

# Public Document Pack

**LICENSING SUB-COMMITTEE**

**TUESDAY, 16 FEBRUARY 2021**

**SUPPLEMENTARY INFORMATION**

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***Leeds District Licensing Department***

**Leeds District Licensing Department**

Leeds District HQ  
Elland Road  
Leeds  
LS11 8BU

11<sup>th</sup> February 2021

**Entertainment Licensing Section  
Leeds City Council  
Civic Hall, Leeds  
LS1 1UR**

**RE: REVIEW OF PREMISES LICENCE  
TAAG UNIT 2B St GEORGE HOUSE 40 GREAT GEORGE ST. LEEDS LS1 3DL  
HEARING: TUESDAY 16<sup>TH</sup> FEBRUARY 2021**

Members of the Sub-Committee:

Since this review application and accompanying documents were submitted by West Yorkshire Police, there have been a number of significant changes.

To my knowledge, no further documents have been submitted by West Yorkshire Police since the original delivery.

Therefore, the purpose of this summary, is to identify and address those changes, and give an up to date view of this case from the perspective of West Yorkshire Police.

The first important change for the purpose of the review hearing, is that PC Cath Arkle, who did all the preparatory work in presenting the review file and accompanying documents, is unable to attend being off work due to personal circumstances.

Therefore, I will be attending the hearing in substitution for PC Arkle.

PS Martin Mynard will also be in attendance, as an observer in the main, but also available to answer any questions of the Sub-Committee if necessary.

At the moment, there is also the possibility that the police will be represented at the hearing by Barrister Daniel Penman (KBW Chambers)?

The official documents regarding attendance, have already been submitted to the licensing authority and accepted.

The review application and accompanying documents, were served on Leeds City Council as the licensing authority, by PC Arkle on the 22<sup>nd</sup> December 2020.

I was asked to substitute for PC Arkle on the 18<sup>th</sup> January 2021, and since that time, I have been in contact with the Solicitor acting for the premises Mr Edward Smith, on more than one occasion by email. The main themes of those emails are the same ones which are reflected in this update.

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This particular review application has been different to the vast majority of others West Yorkshire Police have dealt with previously from the very outset.

Additional and relevant elements from the time of the service of the review documents, have since led to subsequent events and supplementary decisions being taken, which have now put this review in a different light to how it was first presented, and may consequently influence its final determination?

**This is essentially due to the transfer application of this premises licence made by Tijani Osenaga Yesufu.**

### **TRANSFER OF PREMISES LICENCE:**

On the 11<sup>th</sup> December 2020, the transfer application was served on Leeds City Council and then passed on to West Yorkshire Police, as the only recipient apart from the licensing authority.

In accordance with section 42(6) & (7) Licensing Act 2003, the police were then entitled to object to the transfer within 14 days of being notified, by stating "exceptional circumstances" and based only on the crime prevention licensing objective.

West Yorkshire Police objected to the transfer application with a notice dated 17<sup>th</sup> December 2020, which accompanied the review application.

Following the transfer objection, on receipt of further information not made available to West Yorkshire Police prior to the 17<sup>th</sup> December but after the final date to object, the circumstances stated in the objection were clearly no longer seen as "exceptional", and the grounds to object were therefore no longer valid.

The police objection to the transfer of the premises licence was officially withdrawn on the 21<sup>st</sup> January 2021, and as a result the separate hearing scheduled for the 26<sup>th</sup> January 2021 was vacated.

**The premises licence has already been issued with Mr. Yesufu now shown as the sole premises licence holder.**

In addition to this, Mr. Yesufu now as the premises licence holder, has since applied to become designated premises supervisor of the premises (DPS), using his recently acquired personal licence issued by Leeds City Council.

West Yorkshire Police had no grounds to object to the personal licence application of Mr. Yesufu (with no 'unspent' convictions for 'relevant offences'), and there will also be no objections to the vary DPS application either, given the grounds to object would have to be exactly the same "exceptional circumstances" as the ones for the recent transfer covered earlier.

**On that basis, Mr. Yesufu should be named on the premises licence as both the licence holder and the DPS come the time of the review hearing.**

### **Referring back to the transfer for a moment and its relevance to the review-**

- The decision to submit the objection to the transfer application, at the same time as the application for review was an intentional one.

It is immaterial whether the police objected on the 1<sup>st</sup> day or the 14<sup>th</sup> day allowed, after being notified of the transfer application on the 11<sup>th</sup> December 2020, both from the perspective of a separate transfer hearing, and also the interim rights of the applicant during the 'application period'.

