



**THIS PAPER RELATES TO
ITEM 4ii
ON THE AGENDA**

To: **The Clerk to the Licensing Board
Kilncraigs
Greenside Street
Alloa
FK10 1EB**

From: **Paul Fair
Licensing Standards Officer**

Extension: **2091**

Email: **pfair@clacks.gov.uk**

Our Ref: **PF/LSO/PLRA/CC040**

Your Ref:

Date: **22 September, 2023**

Subject: **Licensing (Scotland) Act, 2005, Section 36(3)(za), 36(3)(a), 36(3)(b)
Premises Licence Review Application
Murray Investments Public Houses Limited,
The Woolpack Inn1 Glassford Square, Tillicoultry FK13 6AU CC040**

1. Section 36(3)(za), 36(3)(a), and 36(3)(b), of The Licensing (Scotland) Act, 2005 (the Act) allows any person to make a premises licence review application.
2. Section 36(4) specifies the circumstances where a Licensing Standards Officer (LSO) can only make a review application in the terms of section 36(3)(a) – breach of licence conditions, if a compliance notice issued by the LSO in the terms of Section 14 of the 2005 Act, has not been satisfied.
3. This Premises Licence review application is made in the terms of Section 36(3)(za), 36(3)(a), and 36(3)(b).
4. The terms of Section 36 of the Licensing Scotland Act, 2005, are reproduced in **Appendix A** for the benefit of the Clerk, Licensing Board and the Premises Licence Holder
5. The Woolpack Inn, at 1 Glassford Square, Tillicoultry is a two storey public house type premises in the heart of the town of Tillicoultry. The premises consist of a ground floor bar area, with a traditional snug type room, and small lounge, upstairs there is a large single room within the licensed area that is designated as a function room. (a copy of the full premises licence will be included in the Board Papers)
6. The main door of the premises opens onto a roadway servicing the residential houses in Glassford Square. There is no footpath at the front of the premises and the roadway is relatively narrow. It is so narrow that customers are required to take care when leaving the premises and to ensure that vehicles are not travelling along the road.
7. The premises were granted Premises Licence No CC0040 in September, 2009, and were recognised as a very well run traditional village pub at the time.

8. On 15 May, 2018 the premises licence was transferred to the current premises licence holder – for some unexplained reason the company address was provided as 116 Blythswood Square, Glasgow, G2 4EG. Enquiries have failed to identify any formal connection to that address by the current licence holder.
9. The current premises licence holder, Murray Investments Public Houses Limited is a dormant company, registered as such on Companies House under No 11318511. The directors of this company are James and Jennifer Bacon.
10. The company is registered at 29 Endymion Mews, Hatfield, England, AL10 0EW.
11. Other than for a period on 17 June, 2022, the licence holder has never held a registered office at any other address.
12. The following paragraphs will summarise the information that suggests that the premises licence holder Murray Investments Public Houses Limited, and its directors are not fit and proper persons to hold a premises licence, highlight a number of licence mandatory conditions that have been breached, and detail a number of conflicts with the licensing objectives.
13. A table at **Appendix B**, contains a summary of the compliance concerns that have occurred since February, 2021.
14. If taken at face value that summary demonstrates that the premises licence holder has repeatedly failed to comply with even basic requirements of the Licensing (Scotland) Act, 2005, and as a result a number of long periods of unlawful trade in breach of Section 1 of the licensing Scotland Act, 2005, have occurred. This is in direct conflict with the licensing objective of preventing crime and disorder.
15. The summary identifies 4 separate occasions when the Premises Licence Holder appears to fail to comply with the requirements of Section 54 of the licensing Scotland Act, 2005 (February 2021, April 2022, January 2023, and June 2023).
16. Section 54 of the 2005 Act, is reproduced in **Appendix A**, it is clear that the terms of this section only permit notifications to be made in relation to the premises manager by the premises licence holder.
17. All of the failings detailed in the previous paragraph have resulted in breaches of premises licence mandatory condition No 4(1)(a) which states:-
“Alcohol is not to be sold on the premises at any time when— there is no premises manager in respect of the premises,”
Which in turn result in an offence being committed under Section 1 of the Licensing (Scotland) Act, 2005 – Section 1 of the 2005 Act, is reproduced at **Appendix A**
18. In the summary table, details of an incident at the premises on 15th July 2021 are listed – This incident occurred at a time when there was no premises manager named on the licence.
19. The management of the premises at a time where there is no premises manager named on the licence lies entirely with the premises licence holder.

