



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

Title: **Application for Torbay Council Driver's Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **16th July 2015**

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 an application for a Torbay Council Driver's Licence, where the Applicant does not meet Torbay Council's Hackney Carriage & Private Hire Licensing Policy (hereinafter referred to as 'the Policy') requirements. This report is to consider whether the licensed driver is 'fit and proper person' to hold a Torbay Council Driver's Licence.

2. Recommendation(s) for decision

- 2.1 It is recommended that Mr Michael Bailey's application for a Torbay Council issued Drivers Licence be refused.

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 Mr Michael Bailey made an application on the 7th April 2015 for a Torbay Council issued Drivers Licence. In that application he submitted to Torbay Council that he had a conviction for two offences under the Fraud Act 2006, relating to 'making false representation to make gain for self or other' which were committed on the 25th October 2010. However on receipt of his Disclosure and Barring Service check, the actual date of conviction for these two offences was

21st June 2013.

- 3.4 In considering the Policy, Mr M Bailey's conviction falls into the category of dishonesty which states that 'in normal circumstances any driver would have to remain free from conviction for a period of three years'. Due to the circumstances submitted by Mr Bailey, in that the conviction was a significant period after the crime was committed, Mr M Bailey has requested a personal hearing before a Licensing Committee.
- 3.5 Since granting the application is outside the Policy, the recommendation is that the application is refused.

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

Frances Hughes Assistant Director Community and Customer Services

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 Torbay Council determines the criteria that must be applied to meet the 'fit and proper test' within the Policy. It states

In setting out its Policy, the Licensing Authority seeks to promote the following objectives:

- *The safety and health of drivers and the public;*
- *Vehicle safety, comfort and access;*
- *To prevent crime and disorder and to protect the public;*
- *To encourage environmental sustainability.*

Public safety is paramount, and this Licensing Authority seeks to ensure through its licensing regime that all taxi and private hire vehicles are fit for purpose and that their drivers and/or operators are fit and proper persons.

A1.4 The Policy goes on to say;

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.

A1.5 Mr Michael Bailey made an application on the 7th April 2015 for a Torbay Council issued Drivers Licence. In that application he submitted to Torbay Council that he had a conviction for two offences under the Fraud Act 2006, relating to 'making false representation to make gain for self or other' which were committed on the 25th October 2010. A copy of his application form is attached in appendix one. This is over three years ago. However on receipt of his Disclosure and Barring Service check, the actual date of conviction for these two offences was 21st June 2013, which is only a little over two years ago.

A1.6 In considering the Policy, Mr M Bailey's conviction falls into the category of dishonesty which states that 'in normal circumstances any driver would have to remain free from conviction for a period of three years'. Due to the circumstances submitted by Mr Bailey, in that the conviction was a significant period after the crime was committed, Mr M Bailey has requested a personal hearing before a Licensing Committee.

2 Dishonesty

2.1 It is essential for the public to have trust in hackney carriage and private hire drivers. The practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers and operators. However, there is scope for a dishonest driver to defraud a passenger by demanding more than the legal or agreed fare or by taking a longer route to a destination. Tourists and overseas visitors are particularly at risk from an unscrupulous driver. For this reason, the Licensing Authority will take a serious view of any offences involving dishonesty. The Licensing Authority will not normally consider an application until a period of at least three years free from convictions has elapsed. More than one conviction for this type of offence within the last five years will raise serious doubts about the applicant's fitness to hold a licence. In such cases, the Licensing Authority may reject the application.

2.2 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.

2.3 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*

A1.7 In strict adherence to the Policy, Mr M Bailey is required in normal circumstances to remain free from conviction until 21st June 2016. Therefore the application was refused by Torbay Council Officers, as this criteria had not been met. Mr M Bailey however wrote to Torbay Council's Licensing team seeking a hearing before a Licensing Committee. See Appendix two.

A1.8 A letter dated 11th May 2015 was sent to Mr M Bailey advising him of this recommendation and requesting that he confirms that he wishes to proceed. See Appendix three. This he has subsequently confirmed by email on the 29th May 2015.

A1.9 Since granting the application is outside the Policy requirement, the recommendation is that the application is refused.

A1.10 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 Given the nature of the offences and the fact that three years has not elapsed since Mr M Baileys' conviction, there is in the author of this reports opinion, a potential risk to the public should he be granted a Torbay Council issued Drivers Licence.

A2.1.2 If Mr Michael Bailey is not granted a Torbay Council issued Drivers Licence there is a risk of an Appeal to the Magistrates' Court.

A3. Options

A3.1 The options are:

- (i) to grant Mr Michael Bailey application for a Torbay Council issued Driver's Licence
- (ii) to refuse Mr Michael Bailey application for a Torbay Council issued Driver's 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 equalities or environmental sustainability issues. However, there maybe a risk of crime if Mr Michael Bailey is granted a Torbay Council issued Driver's Licence

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 Application from Mr Michael Bailey for a Torbay Council issued Driver's Licence

Appendix 2 Letter from Mr Michael Bailey requesting a Licensing Committee hearing.

Appendix 3 Letter to Mr Michael Bailey dated 11th May 2015

Documents available in members' rooms

None

Background Papers:

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2012