

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: **28<sup>th</sup> April 2022**

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 relevant facts relating to the holder of a Torbay Council issued dual Hackney Carriage and Private Hire drivers licence. This follows receipt of information from Torbay Council's School transport team that the driver has failed in their duty to safeguard a vulnerable child in their care whilst conducting a school contract and also committing an offence under the Town Police Clauses Act 1847, by allowing an additional person to ride without the hirers consent. 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 a 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 practices have developed over time and have stood up to scrutiny in the Courts and are therefore commonly accepted amongst the majority of Licensing Authorities.
- 3.4 This report follows information received by Torbay Councils School transport team regarding Mr Karl Dooley, who holds a Torbay Council dual drivers' licence number LD0069. Mr Dooley was conducting a school contract on the 8<sup>th</sup> February 2022 on behalf of a company who had sub-let him the work. Whilst transporting a vulnerable 11-year-old school child within his licensed Hackney Carriage, Mr Dooley received a phone call from another passenger requesting a taxi. Mr Dooley then proceeded to pick up the second unknown passenger on route whilst the vulnerable child was on board.
- 3.5 As Mr Dooley had admitted to the incident during the interview with Torbay Council's School transport team on the 10<sup>th</sup> of February, and due to the seriousness of the incident, he was written to by Shaun Rackley of Torbay Council's Licensing team, to request his submission be put before Licensing Committee. This document can be found at Appendix 2.

As stated in the letter, this is not only a child safeguarding incident, but an offence under the Town Police Clauses Act 1847, Section 59, where it states:

*Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding [level 1 on the standard scale].*

- 3.6 Mr Dooley has responded by email to the letter of the 8<sup>th</sup> of March 2022 and explained the incident. This document can be found at Appendix 3.
- 3.7 It is for the Licensing Sub-Committee to consider whether Mr Karl Dooley remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire drivers' licence.
- 3.8 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 practices have developed over time and have stood up to scrutiny in the Courts and are therefore commonly accepted 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.
- A1.5 This report follows information received by Torbay Councils School transport team regarding Mr Karl Dooley, who holds a Torbay Council dual drivers' licence number LD0069. Mr Dooley was conducting a school contract on the 8<sup>th</sup> February 2022 on behalf of a company who had sub-let him the work. Whilst transporting a vulnerable 11-year-old school child within his licensed Hackney Carriage, Mr Dooley received a phone call from another passenger requesting a taxi. Mr Dooley then proceeded to pick up the second unknown passenger on route whilst the vulnerable child was on board.

The passenger was collected from Newton Road, Torquay and taken to Tweenaway Cross, Paignton. The child was placed in the front of the vehicle during this journey.

- A1.6 Mr Dooley was interviewed by an Officer from Torbay Council's School Transport team regarding this incident. This document can be found at Appendix 1.
- A1.7 As Mr Dooley had admitted to the incident during the interview with Torbay Council's School transport team on the 10<sup>th</sup> of February, see A1.6 above and due to the seriousness of the incident, he was written to by Shaun Rackley of Torbay Council's Licensing team, to request his submission be put before Licensing Committee. This document can be found at Appendix 2.

As stated in the letter, this is not only a child safeguarding incident, but an offence under the Town Police Clauses Act 1847, Section 59, where it states:

*Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding [level 1 on the standard scale].*

A1.8 Mr Dooley has responded by email to the letter of the 8<sup>th</sup> of March 2022 and explained the incident. This document can be found at Appendix 3.

A1.9 The Statutory Taxi and Private Hire vehicle standards, as issued by the Department for Transport state:

*5.12 Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:*

***5.13 Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?***

*If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.*

*5.14 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.*

Relevant excerpts of Torbay Councils Taxi policy state:

*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.*

*Appendix A: Taxi & PHV Licensing Criminal Convictions Policy –*

*1.6 - The Licensing Authority will undertake whatever checks it considers necessary to ensure that licences are not issued to unsuitable people. In assessing the suitability of an Applicant or licence holder, the Licensing Authority will take into consideration the following factors:*

- Criminality*
- Number of endorsed DVLA driving penalty points*
- The conduct of the applicant in making the application (e.g. whether they have acted with integrity during the application process)*
- The previous licensing history of existing/former licence holders*

*In addition, the Licensing Authority will also consider further information from sources such as, but not limited to, the Police, Children and Adult Safeguarding Boards, Multi-Agency Safeguarding Hub, Social Services, other Licensing Authorities, other departments within the Council, and Statutory Agencies*

A1.10 Members are requested to consider whether Mr Karl Dooley remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence.

A1.11 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 Karl Dooley 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 Karl Dooley's licence be revoked or suspended and/or have additional conditions imposed.

## **A3. Options**

A3.1 The options are:

- (i) To do nothing, if satisfied that Mr Karl Dooley remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle
- (ii) To give a formal written warning
- (iii) To require additional training and/or to successfully undertake Safeguarding training, or an equivalent higher standard training
- (iv) To suspend Mr Karl Dooley's licence to drive a Hackney Carriage or Private Hire vehicle and to require that additional training and/or Safeguarding training, or the equivalent higher standard training is required
- (v) To revoke Mr Karl Dooley'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 on 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 Interview between Torbay Council's School Transport Team and Mr Karl Dooley

Appendix 2 Letter to Mr Karl Dooley requesting further information

Appendix 3 Email from Karl Dooley

**Background Papers:**

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2021  
Department of Transports, Statutory Taxi and Private Hire vehicle standards 2020