

## The Highland Licensing Board

Meeting – 18 January 2019

Agenda Item	11.1
Report No	HLB/010/19

### Hearing to consider Police Scotland report of conduct inconsistent with licensing objectives Personal licence holder – Matthew Culley (HC/INBS/4291)

#### Report by the Clerk to the Licensing Board

##### Summary

This report relates to a hearing under section 84A of the Licensing (Scotland) Act 2005. This is a mandatory hearing which the Board must hold following receipt from Police Scotland of a report advising that the Chief Constable considers that a personal licence holder has acted in a manner inconsistent with any of the licensing objectives.

#### 1. Background

- 1.1 A personal licence is required to allow any individual to supervise or authorise the sale of alcohol.
- 1.2 Matthew Culley was granted a personal licence on 13 October 2014 and, subject to the terms of the Act, the licence will expire on 12 October 2024.

Matthew Culley is currently the designated Premises Manager at Sobar, 55-67 Castle Street, Inverness, IV2 3DU.

- 1.3 In terms of section 84A of the Act, Police Scotland have submitted to the Board a report dated 20 December 2018 that the Chief Constable considers that personal licence holder, Matthew Culley, has acted in a manner inconsistent with the licensing objectives of preventing crime and disorder, securing public safety and protection of children and young persons from harm. A copy of this report detailing the conduct in question is attached (Appendix 1).

Section 84A(2) of the Act provides that where the Board receives from Police Scotland a report of this nature, the Board must hold a hearing.

- 1.4 The personal licence holder, Matthew Culley, and a representative from Police Scotland have been invited to attend the hearing. Both have been advised of the hearing procedure which will be followed at the meeting and which may also be viewed via the following link:

[http://highland.gov.uk/hlb\\_hearings](http://highland.gov.uk/hlb_hearings)

#### 2. Legal position

## **2. Legal position**

- 2.1 At the hearing, the Board may, after giving the licence holder, Police Scotland and such other persons as they consider appropriate an opportunity to be heard, make an order revoking, suspending or endorsing the licence if the Board is satisfied that it is necessary to do so for the purposes of any of the licensing objectives. The period of any suspension may not exceed 6 months. Alternatively, the Board may decide to take no action.
- 2.2 Separately, where, at the hearing, the Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.
- 2.3 For the purposes of the Act, the licensing objectives are-
- (a) preventing crime and disorder,
  - (b) securing public safety,
  - (c) preventing public nuisance,
  - (d) protecting and improving public health, and
  - (e) protecting children and young persons from harm.

### **Recommendation**

The Board is invited to hear from the representative of Police Scotland and from the personal licence holder and then to determine whether to make any order revoking, suspending or endorsing the personal licence.

Reference: HC/INBS/4291

Date: 21 December 2018

Author: Marjory Bain

Appendices: Appendix 1 - Letter from Police Scotland dated 20 December 2018

20/12/2018

Your Ref: HC/INBS/4291

Our Ref: Person 35053

Clerk to the Highland Board  
Town House  
High Street  
Inverness  
IV1 1JJ



**POLICE  
SCOTLAND**

Keeping people safe

Iain Livingstone QPM  
Chief Constable

Divisional Co-ordination Unit  
Highland and Islands Division  
Police HQ  
Old Perth Road  
INVERNESS  
IV2 3SY

Dear Madam,

**LICENSING (SCOTLAND) ACT 2005 - SECTION 84A  
REPORT OF CONDUCT INCONSISTENT WITH LICENSING OBJECTIVES  
PERSONAL LICENCE HOLDER:**

**Matthew Culley  
14 Assynt Gardens,  
Nairn,  
Inverness-shire,  
IV12 4SJ  
LICENCE NO: HC/INBS/4291**

The Chief Constable hereby reports to the Licensing Board in terms of Section 84A of the Licensing (Scotland) Act 2005 that Matthew Culley, has acted in a manner which is inconsistent with the licensing objective(s) articulated at Section 4(1) of Act, namely:

- Preventing Crime and Disorder
- Securing Public Safety
- Protecting Children and Young Persons from Harm.

In support of this application the following information is provided for your consideration:-

On 12 October 2018 Matthew Culley took up the position of designated premises manager of Sobar, 55 – 67 Castle Street, Inverness, IV2 3DU, premises licence number HC/INBS/554, with a new premises licence being issued accordingly.

