

SPECIAL ANGUS LICENSING BOARD – 3 JULY 2019

**PERSONAL LICENCE – REPORT OF CONDUCT INCONSISTENT WITH A
LICENSING OBJECTIVE**

REPORT BY THE CLERK

ABSTRACT

The purpose of this report is to present to the Board a report received from the Chief Constable in terms of s84A of the Licensing (Scotland) Act 2005 (“the 2005 Act”) advising he considers that a Personal Licence Holder has acted in a manner which is inconsistent with a licensing objective; and for the Board thereafter, to consider and determine, what Order, if any, requires to be made in respect of that Personal Licence. The Board will recall this Report was deferred from the Special Angus Licensing Board of 10 June 2019 at the request of Police Scotland.

1. RECOMMENDATION

It is recommended that the Board considers the report received from the Chief Constable and conduct a hearing in terms of section 84A(2) of the 2005 Act.

1.1 having regard to the conduct, and

- (a) after giving the licence holder and any other such persons as the Board considers appropriate, an opportunity to be heard, and
- (b) if the Board is satisfied, that it is necessary to do so for the purposes of any of the licensing objectives

make one of the following Orders subject to any finding in respect of the fit and proper person test noted at (c) below:-

- (i) revoke, or
 - (ii) suspend for such period, not exceeding 6 months, as the Board considers appropriate, or
 - (iii) endorse the personal licence held by the licence holder concerned.
- (c) determine, if the Board is satisfied having regard to the licensing objectives, that the licence holder is not a fit and proper person to be the holder of a personal licence and revoke the licence.

2. BACKGROUND

2.1 A personal licence is required to allow any individual to supervise or authorise the sale of alcohol. The Clerk has received a report from the Chief Constable, Iain Livingstone, QPM, Tayside Division Headquarters, West Bell Street, Dundee, DD1 9JU, advising that a personal licence holder has acted in a manner which is inconsistent with one of the licensing objectives in terms of section 84A of the 2005 Act, namely, preventing crime and disorder. **A copy of said report shall be circulated to Board members prior to the meeting.**

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 When a report under section 84A is received by a relevant Board, the Board are required to hold a hearing in order 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, and 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 1.1.
- 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 Report of conduct inconsistent with a licensing objective as set out in this report, the Board will have regard to any human rights issues in relation to the Personal 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

7. NOTIFICATION

The Personal Licence Holder has been given a copy of this Report, a copy of the Report from the Chief Constable, and been invited to attend the Board. The Chief Constable has been given a copy of this Report and been invited to attend the Board.

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(a) PERSONAL LICENCE HOLDER DC2246 – XUE HE

The Clerk received a report in terms of section 84A of the Licensing (Scotland) Act 2005 from the Chief Constable, Iain Livingstone, QPM, Tayside Division Headquarters, West Bell Street, Dundee, DD1 9JU, on 2 May 2019, advising that a personal licence holder, Miss Xue He, who is the holder of a Dundee Licensing Board Personal Licence, has acted in a manner which is inconsistent with the preventing crime and disorder licensing objective in terms of section 84A. **A copy of said report shall be circulated to Board members prior to the meeting.**

Miss Xue He is the premises licence holder and designated premises manager of Imperial, 44-46 Dundee Street, Carnoustie, Angus, DD7 7PH. The premises is a licensed Chinese Restaurant and Takeaway. Miss Xue He has been the premises licence holder and designated premises manager since 15 February 2018. Information contained within the report received from the Chief Constable advises that Miss Xue He has held her personal licence since 24 November 2017.