



Wednesday, 16 March 2016

LICENSING SUB-COMMITTEE

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

Thursday, 24 March 2016

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 Brooks

Councillor Doggett

Councillor Manning

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 - 21)
To confirm as a correct record the Minutes of the meeting of a Sub-Committee held on 17 September 2015, 22 October 2015, 10 December 2015 and 18 February 2016.
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 Torbay Council Driver's Licence** (Pages 22 - 31)
To consider a report that seeks review of a Torbay Council Driver's Licence.
7. **Review of Torbay Council Driver's Licence** (Pages 32 - 41)
To consider a review that seeks a review of a Torbay Council Driver's Licence.



Minutes of the Licensing Sub-Committee

17 September 2015

-: Present :-

Councillors Ellery, Manning (In place of Doggett) and Thomas (D) (In place of Lang)

21. Election of Chairman/woman

Councillor Manning was elected as Chairman for the meeting.

22. Apologies

It was reported that the membership of the Sub-Committee had been amended for this meeting by including Councillor Manning instead of Councillor Doggett and Councillor Thomas (D) instead of Councillor Lang.

23. Minutes

This item was deferred until a future meeting.

24. Licensing Act 2003 - An application for a Variation to a Premises Licence in respect of Park Lane, 1 Torwood Street, Torquay, TQ1 1ED

Members considered an application for a Variation to a Premises Licence in respect of Park Lane, 1 Torwood Street, Torquay, TQ1 1ED.

The Premises do fall within the Cumulative Impact Area.

Written Representations received from:

Name	Details	Date of Representation
Environmental Protection	Representation of support in relation to Licensing Objective 'The Prevention of Public Nuisance.'	27 August 2015
Interested Parties	1 Representation on behalf of 4 Interested Parties in relation to Licensing Objectives 'The Prevention of	26 August 2015

	Crime and Disorder,' 'The Prevention of Public Nuisance' and 'Public Safety.'	
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Members noted there have been no additional Representations received from any other Responsible Authority or any other Interested Party.

Oral Representation received from:

Name	Details
Applicant	The Applicant outlined the application, as set out in the submitted documents and responded to Members questions.
Environmental Protection	The Public Protection Officer outlined his Representation in support, as set out in the submitted documents and responded to Members questions.
Nominated Representative on behalf of 4 Interested Parties	The Representative acting on behalf of 4 Interested Parties mentioned the objection, by reference to the Solicitors letter dated 26 August 2015, presented the proposed future development of the building and where able, and responded to Members questions.

Additional Information:

For ease and clarity and with Members consent, the Senior Licensing Officer circulated a table which showed the premises licence current, proposed deleted and amended conditions.

Decision:

That the application for a Variation to a Premises Licence, in respect of Park Lane, 1 Torwood Street, Torquay TQ1 1ED be granted, subject to the following conditions:

The Prevention of Crime and Disorder

1. A CCTV system of an evidential standard must be installed to the satisfaction of the police, and the system to be in operation at all times the premises are open to the public. All recordings from that system must be kept for a period of 14 days and the police to have access to recordings at

any reasonable time.

2. In respect of the roof terrace area, CCTV cameras shall be installed in this area to the satisfaction of the police and there shall be a monitor situated behind the ground floor bar for viewing by staff.
3. On any Wednesday, Friday, Saturday and Sunday nights SIA door stewards shall be employed from 2200 hours until closing time at a ratio of 2 stewards for the first 100 patrons, and thereafter 1 additional steward for each 100 patrons. This condition shall also apply to Christmas Eve and New Years Eve when they do not fall on a Wednesday, Friday, Saturday or Sunday. On all other occasions the Premises Licence Holder shall risk assess the need for door stewards and employ these as such numbers and at such times determined by that risk assessment.
4. SIA door steward, when on duty, must wear distinctive dress.
5. On every operational day when SIA door stewards are required, then those stewards who are employed for front of house duties must wear yellow high visibility jackets for the entirety of their duty.
6. Nominated SIA door stewards and members of management must carry effective two way radios with earpieces and used at all times after 2200 hours. This equipment is kept in good working order.
7. Subject to condition 3 above, on every occasion that the premises sells alcohol after midnight and then closes after 0030 hours, SIA door stewards shall be employed at the premises from 2200 hours until closing.
8. At all times that SIA door stewards are employed at the premises after 2200 hours, an SIA door steward shall be positioned at the entrance to the premises.
9. From 2300 hours until the premises close, members of staff and SIA door stewards shall direct patrons to the roof terrace area if they suspect that the patron(s) is leaving by the main entrance to smoke outside the premises.
10. At all times that the roof terrace area is open, regular checks are to be made by staff and after 2200 hours, an SIA door steward shall be situated in that area. Their duties will include, ensuring that persons using the roof terrace behave in an orderly manner, and that persons shouting, singing or acting in a way that may cause a noise nuisance will be asked to leave the roof terrace area and if necessary, the premises.
11. The premises will maintain membership and actively participate in the Nitenet Radio Scheme, with the radio being in the possession of either the Head SIA Door Steward (when SIA door stewards are employed on the premises) or the Duty Manager.
12. Notices shall be prominently displayed within all bars of the Premises informing patrons who wish to smoke to use the roof terrace area.

13. Consumption of alcohol on the ground floor terrace shall be by persons seated, no alcohol shall be served in glass bottles within those areas from which it is intended or likely that a person shall drink.
14. In relation to the consumption of food and drink (alcoholic and non-alcoholic) on the ground floor terrace, there shall be no consumption after 0200 on Friday and Saturday and after 0000 Sunday to Thursday.
15. Patrons leaving the premises for all purposes between 0000 hours on Saturday nights until 0200 hours on Sunday mornings will not be permitted back into the premises without paying an entrance fee.
16. There must be no entry/re-entry after 0200 hours.
17. The number of persons admitted to the premises on any one occasion shall not exceed a safe occupancy. This is in agreement with the responsible authorities notably Devon Fire and Rescue and the Health and Safety Team.
18. All bar staff will be trained in relation to their responsibilities in relation to the Licensing Act in respect of the sale/supply of alcohol. After 2200 hours at least one manager who holds a personal licence shall be on the premises whilst open to the public.

19. From 2300 hours all drinks must be served in toughened/strengthened glasses or polycarbonate/plastic vessels and no drinks will be served in glass bottles from which it is intended or likely that a person shall drink. All glasses are stamped in accordance with Weights and Measures Legislation.
20. Adequate glass and bottle collection shall be undertaken throughout the premises.
21. There must be a zero tolerance with drugs and have a drugs policy in force on the premises, with the objective of securing, as far as reasonably practical, the safety of others attending the premises.
22. A secure drug deposit box approved by Devon & Cornwall Constabulary shall be located on the premises for the safe storage of any drugs found or seized.
23. The DPS or member of the management team shall attend at least two Torquay Forum Meetings per calendar year, and any other meetings organised by the Police in relation to high risk events.
24. The Licensees shall work with the Local Authority and support any seasonal and other advertising campaigns.

