that she was having difficulties obtaining the CCTV, to progress the investigation from the Premises.

I emailed her to advise of the Premises Licence Conditions and their obligations to comply with requests for CCTV and arranged for a member of my team PC Hollis to contact the Premises Licence Holder and Designated Premises Supervisor to advise that we required the CCTV.

On 15th February 2022 I checked the police incident and noted that the investigating officer had re-attended the Premises but still had been unable to obtain the CCTV, (Appendix 12 refers).

Following this update and to secure and preserve evidence I advised PC Souster to seize the CCTV hard drive as it was within the 28-day time frame that the Premise Licence Condition requires them to retain footage.

I requested PC Bolland and PC Hollis to attend 16 Barbican Road on 18th February 2022 to ensure the Premises were complying with the Premise Licence Conditions. Mr Koay the DPS was not present, but Mr Man Wai Leung (known as Kevin) was present. Leung was part of the previous management team when the Premises operated under the Regency.

Referring back to the hearing webcast Mr Koay's legal representative Mr Craig advised the hearing members of the following:-

28mins 50 secs " A condition that has been offered and agreed excluding previous management from the Premises and that is absolutely quite right.. "

Despite the above assurance during the Licensing hearing on 29th April 2021 it appeared that a member of the management Mr Leung who had been involved with the Premise when it was operating under "The Regency" was still working and in a position of responsibility at the Premises.

Both officers advised me that Mr Koay was not present and that breaches of the Premises Licence were found at the time and as a result a Section 19 Closure Notice under the Criminal Justice and Police Act 2001 was issued. (See Appendix 13 Statement from PC Bolland and Appendix 19 statement of PC Hollis).

On 15th June 2022 following an update from PC Souster that the CCTV from Sky Blue had been forensically examined and contained no footage from 21st January 2022, I contacted Mr Koay first by telephone to discuss the concerns around the criminal investigation being frustrated by failings from the Premise Licence Conditions not being adhered to. I followed this up with a written email which I produce as exhibit JB/03 (Appendix 15).

On 16th June 2022 I contacted Mr Koay by text and phone to arrange a meeting at the Premises on Tuesday 21st June 2022 at 1200hrs.

On 21st June 2022 I attended Sky Blue 16 Barbican Road York, in company with PC Kim Hollis the Licensing Officer for York. I met with Mr Koay and present was his legal representative Mr Walker and a male I know to be Mr Man Wei Leung (known as Kevin). I have met Leung previously at the premises when it was operating under the business name of "The Regency".

My encounters with Mr Leung previously have included issuing him a Section 19 Notice under the Criminal Justice and Police Act 2001 on 2nd December 2020 when he was the person in charge of the Premises operating under "The Regency" for breach of Premise Licence Conditions.

I informed Mr Koay that the reason I was in attendance was due to the concerns that had been highlighted to me from the criminal investigation going back to the incident on 21st January 2022, which had highlighted the failings of the Premise to adhere to Premise Licence Conditions. This had resulted in a visit from Police Licensing on 18th February 2022 and a Section 19 Notice that had been issued by PC Hollis.

I explained that due to breaches of the Premises Licence, the concerns highlighted as part of the criminal investigation in that a 16-year-old had been served alcohol at the premise I had concerns that the Licensing Objectives were being seriously undermined, and my intention was to seek a review of the Premises Licence, and for a Licensing committee to determine if the Premises was fit to operate under a Premise Licence.

Mr Walker legal representative advised that it was his understanding that the breaches relating to the previous Section 19 notice issued in February had been rectified and I explained that whilst present I would conduct a Section 179 inspection to ascertain if there was compliance but that the previous Section 19 was still open as all aspects had not been complied with.

I began by asking Mr Koay if he could show me the Premise Licence summary which is required to be on display in a visible place on the Premises. He was unsure as to where this was located and he sought advice from Mr Leung who advised it was on display on a shelf at the Bar and Mr Koay then went to retrieve it.

I then commenced going through the conditions at Annex 2 on the Premises Licence.

