

ANGUS LICENSING BOARD – 30 JUNE 2020

PERSONAL LICENCE HOLDER

**REPORT OF CONDUCT INCONSISTENT WITH A
LICENSING OBJECTIVE**

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to present to the Board a report received from Andrew Todd, Chief Superintendent, Tayside Division on behalf of 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 two of the licensing objectives; and for the Board thereafter, to consider and determine, what Order, if any, requires to be made in respect of that Personal Licence.

1. RECOMMENDATION

It is recommended that the Board: -

- i) note the report received from the Chief Constable and conduct a hearing in terms of section 84A(2) of the 2005 Act;
- ii) at the hearing, the Board may after giving –
 - a) the licence holder concerned, and
 - b) such other persons as they consider appropriate, an opportunity to be heard, and
 - c) if satisfied that it is necessary to do so for the purposes of any of the licensing objectives make an order: -
 - (iii) a. revoking;
 - b. suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
 - c. endorsingthe personal licence held by the licence holder concerned.
- (iv) if satisfied that it is **not** necessary for the purposes of any of the licensing objectives: -
make no order in respect of the licence holder concerned.

2. BACKGROUND

A personal licence is required to allow any individual to supervise or authorise the sale of alcohol. The Clerk has received a report dated 14 April 2020 from Andrew Todd, Chief Superintendent, Tayside Division Headquarters, West Bell Street, Dundee, DD1 9JU on behalf of the Chief Constable, Iain Livingstone, QPM,, advising that a personal licence holder has acted in a manner which is inconsistent with two of the licensing objectives in terms of section 84A of the 2005 Act, namely, Securing Public Safety and Protecting and Improving Public Health. **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 Section 1(iii) of the Report.

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 matters as set out in this report, the Board will have regard to any human rights issues in relation to the premises licence holder.

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. EQUALITIES IMPLICATIONS

The issues contained in this Report fall within an approved category that has been confirmed as exempt from an equalities perspective. An equalities impact assessment is not required.

7. NOTIFICATION

The Personal Licence Holder has been given a copy of this Report, a copy of the Report from Andrew Todd, Chief Superintendent, Tayside Division, on behalf of the Chief Constable, and been invited to attend the Board. Andrew Todd, the Chief Constable's representative, has been given a copy of this Report and been invited to attend the Board.

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(a) PERSONAL LICENCE HOLDER - AN1155 – KEVIN O'DONOGHUE

The Clerk received a report in terms of section 84A of the Licensing (Scotland) Act 2005 from Andrew Todd, Chief Superintendent, Tayside Division Headquarters, West Bell Street, Dundee, DD1 9JU on behalf of the Chief Constable, Iain Livingstone, QPM, on 14 April 2020 advising that a personal licence holder, Kevin O'Donoghue, has acted in a manner which is inconsistent with two licensing objectives, namely, preventing crime and disorder and protecting and improving public health in terms of section 84A.

A copy of said report shall be circulated to Board members prior to the meeting.

Mr O'Donoghue is the designated premises manager of Commercial Hotel, 28-30 South Street Newtyle, PH12 8UQ and has held this position since 31 March 2016. Mr O'Donoghue has held his personal licence, AN1155, since 10 August 2015.