

TORBAY COUNCIL

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

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: **9th December 2021**

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 whether the holder of a Torbay Council issued Driver's licence remains a 'fit and proper person to hold such a licence' following the criteria as set out in the current Hackney Carriage and Private Hire Licensing Policy 2019 to 2022.

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 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 of the Local Government (Miscellaneous Provisions) Act 1976, 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 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 This report follows a series of events and complaints regarding Mr Setters. The first being an email dated 29th September 2021 from Mr Simon Setters that he had received four notifications for speeding. The second relates to complaint dated 4th October 2021 about an alleged sexual act within a licensed vehicle witnessed by minors and the third, was a complaint about an accident which resulted in the Hackney Carriage turning over in a lane near Ipplepen, in Teignbridge, Devon.
- 3.5 The speeding offences have yet to be confirmed by DVLA and there could still be legal proceedings with regard to that matter, due to a resultant 12 points. With regard to the two complaints, there is conflicting submissions between the parties, so Members need to consider the report and appendices, to determine whether they consider Mr Setters remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire drivers' licence.
- 3.7 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 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 of the Local Government (Miscellaneous Provisions) Act 1976 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 The legislation does not set out the criteria as to what is considered 'fit and proper', therefore leaving it for the Licensing Authority to determine whether a driver or an applicant is indeed 'fit and proper' to hold such a licence. In Torbay, these matters are covered within its Hackney Carriage & Private Hire Licensing Policy 2019-22, which 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.

- A1.5 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.

- A1.6 On the 29th September 2021 the Licensing Team was in receipt of an email from Mr Simon Setters, advising that he had received 4 speeding fines. See Appendix 1.
- A1.7 On the 4th October 2021, a District Commissioner of Scouting contacted the Council switch board, to report a sexual act taking place in a licensed vehicle outside an area used by scouts. Later on the same date, this was confirmed in an email following a conversation with Shaun Rackley, Licensing Officer. You will read in the email that the allegation is that the occupants of the vehicle, a male, later determined to be Mr Simon Setters, and a lady, were both naked and undertaking a sexual act. The lights were on and this was allegedly witnessed by a minibus of scouts, who were within the vehicle being driven past by the District Commissioner of Scouting. A photo was submitted with the email, which did confirm that the vehicle was indeed Hackney Carriage 163, that driven by Mr Simon Setters. See Appendix 2.
- A1.8 On the 6th October 2021, Shaun Rackley wrote to Mr Simon Setters over both incidents above, seeking a response by the 15th October 2021. See Appendix 3.
- A1.9 On the 7th October 2021, the Licensing Team received a reply from Mr Simon Setters regarding both incidents. See Appendix 4.
- A1.10 On the 8th October 2021, Shaun Rackley emailed Torbay Cab Co, seeking to establish whether the said female was a passenger, and whether there was a more serious aspect to this allegation. The response confirmed that she almost certainly wasn't a passenger. See Appendix 5.
- A1.11 On the 14th October 2021, the Licensing Team received an email from a Taxi Operator, with regard to an accident involving the same vehicle, near Ipplepen. The mother of one of the young passengers was very concerned about the circumstances of the accident, where the vehicle had overturned. Fortunately, no one was seriously hurt. Jon Edwards, Licensing Compliance Officer, contacted the mother on the 15th October 2021, and summarised the discussion with the mother

in the final email of the attached sequence. See Appendix 6.

- A1.12 On the 15th October 2021, the Licensing Team received an email from the mother, summarising the events based upon her discussions with her daughter, as had been requested by Jon Edwards. See Appendix 7.
- A1.13 On the 19th October 2021, Steve Cox, wrote to Mr Simon Setters, seeking confirmation that he was the driver of HC163, and was therefore involved in an accident. He replied and confirmed that he was, later that same day. See Appendix 8.
- A1.14 On the 22nd October 2021, Steve Cox, wrote to Mr Simon Setters, advising him of the matters that he intended to include in a Licensing Sub-Committee report, giving him an opportunity to forward any additional information in the committee report. This resulted in an exchange of several emails, including extracts from the email statement from the mother, in relation to the vehicle accident. See Appendix 9.
- A1.15 On the 9th November 2021, the Licensing Team received a response from Mr Simon Setter with regard to the allegations made by the mother in relation to the vehicle accident, presenting his version of events. See Appendix 10.
- A1.16 On the 8th November 2021, the Licensing Team received an email with a letter dated 5th November 2021 on headed paper from the female occupant of the vehicle who was allegedly involved in a sexual act. This she denied. See Appendix 11.
- A1.17 On the 18th November 2021, Steve Cox, wrote to District Commissioner of Scouting, advising them that the Licensing Team had received a statement, in the form of a letter on headed paper, from the alleged female in the vehicle denying that any sexual act was taking place. The email was seeking confirmation that the female was allegedly naked on the night in question. This the District Commissioner of Scouting confirmed. See Appendix 12.
- A1.18 At the time of writing this report, there have been no criminal or road traffic convictions, though there remains the potential for one regarding the 4 speeding offences. With that in mind, there is nothing more to consider regarding the Hackney Carriage & Private Hire Licensing Policy 2019-22, beyond that covered A1.4 and A1.5 above.
- A1.19 Mr Setters has not been licensed as Hackney Carriage and Private Hire Driver for more than 6 months, so there is no history that can be supplied.
- A1.20 Members are requested to consider whether Mr Simon Setter remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence, taking into account the four speeding offences, the allegations that relate to the sexual act in a licensed vehicle, observed by minors, and the circumstances surrounding the vehicle accident.
- A1.21 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 Setters presents a public safety 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 Setters's licence be suspended or revoked and/or have additional conditions imposed.

A3. Options

A3.1 The options are:

- (i) To do nothing, if satisfied that Mr Setters remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire Vehicle,
- (ii) To give a Written Warning,
- (iii) To suspend or revoke Mr Setters's Torbay Council issued Driver's Licence on the grounds that he is no longer considered to be a 'fit and proper' person to hold such a licence, though any temporary suspension must relate to an action that is time based.

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, as there is no requirement for the Licensing Sub-Committee to consult the public in this regard.

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 from Mr Setters dated 29th September 2021 to the Licensing Authority

Appendix 2 Emailed statement from District Commissioner of Scouting dated 4th October 2021.

- Appendix 3 Letter from Shaun Rackley dated 6th October 2021 to Mr Setters, following up that Insurance Documents still needed.
- Appendix 4 Email from Mr Setters dated 7th October 2021 in response to Shaun Rackley's letter
- Appendix 5 Emails between the Licensing team and Torbay Cab Co dated between 8th and 11th October 2021.
- Appendix 6 Emails dated 14th and 15th October 2021 regarding a vehicle accident.
- Appendix 7 Email dated 15th October 2021 from mother of passenger in the vehicle accident
- Appendix 8 Email from Steve Cox to Mr Setters and his reply, both dated 19th October 2021 regarding the vehicle accident
- Appendix 9 A series of emails between Steve Cox and Mr Setters dated between 22nd Oct and 2nd November 2021 20th October about the contents of the committee report.
- Appendix 10 A response from Mr Setters regarding the allegations from the mother of the passenger in the vehicle accident received on the 9th November 2021.
- Appendix 11 A letter from the female occupant of the vehicle dated 5th November, regarding the sexual act allegations.
- Appendix 12 An email from Steve Cox to the District Commissioner of Scouting and their reply dated the 18th November 2021.

Background Papers:

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2019 to 2022