The Prevention of Public Nuisance

1. Noise from the premises shall not be audible within any dwelling with windows open for normal ventilation especially after 2300 hours. This shall be assessed from the boundary to the nearest residential properties, on all sides of the licensed premises. The criteria that shall be applied are:-
 - (i) Before 2300 hours – Noise emanating from the premises shall not be clearly distinguishable above other noise.
 - (ii) After 2300 hours – Noise emanating from the premises shall not be distinguishable above background levels of noise.
 - (iii) The local authority shall reserve the right in cases of tonal noise and where premises are attached to others, to make further assessments from within the residential property.
2. Noise or vibration shall not emanate from the premises such as to cause persons in the neighbourhood to be unreasonably disturbed.
3. Doors and windows must be kept shut during entertainment to reduce noise breakout. A management scheme will be in place to ensure this situation remains.

4. The volume of amplified sound used in connection with the entertainment provided shall at all times be under the control of the licensee/management and the controlling mechanism shall be operated from a part of the premises not accessible to the public.
5. All regulated entertainment shall be played through a noise limiter which is set at a level as agreed with the local responsible authority for public nuisance. The noise limiter shall be made tamper proof and any adjustments to sound levels shall only be made in consultation with the responsible authority for public nuisance.
6. The level of amplified music shall be reduced automatically by 1/3 of the agreed level set by the noise limiter at 0300 hours until closing.
7. The volume of any regulated entertainment will be under the control of the management at all times. Should monitoring indicate that the volume should be reduced, management shall take steps to ensure levels are reduced immediately.
8. No changes that increase the level of volume to the Public Address system shall be made without prior consultation with the local Environmental Health Department; this includes moving of speakers, addition or removal of any equipment and the use of guest acts/DJ's own equipment.
9. Entrances must be provided with lobbies with automatic door-closers. The lobbies shall be in use throughout the time of entertainment
10. Lobbies shall be constructed and operated in such a way to ensure that if regulated entertainment is being played inside the premises, only one door shall be opened at any one time to prevent noise breakout. These doors shall be fitted with automatic closers.
11. Where any proposed structural changes are made to the premises, agreement must be reached with the Environmental Health Department that these works will not increase noise breakout before the works are commenced.
12. From 2300 hours until the premises closes, SIA door stewards shall monitor the external areas and ensure that patrons behaving in a noisy manner are either asked to leave or asked to return inside the premises.
13. SIA door stewards positioned at the exits shall take all reasonable steps to ensure that patrons leave the premises in a quiet respectful manner and do not congregate outside the premises.
14. A management scheme shall be put in place to prevent excessive queuing into the street and particularly into Park Lane.
15. Cooking, noxious or persistent smells from the premises will not cause a nuisance to nearby properties.

16. Provision of mechanical ventilation and air conditioning system shall not allow noise breakout from the premises or cause a nuisance by its operation.
17. Regular maintenance shall be carried out on all plant and machinery to ensure that noise disturbance from such sources is kept to a minimum.
18. The placing of refuse such as bottles in to skips outside the premises shall take place at times that will prevent disturbance to nearby properties and the movement of bins and rubbish outside the premises shall be kept to a minimum after 2200 hours.
19. Delivery of kegs, bottles, food and other materials shall be carried out between the hours of 0930 hours and 1730 hours weekdays.
 - a) The licensee shall ensure that staff leaving the premises after a late night shift will conduct themselves in a manner as not to disturb nearby residents.
20. There shall be no use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas.
21. The roof terrace will close at:

Sundays – midnight, except on Sundays of Bank Holiday Weekends when the terrace will close at 0300 hours on the Monday morning.

Monday and Tuesdays – midnight.

Wednesdays – the terrace will close at 0200 hours on the following day (i.e. Thursday).

Thursday - midnight

Fridays and Saturdays – the terrace will close at 0300 hours on the following days (i.e. Saturday and Sunday mornings)
22. Other than recorded background music, no live or amplified music shall be permitted on the roof terrace area at any time.
23. The volume of background music played on the roof terrace area must be set and maintained at a level that is agreed by a Torbay Council Environmental Health Officer.
24. Background music on the roof terrace area must cease at 0200 hours and shall switch off automatically.
25. After 2300 hours, the number of patrons permitted to use the roof terrace area shall be limited to a maximum of 80 patrons at any one time.

26. Patrons shall not be permitted to take drinks onto the roof terrace area after 2300 hours.
27. All patrons consuming drinks on the roof terrace area must cease doing so at 2300 hours and arrangements must be in place by the Premises Licence Holder for all glasses to be cleared from that area at 2300 hours. Those patrons wishing to continue drinking must be advised to do so inside the Premises.
28. Patrons who behave in a noisy or disorderly manner on the roof terrace area shall be removed from that area and where appropriate asked to leave the Premises. Details of this noisy or disorderly conduct shall be recorded in a log book and where appropriate, details of the patron(s) causing the noise or disorderly conduct shall be recorded in that log book too.
29. Signage must be displayed in the roof terrace area to remind patrons to keep noise to a minimum, warning customers who are excessively noisy or disorderly that they will be removed from that area and potentially the Premises.
30. If Torbay Council receives a complaint of noise nuisance emanating from the Premises and an Environmental Health Officer of Torbay Council deems noise nuisance to exist and the upholds the complaint, the Premises Licence Holder shall on receiving written confirmation of that complaint from Torbay Council:
 - (a) Co-operate with Torbay Council's Environmental Health Officers and implement remedial measures to the satisfaction of the Environmental Health Officers immediately or as reasonably practicable to do so, as determined by the Environmental Health Officer; and
 - (b) Where remedial action cannot be identified and remediated to the satisfaction of the Environmental Health Officer, the roof terrace area shall be closed to all patrons at 2000 hours until such time that the noise nuisance can be identified and the necessary remedial work can be carried out.
31. The roof terrace is to have a solid perimeter wall of at least eight feet, with the exception of the Torwood Street elevation where it shall be six feet. The wall is to have a density of at least 10 kilograms per square meter with no gaps.
32. Non sound reflective surfaces shall be used on the walls and floor where practically possible.