The first condition related to CCTV. I asked Mr Koay if he could show me footage from the 25th of May 2022 (this is per the condition to retain recordings for 28 days). He again asked Mr Leung to do this stating he was the person who deals with the CCTV. The CCTV is not stored on one hard drive it is retained over several and Mr Leung had to take hard- drives out and change them over. It became apparent though that there was no footage for the Karaoke Rooms from the 25th of May 2022, placing them in breach of the Premise Licence Condition.

I requested Mr Koay produce staff training records as per condition 2 on the Premise Licence. He produced names of staff who he stated were current employees but had no training records. The training records also did not include the requirements from the Licence.

Mr Koay was asked by PC Hollis to explain how he delivered the training and he said that he leaves that responsibility to Mr Leung but on occasions when he has done it, he hands the member of staff a page to read regarding age verification and they sign the document. There were no documents in relation to the Premises Operating Challenge 25, the conditions attached to the Licence , the permitted Licensable Activities, the licensing objectives, or the opening times of the venue.

I requested Mr Koay produce to me the refusals and incident register. He again did not appear to know where this was located and spoke in Chinese to Mr Leung about this and then produced some pieces of paper from a folder. There were no details of PC Hollis's visit in February and no details of any incidents recorded.

I went on further to identify other breaches and subsequently issued a further Section 19 Closure Notice to Mr Koay for failing to comply with the following conditions on the Premises Licence:-

1.A digital colour CCTV system will be installed to cover the premises and recorded coverage will include all areas (including outside areas) to where public have access to consume alcohol.

• It will be maintained, working, and recording at all times when the premises are open.

The recordings should be of good evidential quality to be produced in Court or other such hearing.

• Copies of the recordings will be kept available for any Responsible Authority for 28 days. Subject to Data Protection requirements.

• Copies of the recordings shall be made available to any Responsible Authority within 48 hrs upon request. Subject to Data Protection requirements.

• Copies of the recordings will display the correct time and date of the recording.

It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV system at the request of the police or responsible authority. Subject to Data Protection requirements.

2. Documented staff training will be given regarding staff's obligation under the Licensing Act in respect of the:-

- Retail sale of alcohol
- Age verification policy
- Conditions attached to the Premises Licence
- Permitted Licensable activities
- The Licensing objectives and
- The Opening Times of the venue.

Such records shall be kept for a minimum of one year and will be made available immediately upon request from any Responsible Authority.

3. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals of alcohol sales to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises.

Such records shall be kept for at least one year. [For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry]: They will be made available immediately upon a reasonable request from any responsible authority

8.When SIA Door Supervisors are on duty, they shall sign in and out of the premises in a register and shall provide their full name and SIA number.

18. All copies of relevant documents for members of staff will be retained for a period of 24 months post termination of employment and will be made available to Police, Immigration or Licensing Officers on request.

23. Where the karaoke rooms are being used there shall be at least one member of staff permanently situated on each floor of the venue on which the room is being used and the member of staff will monitor the rooms that are in use and will enter each room that is occupied no less than every 30 minutes.

Appendix 19 refers to the Section 19 Closure Notice.

On 30th June 2022 I submitted a Review application in respect of Sky Blue to City of York Licensing Authority as I was concerned that the Licensing objectives had been seriously undermined, following the issue of two Section 19 Closure Notices on 18th February 2022 and 21st June 2022, for failing to comply with Premise Licence Conditions and concerns that a person under 18 had been served alcohol and been involved in an incident which had resulted in a police investigation at the Premises.

On Tuesday 5th July 2022 I re-attended Sky Blue following a pre-arranged appointment, to follow up the Section 19 Notice issued on 21st June 2022, in company with PC 1520 Bolland and Nigel Parkin Senior CCTV officer Regional Scientific Support West Yorkshire Police.

At this time I discussed with Mr Koay, who was in company with his legal representative Mr Walker and also Mr Leung one of the managers if the Section 19 Notice had been complied with. Appendix 18.

