

**ANGUS LICENSING BOARD – 17 MAY 2018**

**TRANSFER OF A PREMISES LICENCE UNDER SECTIONS 33 AND 34 OF THE LICENSING  
(SCOTLAND) ACT 2005**

**REPORT BY THE CLERK TO THE BOARD**

**ABSTRACT**

The purpose of this report is to present an application for transfer of a premises licence under sections 33 and 34 of the Licensing (Scotland) Act 2005 ("the 2005 Act") which requires to be determined by the Board.

**1. RECOMMENDATION**

It is recommended that the Board consider and determine this application in terms of the following options:-

- (i) to allow or not to allow relief from failure to comply with the application requirement for the transfer of a licence within 28 days of the business carried on in the licensed premises to which the licence relates being transferred (whether by sale or otherwise) to another person;
- (ii) having allowed relief in terms of (i), to grant the application in accordance with Paragraph 3 of this Report.

**2. BACKGROUND**

- 2.1 On 27 April 2018, the Clerk to the Board received an application for transfer of premises licence 139 from Solicitors acting on behalf of Mr David Howatson. Premises Licence 139 is held by the Finavon Hotel Limited, Finavon Hotel, by Forfar, DD8 3QB.
- 2.2 The Clerk has been advised by the Solicitor for the applicant that the applicant is the owner of the premises at the Finavon Hotel. Trade was previously conducted by the applicant in partnership with the Finavon Hotel Limited, a Limited Company owned and controlled by the applicant. The Limited Company was the holder of the licence. For commercial purposes, the applicant decided to continue trading as a sole trader. The business was transferred to him, as an individual, from the Partnership, and the Partnership with Finavon Hotel Limited was dissolved. The licence should have been transferred at that time. The licence remaining in the Company's name was overlooked and the 28 day time limit missed.
- 2.3 Members of the Board are asked to accede to the request of the applicant to utilise section 135 of the 2005 Act to relieve failure to comply with the requirements of section 34 of the 2005 Act, namely that the application to transfer the licence is made within 28 days of the business carried on in the licensed premises, to which the licence relates, being transferred from the Partnership to the applicant.
- 2.4 If Members are minded to accede to this request, examination of Police Scotland's Notice dated 3 May 2018 is required. **A copy of the notice shall be circulated at the meeting.** The Board is asked to determine the application in accordance with Section 1 of the Report.

**3. LEGAL IMPLICATIONS**

- 3.1 Section 34 of the 2005 Act provides that an applicant, who is not the premises licence holder or under the age of 18, within 28 days of the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person, may apply to the appropriate Licensing Board for the transfer to that person of the licence.
- 3.2 Section 135 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 of the circumstances to relieve the failure. Where the Board exercises the

power, the Board may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.

- 3.3 If Members are minded to engage section 135 and use the power contained in that section the next step is consideration of section 34(4) which requires Members to consider the transfer application in light of sections 33(4) to (10) of the 2005 Act.
- 3.4 The Chief Constable has provided a notice in terms of section 33(6)(a)(i) and (ii) advising that neither the applicant or any connected person has been convicted to a relevant offence. The Chief Constable was unable to confirm the existence of a foreign offence.
- 3.5 It is the case with this application that the Licensing Board has received a notice from the Chief Constable under section 33(6)(a), the notice does not include a recommendation that the Chief Constable considers it necessary for the purposes of any of the licensing objectives that the application for the transfer of the licence be refused and no additional information has been provided by the Chief Constable; on that basis the Board must grant the application.

#### **4. HUMAN RIGHTS IMPLICATIONS**

- 4.1 There are no human rights implications arising from this report.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 There are no financial implications arising from this report.

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