20. The full details of this incident are recorded by Police Scotland as a complaint about the conduct of patrons sitting at tables outside the premises in the narrow lane. The complaint was made at 8pm on a Thursday night by a passing motorist who alleged he was verbally abused by the patrons. Police found 8-10 males with alcohol sitting at 3 or 4 tables placed on the road, outside the premises. Raymond Heller, a personal licence holder, presented as being in charge, however was unable to produce the premises licence and was unable to confirm that the area was a licensed outdoor drinking area.
21. In a subsequent joint meeting between the Licensing Standards Officer (LSO), Police Scotland and Mr Heller – Mr Heller confirmed that he was not the named premises manager, but that he was in charge of the premises at the time of the incident of the 15th July 2021. He made it clear that he had not been briefed by the licence holder, in fact he did not know who the licence holder was. He described the licence holder as “some fellow from London”.
22. Mr Heller (despite having recently passed his SCPLH exam) was unaware that he was required to produce the premises licence to the Police, had no idea where it was kept, and claimed to have never seen the licence. He was unaware whether or not outdoor drinking was permitted at the premises. In the shared view of the Police and the LSO, his knowledge fell far short of what would be expected of a competent Premises Manager.
23. As a result of the interaction with Mr Heller and the compliance failures identified I wrote a letter to the licence holder at the address on the licence, I also sent a copy of that letter to the address of the licence holder as shown on Companies House. Neither letter was ever acknowledged by the licence holder. However I was made aware by staff at the premises, that Mr Heller was no longer working at the premises and the matter was never followed up.
24. Information held suggests that Mr Heller left his role as premises manager at the Woolpack on or around 11 April, 2022. That is the date the Deborah Cleary began working at the premises in her capacity as manager.
25. Ms Cleary believed that she had been nominated as the premises manager, and admits that the premises were open for trade under her management throughout 2022 and into 2023. Ms Cleary is certain that Mr Heller did not work on the premises at anytime whilst she was the manager.
26. The premises Licence holder failed to notify the Licensing Board of Mr Hellers departure in April, 2022, and also failed to nominate Ms Cleary until January 2023.
27. The premises licence holder has caused or permitted the premises to trade unlawfully throughout that period (April, 2022 – January 2023)
28. However, it appears that Ms Cleary took what she “believed” to be her responsibilities seriously and that during this period other than the breach of

mandatory condition No 4, the premises appear to have been well run during this period.

29. On 28 February, 2023, Ms Cleary ceases to work at the premises and according to her, the premises were stripped of all, stock, and equipment. Information suggests that the premises then closed for some months.
30. The premises licence holders failed to notify the Licensing Board of the departure of Ms Cleary within the required 7 days.
31. Notification of Ms Cleary's departure was first given to Clackmannanshire Licensing Board on 10 May, 2023, when an incomplete variation application is submitted by the Premises Licence Holder.
32. This variation application nominates Raymond Heller as the premises manager, however it was rejected as incomplete, and returned to the Licence Holder along with clear instructions relating to resubmission of the application. There is no record of the application being resubmitted. However, it is uncontested that at some point after this date an amendment was agreed between the Clerk and the agent representing the licence holder. I am unsure at what date it is accepted that Mr Heller became the Premises Manager, however that matter is not important in the context of this report
33. Even if it is accepted that Heller was properly nominated and that this should take effect from 10 May, 2023, Heller leaves employment at the premises on or around 14 July, 2023. This date is important.
34. I spoke with Heller at 15:35 on 21 July, 2023 who was very clear in his position in that call and advised that he had left employment at the Woolpack the previous week, he was on holiday in the Wirral? He advised me that he was at his family home, and that he would not be returning to work at the premises.
35. In accordance with the language of Section 54 of the Licensing (Scotland) Act, 2005 Mr Heller ceased working at the premises in the week ending Saturday 15 July, 2023.
36. To comply with Section 54 the premises licence holder would have until 22 July to make the formal notification of his departure, and Mr Heller was made aware of this requirement.
37. The premises licence holder did not notify the licensing Board of his departure in compliance with the requirements of Section 54 of the 2005 Act.
38. In the week beginning Monday 28 August, 2023 I received a number of complaints about the manner in which an apparent new occupier of the Woolpack was operating. This included a complaint about using untrained staff, operating an unauthorised radio station on the premises and making alterations to the licensed footprint, of the premises. Further information suggested that an individual named only as "Stevie Mac", was also hosting late night "lock ins" at the premises where drinks were being served after licensed hours.