Public Safety

1. The fire safety measures with which the premises are provided shall be maintained in good working order, and their adequacy shall be determined on a regular basis by the carrying out of a fire risk assessment as required

by and in accordance with the Fire Precautions Regulations.

2. In the event of evacuation caused by failure of general lighting, the public shall not be readmitted until the general lighting is fully restored.
3. The premises shall undertake to maintain a safe occupancy level.
4. Where crowd management measures are needed, all reasonable steps shall be taken to ensure that such persons do not obstruct exits, yards, passageways, stairways and ramps and that portable barriers shall be provided to prevent crushing and keep queues in an orderly fashion.
5. Suitable and clearly identifiable areas for dancing must be set aside, and separate from the dance area suitable means of providing cool air/ventilation and adequate seating must be provided.
6. Suitable and sufficient sanitary accommodation must be provided, clearly marked and in good order at all times.
7. No explosive or highly inflammable material shall be brought into the premises.
8. No pyrotechnics shall be used on the premises.
9. Lasers must not be used on the premises without consultation with the Licensing Authority and compliance with HS(G) 95.

The Protection of Children from Harm

1. No persons under the age of 18 shall be employed in connection with the sale of alcohol after 2300 hours.
2. Persons under the age of 18 shall be required to vacate the premises by 2200 hours, unless they are attending an under 18 event.
3. Persons under the age of 18 shall not be allowed into the Nightclub on the first floor at anytime unless attending an under 18 event.
4. Suitable food and non-alcoholic beverages shall be available at all times that children are allowed on the premises.
5. All bar staff shall be suitably trained to prevent the sale of alcohol to under 18's.
6. The premises shall operate a Challenge 25 Policy and any individual who appears to be under the age of 25 shall be requested to provide an approved form of identification bearing a photograph.

7. **Under 18 events may take place to which the following conditions shall apply:**

- 7.1 These events shall finish no later than 2300 hours, after which there will be a 30 minute period before re-opening to over 18's.
- 7.2 The Police shall be notified in writing or email at least 14 days prior to the event.
- 7.3 SIA door stewards must be employed throughout the event, which shall include at least one female steward. All stewards shall have undergone Disclosure & Barring Service check.
- 7.4 All promotional material relating to alcohol shall be removed.
- 7.5 All alcohol shall be locked and or obscured from view.
- 7.6 All gaming machines with prizes shall be unplugged and locked.
- 7.7 Any person refusing to be searched shall be refused entry.
- 7.8 The event shall be promoted to ages 14 and above.
- 7.9 Foreign student events shall be restricted to foreign students only.
- 7.10 Throughout under18 events, the DPS or personal licence holder must be present.

Reasons for Decision:

Having carefully considered all the written and oral Representations, Members resolved to grant the licence having been satisfied that the 73 conditions stated in their decision would seek to promote the Licensing Objectives. In addition, Members did not anticipate that granting this application would add to the problems of crime and disorder and/or public nuisance in the area, as in accordance with the Licensing Authority's Licensing Statement of Principles 2011.

In coming to that decision, Members had regard to the written and oral Representation of Torbay Council's Public Protection Officer which supported the application and noted that the Applicant had engaged in significant consultation with this Officer prior to submitting his application, the contents of which included that recommended by the Officer.

Members also had particular regard to the Officers submission that following the grant of a previous variation application in July 2014, the department had received no complaints about the operation of these premises; that the Applicant had been operating the proposed changes in the application before them under Temporary Event Notices with no complaint and that there had been a number of representations made by Interested Parties who attended the hearing in 2014 and that it was a positive testament to the Applicant that none of those residents were here today.

Members also noted the absence of any Representation from Devon and Cornwall Constabulary's Licensing Department and accepted the submission of the Applicant that he had consulted with the relevant Officers of that department prior to submitting his application. In light of this, Members drew the inference that the Police had no concerns regarding this application.

Members gave careful consideration to the Representation submitted on behalf of the Interested Parties whose residential properties were in close proximity to the premises. Members resolved that the intention of the application to facilitate a winding down period was in their opinion, beneficial to such properties in respect of patrons being dispersed from a late night licensed premise which is situated in an area of mixed use and central to the Borough's night time economy.

Members also had specific regard to each relevant point submitted in the Brecher Solicitors letter dated 26 August 2015. In particular, that set out in section 3. When questioned in respect of this, the nominated representative was unable to give any real evidence of complaint, as he had only been asked to attend the meeting two days earlier. It was submitted by the representative that it was his clients' belief that the change will cause a problem and would hinder future development of the building. On the points that Members were able to alleviate such concerns, they were satisfied that the contents of the 73 conditions addressed this and were reassured that there was no evidence before them that the Applicant had breached his previous premises licence conditions.

In concluding, Members noted that should issues arise as a result of this grant, that both Interested Parties and the Responsible Authorities could call a Review of this Premises Licence.

Chairman



Minutes of the Licensing Sub-Committee

22 October 2015

-: Present :-

Councillor

Councillors Cunningham, Manning and Thomas (D) (In place of Ellery)

29. Election of Chairman/woman

Councillor Manning was elected as Chairman for the meeting.

30. Apologies

It was reported that the membership of the Sub-Committee had been amended for this meeting by including Councillor Thomas D instead of Councillor Ellery.

31. Minutes

The Minutes of the meeting of the Sub-Committee held on 17 September 2015 were confirmed as a correct record and signed by the Chairman.

32. Taxi Driver Report

Members considered a report concerning a Torbay Council Licensed Driver who has been found guilty for an offence of violence. Members considered whether Mr Boyle remains a 'fit and proper person' to continue to hold a Torbay Council Driver's licence.

Members were advised that Mr Boyle had been convicted of Assault by Beating on 20 August 2015 and had advised Torbay Council of the outcome of the court sentence on 21 August 2015, as required by the Council's Hackney Carriage and Private Hire Policy.

Members noted that the offence was not committed whilst Mr Boyle was working.

Members considered the mitigating circumstances put forward by Mr Boyle.

Members noted that Mr Boyle is the current Chairman of the local Taxi Association.

Decision:

That Mr Jud Boyle be formally warned in this instance.

Reason for Decision:

In coming to that decision, Members carefully considered having been charged with the responsibility to determine the driver's licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care or any other vulnerable person known to them to get into a vehicle with the Respondent alone. An unequivocal and unanimous answer by Members to this question was 'yes.'

In determining that Mr Jud Boyle remained a 'fit and proper person' to be a licensed driver by Torbay Council, Members were reassured by his assertions of future conduct, that the offence had not taken place whilst he was on duty as a licensed driver, that he had been a Licensed Driver for 16 years with no real cause of concern, that he had an 11 year non-fault driving record, that he had kept Torbay Council's Licensing Department updated throughout the Court proceedings, the positive motion of confidence in him by members of the Association and the character reference given by Mr John Cree.

