

**Liquor Commission of Western Australia  
(Liquor Control Act 1988)**

**Applicant:** RB  
*(represented by Mr Stephen Butcher of Butcher Paull & Calder Barristers and Solicitors)*

**Respondent:** Commissioner of Police  
*(represented by Ms Grace Gilbert of the State Solicitor's Office)*

**Commission:** Ms Elanor Rowe (Presiding Member)

**Matter:** Application seeking review of a barring notice pursuant to section 115AD of the *Liquor Control Act 1988*.

**Date of lodgement of Application:** 27 June 2022

**Date of Hearing:** On papers

**Date of Determination:** 20 September 2022

**Determination:** The barring notice issued by the Commissioner of Police to the Applicant on 10 June 2022 is varied to expire on 30 September 2022.

**Authorities referred to in determination:**

- *SVS v Commissioner of Police* (LC 19/2011)
- *KRB v Commissioner of Police* (LC 33/2011)
- *ARQ v Commissioner of Police* (LC 46/2011)
- *MRP v Commissioner of Police* (LC 55/2011)
- *GML v Commissioner of Police* (LC 58/2011)

## Background

1. On 28 May 2022, an incident (**the Incident**) involving the Applicant (aged 34 at the time) occurred at a licensed premises, namely the [REDACTED] (**the Venue**).
2. As a result of the Incident, the Applicant was charged with:
  - a. one offence of remaining in the vicinity of a licensed premises after being removed, pursuant to section 115(6) of the *Liquor Control Act 1998*; and
  - b. one offence of refusing to provide personal details to police pursuant to section 16(6) of the *Criminal Investigation (Identifying People) Act 2002*;(together "the Charges").
3. As a further consequence of the Incident, the Commissioner of Police (**the Respondent**) issued a barring notice (**Barring Notice**) dated 10 June 2022 pursuant to section 115AA(2) of the *Liquor Control Act 1988* (**the Act**) prohibiting the Applicant from entering the following specified licensed premises in Western Australia for a period of approximately five and a half months:
  - a. all hotel licences issued under section 41;
  - b. all small bar licences issued under section 41A;
  - c. all nightclub licences issued under section 42;
  - d. casino licence issued under section 44;
  - e. all liquor store licences issued under section 47;
  - f. all club licences issued under section 48;
  - g. all restaurant licences issued under section 50;
  - h. all producer's licences issued under section 55;
  - i. all wholesaler's licences issued under section 58;
  - j. all occasional licences issued under section 59; and
  - k. all special facility licences issued under section 46 and regulation 9A of the *Liquor Control Regulations 1989*.
4. The Barring Notice will expire on 28 November 2022.
5. By Application dated 27 June 2022 (**Application**), the Applicant applied for a review of the Barring Notice pursuant to section 115AD of the Act. The Applicant has elected to have the review determined on the papers.

6. The Incident which gave rise to the Barring Notice is referred to in the following documents:
  - a. Copy of Barring Notice;
  - b. The evidential material relied upon by the Respondent's delegate when the Barring Notice was issued:
    - i. Statement of Material Facts – [REDACTED]
    - ii. Detected incidents report [REDACTED]
    - iii. Incident Report [REDACTED]
    - iv. CCTV and Body Worn Camera ("BWC") footage and stills;
    - v. Police photograph of the Applicant; and
    - vi. Disclosable Court outcomes for the Applicant – Criminal and Traffic;
  - c. The Application for Review;
  - d. Statement of Applicant dated 4 July 2022;
  - e. Email from Applicant dated 6 July 2022;
  - f. The Applicant's Primary Submissions dated 18 July 2022;
  - g. The Respondent's Primary Submissions dated 20 July 2022;
  - h. The Applicant's Responsive Submissions dated 27 July 2022; and
  - i. The Respondent's Responsive Submissions dated 27 July 2022.

