

Email History in Chronological Order Following the Interview of 23 October 2017

1. Gary O'Shea to Philip Johnston

Dear Mr Johnston

Please find attached notes for your information and agreement.

I have not noted everything down verbatim, however, I believe that the attached gives an accurate and fair account of our meeting. Before I proceed to discuss with senior officers and make a decision on any further action I wanted you to have the opportunity of reading through and agreeing/suggesting any areas where you feel I may not have reflected exactly what you said and/or missed anything of significance.

In view of the above, please could I ask that you read through and email me back with any alterations/additions. If you could do so by email pointing out in the email the page and paragraph relevant to your comment I'd be grateful.

Kind regards

Gary O'Shea

Principal Officer - Licensing and Public Protection

2. Mr Johnston Reply

Dear sir,

Page 5 point 8, as I crossed the lights I was in the right hand lane. The complainant was glaring at me, not just glancing.

I gave my side to yourself honestly and as accurately as I could. In the meeting you described my explanations as "perfectly feasible" and, as they are the truth, I am upset to see them now described as "a bit too coincidental". I have a clean driving licence and full disclosure DBS and feel that I am a trustworthy person.

Philip Johnston

3. Response by Gary O'Shea to point 2 (above)

Dear Mr Johnston

I have made the alterations to the notes in line with my previous email.

Having now discussed the matter at senior level, the consensus is that it should be reviewed by a licensing subcommittee especially given the number of complaints received.

I have asked our committee services officers for a date, which is likely to be week commencing 18th December, however, I will write to you formally to notify of the exact date, time and venue once I know. The letter should go out to you therefore, by close of business tomorrow.

In taking this matter to sub-committee, I would point out that as officers we shall be making no recommendations. This will be for Members to consider the facts of the complaints, your explanations to them and to ask questions to clarify any points. The primary consideration of the Licensing Authority is public safety and a large part of this is ensuring that licensed drivers are (and remain to be) considered to be 'fit and proper' persons.

There will be a report written, which will contain details of the complaints and your responses to them and a range of options as permitted in law for consideration. You will be provided with a copy of the report and any relevant documentation no later than one week in advance of the hearing.

Please do not hesitate to contact me should you wish to discuss this matter further.

Kind regards

Gary O'Shea

Principal Officer - Licensing and Public Protection

4. Response to point 3 (above) from Mr Johnston

Dear sir,

In our meeting I was told that, in cases where it is one person's word against another without any independent proof, there could be no further action taken against anyone. I informed you that I have proof for one of the accusations against me. The police officer from a separate incident admitted being in the wrong.

In your communications and at the meeting you mention speaking to your superiors about this matter. I should like to know who they are. In any court or legal proceedings people are presumed innocent until proven guilty. That is not how I feel. I have been questioned at great length about these matters and even though I have been completely honest I feel that my future rests on somebody's opinion, not the facts.

Every person has an equal right to stand up for themselves which is all I have done. I have already said that I would do my utmost not to allow these sort of situations to arise in future. I recorded the whole two hours and seventeen minutes of questioning and as you said at the time, every point was fully explained.

Philip Johnston

5. Reply from Gary O'Shea to Mr Johnston

Dear Mr Johnston

We discussed the matter in detail as you state and I sent you the transcript (which you can check by all means against your recording) of the meeting, which was not verbatim but which you agreed (subject to a couple of small changes that I have subsequently made) was a fair reflection of the conversation that took place.

In the introduction I advised you that referring the matter to a sub-committee was a serious consideration, however, no decision had been made at that time given that it was important to speak with you before any such decision was made. I have reproduced the relevant paragraphs below:

'Given the number and nature of the complaints, it was important that PJ was made aware of them and given opportunity to confirm or deny them and were applicable and appropriate to give explanation as to the content and circumstances of each complaint.

On face value the number of complaints would appear to warrant an appearance at committee. Indeed 2 or 3 of them potentially on an individual basis leads GO to hold a view that committee may be the most appropriate course of action. However GO advised PJ that it is accepted that there are two sides to everything and that the purpose of the meeting is to hear any explanation and/or mitigation from PJ. On this basis GO stressed that no decisions have yet been made and only after the meeting would the matter be discussed/investigated further (as appropriate) and a decision made as to how the matters should be dealt with.

GO explained that the Licensing Authority has a duty to safeguard the travelling public as whilst we are always mindful of the rights of drivers and their need to work, we have to consider the safety of the public as our overriding objective and in matters such as these consider the 'fit and proper' status of drivers should there be substance in the complaints.

The purpose of this meeting was therefore to obtain any relevant account from PJ with a view to considering whether or not the matter should proceed to a Licensing Sub-Committee, or if not what if any other action should be taken'.

Please check your recording also for the part where you state that we advised "in cases where it is one person's word against another without any independent proof, there could be no further action taken against anyone". We certainly alluded to the fact that one person's word against another made it difficult to assess further action as we certainly would not take every complaint received on face value. This is why you were not asked to come in after the first few complaints. However, so many complaints, particularly in a relatively short amount of time tends to build a picture, which, in the interests of public safety, must seriously be looked at.

I have discussed the matter with my senior licensing officer Mandy Guy, with Craig Noble (who was present at the meeting), with Shaun Rackley another licensing officer and have made my immediate line manager, Steve Cox, aware of the situation. All are copied into this email. I have also revisited the accounts of some of the complainants.

I do not believe having assessed everything that that this can simply be dealt with by letter. The hearing will be conducted in private session (although you may be represented or accompanied and the Council may, should it chose to call witnesses) and the full agreed transcript of our interview and details of the complaints will be provided to Members of the sub-committee.

The Sub-Committee will ask questions and would be happy to see any proof i.e. the Police letters that you have, particularly evidence of where the Police Officer admitted to being wrong and the apology letter that you said you received from the Police, or listen to any witnesses as may be appropriate.

I would stress that the purpose of this hearing is not to determine any innocence or guilt rather than to look simply at the actions of you as a licensed driver and on the balance of probability to determine whether they are the actions of a 'fit and proper' person to hold a Torbay council drivers' licence.

The Committee have a wide range of options, which range from doing nothing to full revocation, however, there are options in between such as additional conditions, requiring you to attend a course and/or suspension. Committee will hear the matter independently of the licensing officers. I would again stress that no decision as to any action against your licence has been taken and any proof or corroboration that you can bring to the hearing will clearly assist you in this matter.

It has just been confirmed that the hearing will be on the morning of 21st December, however, I shall write to you separately with full details. You are at liberty to be accompanied and/or represented by anyone of your choosing, whether legally qualified or otherwise.

Kind regards

Gary O'Shea

Principal Officer - Licensing and Public Protection

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