



**GOSCHALKS**  
SOLICITORS

Clerk to the Licensing Board  
The Highland Council  
Town House  
High Street  
Inverness, IV1 1JJ

**Our ref:** RJT/LHK/84773-8650-9

**Your ref:**

**Date:** 25 June 2013

**E-Mail:** rjt@gosschalks.co.uk

**Direct Fax:** 0870 600 5958

Dear Sir/Madam,

**re: Notification of conviction under section 43 Licensing (Scotland) Act 2005**  
**Asda Store, Ivanhoe Avenue, Inverness, IV2 6BZ**  
**Premises Licence Holder - Asda Stores Limited**  
**Barnsley Magistrates Court - 30<sup>th</sup> May 2013**

We act for Asda Stores Limited and would be grateful if you would accept this letter as formal notification under s43 Licensing (Scotland) Act 2005 of a conviction in the Barnsley Magistrates Court on 30<sup>th</sup> May 2013. On that date, Asda Stores Limited pleaded guilty to an offence under s33(1)(a) Health and Safety at Work Act 1974. The company was fined £20,000 and ordered to pay the prosecution costs.

Our client was prosecuted following an incident that took place just after midnight on the morning of 3<sup>rd</sup> August 2011 when the store was closed to the general public. An employee in the grocery department working the night shift slipped in a walk in grocery freezer and reported that he had sprained his knee.

In line with its statutory obligations, Asda reported this slip. This resulted in an investigation by Barnsley Metropolitan Borough Council and ultimately a summons contending that Asda failed to discharge its duty under s2(1) HSWA 1974 to ensure as far as reasonably practicable that its employees did not slip in the walk in freezer.

The freezer in question is in the warehouse of the Barnsley store. It is not accessible by the general public. This freezer holds frozen stock until it is displayed for sale in freezer units on the shop floor.

The freezer is and at all times was subject to proactive and reactive maintenance by City Facilities Management Limited who provide maintenance, inspection and repair services of all Asda's facilities across its 544 stores and 24 distribution centres. As far as the freezer is concerned, the

Queens Gardens, Hull, HU1 3DZ T 01482 324252 F 0870 600 5984 E info@gosschalks.co.uk W www.gosschalks.co.uk DX 11902 - Hull

Partners: Simon Lunt, Ian Lanch, Richard Jewell, Neil Johnson, Clare Johnson, Roy Taylor, Robert Thomson, Jonathan Beharrell, Nigel Beckwith, Zoë Carmichael, Mark Teal, Stephen Walker, Robert Hasle, Richard Taylor, Andrew Johnson, Jonathan Peet, James Phin, Justin Graves, Matthew Fletcher, Andrew Tarbutt, Ted Hanagan, Kate Groves, Craig Beeham, Stephen Dillon, Ashlie Prescott, Chris Groves, Paul Plaxton, Nicola Barrass, James Houston, Victoria Guinn, Andrew Bell, Charlotte Chilcott

Associates: Julia Williams, Matthew Hudson, Rachel Garton

Partnership Secretary: Marlin Holdenby

This firm is authorised and regulated by the Solicitors Regulation Authority under number 61213



contract with City Facilities Management Limited requires that refrigeration engineers inspect the freezer every month and complete a detailed health check refrigeration report.

In addition to scheduled monthly visits, an annual planned preventative maintenance/defrost/deep clean of the freezer is undertaken by City's engineers. Furthermore, City's engineers respond to any reactive jobs required by the store. That call out facility is available 24 hours a day, 365 days a year.

All of these arrangements were in place at the Barnsley store throughout 2011. The annual defrost/preventative maintenance visit took place on 7<sup>th</sup> January 2011 and a further defrost took place in May 2011. There were seven inspections between the scheduled defrost in January 2011 and the incident which brought about the prosecution in August 2011.

Asda pleaded guilty on the basis that City recorded an issue in April 2011 when its engineer noted snow and ice build up on the walls, ceilings and blowers. In July 2011, they noted the freezer was still icing up. This was not reported to Asda and the guilty plea to the Magistrates was on the basis that Asda accepted responsibility for the shortcomings of City and the local management team in relation to the condition of the freezer at the time of the incident.

There was no suggestion that this was a systemic problem in Asda's health and safety arrangements either generally or specifically in relation to the freezer. Asda fully cooperated in the investigation, indeed the investigation only took place as Asda reported the incident itself. The company offered a prompt guilty plea.

We would be grateful if you could confirm whether or not the information contained here is sufficient or whether or not this matter will be placed before the board for further consideration.

If you require the premises licence from us then please do not hesitate to contact us.

Yours faithfully



**GOSSCHALKS**