



Report No: Public Agenda Item: **Yes**

Title: **Conviction of Torbay Council Licensed Driver's of False representation to obtain benefits**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **11th September 2014**

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 concerns a Torbay Council Licensed Driver who has pleaded guilty and been convicted of making false representation in receiving £6,224.02 of benefits whilst working as a part time taxi driver, contrary to Sections 112(1B) of the Social Security Administration Act 1992 and Regulation 88 of the Housing Benefit Regulations 2006. This report is addressing whether the licensed driver remains a 'fit and proper person' to hold a Torbay Council Driver's Licence.

2. Recommendation(s) for decision

- 2.1 There is no recommendation.

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 Local Government (Miscellaneous Provisions) Act 1976 respectively 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'.
- 3.3 Torbay Council's Licensing Team is in receipt of information from the its Legal Department that on the 23rd July 2014, Mr Peter Dawe-Smith had pleaded guilty to an offence under Section 112(1B) of the Social Security Administration Act 1992 and Regulation 88 of the Housing Benefit Regulations 2006 after failing to

notify Torbay Council of a change in circumstances, which resulted in receiving £6,224.02 of benefits whilst working as a part time taxi driver. See Appendix one.

- 3.4 On the 5th August 2014 Mr Peter Dawe-Smith was informed by letter which stated that the matter was likely to be heard at a Licensing Sub-Committee hearing and whether he wished to submit anything to be included within the committee report. This was in relation to both the offence and in relation to not advising Torbay Council of that conviction within 7 days, contrary to Torbay Council's Hackney Carriage and Private Hire Policy. The letter was hand delivered to his home address. See Appendix Two.
- 3.5 On the 22nd August 2014 Torbay Council received a letter from Mr Peter Dawe-Smith to include within this committee report. See Appendix 3.
- 3.6 Fraud including benefit fraud is defined as dishonesty within Torbay Council's Hackney Carriage and Private Hire Policy, and the 'Licensing Authority may refuse to renew, suspend or revoke the licence' upon conviction.

For more detailed information on this proposal please refer to the Supporting Information.

Frances Hughes Executive Head Community Safety

Supporting information to Report XX/2010

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 Local Government (Miscellaneous Provisions) Act 1976 respectively 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 Torbay Council's Licensing Team is in receipt of information from its Legal Department that on the 23rd July 2014, Mr Peter Dawe-Smith had pleaded guilty to an offence under Section 112(1B) of the Social Security Administration Act 1992 and Regulation 88 of the Housing Benefit Regulations 2006 after failing to notify Torbay Council of a change in circumstances, which resulted in receiving £6,224.02 of benefits whilst working as a part time taxi driver. See Appendix one.
- A1.5 On the 5th August 2014 Mr Peter Dawe-Smith was informed by letter which stated that the matter was likely to be heard at a Licensing Sub-Committee hearing and whether he wished to submit anything to be included within the committee report. This was in relation to both the offence and in relation to not advising Torbay Council of that conviction within 7 days, contrary to Torbay Council's Hackney Carriage and Private Hire Policy. The letter was hand delivered to his home address. See Appendix Two.
- A1.6 On the 22nd August 2014 Torbay Council received a letter from Mr Peter Dawe-Smith to include within this committee report. See Appendix 3.
- A1.7 Section 2.2 of Appendix One of Torbay Council's Hackney Carriage and Private Hire Policy says

In the case of a licensed driver being convicted of an offence involving dishonesty 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 three years free from the date of conviction of this type has elapsed.

Dishonesty is defined in Section 2.3 as

Offences of Dishonesty include:

- *Theft*
- *Burglary*
- *Fraud including benefit fraud*
- *Handling or receiving stolen goods*
- *Forgery*
- *Conspiracy to defraud*
- *Obtaining money or property by deception*
- *Other deception*
- *Any similar offences of dishonesty where the conviction is less than three years prior to the date of application*

A1.8 Section 9.3 of Appendix One of Torbay Council's Hackney Carriage and Private Hire Policy says

Convictions of any description committed by both hackney carriage proprietors, private hire drivers and operators during the duration of their licence must be declared to the Licensing Authority in writing immediately and in any case no later than 7 days.

A1.9 Torbay Council's Hackney Carriage & Private Hire Licensing Policy says

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 licenses 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.*

1.4 *Simply remaining free from convictions will not generally be regarded as sufficient evidence that a person is a 'fit and proper' person to hold a licence. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be the protection of the public. The following examples afford a general guide on the actions to be taken where convictions are admitted or discovered.*

A1.10 Mr Peter Dawe-Smith has been a Torbay Council licensed driver for 12 years, and there is no record of any previous complaints or incidents.

A1.11 There is no recommendation.

A1.12 There is a right of Appeal against the Licensing Sub-Committees decision to the Magistrates' Court 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 Having pleaded guilty, Mr Peter Dawe-Smith has been convicted of an offence of fraud on the public purse. If Mr Peter Dawe-Smith retains his Torbay Council issued Drivers Licence, there may be as a result of this conviction, a risk in undermining public confidence in Torbay Council as a taxi licensing authority and in its Policy.

A2.1.2 If Mr Peter Dawe-Smith's Torbay Council issued Drivers Licence is suspended or revoked then there is a risk of this decision being appealed.

A3. Options

A3.1 The options are:

- (i) to suspend Mr Peter Dawe-Smith's Torbay Council Driver's Licence, without immediate effect;
- (ii) to suspend Mr Peter Dawe-Smith's Torbay Council Driver's Licence, with immediate effect;
- (iii) to revoke Mr Peter Dawe-Smith's Torbay Council Driver's Licence without immediate effect;
- (iv) to revoke Mr Peter Dawe-Smith's Torbay Council Driver's Licence with immediate effect
- (v) to issue Mr Peter Dawe-Smith with a warning
- (vi) to do nothing.

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 equalities or environmental sustainability issues. However, should Mr Peter Dawe-Smith continue to work as a Torbay Council Licensed Driver, there is a potential crime and disorder risk, due to his current and recent conviction.

A6. Consultation and Customer Focus

A6.1 There has been no public consultation on this matter and there is no requirement for the Committee to consult the public in this matter.

A7. Are there any implications for other Business Units?

A7.1 There are no implications for other business units.

Annexes

Appendix 1 Email from Mark Maries dated 28th July 2014.

Appendix 2 Letter to Mr Peter Dawe-Smith dated 5th August 2014

Appendix 3 Letter from Mr Peter Dawe-Smith received 22nd August 2014

Documents available in Members' rooms

None

Background Papers:

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

None