

**ANGUS LICENSING BOARD – 19 JANUARY 2023**

**TRANSFER OF PREMISES LICENCE UNDER SECTION 33**

**REPORT BY CLERK TO THE BOARD**

**ABSTRACT**

The purpose of this report is to present an application for transfer of a premises licence under sections 33(1) of the Licensing (Scotland) Act 2005 (“the 2005 Act”) which requires to be determined by the Board.

**1. RECOMMENDATIONS**

It is recommended that the Board conducts a hearing and determines the application in terms of one of the following options: -

- (i) to grant the application for transfer of the licence to the proposed transferee in accordance with paragraph 3.5 of the report; or
- (ii) to refuse the application on one or more grounds referred to in paragraph 3.6 of the report.

**2. BACKGROUND**

The Clerk to the Board, has received an application under section 33(1) of the 2005 Act from the current licence holder for transfer of premises licence number 325.

The Clerk has given notice of the application to the Chief Constable in terms of section 33(4) of the 2005 Act.

A notice has been received from Police Scotland in response. **A copy of the notice shall be circulated to members in advance of the meeting.** The Board is asked to determine the application in accordance with Section 1 of the Report.

**3. LEGAL IMPLICATIONS**

- 3.1 Having received notice of the application from the Clerk the Chief Constable must respond by giving the Licensing Board one or other of the following notices under Sections 33(6)(a) or 33(6)(b) of the 2005 Act respectively: -
- (a) a notice stating that neither: -
    - (i) the transferee, nor
    - (ii) where the transferee is neither an individual nor a council, any connected person, has been convicted of any relevant offence or foreign offence, or
  - (b) a notice specifying any convictions of: -
    - (i) the transferee, and
    - (ii) where the transferee is neither an individual nor a council, any connected person, for a relevant offence or a foreign offence.
- 3.2 If the chief constable considers that it is necessary for the purposes of any of the licensing objectives that the application for transfer of the licence to the transferee be refused, the chief constable may include in his notice a recommendation to that effect under section 33(7).
- 3.3 On giving notice under section 33(6)(a) or 33(6)(b), the chief constable may also provide to the Licensing Board any information under section 33(7A) in relation to: -
- (a) the transferee,
  - (b) where the transferee is neither an individual nor a council, a connected person, or

(c) any person who would be an interested party in relation to the licensed premises if the application for the transfer of the licence to the transferee were to be granted, that the chief constable considers may be relevant to consideration by the Board of the application.

3.4 Where the Licensing Board receives a notice under paragraph 3.1(a) above and,

(a) the notice does not include a recommendation under section 33(7); and

(b) no information has been provided under section 33(7A),  
the Board must grant the application.

In any other case, the Licensing Board must hold a hearing for the purpose of considering and determining the application.

3.5 Where a hearing requires to be held, the Licensing Board must, having regard to the chief constable's notice and any information provided under section 33(7A);

(a) if satisfied that a ground for refusal applies, refuse the application, or

(b) if not so satisfied, grant the application.

3.6 The grounds for refusal are: -

(a) that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence; or

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.

#### **4. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

#### **5. CONSULTATION**

The Chief Constable of Police Scotland has been consulted in the preparation of this report.

#### **6. NOTIFICATION**

The applicant has been notified of the terms of this report. They have also been advised of their entitlement to attend the Board should they wish.

**NOTE:** The background papers (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are: The Licensing (Scotland) Act 2005

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**LICENCE NO. 325 SHER-E-BANGLA, 204 HIGH STREET, MONTROSE, DD10 8PH**

On 6 December 2022 the Clerk to the Board received an application for a Minor Variation and Transfer under Section 33(1) from Indian Cottage (Montrose) Limited, 204 High Street, Montrose, DD10 8PH in connection with premises, Indian Cottage, 204 High Street, Montrose, DD10 8PH. The Minor Variation lodged was to change the premises name to Sher-E-Bangla and to nominate Mr Mohammad Rumi as the premises manager. This Minor Variation was subsequently granted under delegated authority.

Police Scotland submitted a Notice dated 8 December 2022 and a copy of this notice will be circulated to members in advance of the meeting.