

BEFORE CARLISLE COUNCIL LICENSING SUB- COMMITTEE

CUMBERLAND INN 22 BOTCHERGATE CARLISLE:

STATEMENT: PAUL DONALDSON

REVIEW HEARING 19 OCTOBER 2021

1. My name is Paul Donaldson and I am the Operations Manager for Punch, the premises licence holder at the Cumberland Inn ('the Premises').

Introduction

2. The Premises is a long- established pub. However, it has only been part of my area since April 2021. Before that, it was with my colleague Heike Funke. As such, I will refer to that evidence I am able to provide first hand and also matters that I have been made aware of by my colleague, both by reference to contemporaneous notes and from speaking to her directly.
3. The Premises forms part of the Punch leased pub estate. This consists of over 1,300 premises around the country from the Isles of Scilly to Carlisle. Punch also have pubs in Scotland that are regulated under separate legislation to England and Wales. The vast majority of the pubs are run via tenancy agreements of one kind or another with our publicans. These typically run for five to ten years, but can be longer or shorter for various reasons.
4. Punch strive to ensure that their tenants (we refer to tenants as 'Publicans') operate their premises in a safe and compliant manner. We have invested in a number of training courses and online training tools available to all publicans to ensure that they are aware of their roles and responsibilities and understand how important the promotion of the licensing objectives is via the Punch Buyer's Club.

Agreement with Mr Mohtashami

5. Gholamreza Mohtashami (colloquially known as 'Fred') took an assignment of an existing lease (dated 28 April 2016) in February 2020. The Agreement runs for a period of ten years up to April 2026 and requires the tenant, amongst other things, to:
 - a. Meet any lawful conditions on the licences
 - b. Not do anything illegal at the Property which affects the licences and the business
 - c. Make sure that the licences remain in force and are not suspended or made subject to conditions which might reasonably be regarded as difficult or costly to meet.
 - d. Meet with all laws and other legal requirements which may affect or relate to the business or the Property during the Agreement period
6. Under the Agreement, the tenant has the right to peaceful enjoyment of his property free from interference, which includes undue interference from Punch. Our relationship therefore is that of landlord and tenant.
7. Punch holds the premises licence at the Premises. With the exception of a handful of premises where for historic reasons the tenant holds the licence, this is the case throughout the Punch estate. The reason for this is to avoid a situation where a licence either lapses or is surrendered or otherwise amended without our knowledge. It also allows us to exert some influence, mindful of our obligations, should issues come to light. In serious cases, we can seek forfeiture of the Agreement with our tenants where there are breaches of the property agreement.
8. However, forfeiture as a legal process takes time and essentially requires any breaches that the application is based on to remain unremedied at the time of the final Court hearing. For instance, forfeiture for non-payment of rent can be avoided by the tenant by paying the arrears in advance of any final hearing.
9. Seeking forfeiture for matters such as breaches of lawful conditions or otherwise undermining the licensing objectives are much more difficult to prove as there is no simple answer to the question 'has the tenant remedied the breach?'

Punch's dealings with Mr Mohtashami as Tenant

10. As stated earlier some of this period was covered by my colleague Heike Funke. She has confirmed that in November 2019, prior to Mr Mohtashami taking the assignment of the lease, he was required to go on the NCPLH licensing course in order to obtain a personal licence. He also attended the Punch Training Course week in Burton Upon Trent with content including

compliance and licensing matters. He passed all exams. Mr Mohtashami was also provided with a copy of the premises licence and was made fully aware of the conditions therein.

11. The importance of the fire risk assessment was covered in Training Week, with further information provided as part of the RISK folder for the Premises. It also formed part of the 'change over' day procedures. Other notes and guidance were available in relation to CCTV provision, GDPR requirements and ICO registration from the Punch Buyer's Club.
12. All Publicans have an assigned operations manager whose role is to provide advice and assistance if needed on any aspect of running the business. This covers a wide range of areas, from stock through to compliance. However, at the end of the day it is important to remember that it is a matter for each Publican to run their own business.
13. Heike has also confirmed to me (and I have seen the visit notes) that she talked Mr Mohtashami through the premises licence and conditions during a Business Review on 29th Feb 2020 and at a further meeting on the 6 March covered licensing due diligence and health and safety. During a further meeting in May 2020 (by telephone due to lockdown), Heike reiterated to Mr Mohtashami the importance of training for all staff in compliance with conditions on the premises licence prior to re-opening following lockdown, including a reminder that training could be found online as part of Punch's resources for Publicans.
14. It is fair to say therefore that we expected Mr Mohtashami to be fully conversant with his licence and responsibilities as a Publican both at the time he took on the premises and because of the ongoing dialogue thereafter. Of course, it is fair to note that the first Covid lockdown meant that all premises closed in early 2020 until 4 July 2020.

