

## **Item: 4**

**Orkney Islands Area Licensing Board: 20 January 2022.**

**Non-payment of Annual Premises Licence Fee – Fusion, 10/12 Ayre Road, Kirkwall.**

**Report by Licensing Standards Officer.**

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

To consider what action to take in respect of non-payment of annual premises licence fees payable for the period from 1 October 2021 to 30 September 2022.

### **2. Recommendations**

**It is recommended:**

#### **2.1.**

That the Board determines whether to make a review proposal in respect of the premises licence referred to in section 4.1 of this report.

### **3. Background**

#### **3.1.**

In terms of Regulation 7 of the Licensing (Fees) (Scotland) Regulations 2007 (the Regulations), the holder of a premises licence must make payment of an annual fee in respect of the performance in relation to that licence of functions by the relevant Board, the local authority within the area of which the premises are situated and that local authority's Licensing Standards Officers.

#### **3.2.**

The requirement to make payment of an annual fee referred to above is incorporated within the mandatory conditions contained in the premises licences which are issued by the Board.

#### **3.3.**

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).

## 4. Non-payment of Annual Fee

### 4.1.

Invoices in respect of the premises licence annual fees due on 1 October 2021 were issued to the relevant licence holders by the Clerk to the Board in accordance with Regulation 9 of the Regulations. Payment of the annual fee by the holder of the undernoted premises licence remains outstanding despite three subsequent reminders having been sent to the licence holder:

Reference.	Premises.	Licence Holder.	Grounds of review.
OI/PL/97.	Fusion, 10/12 Ayre Road, Kirkwall KW15 1QX.	Light Fantastic (Orkney) Limited.	Non-payment of annual fee (Breach of premises licence mandatory condition 10).

### 4.2.

On 17 November 2021 a licensing compliance notice in terms of Section 14(2)(a)(i) of the Act was issued to the holder 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 holder's premises licence.
- The holder's premises licence could be suspended or revoked in the event of non-payment.

#### 4.2.1.

Notwithstanding above, payment of the annual fee by the licence holder remains outstanding.

### 4.3.

This report comprises a premises licence review application in terms of Section 36 of the Act. In terms of Section 36 of the Act, the Board may reject a premises licence review application if the Board considers that the application is vexatious or frivolous, or does not disclose any matter relevant to any ground for review.

### 4.4.

In terms of Section 38 of the Act, where a Board receives a premises licence review application, the Board must hold a hearing for the purposes of considering and determining the application unless the Board rejects the application on the grounds referred to in section 4.3 above.

#### **4.5.**

In terms of Section 39 of the Act, at a review hearing in relation to any premises licence, the Board may, if satisfied that a ground for review is established, take any of the following steps if the Board considers this necessary and 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.

### **5. 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.

### **6. Legal Aspects**

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

### **7. Contact Officer**

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