

ANGUS LICENSING BOARD – 19 JANUARY 2023

PERSONAL LICENCE – NOTICE OF CONVICTION

REPORT BY THE CLERK

**ABSTRACT**

The Board, previously having decided to hold a hearing in terms of section 83(7A)(a) of the Licensing (Scotland) Act 2005 at the meeting of the Special Board on 12 December 2022, the purpose of this report is to re- present the notice of conviction received from the Chief Constable of a relevant offence in terms of section 83(4)(b) of the 2005 Act in respect of a Personal Licence Holder.

**1. RECOMMENDATION**

It is recommended that the Board considers the correspondence received from the Chief Constable giving notice of the conviction and determine: -

- (a) having had regard to the conviction and any recommendation in the Chief Constable's notice, and
- (b) after giving (i) the licence holder concerned; and (ii) the Chief Constable, 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
  - (i) revoking, or
  - (ii) suspending for such period, not exceeding 6 months, as the Board considers appropriate, or
  - (iii) endorsing,the personal licence held by the licence holder concerned;
- (d) if, at the hearing, the Licensing 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.

**2. BACKGROUND**

The Clerk has received correspondence from the Chief Constable giving notice of conviction of a relevant offence in terms of section 83(4)(b) of the Licensing (Scotland) Act 2005 ("the 2005 Act") in respect of a Personal Licence Holder. **A copy of that correspondence shall be circulated to members in advance of the meeting.**

The Board determined, at its meeting on 12 December 2022 (Report LB 59/22 refers), to hold a hearing in terms of section 83(7A)(a) of the Licensing (Scotland) Act 2005.

2.1 At the hearing under Section 83(7A)(a) of the 2005 Act, the Licensing Board may:-

- (a) having regard to:-
  - (i) the conviction, and
  - (ii) any recommendation contained in the chief constable's notice under Section 83(5) of the 2005 Act,
- (b) after giving:-
  - (i) the licence holder concerned, and
  - (ii) the chief constable 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 under Section 83(9) of the 2005 Act.

2.2 An order under Section 83(9) of the 2005 Act is an order: -

- (a) revoking,
- (b) suspending for such period, not exceeding 6 months, as the Board considers appropriate, or
- (c) endorsing,

the personal licence held by the licence holder concerned.

2.3 The Board may wish to note that an endorsement expires at the end of the period of 5 years beginning with the date on which the endorsement is made. Any endorsement which has expired is to be disregarded. Where three endorsements have been made in any personal licence, the Board which issued the licence must hold a hearing.

2.4 Section 83(9)A of the 2005 Act provides that where, at the hearing, the Licensing 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.

2.5 Section 135 of the 2005 Act 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 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. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

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

In dealing with this report, the Board will have regard to any human rights issues in relation to the Personal Licence Holder.

### **5. NOTIFICATION**

The Personal Licence Holder has been written to at their last known address and advised of their entitlement to attend the Board should they wish.

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**(a) PERSONAL LICENCE HOLDER AN/1571 - EDEN HARRISON SINCLAIR**

The Clerk received an email from Police Scotland on 4 November 2022 enquiring whether Eden Harrison Sinclair, who is a Personal Licence holder, had declared a conviction from 23 August 2022.

Section 82 of the Licensing (Scotland) Act 2005 requires the licence holder, no later than one month after the date of a relevant or foreign conviction, to give notice of the conviction to the Licensing Board.

A recorded delivery letter dated 4 November 2022 was posted to Mr Sinclair requesting he specify to us the nature of the offence and the date of the conviction.

Mr Sinclair provided notification of a conviction by email on 13 November 2022.

The Chief Constable's notice of conviction dated 25 November 2022, which does not include a recommendation, **shall be circulated to members prior to the meeting.**

**(b) PERSONAL LICENCE HOLDER AN/1653 – DAVID HARPER**

The Clerk received an email from Mr Harper, who is a Personal licence holder dated 2 November 2022 confirming that he had received a conviction.

Section 82 of the Licensing (Scotland) Act 2005 requires the licence holder, no later than one month after the date of a relevant or foreign conviction, to give notice of the conviction to the Licensing Board.

The Chief Constable's notice of conviction in terms of section 83(4)(b) dated 7 November 2022 does not include a recommendation and **shall be circulated to members prior to the meeting.**