

EAST AYRSHIRE LICENSING BOARD

Minute of the Meeting of East Ayrshire Licensing Board held within The Council Chambers, Council Headquarters, London Road, Kilmarnock on Tuesday 20 November 2018 at 10am.

SEDERUNT: Councillor Tom Cook (Chair), Councillor Fiona Campbell, Councillor John Campbell, Councillor William Crawford, Councillor Drew Filson, Councillor Ian Grant, Councillor Claire Leitch, Councillor George Mair and Councillor Jacqui Todd.

ATTENDING: Mr S McCall (Depute Clerk to the Licensing Board), Chief Inspector G Docherty and Ms D Hastings (Police Scotland), Mrs C McEwan & Mr I Hiles (Licensing Standards Officers) and Mrs P Duncan and Ms S Duncan (Licensing Board Administrators).

APOLOGIES : Councillor Lillian Jones.

1. SEDERUNT

Noted.

2. MINUTE OF MEETING

2.1 The Minute of the meeting of East Ayrshire Licensing Board held on 23 October 2018 was approved and noted.

2.2 The Minute of the meeting of the Joint Meeting of East Ayrshire Licensing Board and East Ayrshire Local Licensing Forum held on 23 October 2018 was approved and noted.

3. APPLICATIONS CONSIDERED UNDER DELEGATED AUTHORITY

The Clerk provided details on the following applications, which were discharged by the Clerk under delegated authority from 13 October until 9 November 2018:-

Minor Variation	:	7
S33 Transfer	:	2
S34 Transfer	:	1
Grant of Personal Licence	:	10
Small Lottery – Renewals	:	4
Small Lottery – Grant	:	1
Occasional Licences	:	87
Extended Hours	:	5

The Board noted the content of the report for information purposes.

4. APPLICATIONS

Applications considered under the Licensing (Scotland) Act 2005 – See Appendix I.

5. PERSONAL LICENCE REVIEW

- 5.1 Review of personal licence EA/PL/1946/18 for Chloe Hart, in terms of the Licensing (Scotland) Act 2005 following a notice issued in terms of Section 83 of the Act.

The Depute Clerk reminded Members that Chloe Hart had been granted a Personal Licence at the meeting of the Board on 25 September 2018. At that time Ms Hart advised Members that she was due to appear at Court for a drink driving offence. As Ms Hart had now been convicted of the offence, a relevant offence in terms of the Licensing (Scotland) Act 2005, a Personal Licence Review Hearing was required.

Chief Inspector Docherty reported that Chloe Hart was convicted at Kilmarnock Sheriff Court on 5 September 2018 of an offence in terms of the Road Traffic Act, Section 5(1)(A) when she was given a Community Payback Order for a period of 230 hours to be completed within 6 months, disqualified from holding and obtaining a driving licence for 36 months and her driving record endorsed.

The circumstances surrounding the offence was that on 6 November 2017 on a road or other public place, namely Main Street, Newmilns, Chloe Hart drove a car after consuming so much alcohol that the proportion of it in her blood was 189 milligrammes of alcohol in 100 millilitres of blood, exceeding the prescribed limit, namely 50 milligrammes of alcohol in 100 millilitres of blood, contrary to the Road Traffic Act 1988, Section 5(1)(A).

Ms Hart appeared before the Board and advised that she now only drinks alcohol at occasional social events. She continued that she appreciated the severity of the conviction and deeply regretted her actions.

Ms Hart advised that she continued to work with Wetherspoons, who were aware of her conviction and who allowed her time to complete the Community Payback Order.

The Chair moved that the grounds of review had been established. The Board agreed unanimously.

The Chair moved that no action be taken on this occasion, however stressed to Ms Hart that the Board did not wish to see her before the Board with any further relevant offences. The Board agreed unanimously.

6. PREMISES LICENCE REVIEW

- 6.1 Review of premises licence for Pricewise Stores, 61 Riccarton Road, Hurlford in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.

Mr Hiles, LSO, reminded Members that in terms of Section 36(1) any person may apply to the Licensing Board in respect of any licensed premises in relation to which a premises licence has effect, for a review of the licence on any grounds for review, the grounds being:

- (a) That one or more of the conditions to which the premises licence is subject has been breached, or**

(b) Any other ground relevant to one of more of the licensing objectives.

