

Minutes of the Licensing Sub-Committee

9 December 2021

-: Present :-

Councillors Ellery, Barbara Lewis and Mills

30. Election of Chairman/woman

Councillor Ellery was elected as Chairman for the meeting.

31. Minutes

The Minutes of the meetings of the Sub-Committee held on 7 October and 11 November 2021 were confirmed as a correct record and signed by the Chairman.

32. Review of Torbay Council issued Driving Licence

Members considered a report that set out relevant facts relating to a holder of a Torbay Council issued dual Hackney Carriage and Private Hire Driver's Licence. Members were requested to determine the facts before them, whether or not the holder of the dual Hackney Carriage and Private Hire Driver's Licence remained a fit and proper person to hold such licence.

The Respondent addressed Members and responded to questions. The Respondent's Manager accompanied him to the meeting. At the hearing the Respondent circulated a letter from the injured persons solicitor.

Decision:

That Mr Batt remains a fit and proper person to drive a Hackney Carriage or Private Hire Vehicle and that no action be taken at this time.

Reasons for Decision:

In coming to that decision, Members carefully considered having been charged with the responsibility to determine the drivers' licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care, or any other vulnerable person known to them to get into a vehicle with Mr Batt alone. An unequivocal and unanimous answer by Members to this question, was 'yes'.

Members had regard to the fact that Mr Batt had notified the Licensing Office on 21 July 2021 that he had been charged with 'driving without due care and attention' and then subsequently advised of the outcome of the court case where

he received 8 points on his driving licence, on 29 July 2021. The Sub-Committee felt that Mr Batt had acted responsibly when involved in a collision with an elderly pedestrian who had slipped off a slope under the wheels of Mr Batt's licensed vehicle in telephoning the emergency services and providing care and support to the injured person. Having fully established the circumstances of the accident members were satisfied that this was an unfortunate accident and accepted that Mr Batt would not have been able to see the injured person on the ground when he edged slowly forward. Members found Mr Batt to be genuinely remorseful and shaken up by the incident and noted that he had considered ceasing driving as a result. However due to support from the Police and others he has been able to continue driving.

Members acknowledged that Mr Batt had fully complied with the requirements of Torbay Council's Hackney Carriage and Private Hire Licensing Policy 2019 - 2022 in reporting the incident and keeping the Licensing Officers updated. He had fully retained his driving licence with the DVLA, and no complaints had been received either by his employer or the licensing authority in the 10 years he has been a Torbay Council issued Licensed Driver, or in the months since the incident, which was emphasised by his employer at the hearing, and confirmed by the Licensing and Public Protection Officer presenting the report.

It was noted that a very small part of the letter submitted at the hearing had been redacted by Mr Batt, Members felt that this was not the right thing to do but accepted, that in his current state of mind following the sad passing of his wife, Mr Batt was not intentionally trying to hide some of the content of the letter, which could be seen in any event.

In concluding, Members resolved, in light of the mitigating factors above, Mr Batt remains a fit and proper person to hold a Torbay Council Driver's Licence and that no further action was a fair and proportionate response to a genuine accident. Noting also that Mr Batt had taken all necessary action to support the injured person, and to co-operate with the Police, Members were satisfied that Mr Batt would continue to ensure public safety, when undertaking his driving duties.

33. Review of Torbay Council issued Driving Licence

Members considered a report that set out relevant facts relating to a holder of a Torbay Council issued dual Hackney Carriage and Private Hire Driver's Licence. Members were requested to determine the facts before them, whether or not the holder of the dual Hackney Carriage and Private Hire Driver's Licence remained a fit and proper person to hold such licence.

The Respondent addressed Members and responded to questions.

Decision:

That Mr Setters' Torbay Council Driver's Licence be revoked in accordance with Section 61(1)(b) of the Local Government (Miscellaneous) Provisions Act 1976 and that this revocation shall have immediate effect, in accordance with Section 61(2B) of the Local Government Miscellaneous Provisions Act 1976.

Reasons for Decision:

In coming to that decision, Members carefully considered having been charged with the responsibility to determine the drivers' licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care, or any other vulnerable person known to them to get into a vehicle with Mr Setters alone. An unequivocal and unanimous answer by Members to this question, was 'no'.

Notwithstanding the mitigating explanations presented by Mr Setters, Members were concerned that having only been issued with his Torbay Council Drivers Licence on 14 July 2021, Mr Setters was before the Licensing Sub-Committee in relation to four notifications for speeding, an alleged sexual act within a licensed vehicle witnessed by minors, and a road traffic accident which resulted in the licensed vehicle turning over in a lane near Ipplepen, with injuries being sustained by the passengers.

Members had regard to the fact that, at the hearing, Mr Setters accepted committing the four speeding offences and confirmed that he had been contacted by DVLA the day before the hearing where he had been informed that he had received 9 penalty points for the offences, together with a requirement to undertake a speed awareness course. It was of concern to Members that Mr Setters submitted that had he been made aware of the first speeding offence before the others, he would have been alerted to the presence of the camera and would not have been caught on a further three occasions by the same camera.

In relation to the report received from the member of public having witnessed a sexual act within the licensed vehicle, whilst passing with a minibus full of minors, Members considered the conflicting submissions and found Mr Setters not to be believable in his account that a medical examination was being undertaken by a female friend to address a pressing health concern.

In any event, Members were not satisfied that a reasonable person would consider parking in a public place, late at night, and partially undressing to the point of exposing their genitals close to a campsite used by young persons and determined that this was not the behaviour expected from a professional licenced driver, or an appropriate use of a licensed vehicle and demonstrated exceptionally poor judgment.

Upon consideration of the road traffic collision, Members noted Mr Setters explanation that the driving conditions were poor at the time of the incident but also had regard to the written statements from two of the passengers and that submitted by the mother of one of the passengers, the following day.

Members could not be certain of the facts and noted the absence of a police report which may have assisted them and were mindful of the decision by the Police not to press charges. However, even if they were to accept Mr Setters account of the events that occurred, he admitted to driving at around 20 mph through thick fog which had descended. Members considered this to be too fast in the

circumstances and together with the four previous speeding offences, Members could not be satisfied that Mr Setters had not been driving too fast for the prevailing conditions which resulted in him rolling his vehicle with four young passengers onboard. Members were also unconvinced that for the vehicle to have overturned, causing it to be written off, coupled with the witness account they were unable to open some of the vehicle doors due to the damage, that excessive speed was not a factor.

Members were extremely concerned that Mr Setters had encouraged his passengers to leave the scene before the emergency services had arrived, having admitted not being medically qualified himself to assess the extent of any injuries sustained.

Members noted that Mr Setters had not reported the collision within 72 hours, as required by Torbay Council's Hackney Carriage and Private Hire Licensing Policy 2019 - 2022

In concluding, Members unanimously resolved to revoke Mr Setters' Torbay Council Drivers' Licence with immediate effect, as they could not be satisfied that he remained a fit and proper person to hold a Torbay Council Dual Hackney Carriage and Private Hire Driver's Licence. In determining this, Members concluded that based on the evidence available and all written and oral submissions, that Mr Setters' conduct as a professional driver had fallen well below the high standard expected, that he was not a credible witness, and not withstanding his mitigating circumstances, to revoke his Licence with immediate effect was appropriate and proportionate in all the circumstances to ensure public safety.

Chairman