

BUCKINGHAMSHIRE COUNCIL AND SURREY COUNTY COUNCIL

TRADING STANDARDS JOINT COMMITTEE

DATE: 18 MAY 2023

LEAD OFFICER: DAVID PICKERING

SUBJECT: TRADING STANDARDS TOBACCO WORK

SUMMARY OF ISSUE:

The Children and Young Person's (Protection from Tobacco) Act 1991 requires Local Authorities to consider, at least once in every period of twelve months, the extent to which it is appropriate to carry out enforcement action to ensure that the provisions of the Children and Young Persons Act 1933, are effected. This seeks to prohibit the sale of cigarettes and associated items, such as nicotine delivery systems, to persons under the age of 18. This duty relates to tobacco enforcement only.

The Service undertakes work in this area supporting the delivery of the Public Health improvement outcomes and responsibilities that relate to the use of tobacco in order to help people to live healthy lifestyles; make healthy choices and reduce health inequalities.

This report considers the Service's work in relation to tobacco and associated products and is not restricted to the potential sale to children and young people.

RECOMMENDATIONS:

It is recommended that the Joint Committee notes and considers the report as a reflection of activity over the financial year 2022–2023 and endorses continued enforcement activities which will be undertaken in 2023– 2024.

REASON FOR RECOMMENDATION:

The Children and Young Person's (Protection from Tobacco) Act 1991 requires Local Authorities to consider, at least once in every period of twelve months, the extent to which it is appropriate to carry out enforcement action to ensure that the provisions of the Children and Young Persons 1933 Act, are effected.

DETAILS:

1. To ensure coherence and to maximise the impact of our work, Trading Standards link closely to Public Health led strategies to reduce tobacco consumption. The Trading Standards role is mainly in relation to tackling supply. However, increasing levels of innovation in the alternatives to tobacco, such as vapes, continue to provide constant challenges to us when assessing how the

legislation applies to them. We link into the regional tobacco groups and HMRC national initiatives.

2. Trading Standards are members of the Tobacco Control Alliance group in Buckinghamshire and Surrey. These groups of partners oversee the delivery of the Public Health Tobacco Control Strategies in both authorities and report back to the Health & Wellbeing Boards. With the ambition for Surrey to have the lowest smoking prevalence in England, the priorities include, among others; “helping young people to be tobacco free”; “tackling illicit tobacco” and “raising the profile of tobacco control”.

In partnership with our Public Health colleagues in Surrey the remit of the group has been extended recently to include alcohol issues as there are common areas of concern and the group will become a sub group of the combatting Drugs Partnership which we anticipate will raise the profile and encourage involvement from a wider range of partners.

The Surrey strategy for 2023-2026 is being developed and will reflect the priorities in the new national strategy (when released) as well as local ones.

The Buckinghamshire Tobacco Control Strategy “Towards a smoke free generation” was launched in June 2019 and we are supporting this by tackling the supply of illicit tobacco and supporting the Alliance group:

[Buckinghamshire-Tobacco-Control-Strategy-2019-2024.pdf](https://healthandwellbeingbucks.org/Buckinghamshire-Tobacco-Control-Strategy-2019-2024.pdf)
(healthandwellbeingbucks.org)

The four main themes of the Buckinghamshire Strategy are Prevention First, Supporting smokers to quit, Eliminating variations in smoking rates and effective enforcement, with an overall focus on key groups.

3. Tobacco use among young people is considered as risk-taking behaviour (by themselves as much as anyone else) and may be seen therefore as gateway-behaviour for other risk taking activities. These would include experimenting with alcohol and other illicit substances when this is combined with carrying offensive weapons and misuse of fireworks the resulting anti-social behaviour adversely affects how safe people feel in their own communities.
4. Sales of illicit tobacco facilitate a cheap way to start or continue smoking and as such needs to be minimised to reduce this impact. In addition, legitimate businesses are disadvantaged threatening small businesses in the local economy.

