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Date: Tuesday, 15 January 2019

Governance Support  
Town Hall  
Castle Circus  
Torquay  
TQ1 3DR

Dear Member

**LICENSING SUB-COMMITTEE - THURSDAY, 17 JANUARY 2019**

I am now able to enclose, for consideration at the Thursday, 17 January 2019 meeting of the Licensing Sub-Committee, the following reports that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>	<b>Page</b>
6.	<b>Licensing Act 2003 – An application for a Review of a Premises Licence for Zakopane, 16 Market Street, Torquay TQ1 3AQ</b>	(Pages 68 - 73)

Yours sincerely

Lisa Antrobus  
Clerk



Devon & Cornwall Police

Licensing Department  
Torbay Council  
C/O Torquay Town Hall  
Castle Circus  
TORQUAY  
TQ1 3DR

Licensing Department  
Devon and Cornwall Police  
Police Station  
South Street  
TORQUAY TQ2 5AH

Telephone: 01803 218900

14 January 2019

Dear Sir/Madam

**Application for a Review of the Premises Licence at Zakopane, 16 Market Street, Torquay, TQ1 3AQ**

I refer to the Review application submitted by Mrs Smart on Wednesday 21 November 2018 in relation to the above named premises.

I would take this opportunity to update you in relation to further information the police has in respect of this premises.

On Thursday 10 January 2019 Mrs Smart received a phone call from Ms Victoria Cartmell of Forrest Solicitors in Lancaster. Ms Cartmell advised Mrs Smart that Zakopane was either being sold or had been sold to a male called Mr Abdullah Omar Abdullah and she was representing the new owner. Ms Cartmell said that she thought the money had already changed hands and she advised Mrs Smart that she would send proof of this in due course. Ms Cartmell said that she was aware that the new owner is the cousin of Mr Khader, the Premises Licence Holder/DPS, but in her opinion this is a genuine sale of the premises.

On Friday 11 January 2019 Mrs Smart received an email from Ms Cartmell together with Transfer and Vary DPS applications for Zakopane and photographs of Mr Abdullah's National Insurance Card, Passport and Personal Licence. Ms Cartmell advised Mrs Smart within that email that she was hopeful that she would be able to forward the sale documents later that day, but to date these documents have not been received by the police.

Later that day (Friday 11 January 2019) the police were served with copies of the

Contact the police

Emergency 999

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101@dc.police.uk 101

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DCPolice



The Government Standard  
Stock code SF615

Transfer and Vary DPS applications from the Torbay Council Licensing Team as these had been served electronically.

At approximately 11.00 am on Monday 14 January 2019 Mrs Smart attended Zakopane in the company of Sgt Dave Curtis, Police Licensing Sergeant for Devon. Mrs Smart spoke to a male behind the counter and asked to speak to the owner. The male, Mr Ali Omar Shukir, stated that he was in charge of the premises. He advised Mrs Smart that Mr Abdullah was at the cash and carry and he said that he (Mr Shukir) is a Personal Licence holder. Mr Shukir stated that he had only worked at the premises for a day, having been asked by Mr Abdullah to assist him as he had recently bought the premises. Mrs Smart asked Mr Shukir when Mr Abdullah became the new owner, and he stated "Last week".

Mrs Smart advised Mr Shukir that she was going to carry out a licensing inspection and he indicated that he was happy to help.

As Mrs Smart was aware that Transfer and Vary DPS applications in relation to this premises had been accepted by Torbay Council she did not ask Mr Shukir to produce the Premises Licence as she assumed that this had been returned to Torbay Council together with the applications. Mrs Smart noted that the Premises Licence Summary was on display behind the counter.

Mrs Smart then started to check each condition contained within Premises Licence number PL1130. In respect of the CCTV system, Mr Shukir showed her the monitor and views from 16 cameras. Mr Shukir stated that he thinks the footage is retained for 31 days. Mrs Smart then asked to see the record of weekly CCTV checks. Mr Shukir did not know what this was until it was explained to him however he could not produce these records. Mrs Smart explained that the relevant condition on the Premises Licence requires a written record of CCTV system checks to be completed and produced to a representative of any responsible authority on request.

Mrs Smart then checked that the front door had a roller shutter, which it did. Mrs Smart asked if the premises has a back exit and Mr Shukir then took Mrs Smart and Sgt Curtis to a rear door. This door did not have a shutter, but Mrs Smart noticed that it was a fire door. Mrs Smart asked whether there was an alarm system in place and Mr Shukir told them that there is, but he said that there was a problem with the alarms in some part of the premises, and he told Mrs Smart and Sgt Curtis that someone was attending later that day to have a look at the system.

