

## **Item: 3**

**Orkney Islands Area Licensing Board: 16 January 2019.**

**Review of Premises Licence: Standing Stones Hotel, Stenness.**

**Report by Licensing Standards Officer.**

### **1. Purpose of Report**

To review the premises licence held in respect of the Standing Stones Hotel, Stenness.

### **2. Recommendations**

**It is recommended:**

#### **2.1.**

That the Board determines what action to take following a review in respect of the premises licence relating to Standing Stones Hotel, Stenness.

### **3. Introduction**

#### **3.1.**

On 6 December 2018, the Licensing Board noted:

##### **3.1.1.**

That, in terms of Regulation 7 of the Licensing (Fees) (Scotland) Regulations 2007, the holder of a premises licence must make payment of an annual fee in relation to the premises licence.

##### **3.1.2.**

That, in accordance with Regulation 9 of the Licensing (Fees) (Scotland) Regulations 2007, invoices were issued in respect of the annual fees for all premises licences held for the period 1 October 2018 to 30 September 2019.

##### **3.1.3.**

That, despite two subsequent reminders having been sent to the licence holders, the annual fee payable in respect to the Standing Stones Hotel, for the period 1 October 2018 to 30 September 2019, remained outstanding.

##### **3.1.4.**

That, in terms of Section 14(2)(a)(i) of the Licensing (Scotland) Act 2005, a licensing compliance notice, containing the undernoted advice, was issued to the holders of the premises licence at the Standing Stones Hotel, Stenness:

- Payment of the annual licensing fee was a mandatory condition of the premises licence.
- Failure to pay the fee would result in an application to the Board to review the holders' premises licence.
- The holders' premises licence could be suspended or revoked in the event of non-payment.

### **3.1.5.**

That the Licensing Standards Officer had subsequently submitted an application for a premises licence review in respect of the premises licence held by Alan R Tulloch and Linda Johnston in relation to premises known as Standing Stones Hotel, Stenness, arising from an ex facie breach of a mandatory condition pertaining to the premises licence, being non-payment of the statutory annual fee relating to the premises licence.

### **3.1.6.**

That, in terms of section 38 of the Licensing (Scotland) Act 2005, the Board was required to assign a review hearing for the purposes of considering and determining the application unless the Board considered that the application was vexatious or frivolous or that it disclosed no relevant ground for review.

### **3.1.7.**

That, in terms of paragraph 13 of the Licensing (Procedure) (Scotland) Regulations 2007, a review hearing required to be held no later than 42 days after the date on which the licensing board received the premises licence review application.

### **3.1.8.**

That, on 3 December 2018, the Licensing Standards Officer was advised by the Finance service, Orkney Islands Council, that the annual fee payable in respect to the Standing Stones Hotel, for the period 1 October 2018 to 30 September 2019, had been paid.

### **3.2.**

The Board resolved that, notwithstanding the fact that the outstanding fee had subsequently been paid, a relevant ground for review had been disclosed and, accordingly, the premises licence held at Standing Stones Hotel, Stenness, be reviewed.

## **4. Background**

### **4.1.**

A premises licence has been held at Standing Stones Hotel, Stenness, since 1 September 2009, firstly by Standing Stones Hotel Ltd and subsequently by Alan R Tulloch and Linda Johnston since 15 July 2010. Mr Tulloch is also named on the premises licence as premises manager.

### **4.2.**

The requirement to make payment of an annual fee, as required by the Regulations, is incorporated within the mandatory conditions attached to the premises licences issued by the Board.

### **4.3.**

In terms of Regulation 7 of the Licensing (Fees) (Scotland) Regulations 2007 and, by incorporation, the mandatory conditions attached to the premises licence, the annual fee for the premises licence in respect of the Standing Stones Hotel, Stenness, was due and payable on 1 October 2018.

### **4.4.**

A breach of a condition of a premises licence comprises a statutory ground on which a Licensing Standards Officer, or any other person, may apply to the Board for a review of the premises licence in terms of Section 36 of the Licensing (Scotland) Act 2005 (the Act).

## **5. Late Payment of Annual Fee**

### **5.1.**

In accordance with Regulation 9 of the Regulations, invoices in respect of the premises licence annual fees due on 1 October 2018 were issued by the Clerk to the Board on 8 August 2018 to relevant licence holders.

### **5.2.**

Despite three subsequent reminders having been sent to the licence holders on 12 September, 10 October and 7 November 2018, payment of the annual fee by the holders of the premises licence held at Standing Stones Hotel, Stenness, remained outstanding until 3 December 2018.

### **5.3.**

On 15 October 2018 a licensing compliance notice in terms of Section 14(2)(a)(i) of the Act was issued to the holders of the premises licence referred to above. The licensing compliance notice contained advice that:

- Payment of the annual licensing fee was a mandatory condition of the premises licence.

- Failure to pay the fee would result in an application to the Board to review the holders' premises licence.
- The holders' premises licence could be suspended or revoked in the event of non-payment.

#### **5.4.**

The fee was subsequently paid on Monday, 3 December 2018 by Mr Alan R Tulloch, which was 63 days after the due date for payment in terms of the regulations and mandatory conditions attaching to the premises licence. The later payment amounted to a breach of the said regulations and mandatory conditions.

## **6. Premises Licence Review**

### **6.1.**

As detailed in section 3 above, on 6 December 2018, the Board determined to hold a hearing for the purposes of considering and determining a premises licence review application in respect of Standing Stones Hotel, Stenness. Such a hearing is known as a "review hearing".

### **6.2.**

The licence holders were requested to attend, or be represented at, the hearing and advised that they may produce to the hearing any documents in their possession that they consider to be relevant. They were also advised that they should consider seeking independent legal advice and that they may be accompanied or represented by a legal or other representative at the hearing.

### **6.3.**

Section 39 of the Act provides that at a review hearing in relation to any premises licence, the Board may, if it is satisfied that a ground for review is established, take such of the following steps as they consider necessary or appropriate for the purposes of any of the licensing objectives:

- Issue a written warning to the licence holder.
- Make a variation of the licence.
- Suspend the licence for such period as the Board may determine.
- Revoke the licence.

### **6.4.**

It is also open to the Board to take no action.

### **6.5.**

The licensing objectives are defined in section 4 of the Act as follows:

- Preventing crime and disorder.
- Securing public safety.

- Preventing public nuisance.
- Protecting and improving public health.
- Protecting children and young persons from harm.

## **6.6.**

In terms of section 39A of the Act, the Board must give notification of their determination to the premises licence holder and the premises licence review applicant (in this case the LSO). If the Board determines to take one of the steps detailed at section 6.9 above, the premises licence holder may require the Board to give a statement of reasons for their decision.

## **6.7.**

In terms of section 131 of the Act, a sanction listed in section 6.9 of this report can be appealed to the Sheriff Principal.

## **6.8.**

In terms of section 132 of the Act, a decision of the Board which is appealed continues to have effect despite the appeal. However, there is an exception whereby, on the application of any appellant and if satisfied on the balance of convenience that it is appropriate to do so, the Sheriff Principal may set aside a decision to suspend or revoke a premises licence pending determination of any appeal, thus permitting the licence holder to trade.

## **7. Financial Implications**

The Regulations prescribe the maximum fees payable based on the rateable value of the premises. In this instance the annual fee payable under Regulation 7 as determined by this Board is £500.

## **8. Legal Aspects**

The legal aspects are contained within the body of this report.

## **9. Contact Officers**

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