<https://www.illicit-tobacco.co.uk/problem/illicit-tobacco/>

5. There is evidence that the supply of illicit can be linked to organised crime and we work in partnership with the police to ensure appropriate dissemination of intelligence. We also populate the national IDB intelligence database which is accessed by HMRC and other relevant partners. We have seen in the past year evidence that OCGs are operating in our area and we are liaising with colleagues in other authorities to ensure joint action is more effective

https://www.eesc.europa.eu/sites/default/files/files/mr_arndt_sinn_speech.pdf

6. The programme for the financial year 2022/2023 was as follows:-

6.1. Contribute to the Surrey and Buckinghamshire Tobacco Control Strategies by taking action to reduce the supply of illicit tobacco through intelligence and enforcement.

We gathered local intelligence and used appropriate enforcement action against suppliers. Intelligence was shared across relevant enforcement agencies to tackle organised distribution networks,

17 visits resulting in 4,284 packets of 20 cigarettes, 11,340g of hand rolling tobacco and 414 packages of shisha of various sizes being seized. Using tobacco detection dogs for these operations is vital because the illicit tobacco is usually hidden from view. Hiding places vary and are becoming more sophisticated in some instances. These include mechanisms which can be triggered to access the tobacco products.

We have taken 3 prosecutions, against 5 entities, one of which resulted in a suspended prison sentence for the business owner. We also issued 12 written warnings to businesses, mainly relating to the sale of vapes where there were no additional aggravating factors.

6.2. Promote the education message about the harm illicit tobacco causes and the smoking cessation message and gather any intelligence about sales of illicit tobacco to identify sources.

We worked with Public Health to achieve the best outcome we can from an educational perspective in particular identifying the best use of social media to target messaging.

We continued to liaise with both Councils communications teams to publicise our work about tobacco issues.

[Trading Standards cracks down on illegal tobacco sales in Buckinghamshire | Buckinghamshire Council](#)

[Two fined over illegal tobacco sales after counterfeit cigarettes found at Aylesbury shop | Bucks Herald](#)



[Trading Standards cracks down on illegal tobacco sales in Buckinghamshire - Bucks Radio](#)

[Aylesbury shopkeepers who hid stash of cigarettes in wall are fined | Bucks Free Press](#)

[Illegal tobacco campaign - Surrey County Council \(surreycc.gov.uk\)](http://surreycc.gov.uk)

6.3. We continued to support the Tobacco Alliance groups in both authorities

We continued to be members of the Surrey Tobacco Control Alliance and Buckinghamshire Tobacco Control Alliance groups and participated in meetings organised for both authorities. We are participating in producing the new tobacco control strategy in Surrey We continued to work with partners on the groups to deliver the agreed strategies to reduce smoking prevalence rates in both counties.

6.4. We continued to use local, regional and national intelligence to ensure we target our interventions and resources appropriately.

We monitored regional and national intelligence by actively participating in regional and national groups and used it when appropriate. By using intelligence we targeted our interventions on identified higher risk businesses. This was reflected in a significant success rate in finding illicit tobacco.

6.5. Seek licence reviews through the relevant District/Unitary Council when appropriate.

We sought two licence reviews this year and continue to liaise with licensing colleagues in both authorities to support a compliant marketplace. Both reviews resulted in suspension of the licences.

6.6. We continued to monitor the market for alternatives to tobacco products, such as vaping products, to assess potential risks and look for solutions to ensure any risks to consumer safety is minimised

The supply of vaping products continues to be a dynamic and increasing market in terms of both quantity and variety of products. This is the subject of a separate paper for the Joint Committee

Working with UKVIA in a Primary Authority Partnerships we continue to support them to educate their member businesses through advice and webinars with the aim of reducing the risk of underage sales from both physical premises and internet sales.

Working with the Association of Convenience Stores (ACS) in a Primary Authority Partnership we have produced advice guides for members to educate regarding the sale of age restricted products which can be found on this link: [acs advice - age restricted sales 2023.pdf](#) (and see images below). Being present at their annual conference enabled us to demonstrate the difference between compliant and non-compliant vapes to help businesses understand what they can sell and why.

ACS advice
PREVENTING UNDERAGE SALES

Understanding how to manage underage sales is probably the main compliance challenge a convenience store retailer faces. This guide explains what you are legally obligated to do, what you should consider doing as best practice, and how you put in place the policies and procedures that will help you to manage this difficult area successfully.

