

Minutes of the Licensing Sub-Committee

26 October 2023

-: Present :-

Councillors Barbara Lewis, Tolchard and Chris Lewis

14. Election of Chairman/woman

Councillor Barbara Lewis was elected as Chairman for the meeting.

15. Apologies

It was reported that the membership of the Sub-Committee had been amended for this meeting by including Councillor Chris Lewis instead of Councillor Douglas-Dunbar.

16. Minutes

The Minutes of the meeting of the Sub-Committee held on 14 September 2023 were confirmed as a correct record and signed by the Chairman.

17. Application for Torbay Council Driver's Licence

Members considered a report that set out relevant facts relating to a applicant for a Torbay Council issued dual Hackney Carriage and Private Hire Driver's Licence. Members were requested to determine based on the facts before them, whether or not the applicant of the dual Hackney Carriage and Private Hire Driver's Licence was a fit and proper person to hold such licence.

At the Hearing the Applicant addressed Members and responded to their questions.

Decision:

Subject to the successful completion of the Knowledge Test and any other outstanding requirements under the Hackney Carriage (Taxi) and Private Hire Policy the Applicant's application for a dual Torbay Council Driver's Licence, be approved.

Reasons for Decision:

In coming to that decision, Members carefully consideration 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 the Applicant alone. An unequivocal and unanimous answer by Members to this question, was 'yes'.

Members were reassured by the Applicants oral presentation, his openness, honesty, and clear and concise manner in which he set out the circumstances of the offence which resulted in him having 6 penalty points on his licence. Members further noted that other than the 6 penalty points for the one incident the Applicant had an otherwise clean licence.

Following questioning the Applicant around the circumstances of the offence Members were concerned that the Applicant did not pull his vehicle over onto the hard shoulder and come to a complete stop before attempting to retrieve and reposition his fallen telephone, however accepted that the Applicant's automatic and instinctive reaction was to want to immediately remove the potential hazard from the drivers footwell. Members further noted the Applicants view that, upon reflection, to have pulled over would have been safer course of action.

Given the severity of the offence and the impact that a conviction for a driving offence could have upon a professional driving career, Members were surprised that the Applicant did not chose to prioritise attending Court to plead mitigating circumstances above his other pressing commitments, however, did not feel that this was cause for concern.

Whilst concerns were raised as to the Applicants failure to read the Hackney Carriage (Taxi) and Private Hire Policy prior to making his application for a Torbay Council Drivers Licence, Members accepted that this was an oversight due to having previously worked as a taxi driver and assuming, albeit mistakenly, that the criteria and process had not changed. The Applicant confirmed that he had now read the Policy, and Members were reassured by the Applicants commitment in all other respects.

In concluding, Members all agreed that they found the Applicant to be believable in his account and that this was an isolated incident. It was clear that the Applicant viewed the incident as regrettable and were satisfied having heard the Applicant's oral representation that he would uphold the professional standards they expect of a driver licensed by them and therefore saw reasonable justification to depart from the Hackney Carriage and Private Hire Licensing Policy and grant the application for a dual Torbay Council Driver's Licence.

18. Application for Torbay Council Driver's Licence

Members considered a report that set out relevant facts relating to a applicant for a Torbay Council issued dual Hackney Carriage and Private Hire Driver's Licence. Members were requested to determine based on the facts before them, whether or not the applicant of the dual Hackney Carriage and Private Hire Driver's Licence was a fit and proper person to hold such licence.

At the Hearing the Applicant and his employer addressed Members and responded to their questions.

Decision:

That the Applicant's application for a dual Torbay Council Driver's Licence, be refused.

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 the Applicant alone. The answer by Members to this question, was a unanimous and unequivocal 'no'.

After thorough and careful deliberations, Members could not be certain that the Applicant was a fit and proper person to hold a Torbay Council Drivers Licence. Members noted that the Applicant had not provided a written submission before the hearing, despite having had the opportunity and being asked to do so by the Licensing Officer and gave no explanation for this omission at the hearing. Omitting this opportunity in Members opinion, did not support the Applicants assertion that he had been missing doing a job which he loved. Additionally, in Members opinion, the driver appeared unprepared in his attendance at the hearing which they could reasonably have expected, given his assertion.

Furthermore, Members were unconvinced by the remorse voiced by the Applicant, and whilst he stated that he had learnt a lot since having his Torbay Council Drivers Licence revoked in December 2021, and believed himself to be a better driver in that he is more considered and careful on the road, Members could not be satisfied on the evidence before them that the Applicant would not repeat the conduct which fell well below the standard reasonably expected by them of a driver licensed by Torbay Council, and which also led to his revocation after holding the licence for less than five months to include three speeding offences on 2 August 2021, 13 September 2021 and 19 September 2021, expiring on 2 August 2024, 13 September 2024 and 19 September 2024 respectively.