### **The Incident**

7. The circumstances of the Incident at the Venue were summarised in the Statement of Material Facts as follows:
  - a. At about 5:40pm on 28 May 2022, the Applicant was in the Venue (a licensed premises).
  - b. The Applicant behaved in an aggressive manner and was asked to leave the Venue. The Applicant was ejected by security staff but refused to leave the area; he remained on the foot path, arguing with door staff and management.
  - c. He was asked to leave several times and Police were summonsed.
  - d. Police arrived on the scene and escorted the Applicant away from the premises.
  - e. Police explained to the Applicant that he had committed the offence of "*refusing to leave a licensed premises*" and asked him for his identifying details. The Applicant gave his name and handed over a "*worn*" driver's licence.
  - f. The current address was on a sticky label on the rear of the licence and was not legible.



- g. When asked to, the Applicant repeatedly refused to state his address to Police and replied: *"it's on the license"*.
  - h. After several attempts to gain the information, the Applicant was arrested by Police and transported to Perth Police station.
8. The Commission noted that the Applicant disputed some of the Police evidence relating to the circumstances of the Incident and his actions throughout as set out above and put forward an alternative account of what had happened.

**Submissions by the Applicant**

9. The Applicant submits that the Commission ought to quash the Barring Notice. In the alternative, the Applicant seeks that it is varied to only include tavern licences under Section 41 of the Act, being the type of licence held by the Venue where the alleged Incident took place.

Personal circumstances of the Applicant and background

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- e. At the time of making the Application, he was focused on his health and fitness.

The Incident

- f. The Applicant had had a number of alcoholic drinks with friends before leaving his home to attend a ticketed concert at the Venue. He had only purchased one drink at the Venue before the Incident.
- g. Around thirty minutes after arriving at the Venue, the Applicant was told by staff that he needed to leave the premises with the reason being he was exhibiting signs of drunkenness. He complied and went outside. He denied that he had acted in an aggressive manner and stated that was not the reason he had been asked to leave.
- h. Outside the Venue, the Applicant spoke with the security staff about why he should be let back in ([REDACTED]). The security staff refused to oblige. He continued to argue the issue and the security staff called the Police.
- i. Officers from the West Australian Police Force ("Police Officers") guided the Applicant across the road from the Venue to a laneway. A discussion took place there.

- j. The Police Officer asked for the Applicant's identification and his personal details, including his name and address. The Applicant produced his drivers' licence ("License"). As the Applicant had changed his address since his License had been issued, the Department of Transport had sent him a new address sticker to attach to it. Although the sticker was a "little bit worn", it was still legible.
- k. The Police Officers read the address to the Applicant but queried it, including whether he lived [REDACTED]. The Applicant replied that the information was on his License. The Police Officer insisted that he said his address verbally. The Applicant repeated that his details were on the License a few times.
- l. The Applicant was arrested for not providing his personal details on the basis that the address on the sticker was worn and allegedly illegible. However, the Applicant submitted that the address was legible and there was no obligation for the Applicant to verbally confirm his personal details. The Applicant had complied with his obligations in that regard by providing his current drivers' License.
- m. There was not any evidence in the materials provided that the Police Officers had explained to the Applicant that by refusing to leave the vicinity of the licensed premises (the Venue), he had committed an offence.
- n. With regard to the CCTV footage, the Applicant noted as follows:
  - i. The security guard touched the Applicant by the arm to motion him to move around a metre back from where he was standing. The Applicant complied moments later before taking two steps back whilst talking to someone.
  - ii. The Applicant, and another male ("Other Male"), who had left the Venue with the Applicant, had not attempted to move past the security guards to re-gain entry to the Venue. The Applicant had placed his right hand near the cheek of the security guard talking to him, noting there had been a concert on and loud music coming from inside.
  - iii. The Applicant had made a punching gesture. However, such gesture had not been directed toward anyone and was more consistent with his previous animated movements (such as his dancing and hand gestures) as opposed to an act of aggression.
  - iv. The most aggressive act throughout the whole Incident was when the security guards had pushed the Other Male to the ground. The Applicant had tried to hold the Other Male away from the security guards, along with the Police Officers.