ASSURED
Alcohol
Lighter fuel / Butane
Tobacco and cigarette papers
Firearms
Anti-air paint
Christmas crackers
DVD and video games
Lottery and promotional
Psychoactive substances
E-cigarettes
Pistol

BEST PRACTICE
Knives/Razors
High caffeine energy drinks
CBD products
Tobacco associated products
Bespoke toilet roll
Medicines
Acids / Corrosive substances

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An ACS advice guide for retailers
www.acs.org.uk

1. WHAT IS AGE RESTRICTED?

Legally age restricted products

ALCOHOL (18)
Selling alcohol to someone under 18 can lead to an on the spot fine of £250, a caution that appears on your criminal record or formal prosecution including an unlimited fine. If you are found to have persistently sold alcohol to someone under 18 you could face an immediate closure order for between 48 hours and 28 hours (14 days), or an unlimited fine. You need to have a licence from the local authority in order to sell alcohol and failing to prevent underage sales will end that licence of sale.

LIGHTER FUEL/BUTANE (18)
Selling either of these products to a under 18 is illegal and can lead to an unlimited fine and up to six months in prison.

ACIDS/CORROSIVE SUBSTANCES (18)
The Offences Against the Person Act 1969 prohibits a sale offence of selling certain harmful corrosive products to under 18s and placed new restrictions on online sales of corrosive products, including restrictions on deliveries to residential premises.

TOBACCO AND CIGARETTE PAPERS (18)
Selling cigarettes, rolling tobacco or cigarette papers to an under 18 can lead to a caution - resulting in a criminal record - or a formal prosecution including a fine of up to £2,500. It can also cause a tobacco handling order, banning either the store or the individual from selling tobacco.

E-CIGARETTES (18)
A person who sells a nicotine containing product to someone under the age of 18 commits an offence. This is a strict liability offence, the owner of the business can be held responsible as well as the member of staff who made the sale. The penalty for selling these products is a fine of up to £2,500.

LOTTERY (18)
It is illegal to sell National Lottery products (including scratchcards) to anyone under the age of 18. The penalty is a fine of up to £5,000. Retailers must ensure that persons under 18 are not allowed to sell these products. There are strict rules for the authorisation of 16 and 17 year olds to sell (see page 71 and 80). It is also a breach of your National Lottery Retailer Agreement for prizes to be paid out to someone under 18. Underage sales can lead to a termination of your retailer agreement with the lottery terminal and to the removal of your lottery terminal.

KNIVES (18)
Selling a knife (including a utility knife) or blade to an under 18 is illegal and can lead to an unlimited fine and up to six months in prison. The Offences Against the Person Act 1969 makes it a criminal offence to sell and dispose of knives, sold online without verifying the buyer is over 18 both in order of sale and of delivery. Packaging must be clearly labelled to indicate their contents and that they must be handed to a person over the age of 18. Bladed products that a products that can cut a persons skin must not be delivered to a residential address. Home Office guidance on the sale of knives is available at: www.gov.uk/government

UNDER 25?
Restrictions on age restricted products

No legal age restriction in place

TOBACCO ASSOCIATED PRODUCTS (18)
There is no legal prohibition on smoking related products such as lighters and pipes (except cigarette papers and lighter refills) however you may choose not to sell them to anyone under the age of 18.

CBD PRODUCTS (18)
CBD is often used as a food or food supplement, e-cigarettes or cosmetic. CBD products must contain no THC. Businesses must ensure that any claims about medical or health benefits are being made. Foods or food supplements which contain CBD are considered novel foods. The FSA has produced a list of CBD food products which are linked to a credible application for authorisation going through the novel foods process. Any products not on the list marked as 'novel' should not be sold. CBD products which are not a food or food supplement and does not need authorisation. The FSA has issued advice on the consumption of CBD for healthy adults and vulnerable groups, which is available at <https://www.food.gov.uk/business-guidance/consumption-cbd>. Currently there is no age restriction on the sale of CBD, though it is recommended products are not sold to under 18s. E-cigarettes containing both nicotine and CBD are unlawful.

ADULT MAGAZINES (18)
Adult (pornographic) magazines are not legally age restricted. However, it is commonly accepted and recommended that you do not sell pornographic magazines to anyone under the age of 18. There are also strict laws on display magazines that breach the Obscene Publications Act, and you should be careful about products obtained from less established trade channels.