In terms of Section 36(4) of the Licensing (Scotland) Act, a Licensing Standards Officer may request a premises licence review if, after the issue of a Compliance Notice, one or more conditions of the premises licence are not complied with.

Section 10(2) of the mandatory conditions of the premises licence state that the annual fee must be paid as per the terms of the Licensing (Fees) (Scotland) Regulations 2007. As such the annual fee falls to be due on 1 October each year, or, where that date falls on a Saturday or Sunday, on the immediately following Monday.

Mr Hiles, LSO, advised that the premises licence is currently held in the name of Alan Armstrong Paterson, who has held the licence since it was granted by the Board at a meeting on 28 April 2009. He continued that up until 2016 the annual premises licence fee, due to be paid before 1 October each year, had been paid on time, however in 2016 it was paid on the 12 October and in 2017 it was paid on the 2 October.

Mr Hiles reported that a letter dated 4 July 2018 was sent to the licence holder reminding him that the annual fee of £220 was due to be paid on or before 1 October 2018.

As payment was not received a Compliance Notice, in terms of Section 14(2)(i) of the Act, was issued on 15 October 2018. The Compliance Notice was hand delivered in person to the premises licence holder at the business premises address in Hurlford and required that the annual fee of £220 be paid within 7 days of the date of the Notice, namely Monday 22 October 2018.

Mr Hiles advised that the premises licence holder had indicated that he may surrender the licence but to date had not surrendered the licence.

Mr Hiles concluded that the annual fee remained unpaid and that there had been no communication from Mr Paterson. Mr Hiles request that Members, if satisfied that a ground for review has been established, take such steps as considered necessary, to ensure compliance with the Licensing (Scotland) Act 2005.

Mr Paterson was not present or represented at the meeting.

The Depute Clerk reminded Members of the options available to the Board if they found the grounds for review to be established.

The Chair moved that the grounds of review had been established and, in the circumstances, the licence be revoked. The Board agreed unanimously.

- 6.2 **Review of premises licence for Catrine House Coffee Shop & Ice Cream Parlour, Mauchline in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.**

The Depute Clerk advised that a premises licence review requested had been made by Mr Hiles, LSO, who reported as follows:-

The premises licence is currently held in the name of William Brown Templeton, who has held the licence since it was granted by the Board at a meeting on 31 July 2014.

Payment of the annual premises licence fee has been made late every year since the licence was granted. In 2014 the fee was paid on 4 November. In 2015 the fee was paid on 27 October. In 2016 the fee was paid on the 25 October and in 2017 the fee was paid on the 4 October.

A letter dated 4 July 2018 was sent to the licence holder reminding him that the annual fee of £220 was due to be paid on or before 1 October 2018.

As payment was not received a Compliance Notice, in terms of Section 14(2)(i) of the Act, was issued on 15 October 2018. On the 15 October 2018, an attempt was made to hand deliver the Compliance Notice to the home address provided by the licence holder, however it was found that he no longer resident at the address provided and that the premises were to be used as a holiday chalet and let out to paying guests. A visit was made to the premises and it was found that the premises were insecure and completely empty. The Compliance Notice was left on the counter. This Compliance Notice required that the Annual Fee of £220 be paid within 7 days of the date of the Notice, namely Monday 22 October 2018. No response was made by the licence holder and all telephone numbers on file and on the internet had been disconnected.

The annual fee remained unpaid and that there had been no communication from Mr Templeton.

Mr Hiles request that Members, if satisfied that a ground for review has been established, take such steps as considered necessary, to ensure compliance with the Licensing (Scotland) Act 2005.

Mr Templeton was not present or represented at the meeting.

The Depute Clerk reminded Members of the options available to the Board if they found the grounds for review to be established.

The Chair moved that the grounds of review had been established and, in the circumstances, the licence be revoked. The Board agreed unanimously.

- 6.3 Review of premises licence for Dagmar, 18 Glaisnock Street, Cumnock in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.

The Depute Clerk advised that a premises licence review requested had been made by Mr Hiles, LSO, who reported as follows:-

The premises licence is held in the name of Dagmar Scot Ltd. who have held the premises licence since 6 June 2017 when the licence transferred. The premises licence was granted by the Licensing Board at a meeting on 17 March 2009, permitting the sale of alcohol on sales only. The premises are currently open and trading.