#### Terms of barring notice

- o. The Applicant is a "foodie" and attends restaurants regularly with a group of friends. The Barring Notice prevents him from going to restaurants with his friends.
- p. The Applicant was due to attend two weddings in November 2022 ([REDACTED]) where the receptions will be held at venues holding tavern restricted licences. The Barring Notice would prevent him from attending both events.



Whether the Applicant has contravened a written law

- q. The Applicant accepts that the Respondent had reasonable suspicion that the Applicant had contravened a provision of a written law.
- r. However, a person is assumed innocent until proven guilty. It can therefore not be taken as fact that the Applicant has contravened a provision of any written law. At the time of the Application, the Charges remained before the Court, and it was submitted that the Applicant had a defence that he had complied with the request for his personal details by providing his drivers' License.

Whether the incident took place on or in the vicinity of licensed premises

- s. The alleged offences occurred outside, but in the vicinity of a licensed premises.

The risk of the Applicant behaving in a similar manner

- t. The risk of the Applicant behaving in a manner contrary to the object of the Act is very low. The Applicant is not a "big drinker" and only drinks on social occasions. Usually, he does not drink at all.
- u. He regretted and was genuinely sorry for his behaviour on the evening of the Incident. He was embarrassed about the situation he had put himself in. With the benefit of hindsight, he acknowledged that he should have handled matters differently and clearly should have told the Police Officer his address verbally. However, he had not been thinking clearly at the time because he had been affected by alcohol.
- v. He was unable to explain why he drank so much. He was excited to go out to a concert with his friends. The Applicant accepted responsibility for his actions.
- w. The nature and circumstances of the Incident are at the low end of the scale when it comes to seriousness, namely being that he did not comply with requests for him to leave the regulated premises for twenty-five minutes.
- x. In June 2009 or thereabouts, the Applicant had been convicted (on a plea of guilty) of obstructing police and failing to provide his personal details. The Applicant acknowledged that he had acted immaturely and foolishly at the time, however, the event was thirteen years ago when the Applicant was twenty-one years old. Therefore, there had been a significant gap between his offending.
- y. The Applicant had submitted seven letters of support from various significant parties. They had all spoken highly of his character and "*the common denominator...is that the Applicant's conduct was out of character for him and he is unlikely to behave in this way again.*"

Conclusion

- 10. The Applicant submitted:
  - a. The Charges had not been aggravated by an allegation that any violence or indecent behaviour occurred.
  - b. The events that had given rise to the Charges were at the low end of the scale of seriousness.

- c. The Applicant's behaviour was out of character. It was both foolhardy and regrettable. The Applicant was not a heavy drinker of alcohol and he had learnt his lesson.
- d. The risk of harm to the public or the licensee was very low having regard to the nature of the Incident and the Applicant's character as well as his personal circumstances at the time.

### **Submissions by the Respondent**

- 11. The Respondent submits that the circumstances of the case warranted the exercise of the Respondent's discretion to issue a barring notice. The decision of the Respondent should not be varied, and the Barring Notice should be affirmed.

#### Personal circumstances of the Applicant and background

- a. Given the object of a barring notice is protective, the Commission should pay minimal, if any, heed to matters personal to the Applicant such as the impact that the Barring Notice may have on his social life.
- b. The Barring Notice is neither a punishment for his behaviour at the Venue nor his previous offending. Rather the Barring Notice is a mechanism to protect the community from the antisocial behaviour of the kind the Applicant demonstrated.