FIREWORKS (16, 18)
Fireworks have different age restrictions based on what category they are. It is illegal to sell category F1 (indoor use, low hazard and low noise) fireworks such as party poppers to anyone under 16. It is illegal to sell category F2 (for outdoor use in confined areas) and F3 (for outdoor use in large open areas) fireworks to anyone under 18. In both cases an underage sale can lead to an unlimited fine and up to three months in prison.

PETROL (16)
It is generally against the law to supply petrol to anyone under the age of 16. This is imposed by the terms of a fuel retailers licence to sell petrol. The penalty is an unlimited fine and up to twelve months in prison.

ANTI-AIR PAINT (16)
Selling these products to an under 16 is against the law and can lead to a fine of up to £2,500.

CHRISTMAS CRACKERS (12)
Selling Christmas crackers to a person under the age of 12 is illegal and can lead to an unlimited fine and up to three months in prison.

DVDS AND VIDEO GAMES (12, 15, 18)
All DVDs carry a British Board of Film Classification (BBFC) certificate. All video games carry a PEGI European Game Information (PEGI) Certificate. There are two legal age restrictions. It is illegal to sell or rent that product to someone who is under that certified age. The penalty is an unlimited fine and up to six months in prison.

ONLINE VERIFICATION
Age verification cards and e-vouchers may be sold specifically for customers who need to prove their age online. The most common age verification is 18, where the same rules apply for checking to buyers using the card/voucher as with other age restricted products.

PSYCHOACTIVE SUBSTANCES
There is no legal restriction on the sale of psychoactive substances such as solvent based glues, correction fluid, anti-freeze and others. However, it is recommended that retailers voluntarily age restrict these substances for those under 18. To prevent these at highest risk from gaining access to these products, it is an offence to supply where the retailer knows, or where the psychoactive substance is likely to be consumed for its psychoactive effects. There is no expectation for a retailer to do above and beyond what is reasonable and the offences only apply where there is a likelihood of consumption. A retailer should take reasonable steps to make sure they are aware of the potential uses of such products. The penalty is 12 months imprisonment and an unlimited fine.

NO age restriction in place

HIGH CAFFEINE / ENERGY DRINKS (16)
There is no legal prohibition on energy drinks. However, you should be aware that all major UK manufacturers advise that their products are not suitable for children which they define as under 16 years old. You may decide to impose a restricted sale policy on your premises, or you may be asked to do so by the local school or parents group. You should listen to such requests constructively and accommodate them if you can.

EGGS, FLOUR AND TOILET PAPER
There is no legal prohibition on the sale of eggs, flour or toilet paper to an underage person. However, there are strict rules on the sale of these products to children (which they define as under 16 years old) which local police or other community representatives may ask you to restrict sale to under 16s to prevent anti-social behaviour. You should listen to such requests constructively and accommodate them if you can.

SAFETY RAZOR BLADES (UNDER 21mm)
The Criminal Justice Act 1988 makes it an offence to sell to a person under 18 years any razor blade but does not apply to replacement cartridges for safety razors where less than 2mm of the blade is exposed. Businesses should ensure staff are aware of which blades are considered safety blades and so legal to sell to under 18s.

LADS' MAGAZINES (16)
Men's lifestyle magazines (Lads' Maggs) do not have an age restriction, but you may choose to implement a policy to prevent their sale to under 16s.

See page 12 for the information taken contained in "1" in the referenced legislation or additional referenced articles.

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PREVENTING UNDERAGE SALES An ACS advice guide for retailers

2. APPROACHES TO PREVENTING SALES

Challenge 25

ACS recommends the use of Challenge 25 policies for all age restricted sales.

Challenge 25 is a store policy based on two simple principles:

- All staff serving customers should be trained to think 25. This means if a customer is seeking to buy an age restricted product (of any kind), the staff member should ask themselves the question - "Does the person in front of me look like they might be under the age of 25 years?" If the answer is yes, then they should ask the person for a valid proof of age. If the identification confirms they are over the legal age to purchase for that product, then it can be sold to them.
- The store policy is clearly communicated to customers, usually through the use of visible in-store signage.

