



Wednesday, 21 February 2018

LICENSING SUB-COMMITTEE

A meeting of **Licensing Sub-Committee** will be held on

Thursday, 1 March 2018

commencing at **9.30 am**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Doggett

Councillor Pentney

Councillor Thomas (J)

A prosperous and healthy Torbay

For information relating to this meeting or to request a copy in another format or language please contact:

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LICENSING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman for the meeting.
2. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
3. **Minutes** (Pages 3 - 15)
To confirm as a correct record the Minutes of the meeting of a Sub-Committee held on 23 November 2017, 21 December 2017 and 25 January 2018.
4. **Declarations of interests**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
5. **Urgent items**
To consider any other items that the Chairman decides are urgent.
6. **Review of a Torbay Council Drivers' Licence** (Pages 16 - 28)
To consider a report that reviews a Torbay Council Drivers' Licence.



Minutes of the Licensing Sub-Committee

23 November 2017

-: Present :-

Councillors Doggett, Thomas (D) and Thomas (J) (Chairman)

72. **Gio's Bar, 18 Esplanade Road, Paignton**

Members considered a report on an application for a Premises Licence in respect of Gio's Bar, 18 Esplanade Road, Paignton.

Written Representations received from:

Name	Details	Date of Representation
Police	Representation objecting to the application on the ground of the 'Prevention of Crime and Disorder'.	6 October 2017
Public Protection	Representation objecting to the application on the ground of the 'Prevention of Public Nuisance'.	11 October 2017
Member of the Public	Representation objecting to the application on the grounds of the 'Prevention of Crime and Disorder', 'Prevention of Public Nuisance' and 'Public Safety'.	Undated
Member of the Public	Representation objecting to the application on the ground of 'The Prevention of Public Nuisance'.	Undated
Member of the Public	Representation objecting to the application on the grounds of 'The Prevention of Public Nuisance' and 'The Prevention of Crime and Disorder'.	25 September 2017
Member of the Public	Representation objecting to the application on the ground of 'The Prevention of Public Nuisance'.	25 September 2017
Member of the Public	Representation objecting to the application on the ground of 'The Prevention of Public Nuisance'.	5 October 2017
Member of the Public	Representation objecting to the application on the ground of 'The Prevention of Public Nuisance'.	24 September 2017
Member of the Public	Representation objecting to the application on the ground of 'The	3 October 2017

	Prevention of Public Nuisance’.	
Member of the Public	Representation objecting to the application on the grounds of ‘The Prevention of Public Nuisance’ and ‘The Prevention of Crime and Disorder’.	Undated
Member of the Public	Representation objecting to the application on the grounds of ‘The Prevention of Public Nuisance’ and ‘The Prevention of Crime and Disorder’.	Undated
Member of the Public	Representation objecting to the application on the grounds of ‘The Prevention of Public Nuisance’, ‘The Prevention of Crime and Disorder’ and ‘Public Safety’.	20 September 2017
Member of the Public	Representation objecting to the application on the grounds of ‘The Prevention of Public Nuisance’, ‘The Prevention of Crime and Disorder’.	6 October 2017

Oral Representations received from:

Name	Details
Applicants	The Applicants outlined their application and responded to Members questions.
Police Representative	The Police Representative outlined their objection to the application and responded to Members questions.
Public Protection	The Public Protection Representative outlined their objection to the application and responded to Members questions.
Member of the Public	A Member of the Public outlined their objection to the application and responded to Members questions.
Member of the Public	A Member of the Public outlined their objection to the application and responded to Members questions.
Member of the Public	A Member of the Public outlined their objection to the application and responded to Members questions.

Decision

That the application for a Premises Licence in respect of Gio’s Bar, 18 Esplanade Road, Paignton be granted as applied for, subject to the following amendment:

All licensable activities shall cease at 1 a.m. and the Premises shall close at 1.30 a.m.

In addition, the Premises Licence shall include the conditions put forward by the Police, as agreed by the Applicant and the following three conditions:

- i) The Premises shall have a written noise management plan, in consultation with and agreed by, the Licensing Authority's Public Protection Officer.
- ii) The Premises noise management plan must be kept at the Premises and reviewed when appropriate to do so; and
- iii) The Premises noise management plan must detail management policies and practices to control all aspects of public nuisance emanating from this premise and its patrons.

Reason for decision

Having carefully considered all the oral and written Representations, Members resolved to grant the application with modifications, as they could not be satisfied that the mitigation put forward by the Applicant would ensure that The Prevention of Public Nuisance licensing objective would be promoted, due to the premises being in such close proximity to that of residential premises and commercial premises which offered guest accommodation.

Members noted the oral submissions of the Responsible Authorities in respect of the efforts and improvements made by the previous owners who are now the current managers to address noise nuisance emanating from the premises and its patrons but in the knowledge that these persons were imminently due to vacate the premises, they could not be satisfied at this stage that the new owners would maintain the same level of firm control and therefore had serious concerns that conditions alone would not ensure that The Prevention of Public Nuisance Licensing Objective would be promoted, if a 3am licence was granted.