A letter dated 4 July 2018 was sent to the licence holders advising that the annual fee of £280 was due to be paid on or before 1 October 2018.

As payment was not received, an email was sent to the email provided as a correspondence address for Dagmar Scot Ltd. on 10 October 2018 reminding of the requirement to pay the annual fee, however no response was received.

As payment was not received a Compliance Notice, in terms of Section 14(2)(i) of the Act, was issued on 15 October 2018.

The Compliance Notice was hand delivered to The Dagmar, 18 Glaisnock Street, Cumnock and handed to Shelley Naismith, the Designated Premises Manager and required that the annual fee of £280 be paid within 7 days of the date of the Notice, namely by Monday 22 October 2018.

As at the date of writing the Report, the annual fee remained unpaid and no contact had been made by the premises licence holder by email, letter or telephone, however payment was made on 7 November 2018.

In 2017 the annual fee was paid on 10 October 2017 and on that occasion the premises licence holder had to be contacted and reminded that the payment was due.

Mr Hiles request that Members, if satisfied that a ground for review has been established, take such steps as considered necessary, to ensure compliance with the Licensing (Scotland) Act 2005.

Mr Bryce Johnstone appeared before the Board on behalf of the licence holder and explained that the DPM of the premises should have paid the fee however omitted to do so. He continued that the DPM had been off work ill and had the reminder letters with her. When it had been ascertained that the fee had not been paid, payment was made immediately.

The Depute Clerk asked how closely Mr Johnstone was involved in the operation of the business.

Mr Johnstone advised that he was involved in payment of accounts however didn't realise that the fee was due as the reminder letter had not been passed on by the DPM. Mr Johnstone took responsibility for the late payment.

The Depute Clerk asked if Mr Johnstone was aware that the mandatory conditions attached to the premises licence were being breached by not paying the annual fee on time and Mr Johnstone advised that he was aware.

The Depute Clerk reminded Members of the options available to the Board if they found the grounds for review to be established.

Mr Johnstone stated that he had no excuse but paid the annual fee immediately when the omission had been realised.

Councillor Leitch asked if this was the first time the annual fee had been paid late.

Mr Johnstone advised that steps had been put in place to avoid this mistake from happening again and that staff had now been advised that all mail should be left to be dealt with by Mr Johnstone.

The Chair moved that the grounds of review had been established and, in the circumstances, that a warning letter should be issued to the licence holders. The Board agreed unanimously.

- 6.4 Review of premises licence for Eglinton Hotel, 50 Main Street, Dalmellington in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.

The Depute Clerk advised that a premises licence review requested had been made by Mr Hiles, LSO, who reported as follows:-

The premises licence is held in the name of Combined Inns (Eglinton) Ltd., who have held the licence since it was transferred on 18 January 2016. The premises licence, permitting the sale of alcohol on sale only, was granted by the Licensing Board at a meeting on 3 November 2009 and are currently open and trading.

A letter dated 4 July 2018 was sent to the licence holders reminding that the annual fee of £280 was due to be paid on or before 1 October 2018. On 10 October 2018, Tom Bowie, who is involved in the operation of the premises was spoken to by telephone when he assured that a cheque would be posted that day. No cheque was received.

As payment was not received a Compliance Notice, in terms of Section 14(2)(i) of the Act, was issued on 16 October 2018.

The Compliance Notice was posted by Recorded Delivery mail to Eglinton Hotel, Dalmellington on 16 October 2018 and required that the annual fee of £280 be paid within 7 days of the date of the notice, namely by Tuesday 23 October 2018.

As at the date of writing the Report, the annual fee remained unpaid and no contact had been made by the premises licence holder by email, letter or telephone, however payment was made on 1 November 2018.

In 2016 the annual fee was paid on 24 October 2017 and on that occasion the premises licence holder had to be contacted and reminded that the payment was due. In 2017 the fee was paid on time.

Mr Hiles request that Members, if satisfied that a ground for review has been established, take such steps as considered necessary, to ensure compliance with the Licensing (Scotland) Act 2005.

Mr Thomas Bowie appeared before the Board on behalf of the licence holders and explained that he had been moving house at the time the first letter had been issued and had paid the fee immediately upon receiving the second reminder. Mr Bowie stated that he took full responsibility and apologised for the late payment.

Mr Bowie concluded that this was the first time that the annual fee had been paid late and ensured that the oversight would not happen again.

