

Public Agenda Item: **Yes**

Title: **Consideration of an Application to Renew a Dual Hackney Carriage and Private Hire Drivers' Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **31st May 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 an application to renew a Torbay Council issued dual Hackney Carriage and Private Hire drivers licence, where the applicant has not met with the requirements set out in the current Hackney Carriage and Private Hire Licensing Policy 2016, by virtue of holding a current unspent conviction without informing Torbay Council. So therefore to determine on the facts laid before them, whether or not the Applicant remains 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. Therefore, there is no recommendation. The options available to Members however, are highlighted in paragraph A3.1 of Annex 1 to this report.

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 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.
- 3.4 Torbay has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. One of these is an enhanced Disclosure and Barring Service Disclosure (DBS), which is relevant in this case.
- 3.5 This report follows receipt of a renewal application from Mr James Uglow, which was made on 28th April 2018. In his application, Mr Uglow has declared that he holds a current conviction where in the relevant section he has entered:

Yes: £300 fine.

No other details were given. The Licensing Authority had not been made aware of the conviction at the time it was received, as required under the terms of the Hackney Carriage and Private Hire Licensing Policy.

- 3.6 The renewal application submitted on 28th April 2018, had not included a DBS, which is a requirement for this application, though this was submitted separately on 4th May 2018, as it had only been applied for on 20th March 2018.
- 3.7 The DBS corroborated the declaration made on the application as to the conviction and expanded to provide details of the offence, as follows:

Date of Conviction:	8th October 2015
Offence:	Destroy or Damage Property (value of damage £5000 or less – Offence against Criminal Damage Act 1971)
Court:	South and West Devon Magistrates
Disposal:	Conditional Discharge 12 Months
	Costs £85
	Victim Surcharge £15
	Criminal Courts Charge £150

- 3.8 Mr Uglow claims to have submitted a notification in October 2015, though the Council has no record of this and a copy cannot be supplied. This is covered in emails from Mr Uglow in **Appendices 2 and 4**.
- 3.9 The Convictions section of The Councils Hackney Carriage and Private Hire Licensing Policy 2016 says:

Violence

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...*

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.*

3.10 The Councils Hackney Carriage and Private Hire Licensing Policy 2016, section 7.6 goes says:

In relation to previous convictions, the Licensing Authority will have regard to the following:

- *The nature of the offence/s;*
- *The age of the offence/s;*
- *The apparent seriousness, as gauged by the penalty applied.*

3.11 It is therefore for the Sub-Committee to consider as to whether Mr Uglow remains a 'fit and proper person' to hold a Torbay Council issued Dual Hackney Carriage and Private Hire Drivers' licence.

3.12 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 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.
- A1.4 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.
- A1.5 Section 51 of the 1976 Act (with regard to Private Hire drivers) states:
- (1) Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:
- Provided that a district council shall not grant a licence—
- a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence; or
- b) to any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver's licence so authorised.
- (2) A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary.
- A1.6 This report follows receipt of a renewal application from Mr James Uglow, which was made on 28th April 2018. In his application, Mr Uglow has declared that he holds a current conviction where in the relevant section he has entered:

Yes: £300 fine

No other details were given. It was also noted that the Licensing Authority had not been made aware of the conviction at the time it was received, as required under the terms of the Hackney Carriage and Private Hire Licensing Policy.

A1.7 All applicants due to renew their Dual Hackney Carriage and Private Hire Drivers' licence before the end of April this year, were notified on 3rd January 2018 that a Disclosure and Barring Service Disclosure (DBS) would be required and that it should be applied for as soon as possible. In addition, drivers were reminded that failure to submit an acceptable DBS in good time, could delay any application as they would not be permitted to work until satisfactory receipt of the disclosure.

A1.8 The renewal application submitted on 28th April 2018, did not include a DBS, although this was submitted separately on 4th May 2018. It had only been applied for on 20th March 2018.

