



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

Title: **Conviction of Torbay Council Licensed Driver's of Road Traffic Act offence**

Wards Affected: **All**

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

Key Decision: **No**

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

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1. What we are trying to achieve

- 1.1 This report concerns a Torbay Council Licensed Driver who has pleaded guilty and been convicted of an offence under Section 3 Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. Namely, 'driving without due care and attention'. Members of the Licensing Committee are requested to consider whether the licensed driver remains a 'fit and proper person' to hold a Torbay Council issued Driver's Licence.

2. Recommendation(s) for decision

- 2.1 There is no officer recommendation. However, should the decision be for Mr Anthony Ryan to retain his Torbay Council issued Driver's Licence, then it is recommended that Mr Anthony Ryan undertakes a Driving Standard Assessment within 3 months of this hearing date, as set out in Torbay Council's Hackney Carriage (Taxi) & Private Hire Policy.

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 Torbay Council is in receipt of information, in the form of an article from the Herald Express dated the 12th September 2015 which states that Mr Anthony Ryan had “pleaded guilty to driving without due care and attention, contrary to Section 3 of the Road Traffic Act 1988 and Schedule 2 the Road Traffic Offenders Act 1988. He was fined £500 with £285 additional costs and issued with 7 penalty points on his driver’s licence. Mr Anthony Ryan did not report this matter to Torbay Council, contrary to the requirement in the Council’s Hackney Carriage and Private Hire Policy which Mr Anthony Ryan received as part of the licensing process.
- 3.5 On the 23rd September 2015 a letter was sent to Mr Anthony Ryan giving him an opportunity to provide information to be included within this committee report about both the conviction and the failure to comply with the Policy requirement. Torbay Council received a letter from Mr Anthony Ryan, dated the 28th September 2015.
- 3.6 Mr Anthony Ryan has been a licensed driver with Torbay Council since December 2010, during which time one complaint has been reported to the Council. The complaint related to allegations about Mr Anthony Ryan’s driving but no action was taken at that time.
- 3.7 There is no officer recommendation. However should the decision be for Mr Anthony Ryan to retain his Torbay Council issued Driver’s Licence, then it is recommended that Mr Anthony Ryan undertakes the Driving Standard Assessment within 3 months of this hearing date, as set out in Section 5.10 of Torbay Council’s Hackney Carriage (Taxi) & Private Hire Policy.

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 Torbay Council is in receipt of information in the form of an article from the Herald Express dated the 12th September 2015 which states that Mr Anthony Ryan had "pleaded guilty to driving without due care and attention, contrary to Section 3 of the Road Traffic Act 1988 and Schedule 2 the Road Traffic Offenders Act 1988. He was fined £500 with £285 additional costs and issued with 7 penalty points on his drivers licence. See Appendix one. The details of the Magistrates Court hearing are confirmed in the Memorandum of an Entry dated 1st September 2015.
- A1.5 Mr Anthony Ryan did not report this matter to Torbay Council, contrary to the requirement set out in Section 9.3, Appendix One of the Council's Hackney Carriage and Private Hire Policy which Mr Anthony Ryan received as part of the licensing process. The Policy says:
- Convictions of any description committed by both hackney carriage proprietors, private hire drivers and operators during the duration of their licence must be declared to the Licensing Authority in writing immediately and in any case no later than 7 days.*
- A1.6 On the 23rd September 2015 a letter was sent to Mr Anthony Ryan giving him an opportunity to provide information to be included within this committee report about both the conviction and the failure to comply with Section 9.3, Appendix One of Torbay Council's Hackney Carriage and Private Hire Policy. See Appendix two. Torbay Council received a letter from Mr Anthony Ryan, dated the 28th September 2015 and this is included within this report. See Appendix three.
- A1.7 Mr Anthony Ryan has been a licensed driver with Torbay Council since December 2010, during which time one complaint has been reported to the

Council. The complaint related to allegations about Mr Anthony Ryan's driving but no action was taken at that time.

A1.8 Torbay Council's Hackney Carriage & Private Hire Licensing Policy says

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 licenses 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.*

1.4 *Simply remaining free from convictions will not generally be regarded as sufficient evidence that a person is a 'fit and proper' person to hold a licence. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be the protection of the public. The following examples afford a general guide on the actions to be taken where convictions are admitted or discovered.*

A1.9 The offence of driving with due care and attention is a major traffic offence. The Hackney Carriage & Private Hire Licensing Policy says:

8 Major traffic offences

8.1 *If an applicant has live endorsements or has been disqualified from driving in respect of major traffic offences then the application will be normally be refused until at least five years after the most recent such convictions.*

8.2 *In the case of a licensed driver being convicted of a serious road traffic accident, the Licensing Authority may suspend or revoke the licence or an application to renew the licence being refused. 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.

8.3 A list of major traffic offences can be seen in table 2.

A1.10 Torbay Council's Hackney Carriage & Private Hire Licensing Policy requires current drivers who obtain over six penalty points to undertake a Driving Standard Assessment within 3 months. The Policy says:

5.10 Licensed drivers, as a profession, have a responsibility for the safe transportation of fare-paying passengers. Therefore, the Licensing Authority as part of its application procedure requires a Driving Standard Assessment of the drivers' ability and must be obtained by all new applicants. Similarly, where an existing licensed driver receives over 6 (six) endorsement/s or penalty points within each licensing year the Licensing Authority will require that person to undertake the same assessment. If this is not obtained within 3 months, then the existing licensed drivers badge will be suspended until the necessary driving standards assessment is completed.

A1.11 There is no officer recommendation. However should the decision be for Mr Anthony Ryan to retain his Torbay Council issued Driver's Licence, then it is recommended that Mr Anthony Ryan undertakes the Driving Standard Assessment within 3 months of this hearing date, as set out in Section 5.10 of Torbay Council's Hackney Carriage (Taxi) & Private Hire Policy.

A1.12 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 Having pleaded guilty, Mr Anthony Ryan has been convicted of an offence contrary to Section 3 of the Road Traffic Act 1988 and Schedule 2 the Road Traffic Offenders Act 1988. If Mr Anthony Ryan retains his Torbay Council issued Drivers Licence, there may, as a result of this isolated offence, be a small risk that Mr Anthony Ryan may commit a similar offence in the future.

A2.1.2 If Mr Anthony Ryan's Torbay Council issued Drivers Licence is suspended or revoked then there is a risk of this decision being appealed.

A3. Options

A3.1 The options are:

- (i) to revoke Mr Anthony Ryan's Torbay Council Driver's Licence, without immediate effect;
- (ii) to revoke Mr Anthony Ryan's Torbay Council Driver's Licence, with immediate effect;
- (iii) to suspend Mr Anthony Ryan's Torbay Council Driver's Licence.

- (iv) to issue Mr Anthony Ryan with a warning; and/or
- (v) require Mr Anthony Ryan to undertake a Driving Standard Assessment within 3 months of this hearing date, as set out in Section 5.10 of Torbay Council's Hackney Carriage (Taxi) & Private Hire Policy..
- (vi) 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, environmental sustainability or crime and disorder issues.

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 Herald express article dated 12th September 2015

Appendix 2 Letter to Mr Anthony Ryan dated 23rd September 2015

Appendix 3 Letter from Mr Anthony Ryan dated 28th September 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