



**MINUTES OF THE SPECIAL MEETING OF
EAST LOTHIAN LICENSING BOARD**

**THURSDAY 21 DECEMBER 2023
ONLINE PLATFORM MEETING**

Board Members Present:

Councillor L Bruce (Convener)
Councillor F Dugdale
Councillor G McGuire
Councillor J McMillan

Clerk of the Licensing Board:

Mr C Grilli, Service Manager – Governance

Attending:

Ms G Herkes, Licensing Officer
Ms K Harling, Licensing Standards Officer
PC L Wilson, Police Scotland

Committee Clerk:

Ms B Crichton, Committees Officer

Apologies:

Councillor C Cassini
Councillor N Gilbert

Declarations of Interest:

None

**1. MINUTES FOR APPROVAL
23 November 2023**

The minutes were approved as an accurate record of the meeting, subject to correction of a date error.

**2. PREMISES LICENCE REVIEW
Nisa, Duns Road, Gifford**

The Licensing Standards Officer (LSO) had made an application in terms of Section 36(4) on the grounds specified in Section 36(3)(a) of the Licensing (Scotland) Act 2005 ('the Act') to the East Lothian Licensing Board to review the premises licence in respect of Nisa, Duns Road, Gifford. The application had been made on the 28 November 2023 and subsequently accepted by the Board. A report and accompanying documents had been submitted to the Board for consideration.

The licence holder, Kokulabavan Jeyarasa, was in attendance, and was supported by Mrs McCulloch.

Karen Harling, LSO, spoke to her report and submissions. Alongside the grounds specified in Section 36(3)(a) of the Act for a breach of premises licence conditions, the LSO also sought to add additional grounds specified in Section 36(z)(a), that Mr Jeyarasa was not a fit and proper person to hold a premises licence. She provided an overview of the circumstances and information on the breaches of licence conditions.

The LSO addressed the breach of premises licence mandatory condition 4 regarding the designated premises manager (DPM). She advised that the premises had previously been a Co-op, and a transfer of the premises licence to Mr Jeyarasa had been granted on 12 October 2021. The DPM at the time of the transfer, Carol Mackay, subsequently resigned from employment and her last working day had been 21 November 2021. The LSO reported there had been a failure to notify the Board within seven days that Mrs Mackay had left her position, as required by Section 54 of the Act. As such, all sales of alcohol from this point onwards breached mandatory condition 4, and it was not clear from that point who was managing the premises. She advised that Mr Jeyarasa had made an application to appoint himself as DPM on 22 February 2022 and was subsequently named on the licence. The LSO advised that East Lothian Licensing Board was not able to check whether a person was named as DPM on another premises licence outwith East Lothian. She advised that Mr Jeyarasa had been DPM at a premises in Dumfries since 14 November 2019, and was still the premises manager there. Therefore, there had been no DPM since Mrs Mackay left in November 2021 and selling alcohol had been a breach of mandatory condition 4 until appointment of the current premises manager, Sivapatham Suthkaran, on 17 November 2023. This offence under the Act had been reported to Police Scotland, and local information indicated that alcohol had continually been available since Mr Jeyarasa took control of the shop.

The LSO advised that her involvement with the premises began due to non-payment of annual fees, which was a breach of mandatory condition 10. She had made numerous attempts to contact Mr Jeyarasa and had visited the premises to deliver a final request letter. She advised that the fee was subsequently paid by a male known as 'Ranjan' (later identified as Selvarasa Jeevakaran) in person at John Muir House. On her visit on 8 November, the LSO had found a male staff member alone in the shop who had been unable to speak English and had been unable to provide the premises licence or documents required under the Act. She reported that he seemed panicked and called Ranjan, whom he referred to as his boss. The LSO reported that Ranjan

said he was the manager of the shop and claimed to be Mr Jeyarasa, but had been unable to provide ID when requested. On this visit, the LSO found training records to be incomplete and unsigned, and reported that Ranjan's story about the whereabouts of Mr Jeyarasa changed several times. The LSO left the shop and issued a Section 14 compliance notice by email and post in relation to the breach of mandatory condition 6 for staff training.