In concluding, Members noted that the previous incident during November 2013 which resulted in four drivers licensed by Torbay Council, of which Mr Jud Boyle was one and at that time was the victim, and the matter before them today, involved the same individual and not members of the public. Given the restraining order in place and the assertions of future conduct, Members were reassured that such incidents would not occur in the future.

33. Taxi Driver Report

Members considered a report which concerned a Torbay Council Licensed Driver who had pleaded guilty and been convicted of an offence under Section 3 of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988, namely, 'driving without due care and attention.'

Members considered whether Mr Ryan remains a 'fit and proper person' to continue to hold a Torbay Council Driver's licence.

The Senior Licensing Officer advised Members that Mr Ryan had been fined £500 with £285 additional costs and issued with 7 penalty point which was reported in the Local Press. Mr Ryan had not reported his matter to Torbay Council, contrary to the requirement in the Council's Hackney Carriage and Private Hire Policy which he had received as part of the licensing process.

The Senior Licensing Officer advised Members that should the decision be for Mr Ryan to retain his Torbay Council issued Driver's Licence, then it is recommended that Mr Ryan undertakes a Driving Standard Assessment within 3 months of the Licensing Sub-Committee hearing date, as set out in the Torbay Council's Hackney Carriage (Taxi) and Private Hire Policy.

Members heard from Mr Ryan and the circumstances surrounding the incident and asked, with the assistance of Google Maps, for confirmation of the location of the incident.

Decision:

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.

That Mr Anthony 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.

Reason for Decision:

Having carefully considered all the written and oral Representations, Members resolved to suspend Mr Anthony Ryan Torbay Council Drivers Licence, as they could not be satisfied that he remained a 'fit and proper' person to hold such a licence.

In coming to that decision, Members carefully considered having been charged with the responsibility to determine the driver's licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care or any other vulnerable person known to them to get into a vehicle with the Respondent alone. An unequivocal and unanimous answer to this question by Members', was 'no.'

In determining that Mr Anthony Ryan does not remain a 'fit and proper person' to be a driver licensed by Torbay Council and noting their primary duty which is to ensure public safety, Members had serious concerns about Mr Ryan's driving ability and the unfathomable error of judgement made by him whilst carrying out his duties as a driver licensed by Torbay Council. Such concerns were borne out of the fact that Mr Ryan had, by his own admission, carried out a u-turn on the A30 dual carriage way at approximately 01.00 and ended up driving towards oncoming traffic in the carriages fast lane, whilst ferrying a customer. Members noted that this action had caused an oncoming vehicle to swerve to avoid hitting his vehicle and resulted in Mr Ryan carrying out a second u-turn on the same dual carriage way to go to the aid of that driver who he had caused to crash in to the central reservation.

In considering public safety further, Members resolved that the error of judgement made by Mr Ryan could easily have resulted in a number of fatalities and that he was very lucky not to be faced with more serious consequences.

Members had grave concerns that Mr Ryan appeared to take little or no responsibility for his actions and showed no remorse, instead blaming others and the electronic devices he had on board and even when challenged, he did not depart from this belief but instead stated those were the facts.

Members gave lengthy and serious deliberation in revoking Mr Ryan's drivers licence with immediate effect but subsequently resolved to allow him the opportunity to undertake the driving course, as stated in the decision and that if passed successfully, he would in their opinion become a 'fit and proper' person to be a licensed driver by Torbay Council. In determining the said course, Members did consider the course proposed by the Licensing Officer, as set out in the Torbay Council's Hackney Carriage (Taxi) and Private Hire Policy but resolved that in light of all the circumstances before them, this course did not go far enough to give them the reassurances they needed in upholding their duty of ensuring public safety.

In determining the second part of their decision, Members were concerned that Mr Ryan had not reported his conviction to Torbay Council, contrary to the requirement in Torbay Council's Hackney Carriage and Private Hire Policy which he had been previously issued with. When asked where his copy of this Policy was, Mr Ryan responded to say it was in a folder at home somewhere and when asked why he did not report the conviction, Mr Ryan responded to say that he forgot he had to and thought the Operator would, because they were aware of the incident. Members found these responses lacked any responsibility or regard for the seriousness of the Policy and fell well below that which they could reasonably expect of a driver licensed by Torbay Council.

Chairman/woman



Minutes of the Licensing Sub-Committee

10 December 2015

-: Present :-

Councillors Doggett, King and Stubley

34. Election of Chairman/woman

Councillor Doggett was elected as Chairman for the meeting.

35. Minutes

The Minutes of the meeting of the Sub-Committee held on 3 September 2015 were confirmed as a correct record and signed by the Chairman.

36. Application for Torbay Council Driver's Licence

Members considered a report on an application for a Torbay Council issued Driver's Licence. Members were informed that the applicant, Mr Nasim, had previously had his licence revoked by a Licensing Sub-Committee on 19 December 2013. On the 19 December 2013, Mr Nasim's licence had been revoked because Members at the time were no longer satisfied that Mr Nasim remained a 'fit and proper person' to hold such a licence.

At the Licensing Sub-Committee, Members heard the circumstances surrounding the revocation of Mr Nasim's previous licence and the steps he had since taken to address his behaviour.

Decision

That Mr Imran Nasim's application for a Torbay Council Driver's Licence be approved subject to the following conditions:

- i) That Mr Nasim formally applies to the Licensing Authority for a Driver's Licence and carries out the necessary requirements of that application.
- ii) During the initial three month period of Mr Nasim's licence, Mr Nasim will be required to attend anger management appointments, at least once per month with evidence of attendance being submitted to the Licensing Authority;
- iii) During the initial six months period of Mr Nasim's licence, Mr Nasim will be required to meet once a month with a Licensing Enforcement Officer of the

Licensing Authority, for support, monitoring and to address any issues of concern that may arise; and

- iv) That the anger management appointments and appointments with the Licensing Enforcement Officer shall alternate on a fortnightly basis.

Reasons for Decision

Members were initially mindful to refuse the approval of a Driver's Licence in respect of Mr Nasim, because they could not be satisfied that the two year period which had elapsed between the violent incident and the similar incident which occurred only eight weeks prior to that was a long enough period for Mr Nasim to demonstrate that lessons had been learnt and that he was a reformed character which in turn, met their expectation of what is a 'fit and proper' person to hold such a licence. This coupled with short length of time that Mr Nasim had voluntarily undertaken sessions of anger management, did not reassure them that Mr Nasim would have in place the necessary support should issues arise again as they had when he was previously a licensed driver and on duty.