As the Premises Licence requires that a Personal Licence holder is on duty at all times the shop is open to the public, Mrs Smart asked to see Mr Shukir's Personal Licence, but he could not produce this. Mrs Smart advised Mr Shukir that he should keep his Personal Licence in his wallet or on the premises so that it can be produced when requested.

Mrs Smart asked Mr Shukir to produce the Incident Book. He did this, at the same time producing a number of other books that were contained on a shelf behind some bottles of spirits at the rear of the counter area. On looking at these books Mrs Smart recalled that these books were shown to her and Sgt Norsworthy when they attended the premises on 22 November 2017, this being the date that Sgt Norsworthy issued a Section 19 Cancellation Notice at the premises. At that time Mrs Smart was aware that these books were provided within the compliance pack that Ms Clark (the agent who applied for the initial Grant of the Premises Licence at Zakopane in October 2017), provided to Mr Khader. This compliance pack is referred to within item 1 of our supporting documents bundle.

On examining the Incident book and Barred Customer Log there were no entries contained within. On looking at the Refusals book this contained numerous entries and Mrs Smart and Sgt Curtis were satisfied with the content of this book.

Mrs Smart and Sgt Curtis also looked at the Staff Training book. This did not contain any entries. This matter was drawn to the attention of Mr Shukir who stated that as Mr Abdullah had recently taken over at the premises he was very busy with everything that needed to be put into place and therefore he had not had time to complete the training book.

Mrs Smart explained to Mr Shukir that as some of the conditions on the Premises Licence were not being complied with, every time that alcohol is sold from the premises offences under Section 136 of the Licensing Act 2003 are being committed.

As Sgt Curtis was not satisfied that all of the conditions were being complied with he issued Mr Shukir with a Closure Notice under Section 19 of the Criminal Justice and Police Act 2001. He advised Mr Shukir that the premises have 7 days in which to address the matters outlined and Mr Shukir confirmed that he understood and would discuss the matter with Mr Abdullah. Mr Shukir volunteered to cease the sale of alcohol until the issues identified had been resolved. Mrs Smart thanked him for his assistance and gave him the Section 19 Closure Notice (copy attached).

I would take this opportunity to advise you that in relation to the Incident Book and Barred Customer Log not containing any entries, Mrs Smart was aware at the time of the visit that an incident had occurred at the premises in 2018 and she therefore expected to see details of this recorded within these books.

The incident occurred on Thursday 23 August 2018 between 1800 and 1825 hours, when Mr Wali Khader was assaulted at the premises (Crime CR/077562/18 refers). The crime complaint indicates that the male offender was known to Mr Khader and, after having been banned from the premises, refused to leave. A fight ensued and Mr Khader was pushed by the offender prior to Mr Khader forcibly removing the

offender from the shop. This incident was reported to the police by a member of the public. On police attendance Mr Khader told officers that the offender had been a nuisance in the shop in the past and had been banned, and that on this occasion he was arguing with his girlfriend and smoking in the store and refused to leave when requested.

When the Section 19 Closure Notice was completed, Mrs Smart had forgotten that Transfer and Vary DPS applications had been received 'with immediate effect' and therefore the fact that the incident book and barred customer log contained no entries were included within the Section 19 Closure Notice in error. However, in relation to these books it demonstrates that Mr Khader has again failed to comply with the conditions of the Premises Licence.

In relation to the condition which states "The premises are secured with roller shutters at the front and rear and alarmed when closed", at the time of the visit Mrs Smart was concerned about a fire door being fitted with roller shutters. However Mrs Smart and Sgt Curtis have now discussed this matter and as a result of those discussions, Sgt Curtis is not satisfied that the condition is being complied with. However, as the door in question is a fire exit, the police recommend that the Premises Licence Holder seeks the advice of the Fire Service in relation to this matter.

In respect of the Transfer and Vary DPS applications received in relation to Mr Abdullah, my Licensing Department have until the end of the 14 day consultation period, which ends on Friday 25 January 2019, in which to deal with these applications and make representation, if appropriate.

Should you require any further information or assistance, please do not hesitate to contact my Licensing Officer, Mrs Julie Smart, on telephone number 01803 218900.