NN/1099518

About 2015hrs on Wednesday 17 October 2018, the Police Service of Scotland received a report of an assault at Sobar, 55-67 Castle Street, Inverness. Police officers N0503 Alan Heap and N0628 Matthew Cameron attended at the given location where they found a male person outside the premises with what appeared to be a fresh injury to his nose. In addition to the injuries the male was in such a state of intoxication that he was staggering about and barely able to stand, his speech was severely slurred and he appeared oblivious of the injury to his nose. The injured party was subsequently examined by medical professionals and his injuries treated.

On entering Sobar, the attending officers found approximately 10 persons within in varying states of intoxication. A person was found within the staff area who was also found to be extremely intoxicated but refused to provide any details of what had taken place, other persons within the premise were also spoken to but refused to provide Police with details of what had taken place.

Due to the level of intoxication of many of the patrons, and their initial refusal to provide Police with information, further enquiries were carried out the following day.

It was established the male who had been acting as a barman was covering for a friend who had been the official barman and who had left the premises for a period of time. The stand in barman had not partaken any mandatory training and was simply 'helping a mate out'.

It was established during Police enquiry that an assault had taken place within the Sobar which resulted in the call to Police and that the stand in bar man had been serving alcohol both before and after the incident had taken place. Information also came to light that a patron within the premise had gone behind the bar and took hold of a claw hammer which he held up before returning it behind the bar.

Given the assault is sub-judice no further details can be provided in relation to the incident.

NN/11070/18

About 2315hrs on Sunday 21 October 2018, Police officer T1133 Christopher Donaldson attended a report of a road traffic collision in Inverness. On attendance it was established the collision involved a single vehicle which had been driven by a 17 year old youth who was found to be under the influence of alcohol and subsequently failed a breath test. During the course of Police enquiry the 17 year old youth made admissions to having consumed alcohol within Sobar, Inverness.

Given this matter is sub-judice no further details can be provided in relation to the incident.

On Wednesday 26 October 2018, Ian Cox, Highland Regional Council Licensing Standards Officer conducted an inspection of Sobar, Inverness, during which time he spoke with Matthew Culley. During the conversation Mr Cox requested to review the staff training records, at that time Matthew Culley informed him that there were none. Matthew was informed by Mr Cox that holding staff records was a mandatory condition of the Sobar Premises Licence and he further provided Matthew with advice regarding obtaining appropriate training materials in order to carry out training.

About 1149hrs on Friday 7 December 2018 Police Sergeant N0183 Bruce Gray and James Williamson of the Police Service of Scotland Highland Division Licensing Department attended at Sobar, 55-67 Castle Street, Inverness, to carry out a licensed premises inspection.

At that time Lewis Hall was working behind the bar and there were no patrons within the premise. Lewis was asked if a manager was available to which he responded the manager was en-route and would arrive shortly. The Police licensing officers advised they would await his arrival during which time 3 patrons entered the premise and ordered alcoholic drinks which Lewis served.

Matthew Culley arrived at the Sobar and identified himself as the Designated Premises Manager. It was explained to Matthew that the Police licensing officers intended to perform a licensed premise inspection. Matthew was asked to provide his staff training records to which he explained there were none. Matthew went on to say he had only taken over as premises manager in October 2018 and that there had been no training records. It was explained to Matthew that his staff could not serve alcohol, as Lewis had been observed doing, unless there were staff training record in place if they did not hold a Personal Liquor Licence. Copies of blank training records were later sent to Matthew so he could progress staff training and keep appropriate records.

During the inspection it was observed the Summary Premises Licence was not on display, however the document was located and put in place.

Toilets were checked with drug wipes which displayed a light indication that drug misuse was taking place within the toilets. A copy of a drug policy was later sent to Matthew to provide training to staff.

No refusals/incident book was in place. Matthew was given suitable advice in this regard that it was not a requirement however it was good practice to have one in place.

Following information regarding a claw hammer being located behind the bar, the Police licensing officers looked beside the hatch entrance to the bar area where they located a claw hammer which was within very easy reach of the hatch. Matthew Culley explained the hammer was used for removing and replacing guards on the darts boards. Matthew was advised to place the hammer within the secure staff area which was complied with.

Police licensing officers thereafter went upstairs to the first floor area with Matthew Culley. Within the upstairs area there was a second bar. Matthew was questioned about the running of the bar and answered that if there was a single bar person working downstairs then no one would operate the upstairs bar. Of particular note was the fact that the bar had a door which could be secured however there was no shutter system and as such the bar area was left completely open to be entered. There were optics behind the bar which could easily be accessed by climbing over the bar and there were beer taps which could be accessed by leaning over the bar.

