

The Highland Licensing Board

Meeting – 7 August 2018

Agenda Item	10.1
Report No	HLB/087/18

Hearing to consider Police Scotland report of conduct inconsistent with licensing objectives
Personal licence holder – Thomas Christopher O'Brien (HC/RSL/S/0092)

Report by the Clerk to the Licensing Board

Summary

This report relates to a hearing under section 84A of the Licensing (Scotland) Act 2005. This is a mandatory hearing which the Board must hold following receipt from Police Scotland of a report advising that the Chief Constable considers that a personal licence holder has acted in a manner inconsistent with any of the licensing objectives.

1. Background

- 1.1 A personal licence is required to allow any individual to supervise or authorise the sale of alcohol.
- 1.2 Thomas Christopher O'Brien was granted a personal licence on 1 September 2009 and, subject to the terms of the Act, the licence will expire on 31 August 2019.
- 1.3 In terms of section 84A of the Act, Police Scotland have submitted to the Board a report dated 15 June 2018 that the Chief Constable considers that personal licence holder, Thomas Christopher O'Brien, has acted in a manner inconsistent with the licensing objectives of preventing crime, securing public safety and protecting children and young persons from harm. A copy of this report detailing the conduct in question is attached (**Appendix 1**).

Section 84A(2) of the Act provides that where the Board receives from Police Scotland a report of this nature, the Board must hold a hearing.

- 1.4 The personal licence holder and a representative from Police Scotland have been invited to attend the hearing. Both have been advised of the hearing procedure which will be followed at the meeting and which may also be viewed via the following link:

http://highland.gov.uk/hlb_hearings

2. Legal position

- 2.1 At the hearing, the Board may, after giving the licence holder, Police Scotland and such other persons as they consider appropriate an opportunity to be heard, make an order revoking, suspending or endorsing the licence if the Board is satisfied that it is necessary to do so for the purposes of any of the licensing objectives. The period of any suspension may not exceed 6 months. Alternatively, the Board may decide to take no action.
- 2.2 Separately, where, at the hearing, the Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.
- 2.3 For the purposes of the Act, the licensing objectives are-
- (a) preventing crime and disorder,
 - (b) securing public safety,
 - (c) preventing public nuisance,
 - (d) protecting and improving public health, and
 - (e) protecting children and young persons from harm.

Recommendation

The Board is invited to hear from the representative of Police Scotland and from the personal licence holder and then to determine whether to make any order revoking, suspending or endorsing the personal licence.

Reference: HC/RSL/S/0092

Date: 15 June 2018

Author: Susan Blease

Appendices: Appendix 1 - Letter from Police Scotland dated 15 June 2018

15/06/2018

Your Ref: HC/RSL/S/0092

Our Ref: Person 36011

Clerk to the Highland Board
Town House
High Street
Inverness
IV1 1JJ

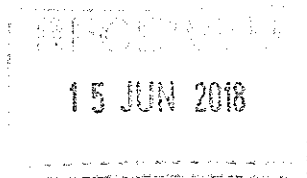


**POLICE
SCOTLAND**

Keeping people safe

Iain Livingstone QPM
Deputy Chief Constable Designate

Divisional Co-ordination Unit
Highland and Islands Division
Police HQ
Old Perth Road
INVERNESS
IV2 3SY



FOR THE ATTENTION OF MS SUSAN BLEASE

Dear Madam,

**LICENSING (SCOTLAND) ACT 2005 - PERSONAL LICENCE HOLDER DUTY
TO NOTIFY LICENSING BOARD OF CONVICTIONS
THOMAS CHRISTOPHER O'BRIEN, 21/11/1956**

NP/4694/16

On 20/05/2016 an SD memory card was found in Dunvegan, Isle of Skye, which was passed to Police and found to contain indecent images of children.

Police enquiry was commenced and the SD card was sent for analysis during which time it was identified that THOMAS CHRISTOPHER O'BRIEN was the owner.

THOMAS CHRISTOPHER O'BRIEN was subsequently detained during which time a laptop computer was seized and also submitted for examination. The said examination revealed the laptop computer contained a considerable number of indecent images, or pseudo images, of children (category A, B and C) and indecent videos (categories A and B). Grading's as per appendix.

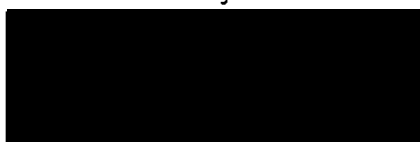
On 12/03/2018, at Portree Sheriff Court, THOMAS CHRISTOPHER O'BRIEN pled guilty to the offences and on 08/05/2018 he was sentenced.

Date	Court	Crime/Offence	Disposal
12/03/2018	Portree Sheriff Court	Civic Govt (Scot) Act 1982 Sec 52A (1) (possess pseudo images) Civic Govt (Scot) Act 1982 Sec 52 (1) (A) (take, or permit to be taken or makes, an indecent photograph or pseudo image of a child)	Community payback order, 3 years supervision, 250 hours unpaid work to be completed within 9 months

On Friday 15/06/2018 enquiry was carried out with Highland Council Licensing Department, Portree office, Skye, at which time it was ascertained THOMAS CHRISTOPHER O'BRIEN had failed to notify Highland Licensing Board, no later than one month after the date, of his conviction, as required by Section 75 of the Licensing (Scotland) Act 2005.

In terms of Section 84A of the Licensing (Scotland) Act 2005, and having regard to the crime prevention, securing public safety and protecting children & young persons from harm objectives, Police Scotland recommends that the Personal Licence for THOMAS CHRISTOPHER O'BRIEN be revoked.

Yours faithfully



Iain Livingstone QPM
Deputy Chief Constable Designate

For enquiries please contact the Licensing Department on 01463 720817.

Appendix.

Category A: images involving penetrative sexual activity, sexual activity with an animal or sadism

Category B: images involving non-penetrative sexual activity;

Category C: other indecent images not falling within categories A or B.