

SPECIAL ANGUS LICENSING BOARD – 3 DECEMBER 2019

THE LICENSING (SCOTLAND) ACT 2005

PREMISES LICENCE REVIEW PROPOSAL

REPORT BY THE CLERK

ABSTRACT

The purpose of this report is to present a Premises Licence Review Proposal under Section 37 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) as detailed in the Appendix to the Report.

1. RECOMMENDATION

It is recommended that the Board consider and determine:-

- (i) to hold a review (“a premises licence review proposal”) in respect of the premises detailed in the attached Appendix.
- (ii) to fix a review hearing date within 42 days of the Board' decision to make the premises licence review proposal.

2. BACKGROUND

In terms of the 2005 Act, it is a mandatory condition applicable to all premises licences that, when alcohol is being sold, a Premises must have a Designated Premises Manager. Further; a Designated Premises Manager must have a valid and current Personal Licence and be the Designated Premises Manager of no more than one premises at any given time. It is the responsibility of a Premises Licence Holder to ensure that their Designated Premises Manager holds a valid and current Personal Licence.

In this instance, the Premises Licence Holder is “*Shotz Pool and Snooker Limited*”, of which there are two connected persons named on the licence. These two people are brothers, one of whom was also the Designated Premises Manager whose licence was revoked.

On 28 October 2019 it was brought to the attention of the Angus Licensing Standards Officer that the Personal Licence of the Designated Premises Manager for Shotz Arbroath, had been revoked on 3rd May 2018 due to failure to undertake refresher training as required by the 2005 Act. The Licence Holder held a Dundee City Council Personal Licence.

It should be noted that Dundee City Council were not under a statutory obligation to inform Angus Licensing Board the Personal Licence had been revoked. There is no way for Dundee City Council to be aware of any of their licence holders being Designated Premises Managers in Angus.

Alcohol had been sold on the premises in the period 3rd May 2018 – 1st November 2019 whilst the Designated Premises Manager did not hold a valid Personal Licence.

Since the sale of alcohol was permitted on the premises whilst a Designated Premises Manager did not hold a valid Personal Licence, there is a breach of the Premises Licence Mandatory Conditions. It is therefore proposed the Board review the premises licence of Shotz by citing the Premises Licence Holders to attend a Review Hearing.

Members are referred to the **APPENDIX** for further details of this matter.

3. LEGAL

In terms of Section 37(1) of the 2005 Act, the Licensing Board may, on its own initiative, propose to review a premises licence on any grounds for review. A proposal under 37(1) is referred to in the 2005 Act as a "premises licence review proposal. The grounds for review specified under section 36(3) of the 2005 Act are:

- za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence
- a) that one or more of the conditions to which the premises licence is subject has been breached; or
- b) any other ground relevant to one or more of the licensing objectives.

In terms of section 37(4) of the 2005 Act, a premises licence review proposal must specify the alleged ground for review, including in particular:-

- i) where the ground is that specified in za) above, a summary of the information on which the Board's view that the alleged ground applies is based
- ii) where the ground is that specified in a) above the condition or conditions alleged to have been breached
- iii) where the ground is that specified in c) above, the licensing objective to which the ground of review relates

In this particular case, it is recommended that the condition alleged to have been breached is that the licence holders have failed to ensure that their Designated Premises Manager held a valid Personal Licence, and that during the time the Designated Premises Manager did not hold a Personal Licence that alcohol was sold, breaching the Mandatory Conditions of a Premises Licence, and that the Board ought to specify this in making a premises review proposal.

In making a premises review proposal, the Board may include in the proposal any information that the Board considers may be relevant to their consideration of the alleged ground for reviewing, including, in particular, information in relation to:-

- a) the licence holder,
- b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or
- c) any person who is an interested party in relation to the licensed premises.

If the Board decides to make a premises review proposal, they should be aware that the review hearing must take place within 42 days from the date they make the proposal in line with the Licensing (Procedure) (Scotland) Regulations 2007.

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. If the Board is minded to suspend the licence, members must first consider the Board's desired aim in imposing a period of suspension and must also consider an appropriate period of suspension taking into account the guidance on proportionality and must ensure that their decision does not discriminate against the licence holder.

6. CONCLUSION

The Board is requested to determine to agree to make a premises licence review proposal in respect of the premises detailed in the appendix and to fix a review hearing date within 42 days of their decision to make the proposal.

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APPENDIX TO REPORT LB 67/19
SPECIAL ANGUS LICENSING BOARD – 3 DECEMBER 2019

A premises licence review proposal is to be considered by Angus Licensing Board in respect of:

Shotz Pool and Snooker Club, 2-4 John Street West, Arbroath

The Board are asked to determine whether or not to proceed to a full premises licence review hearing in terms of Sections 37 and 38 of the Licensing (Scotland) Act 2005.

Background:

I was notified by telephone call on 28th October 2019 that the Personal Licence of the Designated Premises Manager for this premises, Ryan Fleming, had been revoked on 3rd May 2018 due to failure to undertake refresher training as required by the 2005 Act.