#### The Incident

- c. The Incident was captured on CCTV and "*body worn cameras*" worn by the Police Officers. With regard to the CCTV footage, the Respondent noted as follows:
  - i. For the full duration of the video (which is 48 minutes long), the Applicant can be seen engaging with various security guards at the front of the Venue and subsequently with the Police Officers.
  - ii. When the Applicant exited the Venue, he was accompanied by the Other Male.
  - iii. The Applicant and the Other Male can be seen talking to a security guard. A second and third security guard join the first security guard. The third security guard can be seen trying to distance the Applicant further from the entrance to the Venue. However, the Applicant and the Other Male do not move further away.
  - iv. The Applicant and the Other Male can be seen dancing near to the security guards. An additional staff member can also be seen nearby making a phone call.
  - v. The Applicant and the Other Male had attempted to move past the security guards who were positioned so as to prevent them from re-entering the Venue. The staff member then ushers the security guards away and can be seen speaking directly with the Applicant and the Other Male. The Applicant put his right hand against the cheek of the staff member.
  - vi. Two Police Officers arrive at the scene.
  - vii. While talking to the Police Officers, the Applicant appears animated and can be seen making a punching gesture with his arms. The Applicant and the Other Male can be seen shaking hands with the two Police Officers.



- viii. As the Police Officers gesture for the Applicant and the Other Male to leave the Venue, the Other Male re-approaches the nearby security guards. One of the guards pushes him, and he stumbles to the ground. The Police Officers intervene and accompany both the Applicant and the Other Male across the road from the Venue.
- ix. The Applicant and the Other Male speak with the Police Officers. A Western Australian Police vehicle and three further Police Officers arrived at the scene.
- x. One of the Police Officers says to the Applicant: [REDACTED]  
[REDACTED] The Applicant responds "Where am I living? In a house, brother." The Police Officer responds "I want to make sure it's your address and that you haven't moved since..." The Applicant did not provide the Police Officer with his address, gesturing to his License. He replied: "you can read it right there, that's my fucking address." The Police Officer explained to the Applicant that the driver's License was faded, and that it was unclear whether the address contained the number [REDACTED]. The Applicant did not confirm his address.
- d. Irrespective of why the Applicant was required to leave the Venue, it was the Applicant's failure to leave the Venue that had constituted an offence under section 115A of the Act.
- e. The body worn camera footage clearly showed that it was dark at the time of the Incident and that the Police Officer was relying on torch light to see the License.
- f. Regardless, it is not a relevant consideration whether the address on the License was legible or not. The License contained two addresses and it was reasonable for Police Officers to ask the Applicant to confirm which of the two was current.
- g. While the Applicant was not physically violent to the security guards or the Police Officers, he was argumentative and antagonistic.

Why there are reasonable grounds to believe the Applicant has been violent or disorderly or contravened a provision of any written law

- 12. In the circumstances presented and on the evidence before the Respondent, a reasonable person would have been inclined to assent to, and not reject, the proposition that the Applicant had contravened a provision of a written law:
  - a. The evidence established that because of the Applicant's aggressive behaviour, he had been asked to leave the Venue by management and ejected by security staff. The Applicant had then refused to leave the area, remaining on the foot path outside the Venue and continued arguing with security staff for approximately twenty-five minutes until the Police Officers arrived.
  - b. After the Police Officers explained to the Applicant that by refusing to leave the premises, he had committed an offence, they asked the Applicant for his identifying details. The Applicant provided the Police Officers with a "worn" driver's License, and the address was illegible. The Applicant had repeatedly refused to confirm his address, telling the Police Officers that his address was on the License.

- c. The Applicant was charged with one offence of remaining in the vicinity of a licensed premises after being removed and one offence of refusing to provide personal details to police.
- d. Although the Applicant was across the road from the Venue when he refused to provide Police Officers with his address, the Applicant had accepted that he remained “*in the vicinity*” of the premises for the purposes of the Act.

#### The nature and circumstances of the Incident giving rise to the Barring Notice

- 13. The Applicant’s disregard for the nature of his actions in failing to comply with the directions of security staff to leave the Venue demonstrated a clear need for the Barring Notice in order for the general public and licensees to be protected.
- 14. Licensees have an important responsibility to keep patrons safe. Refusing to leave a licensed premises when required to is the type of behaviour that barring notices are designed to protect the public from.
- 15. Security staff at licensed premises should not be subjected to antagonistic and abusive behaviour from patrons who have been required to leave a premises. The fact that the Applicant did not cause any physical harm to anyone is not a relevant consideration. The Applicant’s actions had the potential to cause harm. He had attempted to force his way past the security guards to re-enter the Venue which could have caused harm to the security guards or nearby patrons. Moreover, security staff were prevented from tending to their other responsibilities.