Re-opening following the first lockdown (4 July 2020): Punch dealings with Mr Mohtashami

15. Prior to, and immediately following, re-opening in July 2020, Punch went to great lengths to ensure that their tenants were aware of the law and their responsibilities for re-opening securely and in compliance with the Regulations. You may recall that the Regulations and Guidance were issued very late in the day and, as was often the case during this period. They were subject to significant changes, often on short notice. This was problematic for all of our Publicans. However, we worked with them as best we could to ensure that there would be substantial compliance, albeit we recognised that there would be teething troubles associated with re-opening, not only staff- but customers, getting used to what was and would not be permitted.
16. Heike, for instance, sent all of her publicans the following emails containing advice and links:

- a. 19/5/2020 email re CPL Covid staff training
- b. 8/6/2020 email Reopening Guide, Occupancy Guide, COVID Training
- c. 9/6/2020 email with editable version of Risk Assessment
- d. 19/6/2020 email risk assessments, floor plans, capacity planning updates
- e. 26/6/2020 email Government updates, Punch COVID update webinar etc
- f. 03/07/2020 email re Track and Trace
- g. 03/07/2020 email with Risk Assessment

This was followed up with calls to Publicans to try to assist in ensuring they were confident with operating during the 'new normal'. It was, as you would expect, a very busy time for Publicans and our team alike.

17. On the 19 June 2020, Heike spoke to Mr Mohtashami about his preparation for re-opening. She was surprised to find that Mr Mohtashami admitted to not having even read the emails or made any start on re-opening procedures at the premises. It was emphasised to Mr Mohtashami that this was a priority and needed serious attention from him prior to re-opening.
18. After re-opening, it appeared from reports and visits by Heike that standards were allowed to slip under Mr Mohtashami, which became a source of concern for Heike. I have seen meeting notes that show in July and September 2020, complaints were received from customers of issues of cleanliness. On each occasion, Heike would visit where possible, or at least speak to Mr Mohtashami, to try to ensure that he kept standards up at the premises.
19. On 12 October 2020 TLT LLP-our licensing solicitors, received a copy of the Prohibition Notice from the council to Mr Mohtashami. Mr Mohtashami did not mention the notice when he received it. Nor had he mentioned the meeting of 11th of September 2020 between himself and the council licensing team that led to the service of the Prohibition Notice.
20. On 19 October 2020 our licensing solicitors received an update from Fred Watson at Carlisle Council stating:

'We visited Cumberland on Friday at 11am and he [Mr Mohtashami] wasn't present. He stated on telephone that he wasn't aware of meeting. Another meeting is to be arranged. On Saturday 17th early evening, a passing police patrol saw that people were standing at bar being served by staff who weren't wearing face masks. Police entered the premises and were unhappy as to what they were seeing and a £1000 fixed penalty ticket was issued to him. Later same evening around 8 pm I was in Botchergate when the manager of the Security Company that supplies the door staff to the Cumberland approached me stating that he had withdrawn his door Supervisors from the premises as Fred the manager had been arguing with one of

them and the situation was not tolerable. As a result of door supervisors being withdrawn the premises had to close and I watched as unhappy people had to leave the premises. The pub was closed and in darkness by 8.15pm...'

Again, we were not notified directly by Mr Mohtashami at the time and had to chase him to find out the information.

21. On 23 October 2020, our property litigation solicitors served a Notice under S146 Law of Property Act 1925, effectively initiating forfeiture proceedings on Mr Mohtashami. This was for various reasons, including the breaches of Covid regulations, that had been brought to our attention. On the same day, we withdrew permission for Mr Mohtashami to trade under the premises licence, effectively closing the premises, and removing him as DPS. We informed the licensing and police officers of the steps taken to ensure the premises did not trade without this authority.
22. On 9 December 2020, as part of a proposed package of measures put forward by Mr Mohtashami to deal with the ongoing issues at the premises, Jemma Louise Walker became DPS. The agreement was that Mr Mohtashami would have nothing to do with the day-to-day running of the premises. Jemma was accepted as DPS by the police. As Mr Mohtashami had undertaken all necessary measures to fulfil the terms of the forfeiture notice, such that there was no legal remedy available to us in pursuing this avenue of removal, the formal forfeiture proceeding was not issued, which would have been the next stage in the process.
23. On 15 December 2020 Heike was informed by Fred Watson that the Police and EH officers had jointly decided that Mr Mohtashami was suspected of having remained 'pulling the strings' and that they would therefore be taking further action to prosecute him. 'Lockdown 3' occurred not long thereafter.
24. Between January and April 2021, England was placed back in lockdown with pubs unable to open to public attendance and only permitted to provide takeaway services. As I say, I took over the duties of Operations manager for this site at that time. However, from Heike's handover notes, I was aware of the past history and concerns we had with the manner in which the premises had previously been operated. On re-opening, it did not appear to me that Mr Mohtashami was sticking to his word.
25. On the 29 June 2021, I called Fred Watson and we spoke about the measures we had been working with Mr Mohtashami and Jemma Walker on to deal with issues that had been notified to us since re-opening to do with door supervisor provision and lack of door supervisor log. He informed me of an investigation they were undertaking into an incident on Saturday the 26 June

2021 with customers allegedly being let in by Mr Mohtashami after having originally been barred earlier that day. I said I would meet with Mr Mohtashami and Jemma to discuss this and matters in general. I was able to arrange this for the 2 July 2021.