In coming to that decision, Members noted from all the written and oral Representations, the impact such a late licence has had and would have on the nearby residential premises and commercial premises which offered guest accommodation, in what on some occasions had gone on until 4am.

Given that this premise was the only premises operating a 3am licence in the direct vicinity, Members were satisfied that there was a causal link of noise attributable to patrons leaving this premises and to allow it to continue with such uncertainty, was in their opinion not appropriate or proportionate.

Notwithstanding the Licensing Authority's Statement of Principles which clearly sets out the expectations on Applicants where they seek licensable activities after 11pm in residential areas, Members determined that it was appropriate and proportionate to permit a 1am licence with a closing time of 1.30am, given the areas mixed use and the need for the area to have diversity of use and that other premises in the same location operated a 1am licence without significant impact of neighbouring residential premises. In coming to this decision, Members had regard to the written and oral representations from members of the public and the Responsible Authorities.

In concluding, it was disappointing to Members that despite this being the second attempt in hearing this application, it continued to lack specific detail and clarity in what was a request for a 3am licence. Only after oral submissions from the Applicant, Members questioning and consideration of proposed further amendments that Members were able to determine this application.

Chairman/woman



Minutes of the Licensing Sub-Committee

21 December 2017

-: Present :-

Councillors Doggett, Stocks and Thomas (J)

73. Election of Chairman/woman

Councillor Thomas (J) was elected as Chairman for the meeting.

74. Minutes

The Minutes of the meeting of the Sub-Committee held on 2 November 2017 and 9 November 2017 were confirmed as a correct record and signed by the Chairman.

75. Review of a Torbay Council Drivers' Licence

Members considered a report that sought a review of a Torbay Council Drivers' Licence. At the hearing Members received a representation from the Licenced Driver.

Decision

That Mr Johnston's Torbay Council Driver's Licence be suspended for a period of six months, in accordance with Section 61(1)(b) of the Local Government (Miscellaneous) Provisions Act 1976 and that this suspension shall have immediate effect, in accordance with Section 61(2B) of the Local Government Miscellaneous Provisions Act 1976.

During the period of suspension, Mr Johnston must undertake and successfully complete an anger management course and produce written evidence to that effect to Torbay Council's Licensing Department. Failure to do so will result in Mr Johnston's Torbay Council Driver's Licence being revoked with immediate effect.

Should Mr Johnston successfully complete the anger management course within a three month period from the date of the suspension and produce evidence to that effect, then the period of suspension will be reduced by a period of three months.

Reasons for Decision

Having carefully considered all the oral and written Representations, Members resolved to suspend Mr Johnston's driver's licence having unanimously voted in

their opinion that he did not remain a 'fit and proper person' to hold a Torbay Council Driver's Licence.

In coming to that decision, Members applied the test set out in Appendix A, section 1.2 at page 26 of Torbay Council's current Hackney Carriage and Private Hire Licensing Policy. In addition Members noted that the further incidents before them had occurred despite a formal written warning being given to Mr Johnston for historic complaints which were of a similar nature, the time frame and repetitious nature and number of those further incidents and that they all occurred whilst Mr Johnston was on duty as a driver licensed by Torbay Council.

Members gave careful consideration to the oral submissions put forward by Mr Johnson in respect of his personal circumstances and how this had led to his conduct, the informal support he had received from a friend and the three character references submitted by him. In balancing this with their primary duty to ensure public safety, Members resolved that they could not be satisfied that Mr Johnston would not repeat conduct which fell well below the standard reasonably expected by them of a driver licensed by Torbay Council without undertaking an anger management course. Their reasoning for this determination is that in their opinion Mr Johnston was the aggressor, his behaviour was at best discourteous but more importantly, in some of the incidents, dangerous which could easily have resulted in serious injury to members of the public and/or other road users.

Despite finding himself before a Licensing Committee, Members were seriously concerned that Mr Johnston showed little remorse or responsibility for his conduct but instead, continued to disproportionately justify his actions in respect of most incidents. This in their opinion cemented their fear that if Mr Johnston's driver's license was not suspended for a period of time so that he could undertake an anger management course which would hopefully address the unacceptable conduct he had displayed over a prolonged period of time, Mr Johnston would remain a risk to public safety.

Upon successful completion of the course, Members hoped that Mr Johnston would be able to return to work as a licensed driver and be capable of fulfilling the standards reasonably expected by them of a driver licensed by Torbay Council.

In concluding, Members gave careful consideration to revoking Mr Johnston's driver's licence but resolved in this instance that a suspension with a requirement to undertake an anger management course was appropriate and proportionate, and gave Mr Johnston the opportunity to demonstrate that he was someone who could become fit and proper to hold such a licence.

