

ANGUS LICENSING BOARD – 16 MAY 2019

**REQUEST TO RELIEVE THE FAILURE TO COMPLY WITH A PROCEDURAL REQUIREMENT
THE FOUNDRY BAR, ARBROATH**

REPORT BY THE CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to advise the Board to relieve an applicant of a failure to comply with a procedural requirement which requires to be determined by the Board.

1. RECOMMENDATION

It is recommended that the Board:-

- (i) note that the Clerk has received a request from an applicant to relieve a failure to comply with a procedural requirement which requires to be determined by the board; and
- (ii) determine whether to relieve the failure to comply with the procedural requirement.

2. BACKGROUND

- 2.1 On 29 April 2019 the Clerk of the Board received an application for Transfer of a Premises Licence by a Person Other than the Licence Holder in respect of The Foundry Bar, 5/7 East Mary Street, Arbroath. The application lodged by Thorntons, Solicitors is to transfer the premises licence from Lawrence Brown to Christine Iveson.
- 2.2 Mr Brown is both the existing Premises Licence Holder and the Premises Manager. Mr Brown vacated the premises on 28 February 2017.
- 2.3 Christine and Anthony Iveson are the heritable proprietors of the Foundry Bar. Mr and Mrs Iveson have attempted to secure the co-operation of Mr Brown in the transfer of the Premises Licence without success. A minor variation application has also been submitted in order to vary the premises manager from Lawrence Brown to Christine Iveson.
- 2.4 Section 34 of the Licensing (Scotland) Act 2005 provides that there are certain circumstances when a premises licence can be transferred on the application of another person other than the licence holder. One of these circumstances is when the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to the applicant. Section 34 also provides that such an application must be made within 28 days of the occurrence of the event. If such an application is not made within 28 days of such an event the licence ceases to have effect.
- 2.5 Section 135 of the Licensing (Scotland) Act 2005 provides that the Board may relieve any applicant or other party to proceedings before the board of any failure to comply with a procedural provision if:-
 - (a) The failure is due to a mistake, oversight or other excusable cause; and
 - (b) The board considers it appropriate in all the circumstances to relieve the failure
- 2.6 where the Board exercises this power it may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

4. 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.

5. CONSULTATION

The Divisional Commander, Tayside Division of Police Scotland has been consulted in the preparation of this report and we are currently awaiting comments from Police Scotland.

NOTE: No background papers were relied on to a material extent in preparing the above report.

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