However after careful consideration of all the written and oral Representations, Members resolved to approve the granting of the licence, having been satisfied that the conditions imposed with this approval would eliminate their immediate concerns.

In coming to that decision, Members gave careful consideration to their primary duty in ensuring public safety and had regard to the fact that at no time was Mr Nasim's violence or aggression directed towards any members of the public or customers. Therefore they were satisfied that the test set out in page 7 of the report was met with a conclusive yes.

Members were reassured to note that Mr Nasim had not come to the attention of Devon and Cornwall Constabulary during the two year period since his Driver's Licence was revoked. This was evidenced by the author of the reports submission when reviewing Mr Nasim's Disclosure and Barring Service check.

In concluding, Members noted Mr Nasim's evident remorse and notable maturity in his submissions and when questioned what he would do differently if faced with similar circumstances, Members were reassured by his responses and with the additional conditions, that he was unlikely to repeat the behaviour which led to the revocation of his previous licence.

Should issues of concern arise following Mr Nasim being granted a Driver's Licence, Members would encourage those responsible for issuing and monitoring driver's licensed by Torbay Council to return Mr Nasim before a Licensing Sub-Committee, where appropriate action can be taken to address these concerns.

Chairman/woman



Minutes of the Licensing Sub-Committee

18 February 2016

-: Present :-

Councillors Barnby, Doggett and Sykes

(Also in attendance: Councillors Brooks and Thomas (D))

37. Election of Chairman/woman

Councillor Doggett was elected as Chairman for the meeting.

38. Minutes

The Minutes of the meeting of the Sub-Committee held on 10 December 2015 were confirmed as a correct record and signed by the Chairman.

39. Exclusion of the Press and Public

Prior to consideration of the item in Minute 40 the press and public were formally excluded from the meeting on the grounds that the item involved the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended.)

40. Taxi Driver Report

Members considered an exempt report concerning a Torbay Council Licensed Driver and whether he remained a 'fit and proper person' to hold a Torbay Council Driver's Licence. At the hearing Members of the Licensing Sub-Committee heard submissions from the Environmental Health Manager (Commercial) and the Respondent.

Decision:

That the Respondent's Torbay Council Driver's Licence be revoked in accordance with Section 61(1)(b) of the Local Government (Miscellaneous) Provision Act 1976 and that this revocation shall have immediate effect, in accordance with Section 61(2B) of the Local Government (Miscellaneous) Provision Act 1976.

Reason for Decision:

Having carefully considered all the written and oral Representations, Members resolved to revoke the Respondent's Driver's Licence, as they could not be satisfied that he remained a 'fit and proper person' to hold such a licence.

In coming to that decision, Members considered having been charged with the responsibility to determine the driver's licence, whether they would allow their son

or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care or any other vulnerable person known to them to get into the vehicle with the Respondent alone. An unequivocal and unanimous answer to this question by Members', was no.

In determining that the Respondent does not remain a 'fit and proper person' to be a driver licensed by Torbay Council, Members had due regard to their duty to protect the public, in the knowledge that a licensed driver is in a position of trust and on the evidence before them, the Respondent had conducted himself in a manner that was inappropriate, unacceptable and fell well below the standard expected by them of a driver licensed by Torbay Council.

In considering the submissions of the Respondent in that the female was extremely distressed, suicidal and that he acted merely to comfort her, Members resolved that his admitted conduct during the journey was both unacceptable and inappropriate. In their opinion, he could reasonably have been expected and should have taken the lone, young female passenger directly home and alerted anyone at the property of her distressed state or upon learning that there was no one at home, reported immediately the circumstances to the emergency services and notified his operator.

Although Members noted the Respondents submissions and remorse, in that his actions were inappropriate and foolish and that he regretted, felt embarrassed and disgraced by what he had done. It was only on being arrested and under Police caution that he had admitted to the alleged conduct, in part which in turn, found himself before the Licensing Sub-Committee.

Whilst Members heard from the Respondent with regards to his personal financial circumstances and how losing his driver's licence would affect him, Members were advised by the Council's Senior Solicitor and Deputy Monitoring Officer that this was not a matter that they should take in to account when coming to their decision.

Members considered whether to suspend the Respondents driver's licence but unanimously resolved that due to such a serious error in judgement made by the Respondent, in behaving in such an inappropriate and unacceptable manner towards the lone, young female passenger meant that the only appropriate outcome in their opinion was an outright revocation.

In coming to the decision to revoke the Respondent's driver's licence, Members resolved that it should be with immediate effect, as in their opinion it was in the interest of the public safety to do so. Members' reasoning for this determination is due to the perceived risk which they believe the Respondent poses, following his inappropriate and unacceptable behaviour in these circumstances and the fact that he only admitted to kissing the lone, young female on the lips when the written submissions of the Police was put to him during the hearing and that he had not volunteered this admitted detail, when submitting how he only acted to comfort the lone, young female passenger.

Agenda Item 6



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

Title: **Review of Torbay Council Driver's Licence**

Wards **All**

Affected:

To: **Licensing Sub-Committee** On: **24th March 2016**

Key Decision: **No**

Change to **No** Change to Policy **No**

Budget: Framework:

Contact Officer: **Steve Cox**

☎ Telephone: **01803 208034**

✉ E.mail: Steve.cox@torbay.gov.uk

1. What we are trying to achieve

- 1.1 This report concerns a Torbay Council Licensed Driver who has been disqualified by Bodmin Magistrates' Court from driving for 56 days. This report is to consider whether the licensed driver remains a 'fit and proper person' to hold a Torbay Council Driver's Licence.

2. Recommendation(s) for decision

- 2.1 There is no recommendation.

3. Key points and reasons for recommendations

- 3.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1976, 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 Local Government (Miscellaneous Provisions) Act 1976 respectively 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'.
- 3.3 Section 61 Local Government (Miscellaneous Provisions) Act 1976 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:—
- (a) that he has since the grant of the licence—
 - (i) been convicted of an offence involving dishonesty, indecency or 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.

- 3.4 On the 10th February 2016 Torbay Council Licensing Authority received an email from Mrs Nicola Lyness notifying them that she had been disqualified by Bodmin Magistrates' Court from driving for 56 days for exceeding the statutory speed limit on a public road, as a result of accruing 12 penalty points
- 3.5 This offence took place on the 2nd May 2015, and followed two similar offences on the 13th April 2014 and one failing to comply with traffic light signals on the 17th March 2014.
- 3.7 There is a right of Appeal against the Licensing Sub-Committees decision to the Magistrates' Court 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.