In coming to the decision that Mr Johnston's driver's licence should be suspended with immediate effect, as in accordance with section 61 (2B) of the Local Government Miscellaneous Provisions Act 1976, Members resolved that despite being given a formal written warning by the Licensing Authority for similar conduct, Mr Johnston's unacceptable conduct had continued and if they did not impose the suspension with immediate effect as they have, there was in their opinion a real risk to the safety of the public and other road users.

76. Consideration of an Application for a New Dual Hackney Carriage and Private Hire Drivers' Licence

Members considered a report that set out an application for a Torbay Council Dual Hackney Carriage and Private Hire Driver's Licence. Members were advised that where the applicant does not meet with the requirements set out in the current Hackney Carriage and Private Hire Licensing Policy, by virtue of holding a current unspent conviction and to determine whether or not the Applicant is to be regarded as a 'fit and proper' person to hold such a licence.

Decision

That the application for a Torbay Council Dual Hackney Carriage and Private Hire Driver's Licence be refused.

Reason for Decision

Having carefully considered the application, Members resolved to refuse the application as they could not be satisfied that reasons put forward by the Applicant were sufficient for them to depart from its Policy which clearly stated that 'The Licensing Authority will not normally consider an application until a period of at least three years free from convictions has elapsed'.

In coming to their decision, Members gave careful consideration to the Applicants request and that of their primary duty to ensure that the public were protected. In doing so, Members noted that the time elapsed from conviction was only eight months, the offending period from the date of applying for the benefit to the authority detecting that the application had been fraudulent, was two years and that the Applicant had pleaded guilty at Court, therefore recognising that her actions were fraudulent and wrong.

77. Torquay Squash and Leisure Club, 78 Barton Road, Torquay TQ2 7NS

Members considered a report on an application for a Variation to a Premises Licence in respect of Torquay Squash and Leisure Club, 78 Barton Road, Torquay.

Written Representations received from:

Name	Details	Date of Representation
Police	Representation suggesting conditions should the application be approved.	24 November 2017
Public Protection	Representation suggesting conditions should the application be approved.	27 November 2017

Oral Representations received from:

Name	Details
Applicant's Representative	The Applicant's Representative outlined the application and responded to Members questions.

Decision

That the application for a Variation to a Premises Licence in respect of Torquay Squash and Leisure Club, 78 Barton Road, Torquay be granted as applied for, subject to the following conditions:

- 1) The premises will continue to operate as a members club and that non-members shall be permitted to attend the premises for events, and on other occasions to be determined by the management and/or Designated Premises Supervisor,
- 2) Live music indoors shall cease at 23.00 hours on Friday and Saturday nights, with New Years Eve remaining as applied for,
- 3) Live and recorded music outside must cease at 23.00 hours,
- 4) No glass bottles shall be emptied in to the premises outside bins between 21.00 hours and 08.00 hours; and
- 5) The premises windows must be kept shut at all times during the playing of amplified entertainment.

Reasons for Decision

Having carefully considered all the written and oral representations, Members resolved to grant the licence, as they were satisfied on the evidence before them that to do so, would not undermine the Licensing Objectives.

In coming to that decision, Members noted that the Applicant had consulted with the Responsible Authorities before submitting their application and in turn this had resulted in appropriate conditions being submitted in to the operating schedule and the Responsible Authorities supporting the application, subject to five additional conditions which the Applicant had agreed to.

In concluding, Members further noted that there were no Representations from members of the public.

78. **The Cabin, 13 Lucius Street, Torquay TQ2 5UW**

Members considered a report on an application for a Premises Licence in respect of The Cabin, 13 Lucius Street, Torquay.

Written Representations received from:

Name	Details	Date of Representation
Member of the Public	Representation objecting to the application on the ground of 'The Prevention of Crime and Disorder'.	15 November 2017
Member of the Public	Representation in support of the application.	25 November 2017
Member of the Public	Representation in support of the application.	28 November 2017
Member of the Public	Representation in support of the application.	22 November 2017
Member of the Public	Representation objecting to the application on the ground of 'The Prevention of Crime and Disorder'.	14 November 2017

Oral Representations received from:

Name	Details
Applicant	The Applicant outlined their application and responded to Members questions.

Decision

That the application for a Premises Licence in respect of The Cabin, 13 Lucius Street, Torquay be granted, as applied for.

Reason for Decision

Having carefully considered all the written and oral Representations, Members resolved to grant the application, as they were satisfied that to do so would not undermine the Licensing Objectives.

In coming to their decision, Members had regard to the concerns raised by members of the public but were reassured by the Applicants apparent professionalism, social and environmental conscience, involvement in the community and subsequent knowledge of specific individuals who may cause a nuisance and a good understanding of the potential nuisance street drinkers can cause.

Members noted the comprehensive and appropriate conditions submitted in the Applicants operating schedule which in their opinion, should alleviate the concerns raised by members of the public.

Members further noted the Applicants commitment to work with the Responsible Authorities, as demonstrated through her early consultation with these Authorities, which has resulted in the absence of any Representations from the Police or Public Protection.