1. On receipt of any police objection to a transfer, the licensing authority cannot start to arrange a date of hearing any earlier than the 14<sup>th</sup> day, in accordance with hearing regulations.
  2. In addition, from initial service and during the 14 day period for the police to object, and then after this period and right up to the hearing itself, the transfer applicant is also legally entitled to exercise the rights as a licence holder throughout this whole period, if the application is completed correctly which indeed it was in this case.
- BUT, the decision to actually object to the application to transfer the premises licence made by Mr. Yesufu, was NOT because of the review, NOR the reason to include him as a co-respondent of the review application.

On the contrary in fact.

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This decision was made for us by Mr. Yesufu himself, ticking the relevant box of his transfer application, which allows the transfer to take immediate effect in accordance with section 43(1) Licensing Act 2003- **"..... the premises licence has effect during the application period as if the applicant were the holder of the licence."**

As a result, and after taking legal advice, service of the review papers on the co-respondents, was regarded as nothing more than proper procedure in these particular circumstances.

- Therefore, with regard to the review still to resolve, whilst the transfer of the premises licence to Mr. Yesufu is clearly relevant, the police objection to it is immaterial to a large extent.

At the time of serving the review application, insight that the objection to the transfer would then be withdrawn, was equally just as uncertain as the objection would have been successful at the hearing.

The transfer application needed to run its own course, in accordance with its completely different and separate legal process, but with no guarantee of any outcome of the transfer at the time of serving the review application.

Therefore, the decision was taken to include Mr. Yesufu as a recipient of the review, in order that we didn't reach a stage of the review now becoming null and void, but a result of the transfer application itself and irrespective of its outcome due to the police objection.

## REVIEW OF PREMISES LICENCE:

**How this review now proceeds and to what effects the transfer of the licence to Mr. Yesufu (& the change of DPS) will have on the its determination, is the most significant change since original service to consider?**

The events leading to the review may well have been before Mr. Yesufu had any involvement as holder of the premises of the premises licence.

However, in the present circumstances with only the review to now consider, and as a result of the transfer, it is left to Mr. Yesufu to deal solely with any unanswered questions and any other outstanding issues, surrounding the licence which he inherited by way of transfer and now being reviewed.

**This is largely because of the unique nature of the review application of a premises licence.**

Apart from being an application where responsible authorities and other interested parties are the actual applicants rather than the recipients, in contrast to the all the other application options for premises licences (including a transfer described above), where the process dictates that-

- The licensing authority **"must"** hold a hearing,
- Unless representations / police objections are "withdrawn",
- In which case, the licensing authority "must" grant / issue the licence, and
- Almost identical in each case,

**With regards to a review application the above does not apply.**

With this in mind and to assist, I now refer to and copy section 52(2) Licensing Act 2003 and the footnotes, which appear in the 2021 edition of Paterson's Licensing Acts at pages 418 and 419 (over to 420).

Section 52(2) reads-

### **Section 52 Determination of application for review**

(1) .....

(2) Before determining the application, the authority **must**<sup>1</sup> hold a hearing<sup>2</sup> to consider it and any relevant<sup>3</sup> representations<sup>4</sup>.

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Then the footnotes give a number of possibilities to 1 (**must**<sup>1</sup>) now shown below-

- <sup>1</sup> *AGREEMENT PRIOR TO REVIEW. The question often arises as to whether such a hearing must take place where an agreement is reached between the applicant for the review and the holder of the premises licence prior to the hearing? Once the licensing authority is seised of the application may it be withdrawn? A number of possibilities arise:*
- (a) Representations arise as a consequence of the notification and advertisement of the application. Clearly in such a case we suggest (although it is not entirely beyond doubt), the authority must proceed with the review of the licence, even if the applicant has (for whatever reason) decided not to pursue the original application;*
  - (b) The applicant for review and the holder of the premises licence arrive at an agreement regarding the steps which should be taken by the latter to address the concerns which gave rise to the application for review. Generally in such cases the matter will proceed to a hearing where, if there have been no additional representations, the licensing authority will be content to give effect to such agreement, by the imposition of the 'agreed' conditions, a period of closure, or as may be. However, the committee is not bound to follow that course and has the power to impose any sanction available to it under s 52(4);*
  - (c) The applicant for a review decides that, for whatever reason, the circumstances giving rise to the application no longer obtain and that it should therefore be withdrawn. What is the position where, perhaps, such a decision is made shortly before the review hearing and following advertisement and notification of the application, which has resulted in no additional representations? The obligation on the part of the licensing authority is to hold a hearing. However, if neither the applicant nor any responsible authority or interested party appear to make 'relevant representations' then it would seem that the authority will have no option but to abandon the hearing without determination.*

**Which now poses the questions in the case of this particular review, given the significant change in circumstances –**

- (a) How does this review hearing continue in a normal vein? &**
- (b) As a consequence, how will the focus shift on the “steps” available to be taken on the determination of this review?**

### **COMMUNICATION WITH SOLICITOR EDWARD SMITH:**

I have already emailed Mr. Smith and received a reply on these particular points and changes highlighted, which is referred to below.

