



Wednesday, 15 August 2012

LICENSING SUB-COMMITTEE

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

Thursday, 23 August 2012

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 Addis
Councillor Pentney

Councillor Bent

Working for a healthy, prosperous and happy Bay

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

Kay Heywood, Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 207026

Email: governance.support@torbay.gov.uk



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. **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 Democratic Services or Legal Services prior to the meeting.)
4. **Urgent items**
To consider any other items that the Chairman decides are urgent.
5. **Taxi Driver Report**
To consider a report on a Hackney Carriage Driver whose Medical Certificate expired on 9 July 2012.

(Pages 1 - 9)



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

Title: **Suspension of Torbay Council issued Driver's Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **23 August 2012**

Key Decision: **No**

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

Contact Officer: **Steve Cox**
Telephone: **01803 208034**
E.mail: Steve.cox@torbay.gov.uk

1. What we are trying to achieve

- 1.1 The report concerns a Hackney Carriage Driver whose Medical Certificate expired on the 9 July 2012. To date the driver has not provided an updated Medical Certificate to Torbay Council's Licensing Department.

2. Recommendation(s) for decision

2.1 It is recommend that:

1. Mr Harry Orwell's Driver's Licence issued by Torbay Council be revoked.
2. However, should the Committee resolve that Mr Orwell be allowed additional time to provide a Medical Certificate which meets Torbay Council's licensing requirements, then the 28 day suspension be extended until such time a signed Medical Certificate is provided to Torbay Council's Licensing Department.

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 Section 59 Local Government (Miscellaneous Provisions) Act 1976 requires the Local Authority not to grant a drivers licence unless they are satisfied that the driver is a 'fit and proper person'.
- 3.3 Section 57 Local Government (Miscellaneous Provisions) Act 1976 allows for

checks to be carried out in order to enable the Local Authority to be satisfied that the driver is a 'fit and proper person'. One of these checks is for a Medical Certificate to be signed by a medical practitioner, to the effect that the Applicant is physically fit to be a driver of a Torbay Council licensed vehicle.

- 3.4 Mr Orwell's Medical Certificate expired on 9 July 2012. Mr Orwell was written to on two separate occasions, the first by post prior to the expiry of the Medical Certificate advising that he needed to provide an updated Medical Certificate and the second, by post immediately on expiry of the Medical Certificate. Despite these efforts, Mr Orwell has failed to provide an updated Medical Certificate to Torbay Council's Licensing Department. Therefore under the powers delegated to the Executive Head, Mr Orwell was suspended for 28 days, with a letter being hand delivered to his home address. That being the address which Mr Orwell gave as his home address to Torbay Council's Licensing Department.
- 3.5 Officers of the Licensing Department have spoken to Mr Orwell on the telephone on the day of suspension, 26 July 2012 advising that he must supply a Medical Certificate if he wished to continue driving a licensed vehicle, but to date no Medical Certificate has been forthcoming.
- 3.6 The recommendation of this report is to either allow Mr Orwell more time to provide the required Medical Certificate or to revoke his current Driver's Licence, as the Council cannot be satisfied that he remains a 'fit and proper person' to hold such a licence without a Medical Certificate signed by a medical practitioner.