39. With a view to offering guidance in relation to these allegations and to addressing the issue of the premises being open for trade without a premises manager, I carried out a joint visit with Police Scotland. This visit took place on Thursday 30 August, 2023.
40. On arrival at the premises I was met by an individual who identified himself as Stevie McFarlane?. I assumed that this was one and the same as the “Stevie Mac” previously identified to me in the complaints referred to at paragraph 38.
41. This individual denied having any involvement or interest in the running of the licensed premises. I explained the term “interested party” to him and he remained adamant that he had no financial interest in the premises. On that basis I felt that I was unable to discuss the compliance concerns with him.
42. He identified a female named Llinos Willaims as the person who “owned” the pub, and claimed he was just in the bar doing odd jobs for her.
43. I carried out an inspection of the premises and discovered that a number of alterations had been made to the premises, including the full installation of a commercial radio station in the area identified on the layout plan as the “function room”.
44. Mr McFarlane admitted that he was responsible for these works claiming that the area was not part of the licensed premises. He stated that no building warrants or planning approval were required for the works, and insisted that the construction of a dividing wall had been completed prior to him taking occupancy of this area.
45. A subsequent check revealed that no variation application had ever been lodged in relation to these changes and that both planning consent and a building warrant would be required for the works completed.
46. Enquiry with the premises licence holder revealed he was unaware that these works had been carried out.
47. On Friday 1 September, 2023, I served a notice in the terms of Section 14 of the Licensing (Scotland) Act, 2005 on the premises licence holder. A copy of this notice is included at **Appendix C** and it is quite self explanatory.
48. Later that day the premises licence holder attempted to lodge a minor variation, naming Joyce Scott as the premises manager. This application was to take affect immediately.
49. Ms Scott has since been interviewed and denies agreeing to be the premises manager. She denies ever speaking to the Premises Licence holder, and was in fact out of the UK on holiday on 1 September, 2023, She did not return until the following Friday. She was not capable of becoming the premises manager.
50. Ms Scott states that she had a brief conversation with “Stevie Mac” about “working” at the pub and agreed to have a further conversation with him on her return from holiday.

51. In any case the application relating to Ms Scott was deemed to be incomplete (by the Clerk to Clackmannanshire Licensing Board), in that some of the prescribed information in relation to the proposed premises manager was missing. This application was rejected by Clackmannanshire Licensing Board and the premises licence holder was made aware of the rejection and the reasons for it being rejected.
52. At 22:05hrs on Friday 1st September, Police Scotland, reacting to information received called at the premises and found that it was open and staff were making sales of alcohol in contravention of the Section 14 Notice, and in contravention of Section 1 of the Licensing (Scotland) Act, 2005.
53. Police Scotland noted 20-30 persons on the premises, consuming alcohol and enjoying live entertainment and further noted that the tills were switched on.
54. The officers noted that the staff on the premises were unable to produce statutory training records and that none of them were personal licence holders.
55. They noted the details of the staff present. They were provided as Llinos Williams and June McLaughlin, both of whom admitted making sales of alcohol to the customers in the bar.
56. Llinos Williams identified herself to Police Scotland as being in charge and responsible for the operation of the bar and the sale of alcohol. She also identified as the "leaseholder" which in the terms of the Licensing Scotland Act, 2005, makes her an "interested party".
57. She was aware of the terms of the notice I had served earlier in the day. I am unaware of what explanation she offered to Police Scotland for breaching that notice, although I understand that she was incorrectly told by Solicitors representing the premises licence holder that she could lawfully trade.
58. It is important to note that around 6pm on Friday 1st September, 2023, I made it clear in a telephone conversation to the solicitors representing the premises manager that I was not "satisfied" that the terms of the notice had complied with. The law requires that the issuing LSO be "satisfied" that any Section 14 is complied with.
59. The full operational statement from the attending officers can be read out at the hearing if required.
60. Without any explanation the application pertaining to Ms Scott, was withdrawn and replaced with a variation application nominating another individual as Premises Manager. The application was complete and treated as correctly received by the licensing Board on Saturday 2 September, 2023.
61. A number of questions were asked of the premises licence holder in relation to the matters raised in this report. It was hoped that the answers to the questions would result in a reduction of the size of the report where agreement could be reached between the LSO and the Premises Licence holder. However, in relation

to those questions the answers have either not been supplied or appear to dispute the facts. A summarised extract of the email containing the questions asked and answers provided is included with this report at **Appendix D**

