

Public Agenda Item: **Yes**

Title: **Licensing Act 2003 – Determination of continuance of Personal Licence (PA0129), held by Ms Kate Poulson, following notification of conviction of a relevant offence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **3 August 2023**

Key Decision: **No**

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

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1. Key points and Summary

- 1.1 To consider and determine the continuance of the Personal Licence held by Ms Kate Poulson, following her conviction on 10 May 2023, of a relevant offence under Schedule 4 of the Licensing Act 2003.
- 1.2 The decision to suspend or revoke a personal licence must be made by the Licensing Committee or a Sub-Committee thereof. The action required by a Licensing Officer, before such a decision is made, is to provide formal notification to the licence holder that the Licensing Authority is considering suspending or revoking their licence and invite them to make representations concerning the continuance of the licence.
- 1.3 A notification letter of the type mentioned in paragraph 1.2. above, was emailed to Ms Poulson on 14 June 2023. On 14 June and 23 June 2023 the Licensing Authority received emails from Ms Poulson, and on 23 June 2023 the Licensing Officer spoke to Ms Poulson, during which Ms Poulson outlined the circumstances leading to her conviction and personal circumstances. At the conclusion of the telephone call Ms Poulson was advised to write a representation and email this to the Officer. The Licensing Officer did not receive a representation within the notified period of 28-days, nor subsequently; determining that no representation has been made by Ms Poulson in respect of her licence.
- 1.4 The matter must be considered on its own merits, having received details of the issues arising at a hearing and by reference to information presented in this report. A decision must be made to:

- a) Do nothing and leave the personal licence in place
- b) Suspend the personal licence for a period not exceeding six months
- c) Revoke the personal licence.

1.5 Reasons for the decision must be given for inclusion in the Notice which will be served on Ms Poulson.

2. Background

2.1 Section 138 of the Policing and Crime Act 2017 amended the Licensing Act 2003 and gave Licensing Authorities the power to suspend (for a maximum period of six months) or revoke personal licences where it becomes aware that the holder has been convicted of a relevant or foreign offence, or has been required to pay an immigration penalty, from 6 April 2017. Prior to this, only Magistrates' Courts could suspend or revoke these licences. This is a discretionary power, there is not a positive duty upon Licensing Authorities to consider all personal licence holders who may have been convicted or who receive convictions in the future.

2.2 Section 138(2) of the Policing and Crime Act 2017 prescribes that these powers cannot be delegated to Officers. However, the discretionary nature of the powers permits Officers on a case-by-case basis to consider whether the nature and seriousness of the conviction or convictions should be referred to the Licensing Committee or Sub-Committee for determination. Where Officers consider the offence committed calls into question the ongoing suitability of a person to hold a personal licence, they must first wait until the period during which an appeal can be made in relation to the offence has ended. Where an appeal is not made, the Officer must notify the licence holder, where the Licensing Authority is considering whether to suspend or revoke their licence and invite them to make representations concerning:

- (a) the relevant offence that has caused the Licensing Authority to issue the notice,
- (b) any decision of a court under section 129 or 130 in relation to the licence, and
- (c) any other relevant information (including information regarding their personal circumstances).

Representations must be made within the period of 28 days, beginning with the date the Notice is issued.

2.3 The Policing and Crime Act 2017 does not set out any hearing procedures for determining whether to suspend or revoke personal licences. The Section 182 Guidance issued by the Secretary of State in December 2022, specifies at paragraph 4.77, that the Licensing Authority does not need to hold a hearing to consider the representations. The Council's delegation scheme, published in the Council's "Licensing Statement of Principles 2021-2026" recommends that "Applications for review of personal licences with unspent convictions" is a matter for the Council's Licensing Sub-Committee.

2.4 There is no legal obligation to hold a hearing to determine the continuance of the personal licence held by Ms Poulson. However, to satisfy the principles of natural justice and provide a framework in the event of an appeal to the Magistrates' Court, this matter has been brought before a Licensing Committee.