**Frances Hughes
Assistant Director Community and Customer Service**

Supporting information to Report

A1. Introduction and history

A1.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.

A1.2 Sections 51 and 59 Local Government (Miscellaneous Provisions) Act 1976 respectively 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 Section 61 Local Government (Miscellaneous Provisions) Act 1976 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:—

(a) that he has since the grant of the licence—

(i) been convicted of an offence involving dishonesty, indecency or 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.

A1.4 On the 10th February 2016 Torbay Council Licensing Authority received an email from Mrs Nicola Lyness notifying them that she had been disqualified by Bodmin Magistrates' Court from driving for 56 days for exceeding the statutory speed limit on a public road, as a result of accruing 12 penalty points. See Appendix one.

A1.5 This offence took place on the 2nd May 2015, and followed two similar offences on the 13th April 2014 and one failing to comply with traffic light signals on the 17th March 2014. The details of this are included within Appendix two.

A1.6 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.

A1.7 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.*
- A1.8 Torbay Council’s Hackney Carriage & Private Hire Licensing Policy says the following regarding minor traffic offences;

7 *Minor traffic offences*

- 7.1 *Convictions for minor traffic offences will not prevent a person from being considered for a licence. If a new applicant has six live penalty points on their driving licence for such offences then the application may be granted subject to a strong written warning. If an applicant has more than six penalty points on their licence then the application will normally be refused and no further application will be considered until a period of at least 12 months free from convictions or fixed penalties of this type has elapsed.*
- 7.2 *In the case of a licensed driver accumulating nine or more penalty points the Licensing Authority may refuse to renew, suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 12 months free from convictions of this type has elapsed.*

- A1.9 Torbay Council’s Hackney Carriage & Private Hire Licensing Policy also says the following regarding endorsements;

- 5.11 *Where an existing licensed driver receives over 6 (six) endorsement/s or penalty points on their licence within each licensing year, the Licensing Authority will require that person to undertake the same assessment. If this is not obtained within 3 months, then the existing licensed drivers*

badge will be suspended until the necessary driving standards assessment is completed.

The assessment referred to is the Driving Standards Assessment run by the DVLA.

A1.10 A letter advising Mrs Nicola Lyness of this hearing was hand delivered to his home address on the 14th March 2016. See Appendix three.

A1.11 There is a right of Appeal against the Licensing Sub-Committees decision to the Magistrates' Court 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 Due to the number and nature of the driving misdemeanours, there is a risk to public safety, should Mrs Nicola Lyness continue to drive a licensed vehicle as granted by Torbay Council. This could be mitigated by successfully undertaking the Driving Standards Assessment and subsequent change in driving conduct.

A2.1.2 If Mrs Nicola Lyness Torbay Council issued Drivers Licence is suspended or revoked; there is a risk of an Appeal to the Magistrates' Court.

A3. Options

A3.1 The options are:

- (i) to revoke Mrs Nicola Lyness's Torbay Council Driver's Licence, without immediate effect;
- (ii) to revoke Mrs Nicola Lyness's Torbay Council Driver's Licence, with immediate effect;
- (iii) to suspend Mrs Nicola Lyness's Torbay Council Driver's Licence.
- (iv) to issue Mrs Nicola Lyness with a warning; and/or
- (v) require Mrs Nicola Lyness to undertake a Driving Standard Assessment within 3 months of this hearing date, as set out in Section 5.10 of Torbay Council's Hackney Carriage (Taxi) & Private Hire Policy;
- (vi) 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. However, should Mrs Nicola Lyness continue to work as a Torbay Council Licensed Driver, there is always the potentiality that a similar issue may arise, which would result in an equalities or crime and disorder matter that needs to be addressed.

A6. Consultation and Customer Focus

A6.1 There has been no public consultation on this matter and there is no requirement for the 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.

Annexes

Appendix 1 Email from Mrs Nicola Lyness dated 10th February 2016.

Appendix 2 DVLA report dated 18th February 2016.

Appendix 3 Letter to Mrs Nicola Lyness dated 14th March 2016.

Documents available in members' rooms

None

Background Papers:

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

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

Agenda Item 6

Appendix 1

From: Nicky Lyness
Sent: 10 February 2016 15:50
To: Noble, Craig
Subject: RE: UNCLASSIFIED: RE: Conviction update

Hi Craig
I had 9 points on licence which expire May 2017 and was caught by manned camera 39 in a 30 which took me to 12 points. Disqualified for 56 days - due back April 7th.
Anything else you need?
Kind regards
Nicky

Sent from my Sony Xperia™ smartphone
---- Noble, Craig wrote ----

Hi Nicky

This could affect your renewal I need to look into this, I will need as much information as possible please as you would not normally get disqualified for an SP30. Can you send me all of the details and I will see what I can do. Let me have this information as soon as possible please.

Craig

From: Nicky Lyness
Sent: 10 February 2016 15:26
To: Noble, Craig
Subject: Conviction update

Hi Craig
For your records I have today been disqualified for 56 days for an SP 30.
I am eligible to drive again on April 7th - will this effect my renewal?
Kind regards
Nicky



GOV.UK

View your driving licence information

Name

Mrs

**NICOLA CLAIRE
LYNESS**

Date of birth

Gender

Female

Address

Licence details

Driving status

**You are disqualified until 5 Apr
2016**

Driving licence number

28NC9DH

65

To update or renew your driving licence details visit the [driving licence \(https://www.gov.uk/browse/driving/driving-licences\)](https://www.gov.uk/browse/driving/driving-licences) section



Licence summary

You can share this licence information summary with someone else like your employer or a car hire firm.

Mrs NICOLA CLAIRE LYNESS

Driving licence number:
XXXXXXXXX088NC9DH

Check code:
RFsYB7vY

Date summary generated:

18 February 2016 14:50

Licence issue number:
65

This code
• is case sensitive
• is valid for 21 days
• can only be used once

Driving Status

Disqualified

Endorsements

5 0

Offences Points

Licence valid from:
2 July 2014

Licence valid to:
10 February 2016

Endorsements

TT99

Penalty points:

Offence date:

Expiry date:
10 February 2019

Description:

'totting-up' - if the total of penalty points reaches 12 or more within 3 years

SP30

Penalty points:

Offence date:
2 May 2015

Expiry date:
2 May 2018

Description:

Exceeding statutory speed limit on a public road

SP30

Penalty points:
3

Offence date:
13 April 2014

Expiry date:
13 April 2017

Description:

Exceeding statutory speed limit on a public road

SP30

Penalty points:
3

Offence date:
13 April 2014

Expiry date:
13 April 2017

Description:

Exceeding statutory speed limit on a public road

TS10

Penalty points:
3

Offence date:
17 March 2014

Expiry date:
17 March 2017

Description:

Failing to comply with traffic light signals

What to do next

How to share your licence summary

Give the check code or this licence summary to someone else, like your employer or a car hire firm. They'll also need the last 8 characters of your driving licence number.