A1.9 The DBS corroborated the declaration made on the application as to the conviction and expanded to provide details of the offence, as follows:

Date of Conviction:	8 th October 2015
Offence:	Destroy or Damage Property (value of damage £5000 or less – Offence against Criminal Damage Act 1971)
Court:	South and West Devon Magistrates
Disposal:	Conditional Discharge 12 Months
	Costs £85
	Victim Surcharge £15
	Criminal Courts Charge £150

A1.10 The Council's Hackney Carriage and Private Hire Licensing Policy at paragraph 7.3 states:

Upon receipt of the enhanced DBS check, the Licensing Authority will assess whether any or all of the convictions and/or cautions are capable of having real relevance to the issue of whether or not the applicant or licensed driver is a fit and proper person to hold a licence. The Licensing Authority will also take into account any fixed penalty notices and other information, but only insofar as they are relevant to an application for a licence or impact on the continuance of an existing driver licence. In certain cases, the matter may be referred to the Council's Licensing Committee for determination.

A1.11 On 8th May 2018, Mr Uglow was advised that his renewal application could not be processed due to the conviction received and the fact that this had not been reported to the Licensing Authority in accordance with the Hackney Carriage and Private Hire Licensing Policy. It was outlined in the email that the application would be determined by Licensing Sub-Committee and Mr Uglow was given opportunity to make submissions and to provide any supporting evidence as to the circumstances surrounding the conviction and why this was not reported to the Licensing Authority at the time. A copy of the email is attached at **Appendix 1**.

A1.12 Mr Uglow, responded on the same day (8th May 2018), stating that he had informed the Licensing Authority of the Offence, by email, in October 2015 and provided some brief outline of the events that lead to the conviction. A copy of this email is attached at **Appendix 2**.

A1.13 A further email, which is attached at **Appendix 3**, was sent to Mr Uglow, again on 8th May 2018, which sought further explanation and clarification. Most notably, it sought a copy of the email advising the Licensing Authority of the conviction as such information would be recorded on the driver file and no such record is held.

It was evident therefore, that no such notification was received within the Licensing office.

A1.14 On 10th May 2018, Mr Uglow responded to advise that he could not find a copy of the notification of conviction to the Licensing Authority and provided a few additional details relating to the offence. This email is attached at **Appendix 4**.

A1.15 At 7.6 the Council's Policy says:

In relation to previous convictions, the Licensing Authority will have regard to the following:

- *The nature of the offence/s;*
- *The age of the offence/s;*
- *The apparent seriousness, as gauged by the penalty applied.*

A1.16 Torbay Council's Hackney Carriage & Private Hire Licensing Policy goes on to state;

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.

A1.17 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.

A1.18 Convictions Policy

Violence

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...*

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.*

A1.19 In this case it is 3.7 above that needs to be considered, as to whether Mr Uglow remains a 'fit and proper person' to hold a Torbay Council issued Dual Hackney Carriage and Private Hire Drivers' licence.

A1.20 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 There are two risks. The first risk to be consider is whether Mr Uglow presents a risk to the general public should his renewal application for a Dual Hackney Carriage and Private Hire Drivers' licence be granted.

A2.1.2 The second risk relates to the potential for an appeal should his renewal application for a Dual Hackney Carriage and Private Hire Drivers' licence be refused.

A3. Options

A3.1 The options are:

- (i) to grant a three year renewal of Mr Uglow's licence on the basis that Members **are** satisfied that he is a fit and proper person to hold such licence
- (ii) to refuse to grant the application for renewal of Mr Uglow's licence

on the basis that Members **are not** satisfied that he is a fit and proper person to hold such licence

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. Any crime and disorder impact is best assessed by the Licensing Sub-Committee having determined the facts. If any potential for future crime and/or disorder on the balance of probability is deemed likely or possible, or if the merits of this individual case are such that Members do not feel it appropriate to grant at this time, then this may lead Members to consider whether Mr Uglow meets the 'fit and proper' criteria.

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 Email dated 8th May 2018 to Mr Uglow

Appendix 2 Email dated 8th May 2018 from Mr Uglow

Appendix 3 Email dated 8th May 2018 to Mr Uglow

Appendix 4 Email dated 10th May 2018 from Mr Uglow

Background Papers:

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

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