In concluding, Members noted the layout of the store and the proposed location where alcohol will be displayed and were satisfied that staff would be able to effectively manage the sale of alcohol in a responsible manner.

Chairman/woman



Minutes of the Licensing Sub-Committee

25 January 2018

-: Present :-

Councillors Pentney, Thomas (J) and Tolchard

79. Election of Chairman/woman

Councillor Thomas (J) was elected as Chairman for the meeting.

80. Maja Polish Shop Ltd, 37-39 Market Street, Torquay

Members considered a report on an application for a Review of Premises Licence in respect of Maja Polish Shop Ltd, 37-39 Market Street, Torquay.

Written Representations received from:

Name	Details	Date of Representation
Licensing Authority	Representation in support of the application for a Review of a Premises Licence.	14 December 2017
Safeguarding and Reviewing Service	Representation proposing additional conditions should the licence be modified.	27 November 2017

Oral Representations received from:

Name	Details
Applicant (Police)	The Police outlined their application for Review of the Premises Licence and responded to Members questions.
Licensing Authority	The Licensing Authority outlined their representation and responded to Members questions.
Respondent	The Respondent addressed the issues raised by the Applicant and the Licensing Authority and responded to Members questions.

Decision

That:

- (i) Mr Marius Muskietorz be removed as the Designated Premises Supervisor with immediate effect;
- (ii) The premises Licence shall be suspended until midnight on Friday 23 March 2018; and

- (iii) The Premises Licence will be subject to the following conditions proposed by the Police and agreed by the Applicant:
- (a) No super strength beers, lagers or ciders of 6.1% ABV or above shall be sold from the premises.
 - (b) Cans of beers, lager and cider shall only be sold in multiples of 4 cans.
 - (c) The premises shall adopt a Challenge 25 Policy whereby any individual who appear to be under the age of 25 shall be required to produce an approved form of photographic identification as indicated within the Torbay Council Licensing Statement of Principles 2016 - 2021.
 - (d) Challenge 25 posters shall be prominently displayed within the premises.
 - (e) All staff shall receive training in relation to their responsibilities under the Licensing Act 2003 on a 6 monthly basis. Records of such training shall be retained at the premises for a period of 12 months and be made available to the Police, Police Licensing Officers or Local Authority Licensing Officers for inspection on demand.

Reasons for Decision

Having carefully considered all the written and oral Representations, Members resolved to remove Mr Marius Muskietorz as the premises Designated Premises Supervisor (DPS) as it was evident to them that his apparent absence from the premises was the primary factor in issues of concern not being addressed in a timely manner and a number of conditions of the premises licence being breached for what appeared to be for a prolonged period of time.

In coming to that decision, Members noted the oral submissions put forward by Mr Muskietorz at the hearing that he resides in London and visits the premises once a month, albeit that he was at the end of a telephone, if necessary and the fact that he is DPS to three other licensed premises which are outside of Torbay.

Whilst it was correct that the sale of a specific brand of larger had brought the premises to the attention of the Police and the Licensing Authority, it was alarming to Members that when the premises were visited by these Authorities, a number of conditions on the premises licence were found to be being breached. In Members opinion when considering all the evidence before them, it had been luck rather than responsible management that other conditions on the premises licence had not been breached and potentially criminal offences committed in respect of underage sales and an absence of knowledge by staff to the actual conditions on the Premises Licence itself. This was directly attributable to the fact that when asked, staff were unaware of, or the need for an age verification policy and did not have a copy of the premises licence at the premises. Both of which are requirements of the Premises Licence.

Members were pleased to note that the Premises Licence Holder has now put in place measures to address most of these failings but remain concerned that it had taken enforcement action to achieve this outcome.

Members gave careful consideration to revoking the premises licence but in this instance felt it appropriate, in addition to that of removing Mr Marius Muskietorz as the DPS, to suspend the premises licence for a period of two months. Thus allowing time for the Premises Licence Holder to appoint a suitable DPS and carryout staff training which ensured that all staff involved in the sale of alcohol were fully aware of the conditions of the premises licence and their responsibilities under the Licensing Act 2003.

In concluding, Members resolved that their decision should alleviate the concerns raised by the Responsible Authorities and ensure that the premises future operation would not undermine the Licensing Objectives.

Chairman/woman



Report No: Public Agenda Item: **Yes**

Title: **Review of a Torbay Council Drivers' Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **1st March 2018**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

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1. What we are trying to achieve

- 1.1 This report asks Members to consider information relating to the conduct and convictions received of the holder of a dual Hackney Carriage and Private Hire drivers licence and to determine on the facts laid before them, whether or not the licence holder continues to be regarded as a 'fit and proper' person to hold such a licence.