62. In all the circumstances I would ask the licensing Board to accept that grounds for review in the terms of Section 36(3)(za), 36(3)(a), and 36(3)(b) do exist and are evidenced in the submissions made in this report.
63. In relation to section 36(3)(za) it is suggested that Murray Investments Public Houses Limited and its directors, by the repeated failure to appropriately manage the premises, and manage their responsibilities under the licensing (Scotland) Act, 2005, in particular during periods when there was no appointed premises manager, are not a fit and proper persons to hold a premises licence.
64. In relation to Section 36(3)(a) it is suggested that grounds for review are established in relation to repeated breaches of the licensing conditions including, long periods of operation whilst there was not a premises manager in respect of the premises, and staff training records were not available for examination, and that in particular in relation to the breach of Mandatory Condition No 4 the Licensing Standards Officer has followed the procedure laid down in Section 36(4) prior to making the Premises Licence Review Application, at a point when the notice was not complied with to the satisfaction of the LSO on 1 September, 2023.
65. In relation to 26(3)(b) it is suggested that grounds for review have been established in relation to the numerous breaches of the licence conditions detailed in this report, periods of trade in contravention of Section 1 of the Licensing (Scotland) Act, 2005, repeated failures to comply with the requirements of Section 54 of the Licensing (Scotland) Act, 2005, failure to display copies of the current premises licence, staff being allowed to make unauthorised sales of alcohol, staff allowing persons to gather outside at tables, and encouraging a breach of the local byelaws.
66. In summary, it is suggested that Murray Investments Public Houses Limited, by their lack of involvement in the day to day running of the premises for which they hold the licence have operated in a manner that is inconsistent with the licensing objectives of preventing crime and disorder, protecting public safety, preventing public nuisance and protecting and improving public health. Even when failures were pointed out and they were provided with corrective advice they continued to pursue a course of action which resulted in further periods of trade without a premises manager, and no trained staff. Even after having been made aware that the premises were likely to be subject of a premises licence review application by myself, they took no corrective action to monitor licensing compliance at the premises, and continued to allow the premises to trade in a situation where there was no trained staff and no premises manager.
67. In the event that the Licensing Board make a finding that there are grounds for review, they may also wish to consider whether or not in terms of s84(2) the holder of any Personal Licence has acted in a manner which is inconsistent with

the licensing objectives, whilst working at or in connection with the licensed premises. In particular the Board may want to further explore the conduct of Raymond Heller holder of Stirling Personal Licence No. SC2376.

68. Furthermore in the event that the Board do find that grounds for review exist, they are invited to consider the full range of options available to them, including revocation of the licence, suspension of the licence, variation of the licence, and the option to take no further action.

Paul Fair

Licensing Standards Officer.

Appendix A: Legislative References

Licensing Scotland Act, 2005

Section 1 Prohibition of unlicensed sale of alcohol

(1) Alcohol is not to be sold on any premises except under **and in accordance with**—

- (a) a premises licence, or
- (b) an occasional licence, granted under this Act in respect of the premises.

14 General functions of Licensing Standards Officers

(1) A Licensing Standards Officer for a council area has the following general functions—

- (a) providing to interested persons information and guidance concerning the operation of this Act in the area,
- (b) supervising the compliance by the holders of—

- (i) premises licences, or
- (ii) occasional licences,

in respect of premises in the area with the conditions of their licences and other requirements of this Act,

(ba) providing information to Licensing Boards about any conduct of holders of, or persons applying for, personal licences in the area, which is inconsistent with the licensing objectives,

(c) providing mediation services for the purpose of avoiding or resolving disputes or disagreements between—

- (i) the holders of the licences referred to in paragraph (b), and
- (ii) any other persons,

concerning any matter relating to compliance as referred to in that paragraph.