#### The risk of the Applicant behaving in a similar manner

- 16. The Applicant argued with security staff for twenty-five minutes after being ejected from the Venue and then failed to cooperate with Police Officers – that indicated a tendency for antagonistic behaviour and a blatant disregard for statutory controls that are designed to protect the public. It supports the view that there is a risk of the Applicant behaving in a similar manner in the future.
- 17. The Applicant had previously been convicted of failing to provide personal details to Police Officers in 2009. Although considerable time had passed, it indicated that despite having been convicted of this offence once before, the Applicant had gained no insight into his behaviour.

#### Conclusion

- 18. Failing to leave a premises when required undermines the statutory scheme that is in place to protect the public and licensees and minimise harm in licensed premises. The Applicant had not provided any evidence to satisfy the Commission that he was remorseful for his behaviour.
- 19. Affirming the Barring Notice will allow the Applicant time to learn from his actions which will protect him and the public.
- 20. The Barring Notice should remain in force without any variation, however, if the Commission considers a variation to the Barring Notice to allow the Applicant to attend the wedding of his friend and his sister is appropriate, such a variation should contain a condition that the Applicant is not to consume alcohol at those premises.

## Statutory Framework

21. The Commissioner of Police has the power to prohibit people from entering specified licensed premises, or a specified class of licensed premises, for a period of up to twelve months pursuant to section 115AA of the Act if the Commissioner believes on reasonable grounds that the person has, on licensed premises:
  - a. been violent or disorderly;
  - b. engaged in indecent behaviour; or
  - c. contravened a provision of any written law.
22. The Commissioner may delegate the power conferred by section 115AA of the Act on any member of the police force of or above the rank of Inspector pursuant section 115AB of the Act.
23. Section 115AD(3) of the Act provides that where a person is dissatisfied with the decision of the Commissioner of Police to give the notice, the person may apply to the Commission for a review of the decision.
24. Section 115AD(6) of the Act provides that when conducting a review of the decision, the Commission may have regard to the material that was before the Commissioner of Police when making the decision as well as any information or document provided by the Applicant.
25. Section 115AD(7) also provides that on a review the Commission may affirm, vary or quash the relevant decision.
26. Section 16 of the Act prescribes that the Commission:
  - a. may make its determination on the balance of probabilities [subsection (1)(b)(ii)];
  - b. is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply [subsection 7(a)]; and
  - c. is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms [subsection (7)(b)].
27. In 2010, the Act was amended “*to give protection to the general public from people who have engaged in disorderly or offensive behaviour, who threaten people and who put people in dangerous situations*” (Minister’s statement to the House, Western Australia, Parliamentary Debates, Legislative Assembly 19 October 2010, 7925).
28. The Minister further stated that the legislation gave the Police the power to issue Barring Notices to persons engaging in antisocial behaviour at licensed premises.
29. Section 5 of the Act sets out the objects of the Act. In subsection 5(1)(b) one of the primary objects of the Act is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. Section 5(2) provides for various secondary objects including to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor.



30. In light of the primary and secondary objects of the Act, the effect of a barring notice on a recipient, whilst it may have a detrimental effect on the recipient, is not meant to be seen as a punishment imposed upon them but is to be seen as a protective mechanism (*SVS v Commissioner of Police* (LC 19/2011)).