Yours faithfully



Superintendent J Hawley  
Head of Prevention Department  
Devon & Cornwall and Dorset Police Alliance



File No.:	Computer URN:	Minute No.:
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# Closure Notice

## Section 19 Criminal Justice and Police Act 2001

Section 19 of the Criminal Justice and Police Act 2001 empowers a constable or local authority to serve a closure notice on a person having control of, or responsibility for, any premises that are being, or have been used within the last 24 hours, for the sale or consumption of alcohol on or in the vicinity of the premises, without a licence. (Where such a closure notice is served it must also be served on any other occupier of the premises whose access may be impeded if the part involved in the unlicensed sale of alcohol was to be closed.) Where a constable is satisfied that any premises are being, or within the last 24 hours have been, used for the unauthorised sale of alcohol for consumption on, or in the vicinity of, the premises, he may serve a notice in respect of the premises.

Date and time of the Closure Notice: 11.20am 14/01/19

Person making the Notice: SGT DAVE CURTIS  
Signature: [Signature]

Name (if applicable) and address of the affected premises:  
ZAKOPANE, 16 MARKET STREET, TORQUAY.

Alleged unauthorised use of the premises:  
NO CCTV WEEKLY CHECK BOOK, INCIDENT BOOK  
PRODUCED BUT NO ENTRIES; BARRED CUSTOMER LOG NO ENTRIES,  
STAFF TRAINING RECORDS - BOOK PRODUCED BUT NO ENTRIES

Steps which may be taken to end the alleged unauthorised use of the premises, or to prevent it from re-occurring:  
ADDRESS ISSUES ABOVE - IN PARTICULAR STAFF TRAINING

The person (if applicable) on whom the Closure Notice has been served:  
Name: ALI OMAR SHUKIR  
Signature: [Signature]

## Explanatory Notes

A police officer, or an authorised officer from the local authority has decided to issue this Closure Notice under the terms of Section 19 of the Criminal Justice and Police Act 2001 ('The 2001 Act').

### Section 19 of the 2001 Act – Closure Notices

Where a police officer or an authorised officer from the local authority is satisfied that any premises are being, or within the last 24 hours have been used for the unlicensed sale of alcohol, including being in breach of its licence conditions, he may serve under Sub Section (3) a notice in respect of the premises.

### Section 20 of the 2001 Act – Closure Orders

Your attention is drawn to Section 20 of the 2001 Act. This provides that the police, or as the case may be the local authority, can take action against the said premises by applying to a Justice of the Peace at the local Magistrates' Court for a closure order if the unlicensed sale of alcohol (as alleged in this Closure Notice) is continuing, or there is a reasonable likelihood that the premises will be so used in the future. The application for a Closure Order must be made not less than 7 days, and not more than 6 months after the date on which this closure notice was served.

After an application for the Closure Order is made the Justice of the Peace may issue a summons requiring the applicant and also the persons or persons on whom the Closure Notice was served to attend a hearing at the court on a specified date and time. At the hearing the court will consider the applicant's complaint against the said premises and decide whether a Closure Order should or should not be made.

In accordance with the Magistrates' Court Act 1980 and under the law on human rights, you are entitled to be legally represented at the hearing and to make representations to the court before any decision is taken.

### Appeals – Section 24 of the 2001 Act

An appeal against a decisions by the Magistrates' Court to grant a Closure Order, or a decision to refuse an application for a Closure Order can be made by an affected person to the Crown Court within 21 days.

### Enforcement Powers and Offences - Section 24 of the 2001 Act

It is an offence for a person, without reasonable excuse, to permit a premises to open in contravention of a Closure Order made by the Magistrates Court. Any person found guilty of such an offence will be liable to a fine not exceeding £20,000 or to imprisonment for a term not exceeding three months, or to both.

It is also an offence for a person who, without reasonable excuse fails to comply with any other terms of a Closure Order made by the court, or does an act, which contravenes those other terms. Any person convicted of this offence is liable to a fine not exceeding £5,000 or to three months imprisonment, or to both.

Police officers and authorised officers from the local authority have the power to enter the said premises at any reasonable time, and to do anything reasonably necessary to secure compliance with the Closure Order (for example, to board up the premises). However when exercising this power the constable or the officer must produce evidence of his authority to enter and also his identity before entering the premises, if asked to do so by the owner (or the occupier or the person in charge of the premises).

It is an offence for a person to intentionally obstruct police officers or authorised local authority officer from exercising these powers. Any persons convicted of obstructing a police officer is liable to a fine not exceeding £5,000, or to three months imprisonment, or to both. Any person convicted of obstructing an authorised local authority officer is liable to a fine not exceeding £5,000.