

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

Title: **Consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **28th November 2019**

Key Decision: **No**

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

Contact Officer: **Shaun Rackley**
☎ Telephone: **01803 208026**
✉ E.mail: Shaun.rackley@torbay.gov.uk

1. What we are trying to achieve

- 1.1 This report asks Members to consider relevant facts relating to the holder of a Torbay Council issued dual Hackney Carriage and Private Hire drivers licence. The licence holder has failed to meet specific requirements as set out in the current Hackney Carriage and Private Hire Licensing Policy 2018 to 2022, by allowing their DVLA driving licence to expire. They have also continued to drive passengers for over a 5 (five) month period without a valid DVLA licence in place. Members are requested 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 advanced at the hearing. 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 Carriage and Private Hire Vehicles and 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 judicially approved test of fitness and propriety and therefore it is the responsibility of Licensing Authorities to determine whether a driver, or an applicant is indeed fit and proper to hold such a licence. In the absence of such a test, a number of local tests have developed 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 Council has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. One of these is that they should possess and maintain a suitable driving ability and driving history.
- 3.5 This report follows a review of the DVLA driver data base in respect of Mr Marek Piewiszko, who holds a Torbay Council dual drivers' licence, licence number LD0365, where it was discovered on the 31st October 2019, Mr Piewiszko's DVLA driving licence had expired on the 29th May 2019 and had not been renewed with the DVLA.
- 3.6 On the 31st October Mr Piewiszko's dual drivers' licence was suspended with immediate effect by Mr Steve Cox – Environmental Health Manager (Commercial), this was under delegate powers. This document can be found at Appendix 1.
- 3.7 Mr Piewiszko was written to on the 4th November 2019 and requested to provide an explanation as to the events surrounding the expiry of his DVLA driving licence. This document can be found at Appendix 2.
- 3.8 During the period of the 29th May and the 31st October 2019, Mr Piewiszko has conducted 1369 jobs carrying passengers for Torbay Taxi's for whom he drives for, all of which have been done with an expired DVLA driving licence. There is a perceived risk that any hire and reward insurance that was in place to enable Mr Piewiszko to carry passengers, would have been null and void without a valid DVLA licence in place.

Relevant aspects of the Policy state:

5.5 The Licensing Authority will not have regard to the age of an applicant when determining their suitability where it can be shown that:

- The applicant holds a valid full United Kingdom (UK) driving licence (licence issued in accordance with Part III of the Road Traffic Act 1972 (as amended) and that this licence must have been held for no less than 12 months at the time of application).

5.20 The Licensing Authority at its discretion, may require specific training to be undertaken where deemed appropriate. This training may include disability awareness, manual handling, equalities awareness, or anything else as deemed appropriate by the Licensing Authority.

- 3.8 It is for the Licensing Sub-Committee to consider whether Mr Piewiszko remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire drivers' licence.
- 3.9 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 judicially approved test of fitness and propriety and therefore it is the responsibility of Licensing Authorities to determine whether a driver, or an applicant is indeed fit and proper to hold such a licence. In the absence of such a test, a number of local tests have developed 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 Council has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. One of these is that they should possess a suitable driving ability and driving history.
- A1.5 This report follows a review of the DVLA driver data base in respect of Mr Piewiszko, where it was discovered that his DVLA driving licence had expired on the 29th May 2019.
- A1.6 On the 19th March 2013 Mr Piewiszko signed a receipt for the latest version of Torbay Councils Hackney Carriage and Private Hire Licensing Policy which has remain unchanged from that date in relation to the requirement to hold a valid DVLA driving licence before a dual drivers licence can be granted. The signed receipt also states that he had received the Policy and it was his responsibility to familiarise himself with the contents of the Policy. This document can be found at Appendix 3.
- A1.7 Mr Piewiszko continued to carry passengers between the 29th May and the 31st October 2019, working for Torbay Taxis, where he undertook 1369 jobs. This is the time period from when the DVLA driving licence expired and the dual drivers' licence was suspended with immediate effect.
- A1.8 Relevant excerpts of the Policy are highlighted in 3.7 of the report (above). Of particular relevance is section 5.5 of the Policy, which deals with what an applicant/driver must hold in order to be licensed with the Licensing Authority. This states:

5.5 The Licensing Authority will not have regard to the age of an applicant when determining their suitability where it can be shown that:

- The applicant holds a valid full United Kingdom (UK) driving licence (licence issued in accordance with Part III of the Road Traffic Act 1972 (as amended) and

that this licence must have been held for no less than 12 months at the time of application).

- A1.9 As Mr Piewiszko's DVLA driving licence had expired, the decision was made under delegated powers on the 31st October 2019 by Mr Steve Cox – Environmental Health Manager (Commercial) to immediately suspend Mr Piewiszko's dual drivers licence. This was in the interest of public safety along with the perceived risk that any hire and reward insurance that is in place to enable the carrying of passengers would likely to be null and void without a DVLA driving licence in place.
- A1.10 Following this, Mr Piewiszko was written to on 4th November 2019 and requested to provide an explanation as to the events surrounding the expiry of his DVLA driving licence.
- A1.11 Mr Piewiszko has responded to the letter of 4th November 2019 and included mitigating circumstances. This document can be found at Appendix 4.
Mr Piewiszko has been invited to attend the hearing in order to answer any questions and to explain the circumstances surrounding the expiry of his DVLA driving licence.
- A1.12 Members are requested to consider whether Mr Piewiszko remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence.
- A1.13 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 considered is whether Mr Piewiszko presents a risk to the general public should he continue to hold a licence to drive a Hackney Carriage or Private Hire vehicle.
- A2.1.2 The second risk relates to the potential for an appeal should Mr Piewiszko's licence be revoked or suspended and/or have additional conditions imposed.

A3. Options

A3.1 The options are:

- (i) To do nothing and lift the suspension, if satisfied that Mr Piewiszko remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle
- (ii) To require additional training and/or to successfully undertake a Driving Standards test, or an equivalent higher standard test
- (iii) To continue the suspension of Mr Piewiszko's licence to drive a Hackney Carriage or Private Hire vehicle and to require that additional training and/or a Driving Standards, or the equivalent

- higher standard test is required
- (iv) To revoke Mr Piewiszko's drivers licence on grounds that he is no longer considered to be a 'fit and proper' person to hold such a 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, equalities or crime and disorder issues other than as outlines in this report.

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	Suspension letter issued to Mr Piewiszko
Appendix 2	Letter to Mr Piewiszko requesting information
Appendix 3	Signed receipt for Torbay Councils Hackney Carriage and Private Hire Licensing Policy
Appendix 4	Letter from Mr Piewiszko with supporting information

Background Papers:

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2018 to 2022