### **Determination**

31. The Commission, in considering an application pursuant to section 115AD, is to review the decision and determine whether to affirm, vary or quash a decision.
32. Therefore, the questions to be determined on a review are whether:
- a. there are reasonable grounds for believing that the barred person has, on or in the vicinity of licensed premises, been violent or disorderly; engaged in indecent behaviour; or contravened a provision of a written law; and
  - b. the period and terms of the barring notice reflect the objects and purpose of the Act and are not punitive in nature.
33. It is for the Commission to determine whether, on the balance of probabilities, the Applicant was involved in the Incident to the degree that warrants the issue of a barring notice.
34. I have considered all the evidence before me, and on the materials supplied I am satisfied that there were reasonable grounds to conclude that the Applicant had contravened a provision of a written law when he failed to leave the vicinity of a licensed premises.
35. Accordingly, I find that there was a clear and proper basis for the delegate of the Respondent to exercise the power conferred by section 115AA of the Act.
36. Therefore, it is for the Commission to determine, in the relevant circumstances, whether the length and terms of the Barring Notice are sufficient to uphold the objects of the Act and are not punitive in nature. The public interest must be balanced against the impact of the Barring Notice on the Applicant.
37. In determining whether to quash or vary the Barring Notice, it is relevant to take into account the nature and circumstances of the incident giving rise to the barring notice; the risk of the Applicant behaving in a similar manner again; and the need to protect the general public, the licensee and the Applicant: *KRB v Commissioner of Police* (LC 33/2011); *ARQ v Commissioner of Police* (LC 46/2011); *MRP v Commissioner of Police* (LC 55/2011); and *GML v Commissioner of Police* (LC 58/2011).
38. I have viewed both the CCTV footage and the BWC footage of the Incident. In relation to the CCTV footage, I made the following observations regarding the circumstances of the Incident (noting there was no sound to the recording):
- a. After exiting the Venue with the Other Male, the Applicant stands on the path outside the Venue with the Other Male. One security guard is also present.
  - b. The Other Male temporarily goes out of sight. The Applicant takes a few steps away from the Venue and appears to call someone on his mobile telephone.

- c. The Other Male reappears alongside the Applicant outside the Venue. The pair are joined by three security guards.
- d. The Other Male starts leaning in towards one of the security guards. The Applicant tries to intervene to stop him and appears to be dancing.
- e. A staff member dressed in black ("Staff Member") appears and makes a telephone call.
- f. Five security officers are now present (including two security officers who are overseeing the queue of people entering the Venue). The Staff Member is also present. There is an ongoing discussion between the parties.
- g. Approximately twenty-five minutes after the Applicant left the Venue, two Police Officers arrive.
- h. The Other Male shakes hands with one of the Police Officers. The Applicant pats the shoulder of one of the security guards.
- i. The Applicant, the Other Male and the two Police Officers are about to move on.
- j. The Other Male walks back towards the Staff Member and one of the security guards pushes him away.
- k. The Other Male moves towards the security guard; the Staff Member pushes the Other Male and he falls to the ground.
- l. At this time, the Applicant was standing some distance away and was not involved in the above altercation – he had been waiting alone at the nearby traffic lights to cross the road with the others.
- m. The two Police Officers pull the Other Male away by his arm, restraining him.
- n. The Applicant walks over, and also tries to remove the Other Male, from the situation by pulling him away.
- o. The Applicant holds the Other Male around the chest and walks with him as the group crosses the road.
- p. On the other side of the road, a discussion takes place between the Applicant, the Other Male and the two Police Officers.
- q. The Applicant makes a gesture as if he is going to walk away from the group; one of the Police Officers holds him back by the arm. The Applicant tries to shrug him off, however, the Police Officer does not remove his grip.
- r. The Police Officer moves the Applicant so that he is positioned with his back to a low wall; he then turns the Applicant round so that his front is towards the wall. The Police Officer removes handcuffs from his belt.
- s. The Applicant pulls out his mobile telephone and speaks on it. He is smiling and appears to be relaxed. The Police Officer puts back his handcuffs.