2. Recommendation(s) for decision

- 2.1 This matter must be determined on its individual merits and any supporting facts or testimony. The options available to Members however, are highlighted in paragraph A3.1 of Annex 1 to this report.
- 2.2 Whilst all options highlighted in paragraph A3.1 of Annex 1 remain open to Members of the Committee, having fully considered the facts, the recommendation of this report, in consideration of Mr Ryan's previous history and failure on this occasion to report this latest offence, is that:

Mr Ryan's hackney carriage and private hire drivers' licence should be revoked with immediate effect, in the interests of public safety, as afforded by section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976.

3. Key points and reasons for recommendations

- 3.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.

- 3.2 Sections 51 and 59 of the 1976 Act in conjunction with section 46 of the Town Police Clauses Act 1847 make provision for the licensing of drivers and state that a district council shall not grant a licence to drive a Private Hire or Hackney Carriage vehicle unless they are satisfied that the driver is a 'fit and proper' person to hold a driver's licence.
- 3.3 Section 51 (2) of the 1976 Act permits the Council to attach to the grant of a licence to drive a Private Hire vehicle 'such conditions as they may consider reasonably necessary'. This provision extends to enabling the attachment of conditions on a dual licence as is issued in Torbay.
- 3.4 There is no prescribed test for 'fit and proper' laid down in legislation and it is therefore left to the individual Licensing Authorities to assess drivers and applicants under their own criteria. However, there is a wide scope for such assessment and certain processes have evolved over time which have stood up to scrutiny in the Courts and are therefore commonly accepted practices amongst the majority of Licensing Authorities.
- 3.5 Torbay has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. These include, a group 2 standard of medical fitness, an enhanced Criminal Records Disclosure (DBS), a driving standards test (DSA), scrutiny of DVLA penalty points and a test of the knowledge of both the area and conditions pertaining specifically to Torbay and local licensing Policy. A recent addition to this is the requirement to test the right to live and work in the United Kingdom.
- 3.6 Section 61 (1) of the 1976 Act states that a district council may suspend or revoke or refuse to renew the licence of a driver of a Hackney Carriage or a Private Hire vehicle on any of the following grounds:—
- (1) (a) that he has since the grant of the licence—
- (i) been convicted of an offence involving dishonesty, indecency violence; or
 - (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or
- (b) any other reasonable cause.
- 3.7 Section 61 (2) of the 1976 Act states:
- (2) (a) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the district council the driver's badge issued to him...
- (b) If any person without reasonable excuse contravenes the provisions of this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

- 3.8 Under Section 61 (2A) a suspension or revocation of a drivers' licence takes effect at the end of a period of 21 days beginning with the day on which the notice is given to the driver. However, under section (2B) any suspension or revocation may take immediate effect if it is deemed to be necessary in the interests of public safety. In such circumstances the notice given to the driver notifying of the suspension or revocation must include a statement and explanation as to why section (2B) has been deemed necessary.
- 3.9 This report follows receipt of a number of penalty points (endorsements) received by Mr Ryan and a failure by Mr Ryan to report the latest endorsement received to the Licensing Authority, as required under the terms and conditions of licence.
- 3.10 Upon discovery of the endorsement (totalling 4 penalty points) received by Mr Ryan for an offence committed on 23rd November 2016, Craig Noble, Licensing Enforcement Officer, wrote to Mr Ryan to seek explanation and clarification. The letter to Mr Ryan was dated 11 January 2018 and is attached to this report at **Appendix 1**.
- 3.11 Mr Ryan responded to Mr Noble's letter dated 17 January 2018 and enclosed a copy of the notice of fine and collection order. A copy of this letter and its enclosures is attached at **Appendix 2**.
- 3.12 The Licence Summary from the DVLA showing the current position relating to endorsements on Mr Ryan's DVLA drivers licence is attached at **Appendix 3**. It is evident from this that for the period between 23 November 2016 and 12 September 2017, a period of some nearly 10 months, Mr Ryan's licence was actually endorsed with a total of 14 (fourteen) penalty points that were current at that time. The Licensing Authority was unaware of this at the time as the matter had not been reported as required.
- 3.13 There is a right of Appeal to the Magistrates' Court as provided under section 61 (3) of the 1976 Act against the Licensing Sub-Committee decision. Such an appeal must be lodged within 21 days from the date of a Notice following the decision.

For more detailed information on this proposal please refer to the Supporting Information.

**Steve Cox
Environmental Health Manager (Commercial)**

Annex 1 - Supporting information

A1. Introduction and history

- A1.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.
- A1.2 Sections 51 (in respect of Private Hire drivers) and 59 (in respect of Hackney Carriage drivers) of the Act state that a district council shall not grant a licence to drive a Private Hire vehicle or Hackney Carriage unless they are satisfied that the driver is a 'fit and proper person to hold a driver's licence'.
- A1.3 The test for 'fit and proper' as it applies in Torbay is outlined in paragraph 3.5 of the report.