Whilst Members noted that the Applicant had not received any further penalty points since September 2021, having 9 penalty points currently, a further speeding conviction would result in the Applicant losing his DVLA issued driving licence, which was considered by Members to no doubt provide a strong deterrent, but in of itself, provided no reassurance to Members that the Applicant was fit and proper when determining public safety, which is and remains, their primary consideration.

Members gave due consideration to the Applicant's positive character references and were pleased to note that after losing his Torbay Council Drivers Licence, he had been retained by his employer in a non-driving capacity and had found additional employment as a takeaway delivery driver. However, Members were not convinced from the Applicants brief oral representation that he had fully reflected upon the severity of the incidents that led to his revocation, and neither had he taken any action which would have demonstrated his commitment to becoming a licensed driver again and to his self-improvement. Such as, undertaking and completing successfully, an

approved advanced driving course before making his application which may have provided Members with the reassurance they would be satisfied with, as to his fit and properness.

In concluding, Members could not be satisfied that the Applicant was a fit and proper person and did not feel that they had sufficient justification to deviate from Torbay Council's Hackney Carriage and Private Hire Drivers Policy, which states at Appendix A: paragraph 7.4

In the case of a licensed driver accumulating nine or more penalty points on their driving licence, the Licensing Authority may refuse to renew, suspend, or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least one year free from conviction or at least one year since the completion of the sentence (whichever is longer).

Members therefore determined that to refuse the application, was in line with the Policy, and both proportionate and appropriate in the interests of public safety.

19. Consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence

Members considered a report that set out relevant facts relating to a holder of a Torbay Council dual Hackney Carriage and Private Hire Driver's Licence. Members were requested to determine based on the facts before them, whether or not the applicant of the dual Hackney Carriage and Private Hire Driver's Licence remained a fit and proper person to hold such licence.

At the Hearing the Respondent addressed Members and responded to their questions.

Decision

That Mr Mohammed be formally warned in writing and that this warning shall remain in situ for a period of 18 months and that should any further issues of concern arise within that 18-month period which requires Mr Mohammed to appear again before a Licensing Committee, Members of that Committee shall be made aware of this written warning; and

That Mr Mohammed read and familiarises himself with the contents of Torbay Council's Hackney Carriage (Taxi) and Private Hire Policy, as issued to him and that he keeps a copy of the said Policy in the licensed vehicle at all times when on duty as a licensed driver for future reference.

Reason 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 Mohammed alone. An unequivocal and unanimous answer by Members to this question was 'yes'.

Members of the Committee heard from the Licensing Officer that Mr Mohammed had held his Torbay Council Drivers Licence since October 2021, having previous to that been licensed from 2012 to 2018. In August 2023 Devon and Cornwall Police had contacted them in relation to a speeding offence committed in Plymouth at 22.02 hours on 16 April 2023 where Mr Mohammed, the registered proprietor of the vehicle, had nominated out a different driver stating that he had given permission for this person to have access to the vehicle.

The Authority's records showed that this person did not hold a Torbay Council Drivers Licence and therefore in lending out his vehicle Mr Mohammed was in contravention of the Taxi Policy, and in doing so committed an offence under the Town Police Clauses Act 1847.

In his oral submissions, Members heard from Mr Mohammed how he had become too poorly to work during his shift that day and had to return home to go to bed. He then allowed a friend who was visiting his partner to use his licensed vehicle to collect some pre-ordered shopping from a specialist Mediterranean food store in Plymouth, which was to close at 11pm. Mr Mohammed described this as a family emergency. Mr Mohammed further described thereafter being too unwell to work for a period of 3 days, which is supported by his card machine payment records.

Having heard Mr Mohammed's representation and explanation of the circumstances, and by his own admission, Mr Mohammed had clearly misunderstood Torbay Council's Hackney Carriage and Private Hire Licensing Policy in not only having confirmed that he was unaware that no other person apart from himself was permitted to drive the licensed vehicle, but also in that removing the plate from the vehicle, as suggested by Mr Mohammed, would have been acceptable, which is not the case.

Members had regard to the fact that the Respondent had in his written reply to the Licensing Officer, admitted to the oversight and appeared remorseful before them, However, resolved in their opinion, that whilst his actions were likely unintentional, they showed a disregard for the Taxi Policy with which he is expected to have read and understood. Members did not accept Mr Mohammed's opinion that food collection constituted a family emergency.

In concluding, Members considered the mitigating circumstances put forward by the Respondent and the seriousness of the offence being a not only a breach of Policy but additionally, an offence under Town Police Clauses Act 1847, however noted Mr Mohammed's clean driving licence and whilst aware of a historic complaint, relating to his conduct, which was not pursued, saw no reason to consider Mr Mohammed to be a risk to public safety and therefore determined, that it was both appropriate and proportionate to formally warn Mr Mohammed on this occasion.

