

**TYNE AND WEAR FIRE AND RESCUE AUTHORITY**

**Item No 9**

**MEETING: 11<sup>TH</sup> DECEMBER 2017**

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**SUBJECT: RESULTS OF PROSECUTIONS**

**JOINT REPORT OF: CHIEF FIRE OFFICER/CHIEF EXECUTIVE (CLERK TO THE  
AUTHORITY)**

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**1 INTRODUCTION**

- 1.1 The purpose of this report is to update members in relation to the outcome of Fire and Rescue Authority prosecutions that have come before the local courts this year.

**2 USMAN ALI – RAY'S DISCOUNT STORE**

- 2.1 In August 2016, a fire safety audit was undertaken at premises known as Ray's Discount Store in Vilette Road, Sunderland, as part of the Service's Risk Based Assessment Programme. The manager responsible for the premises – Mr Usman Ali – was not present at the time, therefore a full audit could not be undertaken. Repeated attempts to communicate with Mr Ali to arrange for a full audit to be carried out were unsuccessful.
- 2.2 In view of this, a formal request for information under Article 27 of the Regulatory Reform (Fire Safety) Order 2005 was served on Mr Ali by way of a letter dated 24<sup>th</sup> October 2016. The request required Mr Ali to provide key information in relation to the premises to enable the Fire and Rescue Service to identify the Responsible Person for the premises for the purposes of the 2005 Order and to enforce the fire safety provisions of that Order.
- 2.3 Mr Ali was required to provide, within a period of 14 days, information regarding the identity of the employer of the persons working at the premises, supported by a copy of the Employer's Liability Compulsory Insurance certificate for the premises and a copy of any lease in relation to the premises (or, if no lease, to indicate the legal basis for occupation, for example as freeholder). Additionally, he was asked to provide a copy of any fire Risk Assessment drawn up in relation to the premises, together with details of suitable emergency routes and exits and copies of all paperwork pertaining to maintenance and testing of physical fire precautions (such as the servicing of fire fighting equipment) and

fire training provided to employees. However, no reply was received within the specified period, either to furnish the information requested or to explain why it could not be provided.

- 2.4 A further Article 27 notice was served upon Mr Ali on 23<sup>rd</sup> November 2016, repeating the previous request for information. Once again, no response was received.
- 2.5 Failure to comply with the requirements of an Article 27 notice constitutes an offence under Article 32(2)(e) of the Fire Safety Order, which is punishable on summary conviction by a fine of up to £1,000. Therefore, in view of Mr Ali's repeated failure to respond to such notices, proceedings were commenced against him in the Sunderland Magistrates' Court.
- 2.6 The matter first came before the Court on 29<sup>th</sup> March 2017, when Mr Ali failed to attend. The matter was proved in his absence and the maximum fine of £1,000 was imposed for each offence, together with an order to pay prosecution costs of £1,380 and a victim surcharge of £120.
- 2.7 However, Mr Ali subsequently contacted the court and made a statutory declaration that he had been unaware of the proceedings against him. The conviction was therefore set aside and the proceedings re-opened.
- 2.8 Mr Ali then entered pleas of not-guilty to the two offences charged against him, and at a hearing on 28<sup>th</sup> June, his solicitor asked the court to consider a preliminary point as to whether the two Article 27 requests had been properly served. After submissions had been made by both parties on that point, the District Judge hearing the matter indicated that service had been effected in accordance with the statutory requirements. In view of this, Mr Ali then changed his pleas to guilty.
- 2.9 On this second occasion, Mr Ali was fined the sum of £500 for each of the two offences and was ordered to pay costs of £600. In passing sentence, the District Judge indicated that he had given credit for the entering of guilty pleas and the fact that the Defendant was a hard-working individual, providing employment for a number of people and therefore contributing to the community. However, the District Judge also took account of the fact that Mr Ali's failings had resulted in the fire safety audit not being carried out, therefore presenting un-assessed risks to employees and members of the public.