The Depute Clerk reminded Members of the options available to the Board if they found the grounds for review to be established.

The Chair moved that the grounds of review had been established and, in the circumstances, that a warning letter should be issued to the licence holders. The Board agreed unanimously.

- 6.5 Review of premises licence for Grange Service Station, 58 Irvine Road, Kilmarnock in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.

The Depute Clerk advised that a premises licence review requested had been made by Mrs McEwan, LSO, who reported as follows:-

The Premises Licence is held in the name of GS (Kilmarnock) Ltd., who has held the Premises Licence since it was granted by the Board 9 September 2008.

The premises are part of a petrol garage and are closed and not currently trading.

A letter dated 4 July 2018 was sent to the Licence Holder reminding them that the Annual Fee of £220 was due to be paid on or before 1 October 2018.

As of 15 October 2018 payment had still not been received and a Compliance Notice was issued in terms of Section 14(2)(i) of the Act. The Compliance Notice was posted Recorded Delivery to the Company, c/o 1 Beech Avenue, Kilmarnock, which is the address held on file for Steven Harrison, one of the Directors of the Company. The letter and Notice has been returned and marked as “Gone Away”.

On receipt of the returned Notice, a copy of the Compliance Notice was sent to another Director of the Company, namely Gary Haugh, 42 Greenock Road, Bishopton, PA7 5JB, for his information.

As at the date of this Report the Annual Fee of £220 remained unpaid and there had been no further communication from the Licence Holder.

Mrs McEwan respectfully request that Members, if satisfied that a ground for review has been established, take such steps as considered necessary, to ensure compliance with the Licensing (Scotland) Act 2005.

The licence holder, GS (Kilmarnock) Ltd., was not present or represented at the meeting.

The Depute Clerk reminded Members of the options available to the Board if they found the grounds for review to be established.

The Chair moved that the grounds of review had been established and, in the circumstances, the licence be revoked. The Board agreed unanimously.

- 6.6 Review of premises licence for Craigie Stores, 46B Craigie Road, Kilmarnock in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.

The Depute Clerk advised that a premises licence review requested had been made by Mrs McEwan., LSO, who reported as follows:-

The Premises Licence is held in the name of Tariq Sultan, 63 London Road, Kilmarnock, who has held the Premises Licence since it was granted by the Board in August 2008.

The premises are currently trading however alcohol is not being sold.

A letter dated 4 July 2018 was sent to the Licence Holder reminding him that the Annual Fee of £220 was due to be paid on or before 1 October 2018.

As of 15 October 2018 payment had still not been received and a Compliance Notice was issued in terms of Section 14(2)(i) of the Act.

The Compliance Notice was hand delivered to Mr Sultan at the premises on 15 October 2018 by Licensing Officers. Mr Sultan advised at that time that he intended to surrender the Premises Licence as he did not intend to sell alcohol from the premises.

As at the date of this Report the Annual Fee of £220 remains unpaid and Mr Sultan has not surrendered the Premises Licence, as previously advised to Officers.

Mrs McEwan respectfully request that Members, if satisfied that a ground for review has been established, take such steps as considered necessary, to ensure compliance with the Licensing (Scotland) Act 2005.

Mr Sultan was not present or represented at the meeting.

The Depute Clerk reminded Members of the options available to the Board if they found the grounds for review to be established.

The Chair moved that the grounds of review had been established and, in the circumstances, the licence be revoked. The Board agreed unanimously.

- 6.7 Review of premises licence for premises at Burnpark Service Station, Ayr Road, Kilmarnock in terms of the Licensing (Scotland) Act, 2005 for breach of mandatory licensing conditions.

The Depute Clerk advised that a premises licence review requested had been made by Mrs McEwan., LSO.

Manpreet Bawa and Jaspreet Bawa, Directors of MJM Bawa Ltd. appeared before the Board, together with Martine Wyper, Store Manager.

As the licence holders had no preliminary matters to raise, Mrs McEwan reported as follows:-

In terms of Section 36(1) of the Licensing (Scotland) Act 2005, any person may apply to the Licensing Board for a review of the Premises Licence on any of the grounds for review.

