

MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**TUESDAY 7 JANUARY 2014
SALTIRE ROOMS, JOHN MUIR HOUSE, HADDINGTON**

Board Members Present:

Councillor J Goodfellow (Chair)
Councillor D Grant
Councillor W Innes
Councillor F McAllister

Clerk of the Licensing Board:

Mrs K MacNeill

Attending:

Ms M Ferguson, Service Manager – Legal Services
Mr R Fruzynski, Licensing Standards Officer
Ms D Richardson, Licensing Admin Officer
PC H Bowsher, Police Scotland

Committee Clerk:

Mrs L Gillingwater, Democratic Services Manager

Apologies:

Councillor S Akhtar
Councillor S Currie
Councillor T Trotter

Declarations of Interest:

None

1. REVIEW OF PERSONAL LICENCE

Mr Sugendran Naicker

The licence holder, Mr Sugendran Naicker, was present and was represented by Mr MacDonald of MacDonald Licensing.

The Clerk advised that a report had been received from the Police and invited PC Bowsher to present her report.

PC Bowsher referred to Inspector Harborow's letter of 20 November. She advised that the Chief Constable had asked for a review of Mr Naicker's personal licence and had recommended that his licence should be revoked. She further advised that Mr Naicker had been reported to the Procurator Fiscal, who had issued a warning to Mr Naicker.

Mr MacDonald set out the key points in relation to this case, reminding Members that Mr Naicker's premises licence had been suspended by the Board in November 2013 for a period of six months. He advised that Mr Naicker had not sold alcohol from his premises since August 2013, when the incident outlined in the Police letter had occurred, and that as a result, he had suffered financial hardship. Mr MacDonald also outlined the circumstances surrounding the transfer of the licence, noting that Mr Naicker had accepted that he should have notified the Licensing Board of the departure of the previous premises manager.

As regards the incident on 30 August 2013, Mr MacDonald confirmed that Mr Naicker had not been involved in the transaction; indeed he had refused to sell the boy alcohol on a number of occasions previous to that date. Mr MacDonald suggested that there was nothing to indicate that he would have sold alcohol to that boy or to any other person under the age of 18.

Mr MacDonald explained that Mr Naicker had employed the person who had sold the alcohol in a casual and naïve manner, and that he had not seen the employee's original visa. He added that UK Immigration had been very understanding and had not sought to raise charges against Mr Naicker. Mr MacDonald explained that Mr Naicker had trained his employee, and that there was nothing in the letter from the Police to suggest that the training had not been carried out properly.

Mr MacDonald accepted that the sale of the alcohol to an under-age person could not be defended. However, he stated that Mr Naicker had not been involved in the sale and that his employee had disappeared and could therefore not be held to account, resulting in the premises licence being suspended. He reminded the Board that this hearing was concerned with reviewing Mr Naicker's personal licence and his actions as an individual. He explained that Mr Naicker had offered to re-sit the relevant training and he himself would ensure that Mr Naicker was properly trained before using his personal licence again. He added that Mr Naicker had undertaken not to employ an individual in future who was not a personal licence holder.

Mr MacDonald advised the Board of the impact that this incident had had on Mr Naicker. He requested that any suspension of Mr Naicker's personal licence should not exceed the date of his premises licence suspension.

Councillor Goodfellow asked if the Police had evidence of the training record of Mr Naicker's employee. PC Bowsher advised that she did have a copy of the training record, but that there was no way of verifying the document. She noted that the training record had been completed on the day before the incident.

Councillor Goodfellow asked a question in relation to the transfer of the licence. The Clerk of the Board advised that Mr Naicker had been trading without a licence and that he had given false information to the licensing police in Edinburgh. PC Bowsher remarked that the Section 1 offence related to that matter.

Mr MacDonald commented that any individual could trade under another person's premises licence, and that the problem was with his personal licence. He noted that Mr Naicker had obtained a personal licence within the six-week timescale, but that he had not notified the Licensing Board. At that time the premises licence was still held by Mr Martin Ali, who had also failed to inform the Board of the transfer.

The Clerk and members of the Board adjourned in private.

On returning to the meeting, the Chair, Councillor Goodfellow, advised that although Mr Naicker was not present at the time of the sale of the alcohol to the child, he was responsible for sales on that premises and that his failure to prevent the sale of alcohol to an under-age person had resulted in a crime and in harm to a child. He stated that in these circumstances, the Board were of the view that two objectives of the Licensing (Scotland) Act 2005 had been breached. He also expressed concern that Mr Naicker had not been totally honest in his dealings with the police.

Councillor Goodfellow advised that the Board had resolved to suspend Mr Naicker's personal licence until 29 May 2014, the date when his premises licence would be reinstated. He warned Mr Naicker that the police and the Licensing Standards Officer would be monitoring his activities within his premises.

Decision

East Lothian Licensing Board agreed to suspend Mr Naicker's personal licence with immediate effect until 29 May 2014, with close monitoring thereafter by the Police and the Licensing Standards Officer.