

ANGUS LICENSING BOARD – 23 MARCH 2023

REQUEST TO RELIEVE THE FAILURE TO COMPLY WITH A PROCEDURAL REQUIREMENT

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to request that the Board determine whether to relieve an applicant of a failure to comply with procedural requirements in terms of Section 135 Licensing (Scotland) Act 2005 (“the 2005 Act”).

1. RECOMMENDATION

It is recommended that the Board: -

- (i) note that the Clerk has received two requests from applicants for relief from failure to comply with procedural requirements of the 2005 Act, which require to be determined by the Board; and
- (ii) determine whether to relieve the failures to comply with the procedural requirements and if so, whether to impose any order

2. BACKGROUND

- 2.1 Requests have been received for relief from failure to comply with procedural requirements of the 2005 Act so that applications to transfer premises licences, also received, may be considered by the Board.
- 2.2 The application for relief is in respect of an application under section 34(1) of the 2005 Act for transfer of the licence received by the Clerk from the proposed licence holder of the premises licences.

3. LEGAL

- 3.1 Section 135 of the 2005 Act provides that the Board may relieve any applicant or other party to proceedings before the board of any failure to comply with a procedural provision if: -
 - (a) The failure is due to a mistake, oversight or other excusable cause; and
 - (b) The Board considers it appropriate in all the circumstances to relieve the failure.
- 3.2 Where the Board exercises this power it may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.
- 3.3 The Clerk gave notice of the transfer applications to the Chief Constable in terms of section 33(4) of the 2005 Act.
- 3.4 Having received notice of the application to transfer 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.
- 3.5 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).

- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 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. NOTIFICATION

The applicants have been notified of the terms of this Report. They have also been invited to attend the Board.

NOTE: No background papers were relied on to a material extent in preparing the above report.

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APPENDIX TO REPORT LB20/23
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(a) Lic. No. 379, Shotz Pool and Snooker Club, 2-4 John Street West, Arbroath, DD11 1RT

Name of Licence Holder: Shotz Pool and Snooker Ltd., 58 St Mary Street, Dundee, DD1 5RA

Type of Licence: On Sales

Shotz Pool and Snooker Ltd, is currently the named premises licence holder of Shotz Pool and Snooker Club.

Police Scotland emailed Licensing on 5 December 2022 requesting an updated copy of the premises licence for these premises. They advised they still had Shotz Pool and Snooker Ltd – Company No SC436933 as the premises licence holder but that this company was dissolved in October 2020.

A Recorded Delivery letter dated 6 December 2022 was posted out to “The Licenceholder, Shotz Pool and Snooker Club, 2-4 John Street West, Arbroath, DD11 2RT” requesting they contact licensing to discuss the arrangements regarding the premises licence and to also confirm the details of the current premises manager.

Licensing received a telephone call on 11 January 2023 in response from Marc Fleming. Thereafter, the Clerk received, on behalf of Shotz Pool and Snooker Club, a S34 Transfer application along with a covering letter. **A copy of said letter dated 1 February 2023 is attached to this Report.**

The S34 Transfer application proposes Marc Fleming as the premises licence holder. This application was subsequently processed and Police Scotland replied initially with no objections to this application and subsequently with their statutory notice letter. **A copy of the Police letter dated 8 March 2023 will be circulated to Board members prior to the meeting.**

The premises applied for a suite of Occasional Licences, which were issued authorising the sale of alcohol from 24 February 2023 to 20 April 2023.

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(b) Lic. No.336, Coast Bar & Nightclub (Upper Level), 4 Gravesend, Arbroath, DD11 1RT

Name of Licence Holder: M & B Leisure Limited, 1 Elgin Place, Arbroath, DD11 1HU

Type of Licence: On and Off Sales

M & B Leisure Limited, is currently the named premises licence holder of Coast Bar & Nightclub (upper level).

On 17 January 2023 the Clerk received a Minor Variation application to amend the premises manager to Mr Nevada Mitchell whereupon it was identified that the company holding the premises licence, M & B Leisure Limited, had been dissolved with effect from 18 October 2022.

The Licensing Standards Officer contacted Mr Mitchell enquiring about the dissolution of the company. Mr Mitchell thereafter submitted a S34 Transfer on 10 February 2023 to transfer the premises licence into the name of Excel 4 Leisure, 16B Applegate, Arbroath, DD11 1HX.

Police Scotland replied initially with no objections to this application and subsequently with their statutory notice letter. **A copy of the Police letter dated 8 March 2023 will be circulated to Board members prior to the meeting.**