



Friday, 21 December 2012

LICENSING SUB-COMMITTEE

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

Thursday, 3 January 2013

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 Faulkner (A)

Councillor Stocks

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 Governance Support 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 12 November 2012.

(Pages 1 - 8)



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

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

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **3 January 2013**

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 Licensed Driver whose Medical Certificate expired on the 12 November 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. Miss Frances Whates's Driver's Licence issued by Torbay Council be revoked.
2. However, should the Committee resolve that Miss Whates 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 Miss Whates's Medical Certificate expired on 12 November 2012. Miss Whates was written to on two separate occasions, the first by post prior to the expiry of the Medical Certificate advising that she needed to provide an updated Medical Certificate and the second, by post immediately on expiry of the Medical Certificate. Despite these efforts, Miss Whates has failed to provide an updated Medical Certificate to Torbay Council's Licensing Department. Therefore under the powers delegated to the Executive Head, Miss Whates was suspended for 28 days, with a letter being hand delivered to her home address. That being the address which Miss Whates gave as her home address to Torbay Council's Licensing Department.
- 3.5 Officers of the Licensing Department have also left telephone messages asking Miss Whates to contact the department advising that she must supply a Medical Certificate if she 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 Miss Whates more time to provide the required Medical Certificate or to revoke her current Driver's Licence, as the Council cannot be satisfied that she 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 Licensed Vehicle. These certificates expire at different times, dependant on the age and medical conditions of the driver.
- A1.4 Miss Whates Medical Certificate expired on 12 November 2012. Miss Whates was written to on two separate occasions, the first by post prior to the expiry of the Medical Certificate advising that she needed to provide an updated Medical Certificate and the second, by post immediately on expiry of the Medical Certificate. Despite these efforts, Miss Whates 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 Miss Whates by other means, they could no longer be satisfied that she 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, Miss Whates was suspended for 28 days on 7 December 2012 and a letter to this affect was hand delivered to the address which Miss Whates gave as her home address to Torbay Council's Licensing Department. See appendix 2.
- A1.6 An Officer from the Licensing Department also left telephone messages for Miss Whates on the phone number she has given the licensing department and with her previous employer, but have not received any subsequent telephone call.
- A1.7 Miss Whates was also advised of the date and time of the Licensing Sub-Committee hearing by letter. See appendix 3.
- A1.8 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 Miss Whates 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 Miss Whates dated 23rd November 2012.

Appendix 2 Letter to Miss Whates dated 7th December 2012.

Appendix 3 Letter to Miss Whates dated 18th December 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



Please reply to: Mr Shaun Rackley

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

Miss F Whates
(address removed)

My ref: M:005628/SAR
Your ref:
Telephone: 01803 208025
E-mail: Licensing@torbay.gov.uk
Website: www.torbay.gov.uk
Date: 23 November 2012

Dear Miss Whates,

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 **8th October 2012** informing you that the medical that was in force at that time was due to expire on the **12th November 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 **3rd December 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.

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

Yours sincerely

Mr 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:184596/SJC

Your ref:

Telephone: 01803 208025

Fax: 01803 208854

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

Website: www.torbay.gov.uk

Date: 7th December 2012

Miss Frances Whates

(address removed)

Dear Miss Whates

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 12th November 2012, and although two requests have been made in writing dated the 8th October 2012 and the 23rd November 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 Licence 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.

Yours sincerely

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

Miss Frances Whates

(address removed)

My ref: R:184596/SJC
Your ref:
Telephone: 01803 208025
Fax: 01803 208854
E-mail: steve.cox@torbay.gov.uk
Website: www.torbay.gov.uk
Date: 18th December 2012

Dear Miss Whates

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 7th December 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 Thursday 3rd January 2013. 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.

Should you wish to discuss this then please ring me, Shaun Rackley or Craig Noble.

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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