Posters, shelf labels, badges and other materials are available to download and print from <http://www.challenge25.org/downloads.html>



Common refusal approaches

It is normal for retailers and staff to feel apprehensive or awkward about asking people to prove their age. However this is something that they must overcome, and retailers concerned are best dealt with through developing strategies for approaching the issue that suit the individual.

Also, it is worth bearing in mind, that whilst it feels awkward for staff, it is actually something that young people are very accustomed to and the vast majority expect to be asked. Here are the most common approaches you can use:

DEFLECTION

"I have to ask you to prove your age because it is a legal requirement."

FLATTERY

"Can I see some ID please?" "Really? But you're 30 years old!"

"Really? What you looking for a proof for your age?"

CONSTRUCTIVE

"Sorry, I can't serve you today if you don't have ID. But here it is, a buffer that explains how you can get a valid proof of age."

Avoiding conflict

EARLY INTERVENTION

If you see a youth or group of youths that you suspect may be preparing to attempt to buy alcohol, try and make a non-confrontational staff intervention. That lets them know you are aware of them, often deterring them.

STAY CALM AND POLITE

One way to avoid personal attacks is to make clear that it is not your decision, but it's company policy, or because of the rules applied to your licence.

SEEK HELP

If you fear for your safety, you should try to remove yourself from the situation or call for help. If you receive abuse or threatening behaviour, make sure you report it to your manager. For more advice on dealing with violence and abuse visit: www.acs.org.uk/advice

Proxy sales

It is an offence for an adult to purchase alcohol, tobacco or nicotine smoking products on behalf of someone under age. This is commonly called a 'proxy sale'. You should consider adopting a common approach to identifying and preventing proxy sales across all age restricted products.

It can be very difficult to know if an adult intends to buy an age restricted product for or on behalf of someone who is underage. Therefore, you are only expected to act when an obvious proxy sale is taking place.

Here are some common scenarios:

Just because a customer is accompanied by someone who is clearly underage, that does not mean you should suspect them of being a proxy purchaser.

If you see the adult asking the child what alcohol they want, or if the child's behaviour suggests the alcohol is for them - then you should refuse the sale.

Try, as far as possible, to monitor what is happening outside your store, especially if young people are hanging around. If you see what looks like an adult being asked to buy a product by a person outside the store, refuse the sale to that person and report it to the police.

ACS advice

ABOUT THIS GUIDE

This guide is provided by the Association of Convenience Stores in consultation with Buckinghamshire and Surrey Trading Standards. It was last updated in January 2023. Please refer to the ACS website for the most current version of this guidance.

Relevant legislation and additional guidance

- Psychoactive Substances (Safety) Regulations 2015
- Anti-Social Behaviour Act 2003
- ACS Lash Mark Guide
- BDDA Code of Practice for High-Caffeine Content Soft Drinks
- Licensing Act 2003
- The Cigarette Lighter Refill Safety Regulations 1999
- Children and Young Persons Act 1933
- Children and Families Act 2014 and Executive Planning Products (Age of Sale and Proxy Purchase) Regulations 2016
- The National Firearms (Revocation and Amendment) Regulations 2007
- The Royal Pharmaceutical Society does not provide specific guidance on appropriate age for issuing OTC medicines. Similarly, the Medicines and Healthcare Products Regulatory Agency (MHRA), which ensures that medicines and medical devices work and are safe, they not medicines and medical devices work and are safe, they not issuing licences that restrict the sale of OTC medicines to children.
- Criminal Justice Act 1988
- Psychoactive Substances Act 2016
- Video Recordings Act 2010
- Regulation (EU) 2017/745
- Offensive Weapons Act 2019

ACS Primary Authority Scheme

This advice was developed by ACS, Buckinghamshire and Surrey Trading Standards, Welwyn Borough Council and Surrey Fire and Rescue Service, as part of a dedicated primary authority scheme. This means that all the advice that has this mark against it is 'Assured Advice'.

Assured Advice means that if you adopt the policy in your business, then it must be respected by all other local authorities and they cannot ask you to adopt a different policy.

This guide covers a range of different issues of best practice and law. Those that qualify as assured advice are marked by this hallmark.

To benefit from assured advice you must sign up to the ACS Scheme. All ACS members can sign up to the ACS Primary Authority Scheme for details of how to join up visit www.acs.org.uk/advice

CONTACT

For more details on this guidance, contact a member of the ACS team on 01223 350501.

