

TORBAY COUNCIL

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 contact from Mr Paul Batt that he was charged with and then convicted of 'driving without due care and attention'. This has resulted in 8 points on his licence. This is considered a Major Traffic Offence under Hackney Carriage & Private Hire Licensing Policy 2019-22.
- 3.5 In mitigation, Mr Batt fully complied with Section 9.1 of Torbay Council's Policy, and that is to keep Torbay Council fully informed. The Court have not removed his driving licence, and he has a clean record of complaints against him in the 10 years he has been a Torbay Council issued licensed driver.
- 3.6 It is for the Licensing Sub-Committee to consider whether Mr Batt 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 14th July 2021 Mr Batt, a Licensed Driver with Torbay Council notified the Licensing Office, as he is required to do, that he has been charged with ‘driving without due care and attention’. He was asked to contact us when the outcome of the court case was confirmed. This he did on the 29th July 2021, the day after the court hearing. He received 8 points on his driving licence. See Appendix 1. A copy of the DVLA Register confirms the offence to be driving without due care and attention. See Appendix 2.
- A1.7 On the 8th October 2021 Shaun Rackley, Licensing Officer, emailed Mr Batt asking for an explanation to be included within any committee report, which Mr Batt subsequently did. See Appendix 1. Included within Mr Batt’s submission was reference to a statement from the injured party.
- A1.8 On the 18th October 2021, Steve Cox, email Mr Batt seeking a copy of the statement from the injured party, should he wish to forward that to be included within the report. This was followed by a further email on the 21st October 2021, giving Mr Batt the opportunity to say anything in addition or to provide that statement by the 31st October 2021. See Appendix 1.
- A1.9 Mr Batt responded to the email, though there maybe some confusion over the availability of a statement, which may need to be clarified at the committee hearing. He also advised that he will be accompanied by Mrs Denise McDowell his manager.
- A1.10 Section 8.2 of Appendix A of Torbay Council’s Hackney Carriage & Private Hire Licensing Policy 2019-22 for Major Traffic Offences, which ‘driving without due care and attention’ is, says;

In the case of a licensed driver being convicted of a serious road traffic accident, the Licensing Authority may suspend or revoke the licence or an application to renew the licence being refused.

- A1.11 Section 9.1 of Appendix A of Policy goes on to say:

Licence holders must notify the Licensing Authority within 48 hours of an arrest and release, charge or conviction of any offences listed within this Policy. An arrest for any of the listed offences, will result in a review by the Licensing Authority as to whether the licence holder is fit to continue to hold a licence. It is not a predetermination that the licence should be revoked, it is for the Licensing Authority to consider what, if any action in terms of the licence should be taken, based on the balance of probabilities.

A1.12 In mitigation, Mr Batt fully complied with Section 9.1, and kept Torbay Council fully informed. He has retained his driving licence with DVLA, and he has a clean record of complaints against him in the 10 years he has been a Torbay Council issued licensed driver.

A1.13 Members are requested to consider whether Mr Batt remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence, taking into consideration the circumstances in this report and those presented to members on the day.

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 There are two risks. The first risk to be considered is whether Mr Batt 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 Batt'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 Batt remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire Vehicle.
- (ii) To issue a written warning.
- (iii) To suspend or revoke Mr Batt'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 Series of emails between 14th July 2021 and the 21st October 2021, between Mr Batt and Torbay Council's Licensing Officers.

Appendix 2 Copy of DVLA Register dated 21st October 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