

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

Title: **Review of a Torbay Council Drivers' Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **1<sup>st</sup> March 2018**

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 asks Members to consider information relating to the conduct and convictions received of the holder of a dual Hackney Carriage and Private Hire drivers licence and to determine on the facts laid before them, whether or not the licence holder continues to be regarded as a 'fit and proper' person to hold such a licence.

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

- 2.1 This matter must be determined on its individual merits and any supporting facts or testimony. The options available to Members however, are highlighted in paragraph A3.1 of Annex 1 to this report.
- 2.2 Whilst all options highlighted in paragraph A3.1 of Annex 1 remain open to Members of the Committee, having fully considered the facts, the recommendation of this report, in consideration of Mr Ryan's previous history and failure on this occasion to report this latest offence, is that:

Mr Ryan's hackney carriage and private hire drivers' licence should be revoked with immediate effect, in the interests of public safety, as afforded by section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976.

## **3. Key points and reasons for recommendations**

- 3.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), 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 of the 1976 Act in conjunction with section 46 of the Town Police Clauses Act 1847 make provision for the licensing of drivers and state that a district council shall not grant a licence to drive a Private Hire or Hackney Carriage vehicle unless they are satisfied that the driver is a 'fit and proper' person to hold a driver's licence.
- 3.3 Section 51 (2) of the 1976 Act permits the Council to attach to the grant of a licence to drive a Private Hire vehicle 'such conditions as they may consider reasonably necessary'. This provision extends to enabling the attachment of conditions on a dual licence as is issued in Torbay.
- 3.4 There is no prescribed test for 'fit and proper' laid down in legislation and it is therefore left to the individual Licensing Authorities to assess drivers and applicants under their own criteria. However, there is a wide scope for such assessment and certain processes have evolved over time which have stood up to scrutiny in the Courts and are therefore commonly accepted practices amongst the majority of Licensing Authorities.
- 3.5 Torbay has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. These include, a group 2 standard of medical fitness, an enhanced Criminal Records Disclosure (DBS), a driving standards test (DSA), scrutiny of DVLA penalty points and a test of the knowledge of both the area and conditions pertaining specifically to Torbay and local licensing Policy. A recent addition to this is the requirement to test the right to live and work in the United Kingdom.
- 3.6 Section 61 (1) of the 1976 Act 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:—

(1) (a) that he has since the grant of the licence—

- (i) been convicted of an offence involving dishonesty, indecency 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.

- 3.7 Section 61 (2) of the 1976 Act states:

- (2) (a) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the district council the driver's badge issued to him...
- (b) If any person without reasonable excuse contravenes the provisions of this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

- 3.8 Under Section 61 (2A) a suspension or revocation of a drivers' licence takes effect at the end of a period of 21 days beginning with the day on which the notice is given to the driver. However, under section (2B) any suspension or revocation may take immediate effect if it is deemed to be necessary in the interests of public safety. In such circumstances the notice given to the driver notifying of the suspension or revocation must include a statement and explanation as to why section (2B) has been deemed necessary.
- 3.9 This report follows receipt of a number of penalty points (endorsements) received by Mr Ryan and a failure by Mr Ryan to report the latest endorsement received to the Licensing Authority, as required under the terms and conditions of licence.
- 3.10 Upon discovery of the endorsement (totalling 4 penalty points) received by Mr Ryan for an offence committed on 23<sup>rd</sup> November 2016, Craig Noble, Licensing Enforcement Officer, wrote to Mr Ryan to seek explanation and clarification. The letter to Mr Ryan was dated 11 January 2018 and is attached to this report at **Appendix 1**.
- 3.11 Mr Ryan responded to Mr Noble's letter dated 17 January 2018 and enclosed a copy of the notice of fine and collection order. A copy of this letter and its enclosures is attached at **Appendix 2**.
- 3.12 The Licence Summary from the DVLA showing the current position relating to endorsements on Mr Ryan's DVLA drivers licence is attached at **Appendix 3**. It is evident from this that for the period between 23 November 2016 and 12 September 2017, a period of some nearly 10 months, Mr Ryan's licence was actually endorsed with a total of 14 (fourteen) penalty points that were current at that time. The Licensing Authority was unaware of this at the time as the matter had not been reported as required.
- 3.13 There is a right of Appeal to the Magistrates' Court as provided under section 61 (3) of the 1976 Act against the Licensing Sub-Committee decision. Such an appeal must be lodged 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.**

**Steve Cox**  
**Environmental Health Manager (Commercial)**

## Annex 1 - Supporting information

### A1. Introduction and history

- A1.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.
- A1.2 Sections 51 (in respect of Private Hire drivers) and 59 (in respect of Hackney Carriage drivers) of the Act 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 The test for 'fit and proper' as it applies in Torbay is outlined in paragraph 3.5 of the report.

#### Details for Consideration

- A1.4 Mr Ryan has held a Torbay Council hackney carriage and private hire drivers' licence since 30<sup>th</sup> December 2010. During this time there has been one previous complaint relating to allegations about Mr Ryan's driving but as the allegations could not be proven no further action was taken and the complaint was discontinued. Given the lack of evidence, this has not been detailed further in this report.
- A1.5 During September 2015 Mr Ryan was involved in a serious road incident which resulted in him being brought before the Licensing Committee. The details of this incident are that:

*Mr Ryan caused an accident on the A30 near Exeter by driving the wrong way up a dual carriageway and driving into oncoming traffic. An oncoming vehicle was forced to swerve to avoid him and this resulted in the accident.*

*Mr Ryan was prosecuted for this incident and after he admitted careless driving this resulted in 7 (seven) penalty points being endorsed onto his DVLA driving licence under code CD10, which relates to 'driving without due care and attention.*

