

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: **26th October 2023**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Shaun Rackley**
☎ Telephone: **01803 208026**
✉ E.mail: Shaun.rackley@torbay.gov.uk

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 Devon & Cornwall Police where the licence holder has committed an offence under the current Taxi Policy 2022 and the Town Police Clauses Act 1847, by allowing an unlicensed driver to use a registered Torbay Council Hackney Carriage vehicle without the correct licence in place. 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 Torbay Council has adopted a number of common practices for testing the 'fit and proper' status of drivers and Applicants. One of these is that they should possess and maintain a suitable driving ability and driving history.
- 3.5 This report follows information received from Devon & Cornwall Police regarding Mr Rebin Mohammed, who holds a Torbay Council dual drivers' licence. The information provided relates to a speeding offence committed in a Torbay Council registered Hackney Carriage vehicle on the 16th of April 2023 in Plymouth. Mr Mohammed is the current Hackney Carriage vehicle proprietor licence holder of this registered Hackney Carriage.
- 3.6 After investigation, it has been identified that Mr Mohammed has permitted an unlicensed driver to use a Torbay Council registered Hackney Carriage vehicle. This is an offence under the Town Police Clauses Act 1847 and a breach of Torbay Council's Taxi Policy.
- 3.7 Mr Mohammed has additionally been unable to provide valid insurance to show the vehicle was insured at the time of being driven. His honesty and professionalism as a licensed driver has also come into question due to the circumstances surrounding this incident.
- 3.8 It is for the Licensing Sub-Committee to consider whether Mr Rebin Mohammed remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire drivers' licence.
- 3.9 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.

Rachael Hind
Regulatory Service 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. One of these is that they should possess and maintain a suitable driving ability and driving history.
- A1.5 This report follows information received regarding Mr Rebin Mohammed, who holds a Torbay Council dual drivers' licence, licence number LD0255. Mr Mohammed has held this licence since October 2021 and was previously licensed from 2012 until 2018.
- A1.6 Devon and Cornwall Police contacted the Licensing Department on the 17th of August 2023 in relation to Mr Mohammed, advising that HC151, vehicle registration MJ20 YVO, had been caught speeding on the B3214 Old Laira Road, Plymouth at 22:02 hrs on the 16th of April 2023. The Police were trying to establish who held the vehicle proprietors licence for HC151, which at the time of the speeding offence was confirmed as Mr Mohammed. They also wanted to provide us with some information regarding this offence which they believe to be relevant to his current licence.
- A1.7 Devon & Cornwall Police sent an automatic notification following the speeding offence to the registered keeper of the vehicle, Mr Mohammed. Mr Mohammed responded to Devon & Cornwall Police on the 3rd of May 2023 and declared it was not him driving at the time of the offence and nominated a different driver the name of which the Police could not disclose to us.

It is of concern that following Mr Mohammed supplying the information to Devon & Cornwall Police, they struggled to get hold of the nominated driver at the address in Plymouth and despite numerous attempts had to write to Mr Mohammed again on the 19th of June 2023 to remind him that as the registered keeper it was his responsibility to supply up to date details of the nominated driver. The Police did receive a response from Mr Mohammed on the 28th of June 2023 along with an unsigned letter written by the nominated driver, declaring that he was driving the vehicle at the time of the incident using his French driving licence. It is worth noting

that the Police Officer has stated that although he is not a handwriting expert, both Mr Mohammed's and the nominated driver's handwriting 'appear suspiciously similar'. A copy of this email can be found at Appendix 1.

A1.8 Mr Mohammed was written to by Shaun Rackley from Torbay Council's Licensing Team on the 11th of September 2023 requesting details of who was driving HC151 at the time of the offence, along with a request for their Licensed Drivers badge details. A copy of his insurance certificate showing that the driver was covered was also requested. This document can be found at Appendix 2.

A1.9 Mr Mohammed responded by email on the 13th of September 2023 and declared that a friend, was the driver at the time of the offence. The declared driver does not and never has held a Licensed Drivers badge with this Licensing Authority, meaning that by allowing an unlicensed driver to use the registered Hackney Carriage, Mr Mohammed is in breach of Torbay Council's Taxi Policy and has committed an offence under the Town Police Clauses Act 1847, Section 47, where it states:

If any person acts as such driver as aforesaid without having obtained such licence, or during the time that his licence is suspended, or if he lend or part with his licence, except to the proprietor of the hackney carriage, or if the proprietor of any such hackney carriage employ any person as the driver thereof who has not obtained such licence, or during the time that his licence is suspended, as hereinafter provided, every such driver and every such proprietor shall for every such offence respectively be liable to a penalty not exceeding [level 3 on the standard scale].