26. On 2 July 2021, I met Mr Mohtashami and Jemma at the Premises. I brought with me a door steward log and provided a full suite of licensing and health and safety information to make sure that they had everything to hand that Jemma might need. However, Jemma was able to show me a door steward log that had been completed up to date and she confirmed that she knew and understood the conditions on the licence. I stressed at the meeting that Jemma should be allowed to run the premises without interference from Mr Mohtashami as agreed but that this did not appear to be happening. I suggested that Mr Mohtashami should meet with Jemma on Monday mornings when the pub would be shut to deal with payroll, stock and general financial management and the agenda should be set in advance.
27. Mr Mohtashami admitted that he had been watching the CCTV from his phone and when quiet would call up and insist on the pub being closed. Jemma told me that this was unnerving for staff and early closing was causing frustration with staff and customers. Staff were losing pay without notice and customers were not coming if they did not know when the pub would shut. I told Mr Mohtashami that the hours they were opening need to be advertised and stuck to.
28. I could see that Jemma was very frustrated with Mr Mohtashami and made it clear that he should not be interfering with her ability to run the premises. He agreed not to. I warned him that if he did not do as agreed then we would need to look at forfeiture proceedings to remove him. I also reminded them that the Premises was under the spotlight and therefore needed to be doing everything they could to prove to the police and licensing officers that they had taken a grip on matters.
29. On 9 July 2021, TLT responded to a request from Fred Watson to establish whether the rumour that a staff member had been sacked for calling the police to an incident at the premises. This is reported in the police review. I was able to speak to Mr Mohtashami and he stated that the sacking was for financial dishonesty at work, not for any other reason and we reported this back through our licensing solicitors. At the same time, we confirmed that we would continue to work with the police and local authority and work to ensure that Mr Mohtashami and his staff continued to have all the tools needed to operate the premises properly.
30. Throughout July 2021, we received a number of complaints from members of the public and other sources about the state of the premises and erratic closing times. A Complaint was also received that Mr Mohtashami had threatened and sworn at a customer when he had raised issues of cleanliness and the quality of the beer. As this was anonymous, it was not taken any further, although such comments did appear to confirm other sources who had come forward

to provide information about the operation of the premises. We were very concerned that this situation could not continue and we worked to gather evidence to see whether any further action could be taken at this time.

31. On the 29th July 2021, Natasha Louise Hetherington became DPS in place of Jemma.
32. On the 11 August 2021, the police served their review application.
33. On 16 August 2021 a second S146 notice was served on Mr Mohtashami seeking forfeiture. This notice was served specifically in relation to licensing and other legal breaches associated with the operation of the premises as set out in the police review application. Formal proceedings have been served and this matter is progressing through the Courts, with a hearing date expected to be listed shortly.
34. We have seen the evidence bundle submitted by Mr Mohtashami. In particular we note a range of policies that appear to have been recently put together as they are not policies and procedures we have provided or form part of our suite of documents available to Publicans. They have not been previously disclosed to us.
35. We have also been made aware that Mr Mohtashami's legal representative has proposed a condition designed to deal with the issue of Mr Mohtashami having day to day control at the premises. We have, on the advice of our solicitor made an amendment to that proposal as follows:

'Mr Mohtashami shall not be involved in the day-to-day management of the premises to the extent that this involves the admission or service of any person at the premises or decisions normally taken by the Designated Premises Supervisor, but he is otherwise permitted to manage the business directly or by supervising in accordance with lease dated 16 May 2016 of which Mr Mohtashami is guarantor.'
36. We have also seen the Statutory Declaration made by Mr Mohtashami at page 34 of his bundle in relation to the period of time he states that he has had no day to day management of the premises. His assertion is that this has been the position for 'at least 4 month' [sic]. We calculate that this would be from approximately 27 May 2021, going by the date of the declaration. We are concerned that this is inaccurate and indeed it is only in the past two months or so, certainly after Natasha became DPS that this has truly been the position. Our meeting on the 2 July 2021 with Mr Mohtashami, for instance, would suggest that this may not be the case.
37. We appreciate that it is a matter for the Licensing Sub-Committee to consider the proposed condition and the evidence supplied by Mr Mohtashami in relation to the review and determine whether it is sufficient to prevent further action being taken. What is clear, and we support the

proposition made by the police and council officers, is that Mr Mohtashami's presence in the premises on a day to day basis has had a deleterious effect on the operation of the premises.

38. Punch are seeking forfeiture of their agreement with Mr Mohtashami as a means of protecting their premises licence and the future ability for the Premises to trade successfully again. At all times we have sought to work with Mr Mohtashami and with council and police officers to try to ensure that the premises operate in compliance with the law. The forfeiture proceedings will determine whether Mr Mohtashami has a legal case to answer in relation to breaches of his lease, but clearly it is for this Committee to determine the action that needs to be taken to promote the licensing objectives.

I confirm that this statement is true to the best of my knowledge and belief.

Signed

..... Dated October 2021
PAUL DONALDSON