When questioned regarding security of the upstairs bar Matthew stated that the door could be locked and there was a CCTV camera. It was pointed out to Matthew that the monitors for the CCTV system were located within the back staff office and as such any bar person downstairs would actually require to leave the downstairs bar unattended if they wished to view the CCTV. In addition the lockable door would not prevent anyone leaning over the bar to access the beer taps or jumping over the bar to access optics. Further to this it was established that children and young persons were regularly left unattended with no staff or adult supervision.

As the inspection came to an end Matthew Culley was asked what support he received from the licensee to which he stated he received no support what so ever, had never met the licensee since he had taken over as premises manager in October, the licensee never answered any of his calls and the only time he had received any communication from the licensee was if Matthew's rent for the premise was late going into the licensee's bank account.

Prior to leaving the premise Matthew pointed out to Police a large plate glass window to the front of the premise which had been broken, he went on to explain that the licensee had a temporary repair carried out where an adhesive tape had been placed over the crack yet the licensee refused to have the window replaced. The crack had spread which Matthew feared would eventually cause the window to break completely and was a serious risk to patrons within the premise and/or persons standing outside the premise.

#### **History of Personal Licence Holder:**

Matthew Culley was granted a Personal Liquor Licence by Highland Licensing Board on 13 October 2014 with his licence due to expire on 12 October 2024.

The Police Service of Scotland are not aware of any previous reviews, warnings or endorsements connected to this personal liquor licence.

#### **INFORMATION IN SUPPORT OF APPLICATION**

##### **Preventing crime and disorder objective**

On Wednesday 17 October 2018 a member of the public was allowed to take full control of Sobar and serve patrons' alcohol, all whilst having received no training, there being no training record held on the premise and without the sale of alcohol

being authorised, in contravention of mandatory conditions 5 and 6 of the premises licence.

During the time this member of the public was in charge of Sobar an assault took place which resulted in a patron of the premises being injured.

Of further concern is the fact the upstairs bar within Sobar is regularly left unattended which is in no way secured against anyone feloniously appropriating alcohol. These are blatant contraventions of the 'preventing crime and disorder' objective.

### **Securing public safety objective**

In similar circumstances, as detailed above in the 'preventing crime and disorder objective', having a member of the public taking full control of Sobar, during which time a patron was assaulted, is clearly putting public safety at risk.

Added to this the fact a claw hammer was behind the bar which an intoxicated patron took from its location and held up, and a large plate glass window is broken with a mere temporary repair holding it together raises concerns regarding public safety.

Of further concern is the fact the upstairs bar within Sobar is regularly left unattended which is in no way secured against anyone feloniously appropriating alcohol. Staff within Sobar have detailed that the first floor bar is rarely staffed yet the darts, pool, snooker tables and seating area on the first floor are regularly used by patrons who are left unsupervised thereby allowing them easy access to appropriate and consume unknown quantities of alcohol, all in breach of the 'securing public safety' objective.

### **Protecting children and young persons from harm objective**

In addition to adults being left for extended periods of time unsupervised within the first floor of Sobar, and having free access to the upstairs bar, children and youths are also allowed free reign of the first floor and the bar situated therein whilst unsupervised.

Previous information has been provided which details that a 17 year old young person consumed alcohol within Sobar following which they drove and crashed a car whilst over the prescribed drink drive limit. There is no specific information as to whether they were served the alcohol or if they consumed alcohol which they appropriated by taking it from the insecure first floor bar. Irrespective of which method they came into possession of alcohol it remains the alcohol was consumed within Sobar and could have had disastrous consequences. This is an obvious breach of the 'protecting children and young persons from harm' objective.

Should the Board, following the hearing, be satisfied that conduct inconsistent with any of the licensing objectives has been established, I would submit that the

Board consider endorsing the personal licence held by Matthew Culley under Section 84(7) of the Licensing (Scotland) Act 2005.

In signing this report, I confirm that this report is made under the authority of the Chief Constable of Police Service of Scotland:

Signed:

A handwritten signature in black ink, appearing to read 'Iain Livingstone', written in a cursive style.

Iain Livingstone QPM  
Chief Constable

Date: 17/12/2018

For enquiries please contact the Licensing Department on 01463 720817.