Where to view a shared licence summary

Visit <https://www.gov.uk/check-driving-licence> and enter the last 8 characters of the driving licence number and the check code.

Check code not working?

If the code generated is older than 21 days, or the code has been viewed once before, a new code must be created.



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Please reply to: Mr Steve Cox

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

Mrs N Lyness
(address removed)

My ref: R:226599/SJC
Your ref:
Telephone: 01803 208025
Website: www.torbay.gov.uk
Date: 14th March 2016

Dear Mrs Lyness

Re: Disqualification from driving - Section 61 Local Government (Miscellaneous Provisions) Act 1976

I am writing to you with regard to your disqualification from driving on 10th February 2016. Due to the nature of this offence and that Torbay Council's Hackney Carriage and Private Hire Licensing Policy 2016 treats this conviction as a serious matter, a hearing is required to be held in front of a Licensing Sub-Committee.

A hearing has been arranged at 9.30am on Thursday 24th March 2016 to consider that conviction and whether you remain a 'fit and proper' person to hold a Torbay Council issued Drivers Licence. This will take place in the Meadfoot Room at Torquay Town Hall, Castle Circus, Torquay TQ1 3DR.

I would strongly advise that you attend, to be able to make representation to the committee and to answer any questions. I would also recommend you consider taking some legal advice or/and are represented at the hearing.

I enclose a copy of the committee report for your information.

If you have any questions then you can contact either myself or Craig Noble.

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

Yours sincerely

A handwritten signature in black ink that reads 'Stephen Cox'.

Mr Steve Cox
Environmental Health Manager Commercial
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.

Agenda Item 7



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

Title: **Review of Torbay Council Driver's Licence**

Wards **All**

Affected:

To: **Licensing Sub-Committee** On: **24th March 2016**

Key Decision: **No**

Change to **No** Change to Policy **No**

Budget: Framework:

Contact Officer: **Steve Cox**

☎ Telephone: **01803 208034**

✉ E.mail: Steve.cox@torbay.gov.uk

1. What we are trying to achieve

- 1.1 This report concerns a Torbay Council Licensed Driver who has been convicted of an offence under the Crime and Disorder Act 1998 Section 31(1)(b) for racially/religiously aggravated intentional harassment/alarm/distress. This report is to consider whether the licensed driver remains a 'fit and proper person' to hold a Torbay Council Driver's Licence.

2. Recommendation(s) for decision

- 2.1 There is no recommendation.

3. Key points and reasons for recommendations

- 3.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1976, 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 Local Government (Miscellaneous Provisions) Act 1976 respectively 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'.
- 3.3 Section 61 Local Government (Miscellaneous Provisions) Act 1976 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:—
- (a) that he has since the grant of the licence—
 - (i) been convicted of an offence involving dishonesty, indecency or 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.

- 3.4 On the 3rd March 2016 Torbay Council's Licensing Authority received a phone call from a Mr Michael Dewick that he had been to court and convicted of a racial aggravated offence. This was confirmed in writing the following day.
- 3.5 On 7th March 2016 Torbay Council received a letter from the CLPD Co-Ordinator of Devon and Cornwall Police, advising that Mr Michael Dewick had been convicted under the Crime and Disorder Act 1998 Section 31(1)(b) for an offence of racially/religiously aggravated intentional harassment/alarm/distress.
- 3.6 Whilst Mr Michael Dewick has been convicted of a serious offence, the Council's Licensing Department has never received any complaints about him during the ten years he has been a licensed driver.
- 3.7 There is a right of Appeal against the Licensing Sub-Committees decision to the Magistrates' Court 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.

**Frances Hughes
Assistant Director Community and Customer Service**

Supporting information to Report

A1. Introduction and history

A1.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.

A1.2 Sections 51 and 59 Local Government (Miscellaneous Provisions) Act 1976 respectively 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 Section 61 Local Government (Miscellaneous Provisions) Act 1976 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:-

(a) that he has since the grant of the licence—

(i) been convicted of an offence involving dishonesty, indecency or 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.

A1.4 On the 3rd March 2016 Torbay Council Licensing Authority received a phone call from a Mr Michael Dewick that he had been to court and convicted of a racially aggravated offence. This was confirmed in writing the following day. See Appendix one.

A1.5 On 7th March 2016 Torbay Council received a letter from the CLPD Co-Ordinator of Devon and Cornwall Police, advising that Mr Michael Dewick had been convicted under the Crime and Disorder Act 1998 Section 31(1)(b) for racially/religiously aggravated intentional harassment/alarm/distress. See Appendix two.

A1.6 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.

A1.7 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.*

A1.8 Torbay Council’s Hackney Carriage & Private Hire Licensing Policy says the following regarding racially aggravated offences;

- 3.4 *A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) that replace the offences below and the conviction is less than 10 years old prior to the date of application:*

- Arson, with intent to endanger life*
- Malicious wounding or grievous bodily harm which is racially aggravated*
- Actual bodily harm which is racially aggravated*
- Grievous bodily harm with intent*
- Robbery*
- Possession of firearm*
- Riot*
- Assault on Police*
- Racially aggravated offences*
- Violent disorder*
- Resisting arrest*
- Or any similar offences (including attempted or conspiracy to commit offences), which replace the above*

- 3.5 *In the case of a licensed driver being convicted of any of the above offences, the Licensing Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 10 years free from the date of conviction has elapsed.*

A1.9 The Council has no previous history of any racially aggravated

harassment/alarm/distress or any other complaints in respect of Mr Michael Dewick. He has been a licensed driver for over ten years.

A1.10 A letter advising Mr Michael Dewick of this hearing was hand delivered to his home address on the 14th March 2016. See Appendix three.

A1.11 There is a right of Appeal against the Licensing Sub-Committees decision to the Magistrates' Court 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 Although the offence is of a serious nature, given the excellent record that Torbay Council holds in respect of Mr Michael Dewick, he is not considered to be a significant risk to public safety, should he continue to drive a licensed vehicle as granted by Torbay Council.

A2.1.2 If Mr Michael Dewick Torbay Council issued Drivers Licence is suspended or revoked; there is a risk of an Appeal to the Magistrates' Court.

