

ANGUS LICENSING BOARD – 4 OCTOBER 2012

APPEAL TO FORFAR SHERIFF COURT AGAINST BOARD DECISION TO SUSPEND A
PERSONAL LICENCE

REPORT BY THE CLERK

ABSTRACT

The purpose of this report is to advise the Board of the decision of the Sheriff at Forfar Sheriff Court to reverse the decision of the Board, at its meeting on 14 March 2012, to suspend a Personal Licence for 6 months.

1. RECOMMENDATION

It is recommended that the Board note:-

- (i) that the Board determined, at its meeting on 14 March 2012, to suspend a Personal Licence for a period of 6 months;
- (ii) that the holder of the Personal Licence appealed the decision of the Board to the Sheriff Court;
- (iii) that a proof in respect of this matter was held in Forfar Sheriff Court on 20 August 2012; and
- (iv) that the Sheriff, following proof, determined that the Board had erred in law and reversed the decision of the Board.

2. BACKGROUND

2.1 On 14 March 2012, the Board considered a notification of conviction received in respect of Karen Kennedy, who is the holder of a Personal Licence issued by the Board. The notification of conviction advised that Karen Kennedy had been convicted, on 2 February 2012, at Forfar Sheriff Court, of an offence in contravention of Section 5(1)(a) of the Road Traffic Act 1998 (drink driving). As a result of that conviction, she was fined £600, banned from driving for 3 years and had her licence endorsed.

2.2 When the Board considered this matter, Tayside Police provided a summary of the events which lead to her conviction. Karen Kennedy was legally represented and her solicitor addressed the Board in respect of this matter. Having considered the terms of the conviction and the representations received, the Board determined to suspend Karen Kennedy's Personal Licence for a period of 6 months.

2.3 The Licensing (Scotland) Act 2005 provides that a person aggrieved by a decision of the Board in respect of a Personal Licence has the right to appeal that decision to the Sheriff. This decision of the Board was appealed to Forfar Sheriff Court. The Clerk's office lodged appropriate defences against the appeal and the matter proceeded to proof on 20 August 2012 before Sheriff Veal. The Sheriff's decision in respect of this matter was issued shortly thereafter. The Sheriff found, amongst others, that:-

- (a) the Board should not have suspended Karen Kennedy's Personal Licence;
- (b) he was unable to identify any relevant connection between the commission of the offence and the licensing objectives set out in Section 4 of the Licensing (Scotland) Act 2005;

- (c) he was not persuaded that the very fact of the existence of this conviction should automatically incur an additional discretionary penalty at the hands of the Licensing Board; and
 - (d) he considered that any reference to deterrence in the absence of a link to the licensing objectives or the appellants conduct whilst acting as a Personal Licence holder was inappropriate.
- 2.4 Having found as above, the Sheriff determined that the Board had erred in law and reversed the decision of the Board.
- 2.5 It is submitted that the decision of the Board was reversed because the Sheriff found that there was not a sufficient connection between the offence and either the licensing objectives or the Personal Licence holder's ability to perform the functions of a Personal Licence holder.
- 2.6 The Board is asked to note that it can only consider offences committed by a Personal Licence holder if the offence is a relevant offence within the meaning of the Licensing (Relevant Offences) (Scotland) Regulations 2007. An offence in contravention of Section 5(1) of the Road Traffic Act 1988 is specifically referred to as a "relevant offence" in terms of these Regulations. Having regard to Sheriff Veal's decision and other decisions across Scotland, it is difficult to see how a conviction for drink driving can be connected to the licensing objectives or a Personal Licence holder's ability to perform the functions of a Personal Licence holder.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from this report.

4. HUMAN RIGHTS IMPLICATIONS

There are no Human Rights issues arising directly from this report.

5. EQUALITIES IMPLICATIONS

The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.

6. CONSULTATION

The Head of Finance and the Chief Constable have been consulted in the preparation of this report.

**SHEONA C HUNTER
CLERK TO THE LICENSING BOARD**

NOTE: No background papers were relied on to any material extent in preparing the above report.

L&A/SCH/DT