



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

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

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **22 October 2015**

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](mailto:Steve.cox@torbay.gov.uk)**

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## **1. What we are trying to achieve**

- 1.1 This report concerns a Torbay Council Licensed Driver who has been found guilty for an offence of violence. Members of the Licensing Committee are requested to consider whether the licensed driver currently remains a 'fit and proper person' to continue to hold a Torbay Council Driver's Licence.

## **2. Recommendation(s) for decision**

- 2.1 There is no officer 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 20<sup>th</sup> August 2015 Mr Jud Boyle was convicted of Assault by Beating. This he pleaded guilty to. On the 21<sup>st</sup> August 2015 Torbay Council was advised by Mr Boyle of the outcome of that court sentence. This offence was not committed whilst he was working. The details of the outcome of the case are shown in the Court Memorandum of Conviction. See Appendix One. This shows that a Community Order, a Restraining Order and a Compensation Order was imposed, along with financial sanctions as a direct result of the Drivers attendance at Court.
- 3.5 There is no officer recommendation. It is therefore for the Committee to consider the seriousness of the offence and whether Mr Boyle remains a 'fit and proper person' to continue to hold a Torbay Council Driver's Licence. To assist Members in coming to that decision, the author of this report has included with the report the Memorandum of Conviction from the Court for consideration of the sentence given and a written response received from Mr Boyle on the 4<sup>th</sup> October 2015 by email. See Appendix Three.
- 3.6 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 Services

## 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 18<sup>th</sup> August 2015, Torbay Council was advised by Mr Boyle that he was due to attend Court on the 20<sup>th</sup> August 2015 with regard to a charge of Assault by Beating. This he pleaded guilty to. On the 21<sup>st</sup> August 2015 Torbay Council was advised by Mr Boyle of the outcome of that sentence. This offence was not committed whilst he was working. The details of the outcome of the case are confirmed in the Court Memorandum of Conviction. This shows that a Community Order, a Restraining Order and a Compensation Order was imposed, along with financial sanctions as a direct result of the Drivers attendance at Court.

A1.5 On the 23<sup>rd</sup> September 2015 a letter was sent to Mr Boyle giving him the opportunity to include any information within this committee report regarding the recent conviction. See Appendix One. A response was received from Mr Jud Boyle on the 4<sup>th</sup> October 2015 by email. 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 On the matter of violence the policy goes on to say

3.6 *A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s), which replace the offences below and the conviction, is less than 5 years old prior to the date of application:*

- *Assault occasioning actual bodily harm*
- *Common assault*
- *Affray*
- *Criminal damage*
- *Harassment*
- *Or any similar offences (including attempted or conspiracy to commit offences), which replace the above*

3.7 *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 5 years free from the date of conviction has elapsed.*

A1.9 Mr Boyle has been a licensed taxi driver with Torbay Council for 12 years. During that time, there have been very few matters brought to the Council's attention which have concerned Mr Jud Boyle. There was one incident on the 26<sup>th</sup>

November 2013, in which Mr Boyle was involved. Although he was the victim of an assault on that occasion, there were a number of matters brought to the Councils attention leading up to that event, which resulted in four drivers being warned in writing about their future conduct, of which Mr Boyle was one.

A1.10 There is no officer recommendation. It is therefore for the Committee to consider the seriousness of the offence and whether Mr Boyle remains a 'fit and proper person' to continue to hold a Torbay Council Driver's Licence. To assist Members in coming to that decision, the author of this report has included with the report the Memorandum of Conviction from the Court for consideration of the sentence given, a written response received from Mr Boyle on the 4<sup>th</sup> October 2015 by email and confirmation of the record held by Torbay Council of Mr Boyle whilst he has been a Licensed Driver.

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 Given that Mr Boyle has never committed such an offence whilst on duty in the 12 years he has been licensed by Torbay Council, there is a limited risk that he may commit a similar offence whilst working as a licensed driver should he remain a licensed driver.

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

## **A3. Options**

A3.1 The options are:

- (i) to formally warn Mr Jud Boyle.
- (ii) to suspend Mr Jud Boyle's Torbay Council Driver's Licence to allow for any 'appropriate training/counselling
- (iii) to revoke Mr Jud Boyle's 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 equalities or environmental sustainability issues. However, should Mr Jud Boyle continue to work as a Torbay Council Licensed Driver, there is, albeit limited, a risk of crime and disorder for the public, for the reason sets out in A2.1.1 above. .

**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 to Mr Jud Boyle dated 23<sup>rd</sup> September 2015

Appendix 2 Email from Mr Jud Boyle dated 4<sup>th</sup> October 2015

**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 2012