Mr Koay advised me that in respect of the CCTV, he had upgraded the system to ensure that there was sufficient capacity to comply with the Premise Licence conditions regarding storage for 28 days. Nigel Parkin examined the CCTV but as it had only been installed on 1st July 2022, whilst the hard drive appeared to have storage capacity to retain storage for 28 days, he advised that I checked the system was recording once 28 days had lapsed. The system was recording at the time of my visit and I did however check footage from the previous weekend Saturday 2nd July 2022.

Whilst checking the CCTV recordings for this date I noted the following breaches in respect of Premise Licence conditions at Annex 2:-

"7. At all other times the need for SIA registered door staff shall be determined in accordance with a risk assessment, to be carried out by the Designated Premises Supervisor and or the Premises Licence Holder. When employed, door staff will wear high visibility arm bands".

At 22:27hrs on 2nd July 2022 a male identified as working as SIA staff at the premises was noted to not be wearing any high visibility arm band in line with the above condition. There was nothing from the footage to identify him as SIA and he looked like a customer at the premises from the way he was dressed with nothing highlighting him as SIA.

A further breach was identified as follows in respect of condition 24:-

"24. The members of staff situated on the first and second floor shall be in direct radio link with the door staff and will ensure that all alcohol consumed in the karaoke rooms is served by way of waiter/ waitress service. All users of the karaoke rooms will have evidence of their room hire on their food bill as suitable evidence of food purchase and use of the karaoke rooms will be limited to customers who have consumed a meal in the restaurant, excluding snacks. No dancing is to take place on the ground floor of the building at any time."

From viewing CCTV footage between 22:30 hrs and 22:32 hrs on 2nd July 2022 two separate customers were observed purchasing drinks from the bar and not being served by way of waiter/waitress service in line with the above condition. At this time I identified Mr Leung, one of the managers working behind the bar who served one of the customers.

I advised Mr Koay that given we were present to check compliance with a Section 19 Notice issued for previous breaches of Premise Licence conditions that to identify further breaches were taking place was extremely concerning and that as Section 136 offences of unauthorised licensable activities had taken place, I would arrange a formal police interview at the police station to investigate the criminal matter.

I continued to then check compliance with the Section 19 Notice in respect of the six conditions which had previously not been complied with. Mr Koay was advised as per the information on the notice that he had seven days to comply but due to operational demands, by the time of the police follow up visit he had had fourteen days to rectify the breaches and again the appointment was pre-arranged. However despite the additional time he had to comply of the six conditions not being complied with only one had been rectified, condition three:-

"3. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals of alcohol sales to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises."

I advised Mr Koay that he would be formally interviewed for the Section 136 offence of unauthorised Licensable activities for failing to comply with Premise Licence conditions pertaining to the Section 19 Notice of 21st June 2022 and the two further offences I had identified from 2nd July 2022.

At 1032hrs on 20th July 2022 I was on duty at Fulford Road Police Station in company with PC1720 Furlong when I commenced an interview under Caution with Mr Koay in respect of the following offence:-

Section 136 – Unauthorised (1)A person commits an offence if—

(a)he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, meaning a premises licence

Mr Koay had legal representation during the interview and fully admitted the offence of breach of Premises Licence conditions on 18th February 2022 (date of first Section 19 Notice issued by PC Hollis) , 21st June 2022 and 2nd July 2022.

The interview concluded at 1137hrs and Mr Koay was advised he would be reported for the offence in question.

On 21st July 2022 I conducted enquiries with North Yorkshire Fire and Rescue Service and emailed Mr Kevin Caulfield Watch Manager at York. Appendix twenty refers to the email correspondence.

Mr Caulfield advised that the Fire Service had prosecuted Mr Koay for breach of Fire Regulations in respect of a Premises Mr Happy 53 Blossom Street York for which he was the Premise Licence Holder, this resulted in Mr Koay being convicted on 31st July 2018, see attached Appendix 21 (Fire Service prosecution document and Appendix 22 Fire Service press release following the conviction).

