

ANGUS LICENSING BOARD – 25 FEBRUARY 2016

REQUEST TO RELIEVE THE FAILURE TO COMPLY WITH A PROCEDURAL REQUIREMENT

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 10 February 2016 the Clerk of the Board received notification that Tze Yan Limited, the Premises Licence Holder for the Jasmine House, Montrose Road, Arbroath, had dissolved on 6 September 2013. No application was lodged to transfer the Premises Licence.
- 2.2 On 12 December 2012 an application for minor variation was granted to vary the premises manager to Xiaoen Chen. No application was submitted in order to transfer the Premises Licence holder at this time. The Premises Licence Holder remained as Tze Yan Limited.
- 2.3 On 10 February 2016, Mrs Yuk Ling Chan advised that she intended to lodge an application to vary the premises manager from Xiaoen Chen to Yuk-Ling Chan. She advised that she understood that the Premises Licence had also been transferred to Xiaoen Chen on 12 December 2012.
- 2.4 On 10 February 2016, the Licensing Standards Officer advised Mrs Yuk Ling Chan that the Premises License no longer had effect and that she should immediately lodge a transfer of licence application as soon as possible. An application for Transfer of a Premises Licence by a Person Other than the Licence Holder was lodged on 12 February 2016 in order to transfer the Premises Licence from Tze Yan Limited to Yuk-Ling Chan.
- 2.5 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 a premises licence holder is dissolved. 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.
- 2.6 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

2.7 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. A letter has been received from the applicant's agent and will be circulated to members.

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.

**SHEONA C HUNTER
CLERK TO THE LICENSING BOARD**

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

**REPORT AUTHOR: Dawn Smeaton, Licensing and Litigation Assistant
E-MAIL: LEGDEM@angus.gov.uk**