The grounds for review are:-

- (a) That one or more of the conditions to which the Premises Licence is subject has been breached, or**
- (b) Any other ground relevant to one or more of the licensing objectives.**

In terms of Section 36(4) of the Licensing (Scotland) Act 2005 a Licensing Standards Officer may make a Premises Licence Review application only if:-

- (a) In relation to the alleged ground for review, the Officer has issued to the Licence Holder a Notice under Section 14(2)(a)(i), and**

- (b) **The Licence Holder has failed to take the action specified in the Notice to the satisfaction of the Officer.**

The Premises Licence in respect of Burnpark Service Station was transferred to Bluegrass HK Limited on 14 October 2014. The Directors of Bluegrass HK Limited were Harpreet Kaur and Jaspreet Bawa with Manpreet Bawa as Secretary. The Designated Premises Manager was Harpreet Kaur (NA 0773).

The Premises Licence was again transferred on 24 May 2017 to MJM Bawa Ltd., the Directors of the company being Jaspreet Bawa and Manpreet Bawa. The Designated Premises Manager was Jaspreet Bawa (NA 1161).

Although the Premises Licence has been held by two different named Companies since October 2014, Jaspreet Bawa has been Director of both Companies.

Condition 6 of the Mandatory Conditions state that no person, other than a person who holds a Personal Licence, is to work in the premises in a capacity which involves the person making sales of alcohol unless that person has received the mandatory two hours training and a Training Record completed and produced to a Licensing Standards Officer on request.

Several inspections have been carried out within the premises since 2014 and it has been noted that Condition 6 has been breached on many occasions, with staff having been unable to produce their Training Record or that training had not been undertaken prior to staff being involved in the sale of alcohol.

During a visit on 2 June 2015 it was observed that alcohol was being displayed outwith the approved licensed area. Guidance was provided to the member of staff working at the time of the inspection.

A further inspection was carried out on 4 June 2015. Following this inspection the Licence Holder was advised that two Personal Licences which were on the premises did not contain details of refresher training, as required by the Regulations, and one of which belonged to the then designated Premises Manager Harpreet Kaur.

An inspection was carried out on 15 August 2016 at which time the member of staff on duty was unable to produce his Training Record. The member of staff was able to answer questions put to him and as such the Officer was satisfied that training had been provided. However, following the inspection a letter was sent to the Licence Holder, reminding them of the requirements in terms of Paragraph 6 of the Mandatory Conditions, namely that a Training Record must be kept on the premises and produced to a Licensing Standards Officer on request. During conversation with the member of staff he advised that the designated Premises Manager, Harpreet Kaur, had retired and was rarely present within the premises. Guidance was also provided to the Licence Holder in this regard.

An inspection was carried out on 10 January 2017 at which time the member of staff was unable to produce his Training Record. This individual was the same member of staff who was unable to produce his Training Record during the inspection on 15 August 2016, and of which the Licence Holder had been notified.

During the inspection it was noted that alcohol was being promoted in the garage forecourt, thereby breaching Paragraph 13 of the Mandatory Conditions, which states that alcohol which is for consumption off the premises, may only be promoted or displayed in the area/areas approved by the Licensing Board.

Alcohol was also being stored in front of a fire exit, thereby breaching Paragraph 13, as well as fire safety legislation which requires the responsible person to ensure that routes to emergency exits are kept clear at all times.

The designated Premises Manager was not available at the time of the inspection and the member of staff working advised that the designated Premises Manager, Harpreet Kaur, had retired due to ill health.

On return to the office, a check of Companies House website revealed that the Director of Bluegrass HK Limited, the Premises Licence Holder, was Harpreet Kaur and that Manpreet Bawa and Jaspreet Bawa had both resigned on 19 January 2016.

In terms of Section 40A of the Act a Premises Licence Holder is required to notify the relevant Licensing Board, no later than one month after a person becomes or ceases to be a connected person, in relation to the Licence Holder. It further states that a Premises Licence Holder who fails to comply, without reasonable excuse, commits an offence. No such intimation was received by the Licence Holder.

A letter dated 11 January 2017 was sent to the Licence Holder with a request that they contact the Licensing Section as a matter of urgency to discuss the situation with regard to the Directors of the Company who held the Premises Licence and to explain the circumstances with regard to the Premises Manager.

On 26 April 2017 an application for Transfer was lodged by Bluegrass HK Ltd., to transfer the Premises Licence to MJM Bawa Ltd, the Directors of this Company being Manpreet Bawa and Jaspreet Bawa. A further application to nominate a new Premises Manager, namely Jaspreet Bawa, was also lodged in terms of Section 31 of the Act, and both applications were granted.