Details for Consideration

- A1.4 Mr Ryan has held a Torbay Council hackney carriage and private hire drivers' licence since 30th December 2010. During this time there has been one previous complaint relating to allegations about Mr Ryan's driving but as the allegations could not be proven no further action was taken and the complaint was discontinued. Given the lack of evidence, this has not been detailed further in this report.
- A1.5 During September 2015 Mr Ryan was involved in a serious road incident which resulted in him being brought before the Licensing Committee. The details of this incident are that:

Mr Ryan caused an accident on the A30 near Exeter by driving the wrong way up a dual carriageway and driving into oncoming traffic. An oncoming vehicle was forced to swerve to avoid him and this resulted in the accident.

Mr Ryan was prosecuted for this incident and after he admitted careless driving this resulted in 7 (seven) penalty points being endorsed onto his DVLA driving licence under code CD10, which relates to 'driving without due care and attention.

During this incident Mr Ryan was carrying a fare paying passenger from Torquay to Exeter.

- A1.6 As a result of the offence and conviction received by Mr Ryan, as highlighted in paragraph A1.5 (above), Mr Ryan was made to appear before a Licensing Sub-Committee on 22nd October 2015. The resolution of the committee at that time was that:

Mr Anthony Ryan's Torbay Council drivers licence be suspended with immediate effect, until such time that he has successfully completed a RoSPA (The Royal Society for the Prevention of Accidents) ADVANCED DRIVING TEST, as approved by the Driver and Vehicle Licensing Agency. The end date to which this test must successfully be completed is the 21 January 2016.

Failure to successfully complete the test by the said date will result in Mr Anthony Ryan's Licence being revoked with immediate effect at midnight on the said date.

The Licensing Committee also recommended that Mr Ryan reads and familiarises himself with contents of Torbay Council's Hackney Carriage (Taxi) and Private Hire Policy (May 2013) , as issued to him and that he keeps a copy of the said Policy in the licensed vehicle at all times when on duty for future reference.

A1.7 Mr Ryan eventually passed the required advanced driving test at bronze level and as a result his Torbay Council Drivers' Licence was returned to him.

A1.8 In early January 2018, the Licensing Authority became aware of a further incident concerning another driving conviction, which Mr Ryan has obtained. This discovery was made as part of a routine check by licensing staff who were carrying out driving licence checks on all licensed drivers in preparation for the upcoming annual licence renewals process.

A1.9 During the checks highlighted in paragraph A1.8 (above) it was discovered that Mr Ryan had received a further 4 points on his driving licence taking his current active total to 11 points. A further matter of concern was that this had not been reported to the Licensing Authority in accordance with the terms and conditions of a hackney carriage and private hire driver's licence.

A1.10 The facts of the latest conviction received by Mr Ryan are:

Mr Ryan was convicted of speeding whilst driving in Hampshire during November 2016. He appeared before Magistrates in Hampshire and as a result received a fine of £832.00 and 4 penalty points on his driving licence, costs and victim surcharges brought his total to pay up to £1000.00.

A1.11 On 11 January 2017, upon discovery of this information Craig Noble wrote to Mr Ryan asking him for an explanation of events. A copy of this letter is attached at **Appendix 1**.

A1.12 Mr Ryan responded by letter dated 17 January 2018 and received on 19 January 2018, stating that he was unfamiliar with the area in Cadham, where the conviction was received and that he had missed a 30 mile an hour sign. The actual speed of travel is not stated in the letter, other than to state that Mr Ryan believed he was in a 40 MPH limit when in fact it was a 30 MPH limit. A copy of Mr Ryan's letter and enclosures is attached at **Appendix 2**.

A1.13 Mr Ryan's explanation for his failure to disclose the latest conviction is that:

He was unaware that he had received any penalty points and he therefore (mistakenly) thought that he did not need to inform us of the incident. Mr Ryan stated in his letter that he knew nothing of the penalty points until he received the letter from Craig Noble dated 11 January 2018.

A1.14 The Torbay Council policy quite clear it states at paragraph 6.4:-

Failure to inform the Licensing Authority immediately. Or within 5 working days of any convictions, cautions and fixed penalty notices during the licensing application and/or licensing period (i.e once the licence is granted) may result in suspension or revocation of the driver licence. Similarly where convictions, cautions or fixed penalty notices are notified, depending on the nature of the infraction, this may result in suspension or revocation of the driver licence.

A1.15 Torbay Council's Hackney Carriage & Private Hire Licensing Policy states;

In setting out its Policy, the Licensing Authority seeks to promote the following objectives:

- *The safety and health of drivers and the public;*
- *Vehicle safety, comfort and access;*
- *To prevent crime and disorder and to protect the public;*
- *To encourage environmental sustainability.*

Public safety is paramount, and this Licensing Authority seeks to ensure through its licensing regime that all taxi and private hire vehicles are fit for purpose and that their drivers and/or operators are fit and proper persons.