(2) The function under subsection (1)(b) includes, in particular, power—

(a) where a Licensing Standards Officer believes that any condition to which a premises licence or occasional licence is subject has been or is being breached—

(i) to issue a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and

(ii) if, in the case of a premises licence, such a notice is not complied with to the satisfaction of the Officer, to make a premises licence review application in respect of the licence,

(b) in relation to a premises licence, to make an application under that section for review of the licence on any other competent ground for review.

Section 36 Application for review of premises licence

(1) Any person may apply to the appropriate 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 of the grounds for review.

(2) An application under subsection (1) is referred to in this Act as a “premises licence review application”.

(3) The grounds for review referred to in subsection (1) are—

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

(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.

(4) A Licensing Standards Officer may make a premises licence review application on the ground specified in subsection (3)(a) only if—

(a) in relation to the alleged ground for review, the Officer or any other Licensing Standards 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.

(5) A premises licence review application must specify the alleged ground for review, including in particular—

(za) where the ground is that specified in subsection (3)(za), a summary of the information on which the applicant's view that the alleged ground applies is based,

(a) where the ground is that specified in subsection (3)(a), the condition or conditions alleged to have been breached,

(b) where the ground is that specified in subsection (3)(b), the licensing objective or objectives to which the alleged ground of review relates.

F3(5A) A person making a premises licence review application may include in the application any information that the applicant considers may be relevant to consideration by the Licensing Board of the alleged ground for review including, in particular, information in relation to—

(a) the licence holder,

(b) where the licence holder is neither an individual nor a council, a connected person in relation to the licence holder, or

(c) any person who is an interested party in relation to the licensed premises.

Section 54 Dismissal, resignation, death etc. of premises manager

(1) This section applies where any of the events specified in subsection (2) occurs in relation to any licensed premises in respect of which a premises licence has effect.

(2) Those events are—

(a) the premises manager ceases to work at the premises,

(b) the premises manager becomes incapable for any reason of acting as premises manager,

(c)the premises manager dies, or

(d)the personal licence held by the premises manager is revoked or suspended.

(3)The premises licence holder must, not later than 7 days after the occurrence of the event, give notice of it to the appropriate Licensing Board.

(4)Subsection (5) applies if—

(a)subsection (3) is complied with, and

(b)within the period of 6 weeks beginning with the day on which the event occurs, a premises licence variation application is made seeking a variation of the premises licence in respect of the premises so as to substitute another individual as the premises manager.

84 Conduct inconsistent with the licensing objectives

(1)This section applies where, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding such as is mentioned in subsection (2) in relation to any personal licence holder who is or was working in the licensed premises in respect of which the premises licence was issued (“the licensed premises concerned”).

(2)That finding is a finding that the licence holder concerned, while working as mentioned in subsection (1), acted in a manner which was inconsistent with any of the licensing objectives.

Appendix B – Summary Table of Compliance Concerns

| Date of event | Details Compliance Failure | Explanation offered by Premises Licence Holder | Statutory Reference |
|--|--|--|-------------------------------|
| 28 February, 2021 | PM Leigh Singleton Leaves employment at the premises- Premises Licence Holder fails to make the notification within 7 days | The question relating to this matter was not answered by the Licence Holder – No evidence of correct notification was produced | Section 54 |
| 28 February, 2021 until 23 April, 2021 | Premises continue to trade without a premises manager | | MC No Section 1 |
| 15 July, 2021 | Police Scotland attend a complaint and find a number of patrons consuming alcohol at tables unlawfully set up outside the premises – Being served by Raymond Heller who identifies as manager. Premises Trading with No premises Manager in Post at that time | The premises licence holder appear in their response to the question relating to this matter that Heller was not appointed until after this incident (20 July, 2022) | Section 1 MC No 4 |
| 22 July 2021 | LSO/Joint Police Visit – Premises open and trading – No premises manager Heller identifies as Manager but has no knowledge of the terms of the premises licence, appears not to have even basic knowledge of the licensing objectives. | Solicitor representing Licence Holder advises that a telephone conversation took place between her and Heller on 19 th July 2022 | |
| April 2022 | Information from appointed manager (NOT formal PM at that time) confirms Raymond Heller no longer works at the premises and has returned to Crianlarich. Premises open and trading with no premises manager | No explanation is offered by the licence holder in response to the questions that relate to this matter. | Section 54 And MC No 4 |