- 2.5 The Licensing Act 2003, Part 6, places an obligation upon a personal licence holder charged with a relevant offence to inform the Court on charge, or no later than the first appearance, of their status as a personal licence holder. Unless exceptional circumstances apply, that licence should be produced to the Court.
- 2.6 A personal licence holder who fails to notify the Court as per paragraph 2.4 above or the Licensing Authority as described in paragraph 2.8 below, commits a further offence. The same provision applies to any determination of appeal against a conviction or sentence. A person found guilty of an offence under this section, is liable on summary conviction to a fine not exceeding Level 2 on the standard scale. As the Licensing Authority were notified of Ms Poulson's conviction by South Devon Magistrates Court it appears that the court were notified of Ms Poulson's Personal Licence.
- 2.7 The personal licence holder is also under a duty to inform the Licensing Authority (by way of a notice) of their conviction and sentence. They must do this as soon as is reasonably practicable. Ms Poulson has failed to inform the Licensing Authority of receipt of her conviction for a relevant offence.
- 2.8 Government Guidance states at paragraph 4.3: *"Any premises at which alcohol is sold or supplied where the requirement for a personal licence holder does apply may employ one or more such licence holders. For example, there may be one owner or senior manager and several junior managers holding a personal licence. However, the requirement that every sale of alcohol must at least be authorised by a personal licence holder does not mean that the licence holder has to be present on the premises or oversee each sale; it is sufficient that such sales are authorised."*
- 2.9 The holder of a personal licence does not need to be connected to a particular premises, and once granted, the holder may sell or supply alcohol from any licensed premises in England and Wales.
- 2.10 Where the Licensing Authority determines not to revoke the licence, the Licensing Officer must write to the Police confirming this decision and invite the Police to make representations about whether the licence should be suspended (perhaps for a longer period) or revoked. This clearly is a departure from arrangements for determinations for premises licence and variations, which seek representations from the Police and other responsible authorities in advance of a hearing.
- 2.11 Police representations must be made in writing and submitted within 14 consecutive days (beginning with the day the Council Notice is received by them).
- 2.12 Should the Police not make any comments/support the decision of the Licensing Authority, then the Regulatory Services Manager may, it is suggested in collaboration with the Chairman of the Licensing Committee and the Council's Legal Advisor, determine whether a second hearing is necessary, or whether the original decision (as notified) applies.
- 2.13 Where the original decision is upheld, then a Decision Notice will be issued to the Licence Holder and the Police. The Police or the Licence Holder may appeal the decision of the Licensing Authority.

- 2.14 Where the Police make representation, then a second hearing must be held to decide the following:
- a. the licence will be suspended for a period not exceeding six months
 - b. the licence is revoked.
- 2.15 Following the second hearing, a Decision Notice will be issued to the Licence Holder and the Police. Both parties can appeal the decision.
- 2.16 Following such Appeal, the Magistrates' Court may:
- a. dismiss the appeal,
 - b. substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
 - c. remit the case to the Licensing Authority to dispose of it in accordance with the direction of the Court,
 - d. and may make such order as to costs as it thinks fit.

3. Matters specific to Ms Kate Poulson

- 3.1 A Personal Licence was issued by Torbay Council to Ms Kate Poulson on 6 November 2020. A copy of the Personal Licence is provided at **Appendix 1**. As of 1 April 2015, there is no requirement to renew a personal licence.
- 3.2 On 10 May 2023 the Licensing Authority were notified by South Devon Magistrates Court that Ms Poulson had appeared at court that day, when she was convicted of an offence and disqualified from driving for 12 months.
- 3.3 On 14 June 2023 the Licensing Officer contacted South Devon Magistrates Court and asked them to provide a copy of Ms Poulson's conviction.
- 3.4 On 14 June 2023 South Devon Magistrates Court provided the Court Extract in respect of Ms Poulson's conviction. This is shown at **Appendix 2**.
- 3.5 The conviction relates to an offence committed under Section 5A(1)(a) and (2) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988 (driving etc a vehicle with drug concentration above prescribed limit). Ms Poulson was ordered to pay a fine of £120, Costs of £85.00, a Victim Surcharge of £80.00 and was disqualified from driving for an obligatory period of 12 months. The conviction will be spent on 9 May 2024.
- 3.6 The Court Extract shows that at the time of the offence the proportion of Benzoyllecgonine in Ms Poulson's blood was not less than 226ug/L. As of 2 March 2015 the threshold for this drug is 50ug/L.
- 3.7 The Licensing Officer, noting the seriousness of the offence and the penalty handed down by the Court, wrote to Ms Poulson to notify her that the Licensing Authority is considering suspending (for a maximum of six months) or revoking the licence. A copy of this letter is provided at **Appendix 3**.
- 3.8 The Licensing Officer sent this notification by email and Ms Poulson responded to this email and telephoned the Licensing Officer to discuss the matter. She was

advised to make written representation within 28 days from the date of the letter, ie 12 July 2023, but did not do so.

Julie Smart
Licensing Officer

Appendices

- Appendix 1 Copy of Personal Licence
- Appendix 2 Copy of Court Extract showing conviction and sentence
- Appendix 3 Copy of Notification to Ms Poulson
- Appendix 4 Copy of Schedule 4 of the Licensing Act 2003 – List of Relevant Offences

Documents available in Members' rooms

None

Background Papers:

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

Torbay Council Licensing Policy 2021-26

Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)