A1.16 Torbay Council's Hackney Carriage & Private Hire Licensing Policy goes on to say;

1 General Policy

1.1 *Each case will be decided on its own merits.*

1.2 *The Licensing Authority has a duty to ensure, so far as possible, that applicants are 'fit and proper' persons to hold licences and in the absence of a judicially approved definition of "fit and proper", the Licensing Authority use the test of:*

"Would the Officer charged with the ability to grant a licence allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter, or any other person for whom they care, to get into a licensed vehicle with the applicant alone"

The wording of this test originates from Button, J. T. H. (1999), Taxis – Licensing Law and Practice, Butterworths, London.

1.3 *The overriding consideration is the safety of the public. The Licensing Authority has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit. An aspect of this is the extent to which previous convictions, including but not limited to convictions of dishonesty, sexual offences, traffic offences, violence and drugs, indicate that a person is not a 'fit and proper' person and would not take advantage of passengers or abuse or assault them.*

A1.17 There is a right of Appeal to the Magistrates' Court against the Licensing Sub-Committee decision. Such an appeal must be lodged within 21 days from the date of a Notice following the decision.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.1.1 Under current Policy and in full consideration of the overriding requirement to

protect the safety of the travelling public, this is a matter where officers consider revocation should be given serious consideration in the interests of public safety. This recommendation has been made particularly in light of the previous driving record of Mr Ryan and his failure to report penalty points that were endorsed on his licence in November 2016. This is in clear violation of the Council's Hackney Carriage and Private Hire Policy

A2.1.2 There are risks both potentially to the public and to the Council if a key decision were to be taken without full consideration of the facts. However, by placing this matter before a Licensing Sub-Committee, for consideration on the merits of the case, such risks are reduced as full consideration may be given in an open and transparent manner of all relevant facts.

A3. Options

A3.1 The options are:

- (i) to formally warn Mr Ryan and/or to add conditions to the scope of his Torbay Council Driver's Licence;
- (ii) to suspend Mr Ryan's Torbay Council Driver's Licence, with or without immediate effect, as outlined in paragraph 3.8 of the report which may or may not include the addition of conditions to the scope of the licence as deemed appropriate;
- (iii) to revoke Mr Ryan's Torbay Council Driver's Licence with or without immediate effect as outlined in paragraph 3.8 of the report;
- (iv) to do nothing.

A4. Summary of resource implications

A4.1 There are some resource implications if there is an Appeal to the Magistrates' Court.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no environmental sustainability issues. Whilst this report brings a number of matters to Members' of the Licensing Sub-Committees attention, there are no criminal convictions (only motoring convictions). In view of this, any crime and disorder impact is best assessed by the Licensing Sub-Committee having determined the facts. If any potential for crime and/or disorder on the balance of probability is deemed likely or possible, then this may lead Members to consider whether Mr Ryan meets the 'fit and proper' criteria. It is important to note however, this is not the only consideration.

A6. Consultation and Customer Focus

A6.1 There has been no public consultation on this matter and there is no requirement for the Licensing Sub-Committee to consult the public in this matter.

A7. Are there any implications for other Business Units?

A7.1 There are no implications for other business units.

Documents available in members' rooms

None

Appendices

Appendix 1 – Letter from Craig Noble to Mr Ryan

Appendix 2 – Response letter from Mr Ryan to Craig Noble

Appendix 3 – DVLA licence summary highlighting the convictions received

Background Papers:

The following documents/files were used to compile this report:

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2016



Please reply to: Mr Craig Noble

Community Safety

c/o Town Hall
Castle Circus
TORQUAY
Devon
TQ1 3DR

Mr A W J Ryan

Address removed.

My ref: R:242518/CAN

Your ref:

Telephone: 01803 208025

Website: www.torbay.gov.uk

Date: 11 January 2018

Dear Mr Ryan

Re: Driving Incident

We have today being carrying out routine driving licence checks on all of our licensed drivers in preparation for the renewals process for 2018/2019. Unfortunately the DVLA website clearly shows that you have received a fine for driving in excess of the speed limit. The information goes on to say that this offence took place on 23 November 2016 and you received 4 penalty points and a fine of £832.00. I have some serious concerns about this offence not least of all because it happened after you had already appeared before the Licensing Committee and as a result of your Committee appearance you were required to undertake a Royal Society for Prevention of Accidents Advanced Driving Test. Speeding after you have been through this process clearly shows that you do not appear to be learning any lessons from your previous errors.

As a result of this latest information I now need you to respond to this letter, **IN WRITING**, as soon as possible and in any case no later than **Friday 19th January 2018**. In your letter I would like you to explain to me the circumstances that occurred when you were stopped for speeding and why you were in this situation. I would also like you to explain, in your letter, why this matter was not reported to the Licensing Office at the time of the incident or shortly after.

Please bear in mind this is a serious matter and in light of your driving record and depending on what you have to say in your letter there is a very strong possibility that this matter could be brought before the Licensing Committee. I am not saying that this will happen but we will have to look at what you have to say and make a decision based on your response. With this in mind you should ensure that your letter gives us as much information as possible as this is your opportunity to make us aware of your version of events.