A3. Options

A3.1 The options are:

- (i) to formally warn Mr Michael Dewick.
- (ii) to suspend Mr Michael Dewick Torbay Council Driver's Licence, with or without immediate effect;
- (iii) to revoke Mr Michael Dewick Torbay Council Driver's Licence with or without immediate effect.
- (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 or equalities issues. However, should Mr Michael Dewick continue to work as a Torbay Council Licensed Driver, there is always the potential that a similar issue may arise, which would result in a crime and disorder matter that needs to be addressed.

A6. Consultation and Customer Focus

A6.1 There has been no public consultation on this matter and there is no requirement for the 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.

Annexes

Appendix 1 Letter from Mr Michael Dewick dated 4th March 2016.

Appendix 2 Letter from Devon and Cornwall Constabulary dated 7th March 2016.

Appendix 3 Letter to Mr Michael Dewick dated 14th March 2016.

Documents available in members' rooms

None

Background Papers:

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

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

Agenda Item 7
Appendix 1

FRI 4/2/16

TO CRAIG

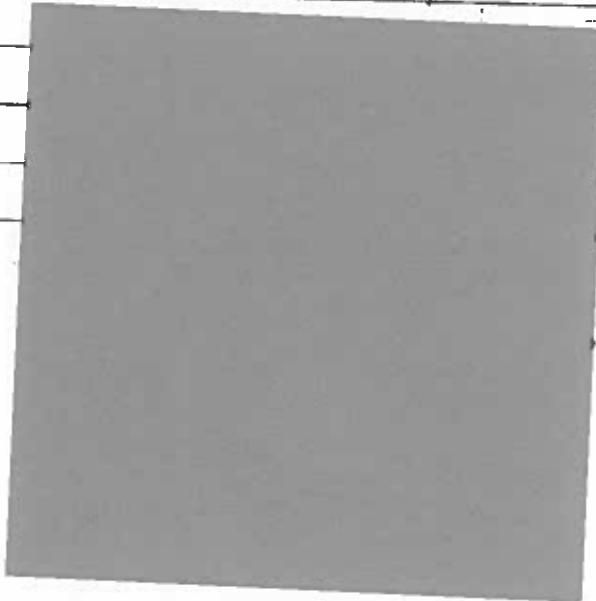
I WENT TO COURT ON
WEDNESDAY AND FINISHED
UP BY BEING FOUND GUILTY,
AND BEING FINED £1,370

QUITE FRANKLY THAT SHOULDN'T
HAVE HAPPENED

YOURS SINCERELY,

MIKE DEWICK

LICENCE NUMBER LD0064



Our ref: CLPD

Your ref:

Torbay Local Licensing Authority
Torbay Council
C/O Torquay Town Hall
Torquay
TQ1 3DS

Jane Selley-Steer
CLPD Co-Ordinator
Devon & Cornwall Constabulary
FNCS SSU Building HQ
EXETER EX2 7HQ

7th March 2016

Telephone: 01392 223153

Dear Sir/Madam

Notification of conviction Information from Force Co-ordinator

NAME: Michael Dewick

D.O.B. Removed

ADDRESS: ADDRESS REMOVED

I am writing regarding the above named who we understand is either employed by you, performs a voluntary role with your organisation, or is employed/volunteers in activity for which you are a Regulatory Body or have oversight responsibilities.

The information disclosed to you below is provided under the Common Law in order to address a "pressing social need" and it may indicate that the subject of the disclosure presents a potential risk to others due to the role that they currently perform. It is a matter for you to determine what action, if any, is necessary in order to mitigate any risks that are evident to you as a result of this disclosure. In making this disclosure Devon and Cornwall Police has considered both the relevancy and proportionality of so doing.

The information we are providing is that the above named was convicted at South and West Devon Magistrates Court on 02/03/2016 for the following:

Offence: Racially/Religiously aggravated intentional harassment/alarm/distress – words/writing

Sentence: Fine £700.00, Costs £600.00, Victim Surcharge £70.00

He informed the Police that he had an occupation of Taxi Driver

He did not identify the employer's details

The circumstances of the incident(s) are as follows:

On 3rd January 2015 at Torquay both offender and aggrieved were working as taxi drivers. Aggrieved had to move his car due to a leak and asked offender to move his car to which offender replied in a way which was racially aggravated

The information above is considered to be sensitive personal data as defined by Section 2, Part 1 of the Data Protection Act 1998, and as such, you must treat it in **strict confidence** and in accordance with the provisions of that Act.

The information is provided for the specific purpose of informing you of a potential risk and your subsequent assessment of that risk. This letter should not be further disseminated without the permission of Devon and Cornwall Police or a Court Order. In particular, it should not be copied, its contents should not be discussed or shown to other people unless they are directly involved in the risk assessment resulting from the disclosure. The letter should be kept in a safe place, only retained as long as necessary for the intended purpose and should be safely destroyed when no longer required or no longer warranted under the terms of the Act.

If the subject of the disclosure is performing a role that is considered to be Regulated Activity as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended) there may be a statutory requirement for you to refer the matter to the Disclosure and Barring Service. If no statutory requirement exists then you may consider it appropriate to nonetheless make a discretionary referral.

Should you require any further information you will need to evidence a statutory provision that will enable it to be provided. Devon and Cornwall Police reserves the right to charge a fee to cover the costs of any subsequent provision of information.

Yours faithfully

Jane Selley-Steer
CLPD Co-ordinator.



Please reply to: Mr Steve Cox

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

Mr M Dewick
(address removed)

My ref: R:227173/SJC
Your ref:
Telephone: 01803 208025
Website: www.torbay.gov.uk
Date: 14th March 2016

Dear Mr Dewick

Re: Conviction of a racially aggravated offence - Section 61 Local Government (Miscellaneous Provisions) Act 1976

I am writing to you with regard to your conviction of a racially aggravated offence under Section 31(1)(b) Crime and Disorder Act 1998 on 2nd March 2016. Due to the nature of this offence and that Torbay Council's Hackney Carriage and Private Hire Licensing Policy 2016 treats this conviction as a serious matter, a hearing is required to be held in front of a Licensing Sub-Committee.

A hearing has been arranged at 9.30am on Thursday 24th March 2016 to consider that conviction and whether you remain a 'fit and proper' person to hold a Torbay Council issued Drivers Licence. This will take place in the Meadfoot Room at Torquay Town Hall, Castle Circus, Torquay TQ1 3DR.

I would strongly advise that you attend, to be able to make representation to the committee and to answer any questions. I would also recommend you consider taking some legal advice or/and are represented at the hearing.

I enclose a copy of the committee report for your information.

If you have any questions then you can contact either myself or Craig Noble.

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

Yours sincerely

A handwritten signature in black ink that reads 'Stephen Cox'.

Mr Steve Cox
Environmental Health Manager Commercial
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.