The LSO explained that she then undertook a joint visit with PC Lee Wilson on 14 November, where Ranjan and the male she had met on her first visit were present. The LSO and PC Wilson found no valid training record for any staff member, and the Section 14 notice had not been complied with. She advised that PC Wilson spoke with Mr Jeyarasa on the phone, who said he had been in Sri Lanka, and that he lived in Dumfries but travelled to the premises on a regular basis. PC Wilson asked Mr Jeyarasa to instruct Ranjan to remove alcohol and cover displays until staff were trained, as Ranjan had not complied with this request previously. The LSO spoke with Mr Jeyarasa on the phone and he confirmed he had received the Section 14 notice but had not actioned anything. Mr Jeyarasa had confirmed one staff member did not speak English, and that Ranjan was his cousin and ran the shop. Mr Jeyarasa also confirmed that he lived in Dumfries but travelled to work at the premises five days each week, and said he had CCTV proof of this. He informed the LSO he would train all staff and demanded that the LSO visit the shop the following day at 8am. The LSO said she had questioned how Mr Jeyarasa would train the staff within such a short timescale and made clear that she would make an application to review the premises licence on the basis of non-compliance with the Section 14 notice.

The LSO advised that three new staff members had been present on a further visit on 16 November, two of whom claimed to have been trained within the last 48 hours. She reported that they had been able to answer questions about the training. She advised that Mr Jeyarasa appeared unfamiliar in the shop and storeroom and had been unable to provide CCTV evidence of working in the shop. She reported that ID documents were provided for four staff members she had not seen in the premises, and no ID documents were provided for the staff members she had found working previously. Mr Jeyarasa told the LSO that Ranjan required further training and that the first male she had found working in the premises had left. Mr Jeyarasa said that he would appoint Mr Suthkaran as DPM, and the LSO reported that Mr Suthkaran said travel from Kirkcaldy would be difficult. The LSO reported being told by five different staff members that they were living in the same house in Gifford, however, the details of who lived in the house changed. She had established that a private landlord owned the property and believed he had rented the property to a sole tenant, Mr Jeyarasa.

The LSO reported that a new member of staff was found to be working alone on an unannounced visit on 27 November. He was able to provide ID, but panicked and was unable to provide a training record. The staff member said he had worked in the shop for two days, and lived in Dumfries but was staying at the same address in Gifford given by other staff members. She recounted that Ranjan then attended the shop and provided a training record for the staff member. She reported that the staff member had been unable to say who had trained him and said he "had just signed the forms". The LSO described the state of disarray found in the stockroom, illustrated in photographs provided to Board Members, and as a result, contacted the Scottish Fire and Rescue Service to report safety concerns. It was on this visit that Ranjan's identity was established as being Selvarasa Jeevakaran. The LSO emailed Mr Jeyarasa with further concerns relating to staff training following this visit. She said that Mr Jeyarasa had claimed the disorder had been due to a delivery having just been made, but he had been unable to provide evidence of the delivery. He admitted that the new staff member had been poorly trained and undertook to retrain him.

The LSO advised that a further visit was conducted with PC Wilson on 6 December, where Mr Suthkaran was on the premises, along with Ranjan. On this visit, Ranjan produced a training record, could answer some basic questions on his training, and the stockroom was tidier. She noted that no layout plan was available in the premises and she had previously advised Mr Jeyarasa to apply to the Licensing Board for a copy. She reported that alcohol had once again been found on the floor of the shop on the visit on 27 November, and another Section 14 compliance notice had been issued for breach of mandatory condition 13.

The LSO gave her view that Mr Jeyarasa had handed full management and responsibility of the shop over to Ranjan, who was clearly not a responsible or fit person due to providing false information to officials, and by Mr Jeyarasa's own admission, required further training. She said that numerous staff had referred to Ranjan as being the boss. She could see no evidence of Mr Jeyarasa's input and thought he had not been present at the premises for some time. She thought Mr Suthkaran had been appointed as DPM in a hurry to appease officials and she doubted he would have continued involvement to fulfil his role as DPM. The LSO reported that locals commonly assumed that Ranjan was the boss of the premises and that the premises had changed hands into his control.

The LSO summarised that she was of the opinion that Mr Jeyarasa was not a fit and proper person to hold a premises licence and asked Members to consider whether they were of the same view. She referred to the multiple breaches of conditions and wider failings, and said that being a fit and proper person was also taken into account the character and nature of the individual. She noted that Mr Jeyarasa held premises licences in other areas and should be an experienced personal licence holder. She said he had completely failed in his responsibilities as a premises licence holder and had demonstrated disregard for the law and the regulated industry. She referred to opportunities given to Mr Jeyarasa to remedy breaches of the licence and his failure to act. She described Mr Jeyarasa as having no regard for preventing crime and disorder, as untrained staff who were unable to speak English would be unable to conduct conversations for age verification and make safe sales. She also noted that consultees had raised issues with: compliance in planning; maintenance of fire alarms systems and emergency lighting; non-registration with environmental health; and failure to register to sell tobacco and nicotine products. She also highlighted the requirement under Section 84 of the Act that a personal licence review hearing must be held should a personal licence holder be found to be acting in a manner inconsistent with the licensing objectives.

