



REPORT TO: MORAY LICENSING BOARD ON 30 SEPTEMBER 2020

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE APPLICATION HEARING FOLLOWING DISCLOSURE OF RELEVANT CONVICTION ON APPLICATION (CASE NUMBER 1 OF 2020)

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

1.1 This report is to notify the Board:

- i) That notice of relevant conviction(s) has been disclosed on an application for a personal licence. a copy of the notice from the Chief Constable is attached at Appendix 1;
- ii) The Chief Constable has confirmed to the Clerk that the applicant (case number 1 of 2020) has been convicted of relevant offence(s) but the Chief Constable has made no further recommendation;
- iii) That, as a result, s.74(5A) of the Licensing (Scotland) Act 2005 states the Board may hold a hearing to consider and determine whether the licence should be granted or refused.
- iv) That at the meeting on the 6 February 2020 the Board determined to hold a hearing for the purpose of considering this personal licence application.

2. RECOMMENDATION

2.1 It is recommended that the Board:

- i) **Note the existence of a relevant conviction and the absence of a recommendation by the Chief Constable;**
- ii) **Note the previous decision to hold a hearing for the purpose of considering and determining the application;**
- iii) **Proceed with a hearing, have regard to the notice from the Chief Constable, hear from the parties, consider the matter and determine whether to grant or refuse the personal licence having regard the grounds for refusal set out in para 3.7 below;**

3. BACKGROUND

- 3.1 The Licensing (Scotland) Act 2005 section 73 requires the Board to notify the Chief Constable of the receipt of an application for a personal licence. The Chief Constable then has up to 21 days to respond to the notice of application with notice as to whether the applicant has been convicted of a relevant or foreign offence.
- 3.2 The Chief Constable has confirmed to the Clerk that the applicant (case number 1 of 2020) has been convicted of offence(s) but the Chief Constable has made no recommendation for refusal. A copy of the Chief Constable's notice is attached at Appendix 1.
- 3.3 The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513) prescribe which offences are relevant offences for the purposes of the Licensing (Scotland) Act 2005. The list of relevant offences within the Regulation includes, amongst others, the offences disclosed.
- 3.4 Accordingly the applicant for personal licence has been convicted of a relevant offence which has been confirmed by the Chief Constable's representative but no recommendation on behalf of the Chief Constable has been provided.
- 3.5 Under s.74(5A) of the Licensing (Scotland) Act 2005 the Board may hold a hearing, as a result of receipt of the Chief Constable's notice, to consider and determine the application. On the 6 February 202 the Board resolved to hold a hearing and the hearing was due to take place in April however all hearings were cancelled because of coronavirus.
- 3.6 This is therefore the first opportunity to hold that hearing. At the hearing the Licensing Board must, after having regard to the Chief Constable's notice and after giving the licence holder concerned and the Chief Constable an opportunity to be heard:
- i) If satisfied that a ground for refusal applies refuse the application; or
 - ii) If not so satisfied grant the application.
- 3.7 The grounds for refusal are
- i) that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence; OR
 - ii) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.
- 3.8 If a hearing is held then it should be noted that, even in the absence of a recommendation by the Chief Constable, it is possible for the Board to conclude that it is necessary to refuse the application. However, in the absence of such a recommendation by the Chief Constable based on crime prevention grounds, the Board should be slow to draw the conclusion that refusal is necessary for a purpose(s) related to that objective.

3.9 The licensing objectives are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

4. **SUMMARY OF IMPLICATIONS**

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

The Board is to have regard to the licensing objectives and whether there is real and sufficient risk of prejudicing the same.

(e) Staffing Implications

None

(f) Property

None

(g) Equalities/Socio Economic Impact

There are no issues in this case beyond the general equalities and human rights issues that arise in the consideration of individual cases. In particular:

Article 8 - access to private and sensitive information about the person could give rise to interference with the subject's right to respect for private and family life.

Article 1 of Protocol 1 - the decision may also interfere with the right to property, in that, depending on the outcome, the decision may deprive the subject of income.

Article 6 - the right to a fair trial means the proceedings must be conducted fairly to arrive at a reasoned decision.

Article 8 and Article 1 of Protocol 1 are qualified rights, meaning these can be restricted in order to protect the rights of another or the wider public interest. This will require an objective justification. To be able to objectively justify a decision, the Committee has to demonstrate that any decision is a proportionate means to achieve a legitimate aim. A legitimate aim must be a real consideration that is legal and not discriminatory. Examples of legitimate aims include: Public health; Public safety; Efficiency; Enabling elderly people to live at home longer. Saving cost may be relevant but is not an aim in itself.

Any measure taken to achieve the legitimate aim must also be proportionate i.e. necessary and the least intrusive/discriminatory way of achieving the aim.

Lastly, when any of the Articles are engaged, it will also mean Article 14 should be considered. That is the right not to be discriminated against in relation to the convention rights. The definition of discrimination under this Article covers a much wider spectrum than the protected characteristics under the Equality Act 2010. The Committee should therefore have regard to all the subject's circumstances.

(h) Consultations

Consultation is not required.

5. CONCLUSION

- 5.1 It is proposed that the Board note the existence of a relevant conviction and the absence of a recommendation by the Chief Constable;**
- 5.2 It is proposed that the Board determine whether to hold a hearing for the purpose of considering and determining the application;**
- 5.3 It is proposed that, if a hearing is held then the Board, having regard to the notice from the Chief Constable, should hear from the parties, consider the matter and determine whether to grant or refuse the personal licence having regard to the grounds for refusal;**
- 5.4 It is proposed that if a hearing is not held then the Board grant the application.**

Author of Report:	Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board
Background Papers:	
Ref:	SAH