- t. More Police Officers arrive. There are now five Police Officers present at the scene. Two of the Police Officers move the Other Male away from the group.
  - u. The Applicant gets into the back of a Police van.
  - v. Three Police Officers speak to Other Male and make notes. They then walk away.
39. With regard to the BWC footage (which included sound recording), I made the following observations:
- a. The Applicant and the Other Male argue with the Police Officers as to why they should not have been told to leave the Venue.
  - b. One of the Police Officers asks the Applicant where he lives and states that he wants to make sure it is the same address as on the License.
  - c. The Applicant replies, "*in a house brother.*" He adds that he has been truthful since the beginning, and this is "*dumb shit*".
  - d. The Police Officer says to the Applicant that he has two addresses; to which the Applicant replies that he should "*read the back*".
  - e. The Police Officer states that the Applicant and the Other Male are not listening or doing what they have been asked, and comments: "*you are like children*".
  - f. The Police Officer asks the Applicant if it is house number [REDACTED] the Applicant states in response that he is not trying to waste their time and has not been aggressive.
  - g. One of the Police Officers states that the Applicant has not provided his address, and another officer says that he cannot read it from the License. The Applicant says: "*give me a torch I will show you*". The Police Officer says that he should tell them what his address is or he will be arrested. The Applicant states "*I've already been arrested apparently*". The Police Officer says "*fine, get in the van*". The Applicant gets into the Police van.
  - h. One Police Officer asks another, "*is he under arrest?*"
40. It appears from the evidence that when the Applicant was inside the Venue, and was initially asked to leave by staff, he complied with the request without any fracas. The allegation that he improperly remained in the vicinity of the premises arose only after he had left and was outside the Venue.
41. It is obvious (and the Applicant himself acknowledged as much) that he should have left the vicinity soon after exiting the Venue. I find that the Applicant had put himself in a difficult situation and made some thoughtless and unwise decisions. He continued to remain directly outside the Venue for approximately twenty-five minutes. His continued presence, along with that of the Other Male, and his apparent stubborn refusal to leave the area, meant that several security guards were required to oversee the situation. Ultimately, the Police Officers were called to attend.



42. However, it appears from both sets of video footage that the Applicant did not act in an overtly aggressive manner at any time, nor was he responsible for, or involved in, any physical altercation with another party. I particularly noticed that throughout the duration of time the Applicant remained in the vicinity, none among the several patrons and members of the public standing outside the Venue (either passing by or waiting to enter), seemed to be perturbed or disturbed by him or his actions. For the vast majority of time, the Applicant appeared calm, although occasionally somewhat animated. In fact, there were several moments when the Applicant was left completely alone and seemed to pose no danger or threat to anyone. Moreover, when he did try to vocally argue his way back into the Venue, he made no physical attempts to do so.
43. Furthermore, the Applicant appeared to have made an attempt to diffuse the aggressive behaviour exhibited by the Other Male (who looked to be the main aggressor throughout) and calm him down.
44. With regard to the likelihood of the Applicant behaving in a similar manner again, I note the Applicant's previous convictions and I was somewhat concerned that he was again charged for similar misconduct as that which occurred last time. However, the earlier incident occurred in 2009, thirteen years ago when the Applicant was twenty-one years old.
45. It is also clear that the Applicant has seriously considered his behaviour on the day of the Incident and I believe he has showed genuine contrition. He was frank about his actions and how foolishly he had acted. Notably, the Application was accompanied by seven letters of support, from significant people in his life [REDACTED]. In light of those telling references, I find that the Applicant's personal circumstances at the time of the Incident are a relevant consideration, and that they may well have brought about his behaviour. The extenuating circumstances included several references to the fact that during the past year, [REDACTED].
46. All of those who had vouched for the Applicant, provided excellent character references for him and spoke highly of his character. They all asserted that his conduct during the Incident was out of character. I am confident in this case, that the support given and the trust shown by these important people from his personal and work life, will certainly be a positive and beneficial influence to help the Applicant to think seriously about his actions, should he find himself in a similar situation.
47. In conclusion, after balancing the considerations above, it appears to me that the risk of the Applicant behaving in a similar manner in the future is low. While I agree that the Barring Notice served some purpose, I find it appropriate in this particular situation to vary the length of the Barring Notice. I find that to ban the Applicant from attending all licensed premises for a period of five and a half months is an unduly punitive measure. Therefore, the Barring Notice will instead expire on 30 September 2022.



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**ELANOR ROWE**  
**PRESIDING MEMBER**