Within Mr Mohammed's response he declared "my friend drove it to help my family and myself to do some food shopping as I was not feeling well and I couldn't even get out of bed. I completely forgot to remove my taxi plate because of my illness". This document can be found at Appendix 3.

A1.10 Mr Mohammed was again written to by Shaun Rackley from Torbay Council's Licensing Team to request for the second time, an insurance certificate showing that the declared driver was insured at the time of the speeding offence. A request was also made to provide records from the card payment machine within HC151 from the 14th to the 20th of April 2023 to ascertain if Mr Mohammed had worked on the 16th of April.

This document can be found at Appendix 4.

A1.11 Mr Mohammed responded on the 28th of September 2023 with screenshots taken from his card payment machine for the dates requested. On the 16th of April 2023, Mr Mohammed took nine payments between 00:05 hrs and 03:36 hrs and then again eight payments from 17:17 hrs to 21:16 hrs. The last payment on the 16th of April was taken at 21:16 hrs, 46 minutes before the speeding offence in Plymouth occurred. Mr Mohammed also supplied his insurance certificate, which shows only himself covered to drive the vehicle, but has stated that the declared driver has never been on the policy and was using his own comprehensive insurance which he could not check as he was not well at all.

This document can be found at Appendix 5.

A1.12 Due to seriousness of the incident of Mr Mohammed allowing an unlicensed driver

to use a Hackney Carriage without the correct drivers licence in place, without valid insurance together with inconsistencies in his explanation about his illness, Mr Mohammed was written to by Shaun Rackley of Torbay Council's Licensing Team, to request his submission which would be put before Licensing Committee. This document can be found at Appendix 6.

A1.13 Mr Mohammed has responded by email to the letter of the 5th of October 2023 and provided his mitigating circumstances surrounding the incident. This document can be found at Appendix 7

A1.14 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:

Appendix B: Driver Code of Conduct

The driver must not, at any time, when driving a Hackney Carriage or Private Hire vehicle:

2. h) Allow any person(s) to drive the vehicle unless they are authorised to do so by the proprietor, hold an appropriate Torbay Council dual drivers licence and are fully insured to do so

Appendix D: Vehicle Specification Standards and Schedule of Conditions

Unlicensed Drivers - Your attention is drawn to section 46 of each of the 1847 and 1976 Acts which require ALL drivers of Hackney Carriage and Private Hire vehicles to hold the appropriate drivers licence as issued by the Licensing Authority and it is an offence which affects the insurance to allow any unlicensed person to drive any licensed vehicle.

A1.15 Members are requested to consider whether Mr Rebin Mohammed remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence.

A1.16 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 no significant risks.

A3. Options

A3.1 The options are:

- (i) To do nothing, if satisfied that Mr Rebin Mohammed remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle
- (ii) To give a formal written warning
- (iii) To revoke Mr Rebin Mohammed'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 Information received from Devon & Cornwall Police dated 23rd August 2023
- Appendix 2 Letter to Rebin Mohammed from Shaun Rackley (Licensing Team) requesting information dated 11th September 2023
- Appendix 3 Email response from Rebin Mohammed with drivers details dated 13th September 2023
- Appendix 4 Email to Rebin Mohammed from Shaun Rackley (Licensing Team) requesting card payment device print out and insurance document dated 26th September 2023
- Appendix 5 Email response from Rebin Mohammed with card payment device print out and insurance document dated 28th September 2023
- Appendix 6 Letter to Rebin Mohammed from Shaun Rackley (Licensing Team) requesting mitigating circumstances dated 5th October 2023
- Appendix 7 Response from Rebin Mohammed with mitigating circumstances dated 11th October 2023
- Appendix 8 Historic complaint details and letters relating to Rebin Mohammed

Background Papers:

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2022
Department of Transports, Statutory Taxi and Private Hire vehicle standards 2020