PC Wilson acknowledged that a full timeline had been provided by the LSO and provided the Board with his overall impressions based on his visits. He said he also questioned who was really in charge of the store, as Mr Jeyarasa was unlikely to be able to visit on a regular basis and appeared to be unfamiliar with the premises. Mr Jeyarasa had left control of the store with other members of staff, and staff referred to Mr Jeevakaran as being the boss. He found it hard to believe that the new DPM would agree to a commute from Kirkcaldy and agreed with the LSO's assessment that it was likely he had been appointed to appease officials. PC Wilson had spoken with his police counterpart in Dumfries who had confirmed that Mr Jeyarasa remained as DPM for a premises in the area at the same time as having applied for and held the role of DPM in Gifford. PC Wilson said this indicated a complete lack of knowledge or a blatant disregard for the law, and Police Scotland may look to progress this as part of an ongoing investigation. He felt the lack of appropriate management had been reflected in the poor staff training and document maintenance, where records were not properly signed, dated, and were all in different handwriting. He confirmed that staff he came across on visits had not been trained, which caused concern for their ability to reasonably sell alcohol. He felt that the staff member presented on the second visit appeared to be in place to appease officials, and the staff member had stated that he

would move to the address in Gifford. PC Wilson raised further concerns with poor housekeeping, non-payment of annual fees, storeroom issues, and the premises not being registered to sell tobacco. He said that staff providing false details raised questions over their honesty and integrity, and further called into question as to whether Mr Jeyarasa was a fit and proper person to hold a premises licence. PC Wilson said he had never seen such a catalogue of major concerns and commented that Mr Jeyarasa ought to be knowledgeable about the regulated industry. He felt that the various issues showed that Mr Jeyarasa had not taken responsibility and brought into question his ability to uphold licensing standards.

The Convener invited Mr Jeyarasa to respond to the points raised by the LSO and PC Wilson, but Mr Jeyarasa made no comment at this stage of the hearing.

Councillor McMillan asked about Mrs McCulloch's relationship to Mr Jeyarasa. Mrs McCulloch advised that she had worked for Mr Jeyarasa for several years and was providing support at the hearing to ensure Mr Jeyarasa understood the questioning.

Responding to further questions from Councillor McMillan, the LSO advised that she asked standard questions on any site visit and requested that documentation be produced, as specific signage and the premises licence must be displayed and available. She advised that it was an offence not to be able to produce this documentation when requested by the police or LSO. She reported that the premises was one of only a handful which had not paid their annual fees on time, and her first visit had been to deliver a letter to make clear that the premises would be called to a hearing should fees remain unpaid by the start of the following week. She reiterated that the sole member of staff in charge of the shop had panicked when officials had appeared and had struggled to speak English. She said she would expect a shop of this size to have more than one member of staff on duty, and commented that organisation seemed to have been very poor for a member of staff to be left in sole charge of the shop when they had only worked there for two days. She advised that this staff member had been unfamiliar with safety procedures and how to put off an alarm which had been sounding. She said that recruitment procedures were of concern, and said it was rare for staff to be able to relocate at short notice.

The LSO also commented that control of the store seemed to have been handed over to someone who was not fit to run the premises, and Mr Jeyarasa had little involvement. She described the messy and unsafe state of the storeroom on one of her visits, which Ranjan had sought to keep her from entering. She noted contradictions in the times Mr Jeyarasa and Ranjan had said the delivery had been made, and thought that more than one member of staff should have been on duty to tidy away a delivery swiftly. She highlighted a lack of clear instruction to staff members who were also inexperienced.

Councillor McMillan asked about the risks in the Gifford store. PC Wilson commented that overarching issues were of: disorganisation; a lack of supervision; the storeroom being in disarray; safety issues with fire exits being blocked; and serious issues with staff training. He said that issues were sometimes found on site visits but this premises had a far greater catalogue of issues than he had ever seen.

Responding to questions from Councillor McMillan, Mr Jeyarasa advised that one of the managers lived in Kirkcaldy but would move to Gifford, but in the meantime he was paying for his fuel costs for the manager's 45-minute commute. He said that there were now three or four members of staff working every day, and he would now work in the premises three or four days each week. He said staff were recruited through personal connections, and people sometimes came in to enquire about vacancies. He confirmed that Ranjan was his cousin.