| | | | |
|---------------------------------|--|--|----------------------|
| | <p>Appointed manager Deborah Cleary believes she has been formally appointed as PM</p> <p>Sue Williams? Confirms that Heller (her brother?) no longer works at the Woolpack</p> <p>Premises Licence Holder fails to Notify Licensing Board of Hellers departure</p> | | |
| 11 April 2022- 11 January, 2023 | Premises trade under the management of Deborah Cleary, however she has never been formally appointed. Until January 2023) | No explanation offered for this failure by the Licence Holder | MC No 4 Section 1 |
| 28 February, 2023 | Cleary ceases to work at the premises- Notification of this is not made to the Licensing Board by the Premises Licence Holder. | No explanation offered for this failure by the Licence Holder | Sec 54 |
| 10 May, 2023 | <p>An incomplete variation application is made by the Premises Licence Holder to Clackmannanshire Licensing Board to nominate Raymond Heller as PM.</p> <p>This application is rejected with clear instructions for resubmission- The resubmission was never made.</p> | It is accepted that an agreed amendment could be made to this application – rendering the application as competent | |
| 21 July, 2023 | In a call with Raymond Heller, he confirms that he is no longer working at the premises, having left the previous week to go on holiday – No notification of his departure is made by the Premises Licence Holder | The licence holder claims that the notification was made by a person acting on their behalf | Section 54 |

| | | | |
|-------------|---|---|--|
| August 2023 | Complaints received by the LSO in relation to after hours drinking, the installation of a radio station, the change of use of the lounge area upstairs, the construction of a wall and the erection of an external notice on the wall | No explanation of these matters was offered | |
|-------------|---|---|--|

Appendix C- Copy of Compliance Notice

**LICENSING (SCOTLAND) ACT 2005
COMPLIANCE NOTICE UNDER SECTION 14**

Notice is hereby given in terms of Section 14 (2)(a)(i) of the above Act and is issued by Paul Fair, a Licensing Standards Officer for Clackmannanshire Council

This notice requires action to be taken by the Licence Holder to remedy the breaches of the licensing conditions to which the Premises Licence is subject outlined below. Failure to do so to the satisfaction of the Licensing Standards Officer within the time allowed for compliance (if any) will result in an application to Clackmannanshire Licensing Board for a review of the Premises Licence.

| | |
|--|--|
| Premises Licence Holder & Licence No: | Murray Investments Public Houses Limited CC040 |
| Premises Name and Address: | The Woolpack Inn, 1 Glassford Square, Tillicoultry |
| Date & Time Notice Issued: | Friday 1 st September, 2023 |
| Premises Manager Details: | No PM currently named on premises licence |
| Manner of service: | By Post (Recorded Delivery) & Left at premises / E-mail / Personal Service |

Details of Breach of Condition and Remedy
*Licensing Standards Officer should detail the condition(s) breached and describe the remedial action required to be taken in order to comply with this notice.**

Premises Licence NO CC040

The Premises Manager

Condition No 4 (1) Alcohol is not to be sold on the premises at any time when—

(a) there is no premises manager in respect of the premises,

As a result of a breach of the above mandatory condition no further sales of alcohol should be made on the premises until a premises manager has been nominated by the lodging a competent variation application with Clackmannanshire Licensing Board.

All sales of alcohol on the premises must cease with immediate effect

REQUIREMENT TO COMPLY

| | |
|-------------------------------|------------|
| With Immediate Effect: | YES |
| (or) Comply By: | N/A |

| | |
|---|--|
| Licensing Standards Officer (Print Name & Signature) | Where served personally or left at premises Notice Received by (Print Name & Signature) |
| .Paul Fair..... Telephone : 01259 450000 | Name..... Signature..... |

Appendix D – extract of emails between LSO and Premises Licence Holder.

For context the text in blue are the answers provided

From: Paul Fair <PFair@clacks.gov.uk>

Date: 12 September 2023 at 17:33:49 BST

To: **** Redacted

Subject: The Woolpack Inn CC040 OFFICIAL-SENSITIVE[COMMERCIAL]

Dear Mr Bacon,

As part of a premises licence review application I am preparing I am seeking certain information that I hope you can provide.

The first is in relation to a notification made in the terms of Section 54 of the Licensing (Scotland) Act, 2005.

