

SPECIAL ANGUS LICENSING BOARD – 20 JUNE 2023

**PERSONAL LICENCE - NOTIFICATION OF CONDUCT INCONSISTENT WITH A
LICENSING OBJECTIVE**

REPORT BY THE CLERK

ABSTRACT

The purpose of this report is to provide updated information and for the Board to consider and determine what Order, if any, requires to be made in respect of the Personal Licence.

1. RECOMMENDATIONS

It is recommended that the Board conducts a hearing and considers:

- (i) the original correspondence received on behalf of the Chief Constable dated 22 August 2022 advising that he considers that a Personal Licence Holder has acted in a manner which is inconsistent with licensing objectives;
- (ii) the updated information from the Chief Constable dated 28 March 2023;
- (iii) the notification from the licence holder dated 10 April 2023
- (iv) any notice received from the Scottish Courts Service

and determines what Order, if any, requires to be made in respect of a Personal Licence in terms of one of the following options: -

- (a) revoke the Personal Licence held by the licence holder concerned;
- (b) suspend for such period, not exceeding 6 months, as the Board considers appropriate, or
- (c) endorse the Personal Licence held by the licence holder concerned
- (d) make no order.

2. BACKGROUND

With reference to Report LB50/22; the Clerk had received correspondence dated 22 August 2022 from the Chief Constable in terms of section 84A of the Licensing (Scotland) Act 2005 (“the 2005 Act”) advising that he considered that a Personal Licence Holder had acted in a manner which was inconsistent with licensing objectives. **A copy of that correspondence shall be circulated to members in advance of the meeting (Appendix 2)**

At the meeting of the Board of 15 September 2022, the Board noted that there were relevant court proceedings pending and agreed to defer consideration of the matter until these were disposed of by the Court.

The Clerk received correspondence dated 28 March 2023 from the Chief Constable advising of the outcome of court proceedings. **A copy of that correspondence shall be circulated to members in advance of the meeting (Appendix 3)**

The Clerk received correspondence dated 10 April 2023 from the licence holder. **A copy of that correspondence shall be circulated to members in advance of the meeting (Appendix 4)**

The Board, at its meeting on 18 May 2023, agreed to defer the matter.

3. LEGAL

3.1 Reports made by the Chief Constable in terms of section 84A must be submitted to the “relevant Licensing Board”. For the purposes of section 84A, this means:

- (a) if the personal licence holder is working as a premises manager at any licensed premises, the Licensing Board, for the area in which those premises are situated,
- (b) in any other case, the Licensing Board which issued the personal licence held by the licence holder.

3.2 A hearing in relation to a report under section 84A, must be conducted by the Board to determine whether the licence holder has acted in a manner which is inconsistent with any of the licensing objectives having regard to the report received from the Chief Constable and representations made at the hearing.

3.3 The licensing objectives are:

- (i) preventing crime and disorder
- (ii) securing public safety
- (iii) preventing public nuisance
- (iv) protecting and improving public health; and
- (v) protecting children and young persons from harm

3.4 The Board should be aware that any grounds relevant to the licensing objectives mean that there has to be a direct and material link thereto brought about through the sale of alcohol.

3.5 In determining whether the licence holder has acted in a manner which is inconsistent with any of the licensing objectives, the Board must give the licence holder concerned and any other persons the Board consider appropriate, an opportunity to be heard at the hearing.

3.6 If, after giving the persons noted at 3.5 above an opportunity to be heard, the Board considers it necessary, they may grant an order. The Board must determine what type of order is necessary. The orders available to the Board are noted at Section 1(iii) of the Report.

3.7 If the Board determine that the licence holder has acted in a manner which is inconsistent with any of the licensing objectives, it is open to them to grant no order, if they do not find that there is necessity for an order.

3.8 If the Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.

3.9 If the Board makes an order, the Board must give

- (a) the licence holder
- (b) if different, the Licensing Board which issued the personal licence

notice of the order and of the reasons for making it.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

5. HUMAN RIGHTS IMPLICATIONS

In dealing with the matters as set out in this report, the Board will have regard to any human rights issues in relation to the premises licence holder.

Members are advised that Article 1 of the First Protocol of the European Convention of Human Rights (i.e. protection of property) applies in relation to this Report. The licence holder is considered to be the owner of the licence and as such is entitled to the peaceful enjoyment of his/her possession. However, Angus Licensing Board may take such action as it deems necessary to control the use of the property in accordance with the general interest and subject to the conditions provided for by law. Article 14 requires non-discriminatory treatment of individuals in the enjoyment of their rights.

The legal basis for taking any action in connection with this Report is in terms of the 2005 Act.

Any actions considered by the Licensing Board must be proportionate, i.e. there should be as little intervention as possible to achieve the Board's desired aim. If the Board is minded to suspend the licence, members must first consider the Board's desired aim in imposing a period of suspension and must also consider an appropriate period of suspension taking into account the guidance on proportionality and must ensure that their decision does not discriminate against the licence holder.

6. EQUALITIES IMPLICATIONS

The issues contained in this Report fall within an approved category that has been confirmed as exempt from an equalities perspective. An equalities impact assessment is not required.

7. NOTIFICATION

The applicant has been notified of the terms of this Report. They have also been advised of their entitlement to attend the Board should they wish.

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