The premises were visited on 7 March 2018 at which time both members of staff on duty were unable to produce their Training Records. While both staff were able to answer questions put to them the Licence Holder was again notified of the requirements of Paragraph 6 of the Mandatory Conditions.

It was noted that alcohol was being displayed in an area not approved by the Licensing Board, thereby breaching Condition 13 of the Mandatory Conditions. It was also noted that a Notice, advising that it is an offence for a person under the age of 18 years to buy or attempt to buy alcohol on the premises, and for any other person to buy or attempt to buy alcohol on the premises for a person under the age of 18, was not being displayed as required by S110 of the Act. The Licence Holder was notified of the above noted breaches by letter dated 8 March 2018.

A visit was made on 8 May 2018 at which time the member of staff on duty was unable to produce her Training Record. As the Licence Holder had been advised of the requirements of staff training, and of the requirement for staff to produce their Training Record, on several occasions, a Compliance Notice dated 8 May 2018 was served on the Licence Holder, MJM Bawa Ltd., requiring that all staff members must receive the mandatory two hours training and a Training Record thereafter completed for each member of staff and kept on the premises.

A visit was made on 22 October 2018 at which time two members of staff were on duty within the premises. One member of staff was unable to produce their Training Record and it was admitted that training had not been provided.

It was also noted that a 70cl of Glens Gin was being sold at a price which breached the Minimum Unit Pricing and guidance was provided in this respect.

It is the opinion of the Licensing Standards Officer that in order for the Licensing Objectives to be upheld the Conditions of Licence must be complied with. In total 7 inspections have been carried out since 2014 and on 5 occasions staff have been unable to produce their Training Record, despite the Licence Holder having been advised on several occasions of the requirement to comply with the Mandatory Conditions of their Licence. It was also admitted by staff on one occasion that training had not been provided.

A Compliance Notice was issued following the inspection on 8 May requiring that all staff receive training and thereafter complete a Training Record which must be kept on the premises, all as per the regulations. As a member of staff had failed to produce a Training Record during the inspection on 22 October 2018, and indeed admitted that training had not been provided, the Licence Holder has failed to take action, as specified in the Compliance Notice issued on 8 May 2018, by ensuring that all staff involved in the sale of alcohol receive the required training and complete a Training Record, which must be kept on the premises.

The Licence Holder has been advised of identified breaches following each inspection, however has failed to ensure that the Mandatory Conditions in relation to staff training are complied with at all times. It is therefore the Licensing Standards Officer's opinion that the Licence Holder has fell short of the standards expected in failing to ensure that all staff involved in the sale of alcohol receive the required training and completion of Training Records.

Mrs McEwan concluded by respectfully requesting that Members, if satisfied that a ground for renew has been established, take such steps as considered necessary to ensure that the Licensing Objectives are upheld and that the Mandatory Conditions attached to the Premises Licence are complied with at all times.

Neither Manpreet Bawa, Jaspreet Bawa, nor Martine Wyper had any questions for Mrs McEwan.

Manpreet Bawa explained that, although he is noted as Secretary and his wife, Jaspreet Bawa, as Director of Bluegrass HK Limited., they had no involvement in the operation of the business until January 2017 as his wife had been pregnant. He advise that his mother in law operated the premises at that time and therefore could offer no explanation with regards to the incidents that had occurred before 2017.

Referring to the inspection carried out on 10 January 2017, Mr Bawa explained that he had only taken over the operation of the premises the day before and that all matters had been rectified.

Addressing the incident on 7 March 2018, Mr Bawa advised that both members of staff, Martine and James, had up to date training records, however these had not been in the folder passed to the LSO. He stated that James had been in the shop to help with deliveries, however works in the shop in Stevenston and holds a training certificate there.

With regards to alcohol being displayed outwith the designated area, Mr Bawa advised that this was due to a delivery just being received.

Regarding the incident on 8 May 2018 when a member of staff on duty was unable to produce her Training Record, Mr Bawa advised that this record related to Martine Wyper who had forwarded the training certificate together with the relevant application form to East Ayrshire Council to obtain a Personal Licence.