Ryan Fleming applied for a personal licence at Dundee Licensing Board on 17 January 2013. The personal licence was granted by way of delegated powers on 4th February 2013. He was written to by Dundee City Council on 21st November 2017 to remind him to carry out his training before his fifth anniversary of his personal licence being granted.

The premises were therefore operating without a Designated Premises Manager for some 18 months, which is a breach of the mandatory conditions of a premises licence.

Therefore, it is the premises licence holder who is responsible for this breach. In this instance, the premises licence holder is Shotz Pool and Snooker Ltd, of whom the named connected persons are brothers, Ryan and Marc Fleming.

Licensing Standards Officer's Report:

I was contacted by a Licensing Standards Officer from Dundee City Council by telephone call on 28th October 2018. He was calling to ascertain whether or not Ryan Fleming was a Designated Premises Manager in the Angus area. I confirmed he was. The Licensing Standards Officer then advised me that Ryan's Personal Licence was revoked due to failure to undertake refresher training as required by the 2005 Act on 3rd May 2018.

Ryan should have carried out his training before 4th February 2018, and then had three months to notify the licensing board. The last day for notification would have been 3rd May 2018. Ryan did not notify the board therefore his personal licence was revoked on that day. A letter was sent from Dundee Licensing Board to his home address on or about the 3rd May 2018 informing his personal licence had been revoked.

There is no statutory duty for Dundee City Council to inform Angus Council that they have revoked one of their own licences, and Dundee City Council have no way of knowing one of their own licence holders is a Designated Premises Manager in Angus.

I visited the premises unannounced on the 30th October to carry out statutory checks and address the information received. Ryan Fleming was not present. His brother, Marc Fleming, was present. As noted above, Marc is listed as the connected person of the Premises Licence Holder, Shotz Pool and Snooker Ltd. I advised him that they must cease the sale of alcohol immediately as they do not have a Designated Premises Manager. I advised them a Minor Variation inserting a new Designated Premises Manager would be required, and left the requisite form for them to use.

Marc then phoned Ryan and passed the phone to me. Ryan assured me that he had done his refresher training and informed DCC in time. I told him that this is a matter for DCC and I must act on the information provided to me. He accepted this, as did Marc.

My statutory checks identified the following issues:

1. Staff Training Records: although both Marc and Ryan were adamant they had been done, they could not be produced.

2. The mandatory sign in terms of Paragraph 11 of Schedule 3 of the Licensing (Scotland) Act 2005 (the Mandatory Licensed Premises Conditions) was not displayed. I sent a copy in the post so they could be display one.
3. Personal Licence: Marc was working on licenced premises and unable to produce his personal licence. It is a requirement under Section 93 of the 2005 Act that a Personal Licence holder produce their licence on request by a Licensing Standards Officer when working on any licensed premises.
4. Premises Licence: Marc was not able to produce this (the summary was displayed). Section 52 of the 2005 Act stipulates that the premises licence is kept safe on the premises and produced on request by a Licensing Standards Officer.
5. A refusals book was not being kept as required under the Statement of Licensing Policy at section 3.1.2. I left an example with the premises and they advised they will start doing this. Being a snooker and pool venue, I would expect this to need to be used.

Upon my return from visiting the premises, I emailed Police Scotland notifying them of my visit and that the Designated Premises Manager held no Personal Licence. I considered it appropriate to refer the matter to Police Scotland as it is a criminal offence for a Premises Licence Holder to allow the sale of alcohol whilst the Designated Premises Manager does not hold a Personal Licence.

I received a phone call on 1st November 2019 from Ryan advising me that he would be coming in that same day to hand in a minor variation. He attended with training records, premises licence and the minor variation form.

The Minor Variation was lodged and substituted out Ryan in favour of his brother Marc, who holds a valid Personal Licence with Dundee City Council. I emailed Police Scotland to notify them that a Designated Premises Manager was now in place.

I have confirmed with Police Scotland that neither Ryan nor Marc as Premises Licence Holders will be charged in respect of this breach of the conditions.

I am bringing this to the attention of the Board as this Premises had been operating without a Designated Premises Manager for some 18 months. A Premises Licence Holder is duty bound by the 2005 Act to inform the Licensing Board if the Personal Licence of their Designated Premises Manager has been revoked. This was not done by either Marc or Ryan. This is a serious breach of the mandatory conditions attached to a premises licence, which reads at Paragraph 4(1):

“Alcohol is not to be sold on the premises at any time when –

- a) there is no premises manager in respect of the premises*
- b) the premises manager does not hold a personal licence*
- c) the personal licence held by the premises manager is suspended, or*
- d) the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises”.*

In breaching this condition, there is a grounds for review in terms of Section 36(3) (a) of the 2005 Act. That section reads that it is a ground for review when one or more of the conditions which attach a premises licence has been breached.

Should the Board decide to proceed to a Review Hearing, I will undertake a further visit to these premises prior to the hearing in order to provide a comprehensive update at that time.

I duly submit this report for the Board’s consideration.

Daniel J. Coleman
Licensing Standards Officer
Angus Council