

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. *Removed*

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 Setter's 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