*During this incident Mr Ryan was carrying a fare paying passenger from Torquay to Exeter.*

- A1.6 As a result of the offence and conviction received by Mr Ryan, as highlighted in paragraph A1.5 (above), Mr Ryan was made to appear before a Licensing Sub-Committee on 22<sup>nd</sup> October 2015. The resolution of the committee at that time was that:

*Mr Anthony Ryan's Torbay Council drivers licence be suspended with immediate effect, until such time that he has successfully completed a RoSPA (The Royal Society for the Prevention of Accidents) ADVANCED DRIVING TEST, as approved by the Driver and Vehicle Licensing Agency. The end date to which this test must successfully be completed is the 21 January 2016.*

*Failure to successfully complete the test by the said date will result in Mr Anthony Ryan's Licence being revoked with immediate effect at midnight on the said date.*

*The Licensing Committee also recommended that Mr Ryan reads and familiarises himself with contents of Torbay Council's Hackney Carriage (Taxi) and Private Hire Policy (May 2013) , as issued to him and that he keeps a copy of the said Policy in the licensed vehicle at all times when on duty for future reference.*

A1.7 Mr Ryan eventually passed the required advanced driving test at bronze level and as a result his Torbay Council Drivers' Licence was returned to him.

A1.8 In early January 2018, the Licensing Authority became aware of a further incident concerning another driving conviction, which Mr Ryan has obtained. This discovery was made as part of a routine check by licensing staff who were carrying out driving licence checks on all licensed drivers in preparation for the upcoming annual licence renewals process.

A1.9 During the checks highlighted in paragraph A1.8 (above) it was discovered that Mr Ryan had received a further 4 points on his driving licence taking his current active total to 11 points. A further matter of concern was that this had not been reported to the Licensing Authority in accordance with the terms and conditions of a hackney carriage and private hire driver's licence.

A1.10 The facts of the latest conviction received by Mr Ryan are:

*Mr Ryan was convicted of speeding whilst driving in Hampshire during November 2016. He appeared before Magistrates in Hampshire and as a result received a fine of £832.00 and 4 penalty points on his driving licence, costs and victim surcharges brought his total to pay up to £1000.00.*

A1.11 On 11 January 2017, upon discovery of this information Craig Noble wrote to Mr Ryan asking him for an explanation of events. A copy of this letter is attached at **Appendix 1**.

A1.12 Mr Ryan responded by letter dated 17 January 2018 and received on 19 January 2018, stating that he was unfamiliar with the area in Cadham, where the conviction was received and that he had missed a 30 mile an hour sign. The actual speed of travel is not stated in the letter, other than to state that Mr Ryan believed he was in a 40 MPH limit when in fact it was a 30 MPH limit. A copy of Mr Ryan's letter and enclosures is attached at **Appendix 2**.

A1.13 Mr Ryan's explanation for his failure to disclose the latest conviction is that:

He was unaware that he had received any penalty points and he therefore (mistakenly) thought that he did not need to inform us of the incident. Mr Ryan stated in his letter that he knew nothing of the penalty points until he received the letter from Craig Noble dated 11 January 2018.

A1.14 The Torbay Council policy quite clear it states at paragraph 6.4:-

*Failure to inform the Licensing Authority immediately. Or within 5 working days of any convictions, cautions and fixed penalty notices during the licensing application and/or licensing period (i.e once the licence is granted) may result in suspension or revocation of the driver licence. Similarly where convictions, cautions or fixed penalty notices are notified, depending on the nature of the infraction, this may result in suspension or revocation of the driver licence.*

A1.15 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.*

A1.16 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.*

A1.17 There is a right of Appeal to the Magistrates' Court against the Licensing Sub-Committee decision. Such an appeal must be lodged 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 Under current Policy and in full consideration of the overriding requirement to

protect the safety of the travelling public, this is a matter where officers consider revocation should be given serious consideration in the interests of public safety. This recommendation has been made particularly in light of the previous driving record of Mr Ryan and his failure to report penalty points that were endorsed on his licence in November 2016. This is in clear violation of the Council's Hackney Carriage and Private Hire Policy

A2.1.2 There are risks both potentially to the public and to the Council if a key decision were to be taken without full consideration of the facts. However, by placing this matter before a Licensing Sub-Committee, for consideration on the merits of the case, such risks are reduced as full consideration may be given in an open and transparent manner of all relevant facts.

### **A3. Options**

A3.1 The options are:

- (i) to formally warn Mr Ryan and/or to add conditions to the scope of his Torbay Council Driver's Licence;
- (ii) to suspend Mr Ryan's Torbay Council Driver's Licence, with or without immediate effect, as outlined in paragraph 3.8 of the report which may or may not include the addition of conditions to the scope of the licence as deemed appropriate;
- (iii) to revoke Mr Ryan's Torbay Council Driver's Licence with or without immediate effect as outlined in paragraph 3.8 of the report;
- (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 environmental sustainability issues. Whilst this report brings a number of matters to Members' of the Licensing Sub-Committees attention, there are no criminal convictions (only motoring convictions). In view of this, any crime and disorder impact is best assessed by the Licensing Sub-Committee having determined the facts. If any potential for crime and/or disorder on the balance of probability is deemed likely or possible, then this may lead Members to consider whether Mr Ryan meets the 'fit and proper' criteria. It is important to note however, this is not the only consideration.

### **A6. Consultation and Customer Focus**

A6.1 There has been no public consultation on this matter and there is no requirement for the Licensing Sub-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.

## **Documents available in members' rooms**

**None**

## **Appendices**

Appendix 1 – Letter from Craig Noble to Mr Ryan

Appendix 2 – Response letter from Mr Ryan to Craig Noble

Appendix 3 – DVLA licence summary highlighting the convictions received

## **Background Papers:**

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2016