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

Frances Hughes Executive Head Community Safety

Supporting information to Report XX/2010

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 Section 59 Local Government (Miscellaneous Provisions) Act 1976 requires the Local Authority not to grant a drivers licence unless they are satisfied that the driver is a 'fit and proper person'.
- A1.3 Section 57 Local Government (Miscellaneous Provisions) Act 1976 allows for checks to be carried out in order to enable the Local Authority to be satisfied that the driver is a 'fit and proper person'. One of these checks is for a Medical Certificate to be signed by a medical practitioner, to the effect that the Applicant is physically fit to be a driver of a Hackney Carriage Vehicle. These certificates expire at different times, dependant on the age and medical conditions of the driver.
- A1.4 Mr Orwell's Medical Certificate expired on 9 July 2012. Mr Orwell was written to on two separate occasions, the first by post prior to the expiry of the Medical Certificate advising that he needed to provide an updated Medical Certificate and the second, by post immediately on expiry of the Medical Certificate. Despite these efforts, Mr Orwell has failed to provide an updated Medical Certificate to Torbay Council's Licensing Department. See appendix 1.
- A1.5 Torbay Council's Licensing Department concluded that following the two reminder letters being sent and the fact that Officers were unable to contact Mr Orwell by other means, they could no longer be satisfied that he remained fit to hold a driver's licence. Therefore, under the powers delegated to the Executive Head Community Safety, in consultation with the Chair of Licensing Committee Mr Peter Addis, Mr Orwell was suspended for 28 days on 26 July 2012 and a letter to this affect was hand delivered to the address which Mr Orwell gave as his home address to Torbay Council's Licensing Department. See appendix 2.
- A1.6 An Officer from the Licensing Department spoke to the holder of the vehicle plate which Mr Orwell drives on the 26 July 2012 and advised him of this suspension. The holder of the vehicle plate must have subsequently contacted Mr Orwell, as Mr Orwell contacted the Licensing Department later the same day. An Officer spoke to Mr Orwell on the telephone, advising that he must supply a Medical Certificate if he wished to continue driving a licensed vehicle, but to date no Medical Certificate has been forthcoming. During the telephone conversation Mr Orwell implied he was no longer living at the current address held by Torbay Council's Licensing Department but when asked, he was not prepared to give an alternative address to the Officer to allow future correspondence to be sent to him. He was made aware that the suspension letter was hand delivered to that address.
- A1.7 Officers of Torbay Council still have no contact address for Mr Orwell, so they have left a message for Mr Orwell that he can either supply the Council with an email address for receipt of the report or collect it from behind reception from Tuesday 14th August 2012 onwards. He was also advised of the date and time of the Licensing Sub-Committee hearing. See appendix 3.

A1.8 It is a requirement that licensed drivers advise Torbay Council of any change of address within 7 days. Mr Orwell has failed to do this even after a request to do so. Torbay Council has, however, been advised that Mr Orwell has return the vehicle plate to the plate owner, so the assumption is that he no longer intends to drive.

A1.9 There is a right of Appeal. Any Appeal would be 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 There are no significant risks if the recommendation is agreed.

A2.1.2 If the recommendation is refused, then the risk is twofold.

- (i) Firstly, it could undermine Torbay Council's Policy on the determination of whether someone is fit to drive.
- (ii) Secondly a licensed driver, who may as a result of no longer being fit to drive, put passengers, pedestrians and/or other road users at risk.

A3. Options

A3.1 The options are:

- (i) to revoke the licence.
- (ii) to terminate the suspension or
- (iii) to agree the suspension for a longer period of time to allow Mr Orwell an opportunity to provide Torbay Council's Licensing Department with a signed Medical Certificate.

A4. Summary of resource implications

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

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

A5.1 There are no equalities, environmental sustainability or crime and disorder issues that Torbay Council is aware of.

A6. Consultation and Customer Focus

A6.1 There has been no public consultation on 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 to Mr Harry Orwell dated 11th July 2012.

Appendix 2 Letter to Mr Harry Orwell dated 26th July 2012.

Appendix 3 Letter to Mr Harry Orwell dated 13th August 2012 which enclosed the Committee report.

Documents available in members' rooms

None

Background Papers:

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

None

Agenda Item 5

Appendix 1 :



Please reply to: Shaun Rackley

Community Safety

Roebuck House

Abbey Road

Devon

TQ2 5EJ

Mr H Orwell

My ref: R:178709/SAR

(address removed)

Your ref:

Telephone: 01803 208025

Fax: 01803 208854

E-mail: Shaun.rackley@torbay.gov.uk

Website: www.torbay.gov.uk

Date: 11 July 2012

Dear Mr Orwell,

Re: Medical Not Received

On checking my records I have discovered that you have not submitted a new medical certificate as you are required to do. A letter was sent to you on the **6th June 2012** informing you that the medical that was in force at that time was due to expire on the **9th July 2012**, to date no new medical has been received.