For more details on ACS:
Visit: www.acs.org.uk
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Follow us on Twitter: @ACS_LocalShops

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7. For 2023-24 we will:

7.1. Contribute to the Surrey and Buckinghamshire Tobacco Control Strategies by taking action to reduce the supply of illicit tobacco through intelligence and enforcement.

We will gather local intelligence, use appropriate enforcement action against suppliers, share intelligence across relevant enforcement agencies to tackle organised distribution networks, repeat the illicit tobacco campaign, gather local intelligence and enforcing regulation on nicotine containing devices, raise the profile of the issue through local publicity and participate when relevant in nationally organised campaigns.

We will participate in joint operations with the HMRC to identify and take appropriate action against sellers of illicit tobacco

We will continue to carry out work to identify if there are issues with providers of shisha tobacco in both authorities.

We will programme targeted test purchase operations every 6 weeks and aim to carry these out as resources allow.

We will continue to develop alternative disruption measures against businesses that seek to evade or flaunt enforcement measures by utilising closure orders and actions against complicit landlords under proceeds of crime legislation

7.2. Promote the education message about the harm illicit tobacco causes and the smoking cessation message and gather any intelligence about sales of illicit tobacco to identify sources.

We will work with Public Health to achieve the best outcome we can from an

educational perspective in particular identifying the best use of social media to target messaging.

We will continue to liaise with both Councils communications teams to publicise our work about tobacco issues.

7.3. We will continue to support the Tobacco Alliance groups in both authorities

We will continue to support both the Surrey Tobacco Control Alliance and Buckinghamshire Tobacco Control Alliance groups and will participate in meetings organised for both authorities. We will work with partners on the groups to deliver the agreed strategies to reduce smoking prevalence rates in both authorities.

7.4. Continue to use local, regional and national intelligence to ensure we target our interventions and resources appropriately

We will continue to explore ways to:

- improve intelligence sharing between relevant partners;
- upgrade intelligence from all viable sources; and
- explore alternative means of detecting sales (other than by test purchases)

7.5. Seek licence reviews through the relevant District/Unitary Council when appropriate.

Prosecutions for illicit tobacco can be used to add additional conditions onto the premises licence including the installation of CCTV at the premises, price labels on the alcohol to include the name of the shop, or the imposition of clear and stringent stock control measures.

7.6. Continue to monitor the market for alternatives to tobacco products, such as vaping products, to assess potential risks and look for solutions to ensure any risks to consumer safety is minimised

Following highly variable results from under age test purchasing of vapes in 22/23 (on the worst day of test purchasing 71% of premises sold, on another day no premises sold to the under 18 volunteer) we will utilise intelligence and information to target businesses identified as supplying vaping products to under 18 year olds and attempt test purchases from them.

CONSULTATION:

8. Public Health teams in Surrey and Buckinghamshire have been consulted.

RISK MANAGEMENT AND IMPLICATIONS:

9. We are supporting an important strand of tobacco reduction strategies by seeking to reduce the supply of tobacco products. If we are unable to carry out this work the effectiveness of this will be reduced and it is more likely that such products will be available to children and young people.

Financial and Value for Money Implications

10. The work in this area is carried out by a number of officers as a small part of their wider role. At times work in this area, such as advice to businesses, is combined with other visits that officers are carrying out to the same premises or area to maximise efficiency. This report is suggesting that the Service broadly maintains its approach to this work and therefore there is no additional financial implication beyond that which is already committed.

Legal Implications

11. As outlined in the report, there is a requirement for Local Authorities to consider carryout enforcement actions at least once in every twelve month period, to ensure that the provisions of the Children and Young Persons Act 1933, are effected. The report outlines the enforcement action taken and the legal consequence to such action.

Equalities and Diversity

12. Tobacco consumption is disproportionately prevalent in particular socio-economic groups; tackling tobacco consumption has a positive impact in helping tackle health inequalities. There is no likely negative disproportionate impact arising from the work described in this report on people with protected characteristics.

WHAT HAPPENS NEXT:

13. This is set out in section 8 above.

Contact Officer:

David Pickering, Trading Standards Team Manager, Regulation 07908 408 106

Consulted:

Annexes: None