I would refer members again to the webcast of the Sky-Blue hearing when one of the representors at the hearing asked which premises Mr Koay had been involved in. His legal representative Mr Craig asks Mr Koay at 35 mins to which he replies, "Mr Happy and Chunking Hotpot in York". Mr Craig goes on to further say "There have been no issues have there? " Mr Koay replies "No No no issues ".

Clearly Mr Koay has misled members in his response to this question given the information provided from North Yorkshire Fire and Rescue.

North Yorkshire Police have conducted enquiries and Mr Koay is not the Premise Licence Holder for Chunking HotPot nor has he ever been. He has been the Designated Premises Supervisor when the licence was applied for on 23rd December 2019 until 27th May 2021.

On 28th July 2022 I was on duty in company with PC 1520 Bolland when I attended Sky Blue, to check the compliance with the CCTV retention, following the upgrade of the system hard drive referred to above. Present at the Premise was Mr Leung who showed me the CCTV and I confirmed the system was recording and storing data for the required 28 period. I asked if Mr Koay was on site to speak to him about the outstanding Section 19 Notice however Leung advised he was not at the Premises. I informed Leung I would contact Mr Koay direct to arrange a meeting to go through the Section 19 Notice. I conducted no further checks at this time.

Following a Police disposal decision in line with the Director of Public Prosecution Guidelines, on Thursday 4th August 2022 at 1200hrs I was on duty at Fulford Road Police Station when I issued Mr Koay a Simple Police Caution in relation to the Section 136 offences for which he had been interviewed on the 20th of July 2022.

Mr Koay was advised that I would arrange to visit his premises Sky Blue on Monday 8th August 2022 to check compliance with the Section 19 Notice still outstanding from 21st June 2022.

On Monday 8th August 2022 at 1100hrs I attended the premise in company with PC 1520 Bolland. Mr Koay, Mr Leung, and Mr Walker legal representative where all present.

Checks with the outstanding Section 19 Notice revealed that Premise Licence Conditions were still not being adhered to as listed in the Premise Licence authorisation. The following had still not been complied with from the Section 19 notice:-

"2. Documented staff training will be given regarding staff's obligation under the Licensing Act in respect of the:-

- Retail sale of alcohol
- Age verification policy
- Conditions attached to the Premises Licence

- Permitted Licensable activities
- The Licensing objectives and
- The Opening Times of the venue.

Such records shall be kept for a minimum of one year and will be made available immediately upon request from any Responsible Authority."

Working on information provided to me by Peninsula the HR company contracted to provide support in respect of staff training and management I identified that seven members of staff had no training records.

Furthermore in respect of condition 18 (below) no HR records could be provided for a member of staff that Mr Koay claimed had left the premises or any staff rotas in respect of what staff members had worked on what dates.

"18. All copies of relevant documents for members of staff will be retained for a period of 24 months post termination of employment and will be made available to Police, Immigration or Licensing Officers on request."

I examined the CCTV system from Saturday 6th August 2022 covering the Karaoke rooms and established Condition 23 was not being complied with:-

"23. Where the karaoke rooms are being used there shall be at least one member of staff permanently situated on each floor of the venue on which the room is being used and the member of staff will monitor the rooms that are in use and will enter each room that is occupied no less than every 30 minutes."

Footage was viewed from 21:10hrs until 22:18hrs to ascertain in line with time sheet checks if a member of staff entered the room to check on customers present. Despite time sheets showing the room was checked at 21:20hrs and 21:30hrs no member or staff was seen on the CCTV as per the above to enter the room.

The Section 19 Notice had still not been complied with from 21st June 2022, and despite being issued a Simple Caution on 4th August 2022 for Section 136 offences at Sky Blue, Mr Koay continued to allow further breaches of the Premise Licence conditions on 6th August 2022, a further 136 offence of unauthorised licensable activity.

I followed this visit up with an email to Mr Koay on 9th August 2022 which I produce as Appendix 24.

In respect of Sky Blue, there has been continued significant breaches of Premises Licence conditions which Mr Koay as the Premise Licence Holder and Designated Premises Supervisor has responsibility for.

On every occasion that police have attended the premises Mr Leung has been present and appears to be the person with day-to-day responsibility.