I have reproduced the terms of Section 54 below for your information, and I have highlighted the important words in relation to the ongoing matter that I am investigation.

**Licensing (Scotland) Act, 2005, section 54
Dismissal, resignation, death etc. of premises manager**

(1) This section applies where any of the events specified in subsection (2) occurs in relation to any licensed premises in respect of which a premises licence has effect.

(2) Those events are—

(a) the premises manager ceases to work at the premises,

(b) the premises manager becomes incapable for any reason of acting as premises manager,

(c) the premises manager dies, or

(d) the personal licence held by the premises manager is revoked or suspended.

(3) The premises licence holder must, no later than 7 days after the occurrence of the event, give notice of it to the appropriate Licensing Board.

(4) Subsection (5) applies if—

(a) subsection (3) is complied with, and

(b) within the period of 6 weeks beginning with the day on which the event occurs, a premises licence variation application is made seeking a variation of the premises licence in respect of the premises so as to substitute another individual as the premises manager.

As highlighted the 2005 Act makes it clear that the Premises Licence Holder, in your case **Murray Investments Public Houses Ltd**, must notify the Licensing Board that a premises manager has ceased to work at the premises. **Anyone authorised to notify on behalf of the Premises licence holder may do so.**

1 - My records show that on 28 February 2021 Leigh Singleton ceased to work at the premises as Premises Manager, and that formal notification was not received until 23 April, 2023 **[I think this should be 2021?](it should be 2021 and an email amending this date was sent shortly after the initial email PF, LSO)** - Can you provide evidence that in relation to Leigh Singleton you complied with the Section 54 requirement in relation to Leigh Singleton, alternatively please provide any a explanation that you would want me to take into consideration for the failure to comply with that section. **Please can you**

confirm how intimation was done at 28th February 2021 as Leigh Singleton was still working for the tenant's company. We were advised of this in April 2021 and are carrying out investigations with the previous tenant on what dates were involved here and will revert as soon as we have that information. Lee Singleton's personal licence is reference CC786, issued by Clackmannanshire Licensing Board and issued on 22nd November 2018 therefore expiring on 21st November 2028 and requiring training to be done by 21st November 2023 and intimated no later than 21st February 2024.

2 - Can you confirm the details of who you believe to have been the premises manager at 2100hrs on 15 July, 2021, when the premises were visited by Police Scotland in relation to a complaint about unauthorised outdoor drinking -An application was lodged by email in May 2021 and was followed up with further details by email dated 20th July 2021, both to June Andison attaching a minor variation application to appoint Ray Heller as premises manager. The application fee had been paid on 18th May 2021. The application was acknowledged as received by June Anderson on 20th July 2021.

2 My records show that on 20th July, 2021 Clackmannanshire Licensing Board accepted an variation application to appoint Raymond Heller as premises manager. Can you confirm that Mr Heller was aware that he had been appointed and that he was provided a copy of the premises licence and conditions and a set of clear instructions in relation to how the premises should be managed on your behalf? If yes can you provide a copy of any written instructions provided to Mr Heller or summarise the guidance that was provided to him. Joanna Millar spoke to Ray Heller on 19th July 2021 at 16:54 to confirm his additional details and ensure he understood his rights and responsibilities as a manager.

3 Can you confirm the date on which Mr Heller left his role as PM at the Woolpack, evidence I have suggests that this was around April, 2022. Please provide evidence of compliance with Section 54 of the 2005 Act, in relation to his departure in April, 2022.

In terms of the operation of the premises, there was a period of time when the premises were closed. The premises licence holder is contacting the tenant who was in place at that time to obtain information on when the premises were closed and when Mr Heller left and we will update this information as soon as we receive same.

4 Please provide details of who you believe was the premises manager between 11 April, 2022 and 11 January 2023, when Deborah Cleary was formally appointed in a variation application received by the licensing Board. The premises were closed for a period of time and there was a proposed sale which fell through and our client is checking its records to confirm exact dates. We will confirm same once our client reverts.

5 On 28 February, 2023, Deborah Cleary left the employment of the premises - please provided evidence that you complied with the requirements of section 54 of the 2005 Act, in relation to her departure. The premises were closed for a period of time and there was a proposed sale which fell through and our client is checking its records to confirm exact dates. We will confirm same once our client reverts.