### **3 KATHERINE HIGH – VIVENTE**

- 3.1 After receiving information regarding premises known as 'Vivente' at Hudson Road, Sunderland, Fire Authority officers carried out an inspection on 22<sup>nd</sup> April 2015.
- 3.2 The premises – a four storey, mid-terraced property - were at that time being operated as a private members' club or 'swingers' club and upon arrival the two officers were admitted by two male members of staff via a locked door, which was then re-secured behind them. One of the two staff members went to find the owner whilst the others accompanied the officers on their inspection, leaving the locked door unattended.
- 3.3 In view of a number of serious fire safety concerns, the premises owner – Katherine High – was persuaded to voluntarily close the premises and the customers then present (approximately 15 in number) left the building. The immediate concerns included use of portable heaters, use of extension leads, smoking inside the premises and lit candles in the basement, together with netting and other wall linings which would have contributed to the development of a fire. There were excessive travel distances from upper floors via an escape route, combustible items on that route, tripping hazards and fire doors without self-closing devices. There was a single route to the ground floor, where the rear final exit was locked shut from the outside by means of a roller shutter and the alternative exit via the front door was also locked shut with no key immediately available. Additionally, the fire alarm system was not working.
- 3.4 A full fire safety audit was carried out the following day. It was noted that, having been converted from two, originally separate properties, the premises had two separate basement areas, which were found to contain various pieces of equipment for use by club members, including restraining equipment. The basements also contained storage heaters and candles and the staircase from the basement of no. 3 was lined with black plastic sheeting. There was also evidence of exposed wiring and extension cables, together with breaches in compartmentation which would have permitted the spread of heat and smoke to upper floors and to the next door premises. Additionally, no fire detection was provided in the basement areas. At ground floor level, final exits were non-compliant with relevant guidance – one requiring the raising of a roller shutter and having a drop of approximately one metre to street level and one leading to an enclosed smoking area, secured by a fence and a gate. A door leading to the adjoining property at no. 2 Hudson Road was not 60 minute fire resistant and would have resulted in the passage of fire and toxic smoke to adjacent premises in less than that time. A single staircase led to the upper floors, where there was a bar and locker room together with themed rooms such as a mock

'jail' and lockable rooms containing beds and restraining equipment. There was a build-up of combustible items on the means of escape and a number of fire-resistant doors did not have self-closing devices or intumescent strips and seals, which would have allowed smoke and flames to enter the protected staircase in the event of a fire. The fire alarm system was not in working order and Ms High did not know how to test it and could not recall if it had ever been serviced or tested. Similarly, no evidence was available to show that the emergency lighting or fire fighting equipment was being maintained and there was no evidence of fire safety arrangements being made, no fire procedure or emergency plan and no evidence of fire drills or staff training. During interview, Ms High indicated that on theme nights there could be as many as 110 persons within the premises and that beds on the premises were utilised by guests who may have travelled some distance to the club or who had become too drunk to drive home and who wished to sleep there overnight.

- 3.5 As a result of these serious failings, Ms High was charged with five offences under the Regulatory Reform (Fire Safety) Order 2005, these relating to failure to take general fire precautions, failure to equip the premises with appropriate means of detecting and giving warning of fire, failure to carry out a suitable and sufficient fire risk assessment, locking of fire exits and obstruction of escape routes.
- 3.6 The matter came before the Sunderland Magistrates' Court on 7<sup>th</sup> June 2017, when Ms High pleaded guilty to all five offences. However, the magistrates decided, in view of the seriousness of the matter, that she be committed to the Crown Court for sentence.
- 3.7 A sentencing hearing subsequently took place at Newcastle Crown Court on 9<sup>th</sup> August 2017. Ms High received a six month prison sentence suspended for 12 months, with a rehabilitation activity requirement of up to 20 days and an electronically monitored curfew of 9pm to 6am for three months.

#### **4 RECOMMENDATION**

- 4.1 Members are asked to note the contents of the above report.