

ANGUS LICENSING BOARD – 14 MAY 2015

REQUEST TO RELIEVE FAILURE TO COMPLY WITH RULES AND OTHER REQUIREMENTS
THE SWAN RESTAURANT, 2A ST MALCOLM'S WYND, KIRRIEMUIR

REPORT BY THE CLERK

ABSTRACT

The purpose of this Report is to consider representations from the holder of a Premises Licence which the Board determined to revoke on 2 April 2015.

1. RECOMMENDATION

It is recommended that the Board:-

- (i) Consider the representations made from the holder of a Premises Licence: and
- (ii) Determine what action to take in light of those representations.

2. BACKGROUND

The Board, at its meeting on 2 April 2015, considered a report from the Clerk in relation to a number of premises in respect of which the annual fee had not been paid. In relation to the Swan Restaurant, 2A St Malcolm's Wynd, Kirriemuir, the Board determined that it was necessary, for the purposes of the licensing objective of preventing crime and disorder, to revoke the Premises Licence.

In light of that decision, the Clerk has received representations from the solicitors acting for the Premises Licence holder, Mr Mohammed Jahan. A copy of these representations will be circulated to members of the Board..

Section 135 of the Licensing (Scotland) Act 2005 provides that a Licensing Board may relieve any applicant or other party to proceedings before the Board of any failure to comply with any procedural provision if the failure is due to mistake, oversight or other excusable cause, and the Board considers it appropriate in all the circumstance to relieve the failure.

It would be open to the Board to consider that the failure of the Premises Licence holder to make payment of the annual fee timeously was due to mistake, oversight or other excusable cause. In those circumstances, it would be open to the Board to revoke its decision of 2 April 2015 and reinstate the Premises Licence for these premises.

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 licence holders.

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.

6. EQUALITIES IMPLICATIONS

The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.

7. CONCLUSION

The Board is requested to consider the representations made in respect of this matter and determine what steps, if any, they consider to be necessary.

8. NOTIFICATION

Mr Jahan has been invited to attend the meeting of the Board and speak to the representations made.

SHEONA C HUNTER
CLERK TO THE LICENSING BOARD

NOTE: The background papers (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

Licensing (Scotland) Act 2005