Correspondence with Peninsula reveal that he has been in continual employment at the premises since 1st December 2021. As stated above he was part of the management and the previous issues which lead to the revocation of the previous licence when it was operating under "The Regency". Appendix 25.

Mr Koay has repeatedly failed to ensure compliance with the Premise Licence Conditions and was fully aware that due to the history associated with this Premise it would be under scrutiny from Responsible Authorities. Despite the reassurances provided by him and his legal representative at the hearing it is the view of North Yorkshire Police that he misled Responsible Authorities and members of the Licensing Sub-committee in that previous management have not been replaced and continue to operate the venue.

North Yorkshire Police are of the position that the Premise Licence should be revoked for the reasons highlighted above.

Signature: J Booth

Signature witnessed by:

<u>Witness contact details</u>		URN				
Name of witness:						
Home Address:		Postcode:				
E-mail address:		Mobile:				
Home Telephone Number:		Work Telephone Number:				
Preferred means of contact (<i>specify details for vulnerable/intimidated victims and witnesses only</i>):						
Gender:		Date and place of birth:				
Former name:		Ethnicity Code (16 + 1):				
DATES OF WITNESS NON-AVAILABILITY:						
<u>Witness care</u>						
a) Is the witness willing to attend court?		If 'No', include reason(s) on form MG6 .				
b) What can be done to ensure attendance?						
c) Victims Only – does the victim fall into one of the 3 priority categories who are eligible for enhanced care under the Code of Practice for Victims of Crime? 1) Victims of most serious crimes <input type="checkbox"/> 2) Persistently targeted victims <input type="checkbox"/> 3) Vulnerable and intimidated <input type="checkbox"/> .						
If any of the boxes are checked then Inform CPS at pre-charge stage on MG3, and on MG11 at all other stages and/or where necessary MG2						
d) Witness Only - Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness? <input type="checkbox"/> (<i>youth under 18; witness with mental disorder, learning or physical disability; or witness in fear of giving evidence or witness is the complainant in a sexual offence case</i>) If they do submit MG2 with file in anticipated not guilty, contested or indictable only cases.						
e) Does the witness have any particular needs? If 'Yes' what are they? (<i>Disability, healthcare, childcare, transport, disability, language difficulties, visually impaired, restricted mobility or other concerns?</i>).						
<u>Witness Consent (for witness completion)</u>						
a) The Victim Personal Statement scheme (victims only) has been explained to me		Yes <input type="checkbox"/>		No <input type="checkbox"/>		
b) I have been given the Victim Personal Statement leaflet		Yes <input type="checkbox"/>		No <input type="checkbox"/>		
c) I have been given the leaflet "Giving a witness statement to the police..."		Yes <input type="checkbox"/>		No <input type="checkbox"/>		
d) I consent to police having access to my medical record(s) in relation to this matter (<i>obtained in accordance with local practice</i>)		Yes <input type="checkbox"/>		No <input type="checkbox"/>		N/A <input type="checkbox"/>
e) I consent to my medical record in relation to this matter being disclosed to the defence		Yes <input type="checkbox"/>		No <input type="checkbox"/>		N/A <input type="checkbox"/>
f) I consent to the statement being disclosed for the purposes of civil, or other proceedings if applicable, e.g. child care proceedings, CICA		Yes <input type="checkbox"/>		No <input type="checkbox"/>		N/A <input type="checkbox"/>
g) Child witness cases only. I have had the provision regarding reporting restrictions explained to me. I would like CPS to apply for reporting restrictions on my behalf.		Yes <input type="checkbox"/>		No <input type="checkbox"/>		N/A <input type="checkbox"/>
'I understand that the information recorded above will be passed on to the Witness Service, which offers help and support to witnesses pre-trial and at court'.						
Signature of witness:		PRINT NAME:				
Signature of parent/guardian/appropriate adult:		PRINT NAME:				
Address and telephone number (of parent etc.), if different from above:						
Statement taken by:		Time and place statement taken:				



RESTRICTED (when complete)

MG11



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RESTRICTED (when complete)