Referring to Mr Bawa's submission that neither he nor his wife had any involvement in the operation of the premises until 2017, Mrs McEwan asked if Mr Bawa accepted that records showed Jaspreet Bawa as Director of the companies since 2014.

Mr Bawa advised that both he and his wife, Jaspreet Bawa, had resigned from the company in 2015 and his Solicitors instructed to take the necessary steps remove them from records.

The Depute Clerk reminded Mr Bawa that the Board should have been notified of the change of Directors.

Mr Bawa stated that the LSO was notified of the change in 2015/16 however Mrs McEwan had no record of the change, which was why a letter had been issued on 11 January 2017 requesting that the Licence Holder contact the Licensing Section as a matter of urgency to discuss the situation with regard to the Directors of the Company who held the Premises Licence. Mrs McEwan pointed out that she had received no response to the letter until 26 April 2018 when a transfer application had been lodged.

The Depute Clerk stressed that the Board must be kept up to date with Company Directors by formal intimation.

The Depute Clerk pointed out that Mr and Mrs Bawa had taken over the operation of the premises in January 2017 however the transfer application had not been lodged until April 2017.

Mr Bawa stated Jaspreet Bawa was DPM of the shop in Stevenston and that it had taken time to amend this as he had not realized that she could not be DPM of both shops.

Mr Bawa concluded that the shop in Stevenston had operated for more than 10 years with no problems and been awarded Best Retailer of the Year last year. He acknowledge that mistakes had been made and stressed that this would not happen again.

Mrs McEwan stated that the LSOs were available at all times to provide guidance and that Mr Bawa had made no contact.

Mr Bawa stated that appropriate action was taken to rectify all matters reported.

Mrs Bawa submitted that when they had taken over the premises, the business had been 'on its knees' and that they had to work hard to build the business up.

The Depute Clerk referred to the alcohol which was being displayed at a price which breached the Minimum Unit Pricing and asked if Mr Bawa understood minimum pricing.

Mr Bawa stated that he understood and supported minimum pricing and that this was one bottle that had slipped through the net.

Councillor Leitch referred to the alcohol displayed outwith the alcohol display area and Mr Bawa reiterated that the alcohol in this area had been a delivery.

The Depute Clerk stated that, had it been evident that the alcohol was a delivery, the LSO would not have included this matter in her report.

Mr Bawa advised that deliveries were now delivered in pallets or in cages and so it would be evident.

The Chair asked if Martine Wyper now had a Personal Licence and Mrs Wyper confirmed that she had.

Councillor Mair asked if Mr Bawa as aware of his responsibilities with regards to training of staff etc.

Mr Bawa stated that all 9 members of staff would receive formal training. Mr Bawa continued that he had noted in the submission in respect of the variation application for Icelands that staff receive refresher training every 6 months and stated that he intended to take this on board.

Councillor John Campbell asked if all 9 members of staff had received the mandatory training and Mr Bawa confirmed that they had and that all records were available.

The Board adjourned to consider the matter.

Upon returning the Chair moved that the grounds for review had been established. The Board agreed unanimously.

The Chair expressed very serious concern over the matters reported and in particular the training issues. He moved that the premises licence be suspended with immediate effect, until satisfactory training records for all 9 members of staff could be produced to the Board. This motion was seconded by Council Grant. The Board agreed unanimously.

There being no further business, the meeting ended at 11.30am.

LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR PERSONAL LICENCE

Kerry Carmichael

The Depute Clerk advised that Police Scotland had reported that Ms Carmichael had been convicted of a relevant offence in terms of the Licensing (Scotland) Act 2005.

Ms Carmichael appeared before the Board and had no preliminary matters to raise.

Chief Inspector Docherty advised that Kerry Carmichael was convicted of Assault to Injury at Ayr Sheriff Court on 21 August 2017 when she was given a Community Payback Order with a Supervision period of 12 months, the imposition date being 19 September 2017.

The circumstances surrounding the incident were that on 29 July 2017 at 88 Barrhill Road, Cumnock, Kerry Carmichael, while in the presence of children, assaulted a 16 year old female, her daughter and seized her by the hair, pulled her to the floor by the hair, held onto her by the hair, pulled her to her feet by the hair, pulled her by the hair, threw her onto a bed there, pulled her hair, sat on her, struggled with her, caused her to fall from the bed, seized hold of her by the hair, repeatedly struck her head on the wall there, seized and tore her clothing, seized hold of her by the neck and bit her on the face, all to her injury.