### **DETERMINATION OF REVIEW:**

**From experience of serving many similar reviews over the past 15 years, West Yorkshire Police are consistently mindful that the matter of determining a review is one for the sub-committee presiding at the hearing.**

However, the force is also conscious from the same experience, that sub-committee's have sometimes asked for the police's view to assist in making its determination, but conversely sometimes have not.

(I suspect this latter point is one reason why PC Arkle did not offer any of the “steps” available, in the review application or her statement, being of the view that she may be asked at the actual hearing?)

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Therefore, still with the clear understanding that any determination is ultimately a matter for the sub-committee presiding at the hearing, but also mindful that the members may wish the police as the applicant to provide some input at this point, West Yorkshire Police would make the following comments with regards to the “steps” specified at section 52(4) Licensing Act 2003-

In reverse (and discounting here the no action and the informal warning options also available)-

- Revocation - West Yorkshire Police would have to concede, because of the transfer of the premises licence to Mr. Yesufu, this has weakened the justification in considering this option,
- Suspension (up to 3 months) – seems inappropriate at this particular time, notwithstanding that the review determination will not take effect straight away,
- Remove DPS – this is currently changing, so that Mr. Yesufu should be the new DPS come the time of the hearing, so not really an option in this case,
- Exclude a licensable activity from the scope of the licence – the current licence only authorises the ‘sale / supply’ of alcohol, and
- Modify the conditions of the licence – dealt with below in more detail.

### Modify the conditions of the licence:-

Agreement has already been reached with Mr. Smith on this particular “step”, should the sub-committee decide that this is an appropriate option on determination.

The agreement on conditions of the licence with Mr. Smith amounts to-

- The current hours with regards to the ‘sale / supply’ of alcohol will remain the same as they are now,
- ALL current conditions of the premises licence will also remain as they are now,
- But the following SEVEN conditions, will be ADDED to the licence-
  1. [REDACTED] will have no input in respect of the management of the premises. The management of the premises will be undertaken by the Premises Licence Holder and Designated Premises Supervisor, who will be ultimately responsible.
  2. There will be a minimum of one door supervisor at the premises from 6pm until the premises closes each Friday and Saturday.
  3. The premises licence holder and/or designated premises supervisor will ensure that a Daily Record Register is maintained on the premises by the door staff. The Daily Record Register will contain consecutively numbered pages, the full name and registration number of each person on duty, the employer of that person and the date and time he/she commenced duty and finished duty (verified by the individual's signature). The Daily Record Register will be retained on the premises for a period of twelve months from the date of the last entry.
  4. Where one exists and is available, there will be a communication link in operation at the premises via radio to the police and other venues in the city centre. The communication link will be operated to the guidance provided and all instructions on use agreed. All reasonable police instructions provided via the link will be complied with.
  5. The premises licence holder and/or designated premises supervisor will belong to a recognised trade body or Pub Watch Scheme where one exists, whose aims include the promotion of the licensing objectives.
  6. Any changes to the CCTV system, will not take place without prior consultation with West Yorkshire Police. The CCTV system will follow guidance issued by West Yorkshire Police.
  7. The Leeds District Licensing Department of West Yorkshire Police, will be notified of any ticketed or externally-promoted events to be held at the premises, giving brief details of-
    - (a) the date and time of the event,
    - (b) a general description of the nature of the event, and the type of food to be provided,
    - (c) numbers expected, and
    - (d) contact details of the event organiser.

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### **In conclusion and to re-iterate-**

- this is a summary of the current situation of this premises licence review from the perspective of West Yorkshire Police,
- highlighting the main changes since the original service, brought about principally as a result of the transfer of the premises licence to Mr. Yesufu,
- with the aim of assisting the sub-committee in reaching its determination at the hearing scheduled for Tuesday 16<sup>th</sup> February 2021.

  
**Leeds District Licensing Officer**  
**West Yorkshire Police**

**Date: 11<sup>th</sup> February 2021**

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