6 On 10 May, 2023, a submission was made by email to our licensing mailbox in the form of an incomplete variation application to nominate Raymond Heller again as PM, this submission was rejected as incompetent, and full reasons for its rejection along with instructions to resubmit an amended and competent variation application were provided by the Clerk to the Clackmannanshire Licensing Board. Can you confirm when the amended application was resubmitted and provide evidence that it was received by the Board, we can find no record of the submission. On 12th June Lee Robertson confirmed, in relation to the managers details, that the

box should be left blank if the information was not to be provided and stated “we are happy to accept current application with your confirmation that this information can be removed otherwise the Council will expect a new application form to be completed.” On 12th June Joanna Millar confirmed it was the intention to remove the information from Qu7 so, per Lee Robertson’s email, no further application form was required.

7 On 21 July, 2023 spoke with Raymond Heller who confirmed that he had left his employment at the woolpack a week earlier and was on holiday. Can you provide evidence of your compliance with Section 54 of the Licensing Scotland Act, 2005 in relation to his departure (That will be required only in the event that you maintain he was ever properly nominated as the premises manager in relation to the May submission). If you accept that he was never properly nominated as PM, there is no obligation placed upon yourself to make a section 54 notification in relation to his departure. Susan Williamson, for and on behalf of the premises licence holder, confirmed to Clackmannanshire licensing board on 24th July 2023 that Raymond Heller would no longer be responsible as premises manager as of 24th July 2023. That gave a six week statutory notice period which ended on Monday 4th September 2023. We do not accept he was never properly nominated and it is our position that Mr Heller was properly appointed as premises manager on the above licence as narrated above.

8 In the absence of a premises manager and aware that the premises were possibly trading unlawfully, I carried out a joint visit to the premises along with Police Scotland on Thursday 31 August, 2023, where I was met by a male who identified himself as Steve Macfarlane who denied any involvement in the running of the bar, and claimed to have no financial interest in its operation. Is Steve McFarlane an "interested party" in the terms of the Licensing (Scotland) Act, 2005? If he is do you wish to offer any explanation as to why he would deny this. The landlord is discussing this with Mr Macfarlane and we will revert.

9 I carried out an inspection of the premises and discovered that the layout had changed significantly from the approved layout plan that forms part of the Premises Licence can you provide evidence that the relevant variation application to notify these changes to the Licensing Board has been submitted prior to the changes being made ? If not is there any explanation for that failing The landlord understands the tenant is applying for any necessary consents but will update on this matter

10 Can you confirm that the structural and use changes have the required consents from Planning and Building Control? As above - the landlord understands the tenant is applying for any necessary consents but will update on this matter

11 As a result of my findings on Friday 1 September, 2023 I served a compliance notice that was clear and unambiguous in its content, in my view the notice was not resolved to "my satisfaction" (a requirement of the Act) until Monday 4th September, 2023, when the Licensing Paralegal acknowledged that the required variation application appointing Mr Michie as premises manager was **received by the licensing Board** and thus triggering Section 31. In my view it cannot be said that a Licensing Board has **received** application at a time when they are not reasonably expected to be available. It is generally accepted that a Licensing Board performs its functions between 9am and 5pm Monday to Friday and notifications made outwith that period would be treated as received on the next working day. Police Scotland found the premises trading and in Full operation in the evening of Friday 1 September, in Breach of the notice I served. Is there any explanation of this breach that you would like me to take into consideration prior to submitting my Premises Licence Review Application. The six week period of notice in relation to the previous premises manager leaving expired on Monday 4th September 2023 and as such the premises were trading legally on 1st September 2023 and this was made clear to Police Scotland at their visit on 1st September 2023. An minor variation for the appointment of a premises manager was lodged with you on 1st September 2023 and was then superseded by a further application lodged on 2nd September 2023.

Thank you for taking the time to read this email, please acknowledge safe receipt of the email and a statement of understanding of the requests therein.

I appreciate that there is a lot of questions, however the I must advise that if you want me to consider a response I will have to receive that response by close of business on Monday 18 September, 2023 to allow me to meet a submission deadline of the October, licensing Board meeting.

If you have any questions please do not hesitate to contact me by email or telephone.

I must also advise that there are still a number of questions that remain outstanding and that were asked of you via your solicitor Ms Millar over that last few months, it would be helpful going forward if these outstanding matters could also be addressed.