Ms Carmichael expressed her deep regret over the incident and advised that she had never been in trouble before. Addressing the incident she advised that alcohol had been involved and as a result of the conviction she had lost her job. She continued that she had other children to support was finding it difficult to find employment and thought that a Personal Licence may help.

Ms Carmichael concluded that she no longer drank alcohol and had completed the Community Payback Order.

The Chair asked where Ms Carmichael had previously worked and Ms Carmichael advised that she previously worked in a Care Home.

Councillor Mair asked if Ms Carmichael had been offered a job which was conditional on her getting a Personal Licence. Ms Carmichael advised that she had received a job offer however it had now been offered to someone else as she did not have a Personal Licence.

The Chair asked if Ms Carmichael's daughter lived with her and Ms Carmichael advised that her daughter had moved to live with her Grandmother in January 2018.

There being no further questions, both parties were given the opportunity to sum up.

Chief Inspector Docherty had nothing to add to her submission.

Ms Carmichael expressed her regret over the incident.

The Board adjourned to consider the application.

Upon returning the Chair referred to the conviction as serious, however as Ms Carmichael had no other convictions, no longer consumed alcohol and had other children to support, he moved that the licence be granted. This was seconded by Councillor Crawford. The Board agreed unanimously.

The Chair stressed to Ms Carmichael that the Board did not wish to see her before the Board with any further relevant offences.

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LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR VARIATION OF PREMISES LICENCE

Iceland Foods Limited
c/o TLT LLP
140 West George Street
Glasgow

Iceland Foods
15 Fowlds Street
Kilmarnock

Details of the variation:-

The premises are a licensed supermarket retailer/grocers.

The application is to amend the licensed hours, as follows:-

<u>Current Licensed Hours – Off Sales only</u>	<u>Proposed Licensed Hours – Off Sales only</u>
Monday – Sunday 10.00am – 8.00pm	Monday – Sunday 10am – 10pm

The application is also to amend the operating plan to allow recorded music as an activity during and outwith core hours. Sale of groceries, including fresh and frozen foods and other non-food items to be provided both within and outwith the core licensing hours, but not before 7am or after 11pm. Activities outwith core hours may occur as ancillary. The sale of alcohol by retail for consumption off the premises is ancillary to the sale of groceries and other non-food items. The above shall include deliveries made using our home delivery and ecommerce services, subject to compliance with sections 119 and 120 of the Licensing (Scotland) Act 2005. The premises will also, on occasion, be used to launch new products, have product sampling and food tasting events and host ‘family friendly’ membership evenings.

The application also updates the merchandising areas on the layout plan. The licensed area remains at 6.6 square metres.

Mr McDougall, Solicitor, appeared before the Board on behalf of the applicants, together with Steven Caldwell, Store Manager.

The Depute Clerk advised that no objections or representations had been received in respect of this application.

Mr McDougall submitted that Iceland Foods Limited operated over 900 stores in the UK, 70 in Scotland and that the Kilmarnock shop had 23 employees.

Mr McDougall explained that the increase in hours were to allow flexibility to cater for additional demand and that it was not intended to open until 10pm every night. He continued that the store operated well and that the alcohol display area was modest.

Mr McDougall advised that the company intended to add home deliveries to all their stores throughout Scotland. Home deliveries would be carried out via an online system, payable by card at the time of order. All delivery drivers would be employed by Iceland Foods Limited and will have completed the mandatory 2 hours training. Refresher training would also be carried for employees every 6 months.

Mr McDougall continued that Sections 119 and 120 of the Act would be complied with, Challenge 25 would be applied and ID would be requested. He advised that if proof of age could not be

produced at the time of delivery, the whole order would be returned to the store and an attempt to re-deliver made later. He stressed that no alcohol would be left in a nominated safe place.

Mr McDougall concluded that Iceland was not a brand associated with the sale of alcohol and that customers did not shop in their stores solely to purchase alcohol.

The Chair asked, if a driver was unable to deliver an order, would this be recorded.

Mr McDougall advised that this would be entered unto the store's refusals register.

Councillor Leitch asked if the store opened longer hours than from 10am until 10pm and Mr McDougall advised that the store opened longer hours during the festive period.

There being no further questions, the Chair moved that the variation be granted. The Board agreed unanimously.

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