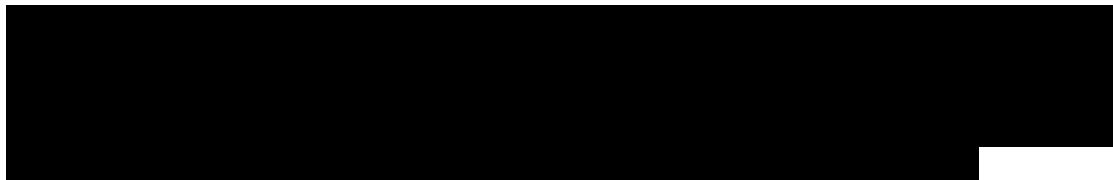
The LSO raised concern that Mr Jeyarasa would be travelling to the premises and remaining as DPM elsewhere, as it was not possible under the Act to be the DPM at more than one premises. Mr Jeyarasa advised, with support of Mrs McCulloch, that he intended to visit the premises in Gifford three or four days each week but would remain DPM at the premises in Dumfries. Responding to a question from the Convener, Mrs McCulloch explained that Mr Jeyarasa would maintain contact with both premises because he worked long hours and travelled to various premises regularly.

Following further discussion, Mr Jeyarasa said that he had been unaware that he could not act as DPM at more than one premises. Councillor McGuire felt that this failure to familiarise himself with the regulations showed Mr Jeyarasa's lack of acceptance of responsibility. Mr Jeyarasa, with support from Mrs McCulloch, stated that it had not been due to a lack of responsibility, but rather a lack of knowledge.

The LSO highlighted that Mr Jeyarasa was an experienced operator and held four premises licences across the country. She advised that information about it not being legal to be the DPM at more than one premises was contained within the personal licence holder course which Mr Jeyarasa had completed.

Responding to a question from Councillor Dugdale about the licensing objective of protecting children and young people from harm, the LSO highlighted serious issues with leaving someone who was not trained in charge of the shop. If they could not speak English, this caused further concern as they would be unable to ask the appropriate questions to undertake age verification, and she highlighted that there were false IDs circulating. She stated that if a sole member of staff was in the shop and they were not trained, then alcohol should not be sold or on display.

In response to questions from Councillor McMillan, Mr Jeyarasa confirmed that he now understood that he could not act as DPM at more than one premises. The Convener stated that the onus was with the licence holder to make the Licensing Board aware of any change of DPM, and said it was not possible for the Board to check whether a DPM was also acting as DPM elsewhere. Mr Grilli, Clerk of the Board, advised that part of the checks relied on Police Scotland's database. PC Wilson advised that this issue had not been picked up in Mr Jeyarasa's case and would be taken forward as a learning point. Mr Grilli confirmed that Mr Jeyarasa had been named as DPM at his premises in Dumfries and Galloway prior to making his application to become DPM in Gifford. As the Dumfries and Galloway role was confirmed prior to the Gifford role, under the legislation, Mr Jeyarasa was never DPM in Gifford, and therefore all sales of alcohol on the premises had taken place illegally over the past two years. PC Wilson advised that this was being investigated by Police Scotland.



The Convener called an adjournment to allow Members to discuss the matter in private session.

Upon their return, the Convener thanked the LSO and PC Wilson for their work in bringing this matter to the Board. He commented that operation of the premises had fallen short of the standard demanded by the Board including: there being no DPM in place; breaches of licensing conditions and food and hygiene standards; a lack of proper training; an inability to operate effectively within the licensed industry; and alcohol display outside of permitted areas. He commented that all five of the licensing objectives had not been upheld following breaches of licensing conditions. Due to the obvious mismanagement of the premises, he said it was clear that Mr Jeyarasa had not been acting as a fit and proper person, and, as such, the Convener formally proposed that the premises licence be revoked and that no further sales of alcohol would take place. He also proposed that Mr Jeyarasa's personal licence be reviewed at the January Board meeting, and that the licensing team write to the Licensing Boards of Fife, East Ayrshire, and Dumfries and Galloway to make them aware of the outcome of the premises licence review hearing. Councillor McGuire formally seconded these proposals, and Members unanimously supported the proposals in a roll call vote.

Mr Grilli advised that a statement of reasons could be prepared if Mr Jeyarasa requested a copy. He confirmed that the decision of the Board was to revoke the premises licence with immediate effect and thus the premises must cease all sales of alcohol immediately.

PC Wilson and the Convener sought confirmation that Mr Jeyarasa had understood the outcome of the hearing and was aware that checks would be carried out on the premises. Mr Jeyarasa confirmed that he understood the decision of the Board.

Decision

The Board agreed:

- that the premises licence for Nisa, Duns Road, Gifford would be revoked and no further sales of alcohol may take place;
- that Kokulabavan Jeyarasa's personal licence would be reviewed at the January meeting of the Board; and
- that the licensing team would write to the Licensing Boards of Fife, East Ayrshire, and Dumfries and Galloway to make them aware of the outcome of the premises licence review hearing.

Signed

Councillor L Bruce
Convener of East Lothian Licensing Board