If you wish to continue driving as a Torbay Council Licensed Driver then you must make arrangements to see your own Doctor immediately. I have enclosed a further medical form for this purpose.

The form must be completed by your Doctor and returned to this office as soon as possible and in any case no later than **25th July 2012**.

Failure to return the completed form on time will result in your Torbay Council Licensed Drivers badge being immediately suspended. Should you wish to discuss this matter further please contact the Licensing Office on the above telephone number.

Yours sincerely

Shaun Rackley
Licensing Enforcement Officer
Licensing & 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.



Please reply to: Mr Steve Cox

Community Safety

Roebuck House

Abbey Road

Devon

TQ2 5EJ

My ref: R:178709/SJC

Your ref:

Telephone: 01803 208025

Fax: 01803 208854

E-mail: steve.cox@torbay.gov.uk

Website: www.torbay.gov.uk

Date: 26 July 2012

Mr H Orwell



Dear Mr Orwell

Re: Section 59 Local Government (Miscellaneous Provisions) Act 1976 – Failure to provide up to date Medical Certificate

I am writing to inform you that in light of the information provided to me by my Officers about a failure to provide a current Medical Certificate I have suspended your Torbay Council issued Drivers Licence from the date of this letter. Your existing Medical Certificate expired on the 9th July 2012, and although two requests have been made in writing dated the 6th June 2012 and the 11th July 2012, no contact has been made with this department and no new Medical Certificate has been supplied. Despite efforts to compel you to provide the information about your continued fitness due to your lack of response and I am left with no option but to suspend your licence.

This suspension will invalidate your insurance.

Under section 59 Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is required to ensure those issued with Torbay Council issued Drivers Licences remain fit to drive. In Torbay that requires the supply of an up to date Medical Certificate.

Therefore under the provisions of Section 61 of the same Act, under powers delegated to me in consultation with the Chair of Licensing Committee Councillor Peter Addis, I suspend your licence for 28 days, pending a Licensing Committee hearing. On supplying an up to date Medical Certificate then this decision can be reviewed. However if by the date of the Committee hearing, no current Medical Certificate is supplied a recommendation will be made that your Torbay Council issued Drivers Licence be suspended until the end of its current period that being the 30th April 2013.

My colleague Mr Steve Cox will contact about the details of that Committee Hearing. Meanwhile if you have any queries then please contact either Mr Steve Cox or Mr Shaun Rackley on telephone 01803 208025.

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

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If you require this in a different format or language, please contact me.

Yours sincerely

F. K. Hughes

FRANCES HUGHES

Executive Head
Community Safety

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Please reply to: Mr Steve Cox

Community Safety

Roebuck House

Abbey Road

Devon

TQ2 5EJ

My ref: R:178709/SJC

Your ref:

Telephone: 01803 208025

Fax: 01803 208854

E-mail: steve.cox@torbay.gov.uk

Website: www.torbay.gov.uk

Date: 13 August 2012

Mr H Orwell

(address removed)

Dear Mr Orwell

Re: Section 59 Local Government (Miscellaneous Provisions) Act 1976 – Failure to provide up to date Medical Certificate

I am writing to you with regard to the above matter and the letter from Frances Hughes dated 26th July 2012, which suspended your Torbay Council issued driver's licence. In line with Torbay Council's delegated powers, a report has to now be presented to Licensing Committee to decide what further action needs to be taken. The report recommends that your Torbay Council Driver's Licence be revoked.

I enclose a copy of that committee report. The hearing will be at 9.30 at the Meadfoot Room at Torquay Town Hall on 23rd August 2012. You will be given an opportunity to address the Committee should you wish too. The Committee will consist of three members (Councillors) who will make the decision.

Can I also advise you that the failure to supply a current address, as I am led to believe that the above address is no longer your primary abode, is a requirement of your Torbay Council issued driver's licence. Details of this are also included in the committee report. If you have any queries then please do not hesitate to contact Shaun Rackley or myself.

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

Yours sincerely

Mr Steve Cox
Environmental Health Manager Commercial

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