Should you require any further information please contact the Licensing Office on the telephone number above.

Should you need to contact us please quote the reference number above.

Yours sincerely

Mr Craig Noble
Licensing Enforcement Officer
Licensing and Public Protection

Please note that, apart from personal details subject to the Data Protection Act, information contained in this letter may be divulged to members of the public under the Freedom of Information Act 2000.

Mr Craig Noble,
License Enforcement Officer,
License/Public Protection,
Town Hall,
Torquay TQ1 3DR

Mr. [unclear]
17/1/18

RE DRIVING INCIDENT CADHAM 23/11/16

Dear Craig,

In response to your letter of 11th January, sorry it took a little longer to reply but I had trouble finding the letter dated 5th June from Hampshire Magistrates Court please find photocopy.

Since taking the Rospa driving course my driving has improved as in awareness etc. On 23rd November 2016 I was driving through Cadham area I was not finding it with I was driving through a 40 mph zone unfortunately I missed a 30 mph sign and was recorded by a mobile camera unit, I believed I was still in a 40 mph zone and my speed was legal.

I attended Hampshire Magistrates court and received a fine and as far as I was aware I had not received penalty points.

The first I was aware of the 4 points was your letter. If I had known I had been given the points I would have informed Torbay Licensing as soon as possible.

I am,
yours sincerely
A. [unclear] (Mr)





North Hampshire Magistrates' Court
Code 1305

Enforcement Office, AP 15224, Park Road, Poole. BH15 2NS Tel: 01633 645112
Email: do-pooleenforcement@hmcts.gsi.gov.uk
24/7 Credit/Debit Card Payments: 0300 790 9901 www.gov.uk/pay-court-fine-online

Mr ANTHONY WILLIAM JOHN RYAN

TORQUAY
DEVON

Division: 092

Account number: 1.

Case number: 441700097409

Born: 1.

Notice of fine and collection order

Offences and penalties

Date	Offences and Impositions		Amount £
6 Jun 2017	1 / Exceed 30 mph speed limit in contravention of a Local Traffic Order - manned equipment.	Fine	832.00
		Victim Sur	83.00
		Costs	85.00
You must pay: The total amount on or before 4 July 2017		Total: £	1,000.00

The court has made a Collection Order to collect the sum due.

See reverse for details on how to pay. Failure to pay as ordered will make you liable for further enforcement action, unless you pay the full balance immediately. This could include:

- Deductions from your earnings
- Deductions from your benefit
- A warrant of control being issued to the enforcement agents to take control of your goods (which will incur additional costs)
- Warrant for your arrest to return you to court
- Increasing your fine by 50%
- Clamping, removal and sale of your vehicle
- Registering the account in the Register of Judgements, Orders and Fines (affecting your ability to obtain credit)
- If after these sanctions have been imposed, your fine remains outstanding, the court may order that you are imprisoned for non-payment.

If you have difficulties in paying the amount you must immediately contact the Enforcement Team on the number above.

All enquiries regarding this notice should be made to the above address.

Alessandro Roveri

Justices' Clerk

Date: 6 June 2017

Mr ANTHONY WILLIAM JOHN RYAN



Licence summary

This was the latest information held when the driving licence summary was generated.

Mr ANTHONY WILLIAM J RYAN

Driving licence number:
XXXXXXXX026AW9FY

Licence issue number:
45

Licence valid from:
6 December 2014

Licence valid to:
22 June 2022

Check code:

WP 52 WM CW

This code is now invalid and cannot be used again.

Date summary viewed:

22 January 2018 11:11

Driving Status

Current full licence

Endorsements

2

Offences

11

Points

Endorsements

SP30

Penalty points:
4

Offence date:
23 November
2016

Expiry date:
23 November
2019

Description:
Exceeding statutory speed limit on a public road

CD10

Penalty points:
7

Offence date:
28 June 2015

Expiry date:
28 June 2018

Description:
Driving without due care and attention

SP30

Expired

Penalty points:
3

Offence date:
12 September
2014

Expiry date:
12 September
2017

Description:
Exceeding statutory speed limit on a public road

Can drive

Category	Start date	End date	Codes
AM	17 January 2014	1 September 2026	
A	2 February 1982	1 September 2026	
B1	8 August 2008	1 September 2026	
B	8 August 2008	1 September 2026	
F	8 August 2008	1 September 2026	
K	2 February 1982	1 September 2026	
L	2 February 1982	1 September 2026	

Provisionally drive

Category	Start date	End date	Codes
BE	19 August 2008	1 September 2026	
C1	16 September 1978	1 September 2026	
D1	16 September 1978	1 September 2026	
G	16 September 1978	1 September 2026	
H	16 September 1978	1 September 2026	

What to do if you need to see this information again

Ask the person who shared their licence with you for a new check code in order to see the licence information again.



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