



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

Wards Affected: **All**

To: **Licensing Sub-Committee**

On: **10 December 2015**

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## **1. What we are trying to achieve**

1.1 This report concerns an application for a Torbay Council issued Driver's Licence, where the Applicant has previously had their licence revoked by a Licensing Sub-Committee on the 19 December 2013. The reasons for that decision, included that Members of that Committee could no longer be satisfied that the Applicant remained a 'fit and proper person' to hold a Torbay Council issued Driver's Licence. This report is to consider whether Mr Imran Nasim is now 'fit and proper person' to hold such a 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 Mr Imran Nasim has made an application dated 28<sup>th</sup> October 2015 for a new Torbay Council issued Drivers Licence. He was advised that it would be necessary for a Licensing Committee to make that decision because his previous licence had been revoked by Members of that Committee. Mr Nasim wrote previously to Torbay Council laying out the reasons why he thought he could now be considered a 'fit and proper person' and asking for the opportunity to have his case heard by a Licensing Committee.

3.4 Mr Imran Nasim's previous Torbay Council issued Drivers Licence was revoked following a violent incident with another licensed driver whilst they were both on

duty. This incident resulted in a Police Caution, as Mr Imran Nasim admitted the offence of Battery.

3.5 Torbay Council's Hackney Carriage & Private Hire Licensing Policy does not set a time period where a driver would not be normally granted a licence following a Caution. However, Members are referred to Section 3.6 of the policy, which states that:

*3.6 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s), which replace the offences below and the conviction, is less than 5 years old prior to the date of application:*

- *Assault occasioning actual bodily harm*
- *Common assault*
- *Affray*
- *Criminal damage*
- *Harassment*
- *Or any similar offences (including attempted or conspiracy to commit offences), which replace the above*

3.6 In the absence of a specific reference to cautions, the committee will need to be satisfied that Mr Imran Nasim meets the 'fit and proper person' test.

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

**Frances Hughes** Assistant Director Community and Customer Services

## Supporting information

### 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 Hackney Carriage & Private Hire Licensing 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 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 Imran Nasim initially approached Torbay Council in May 2015, asking whether he could have a new Torbay Council issued Drivers Licence. He was advised that it would be necessary for a Licensing Committee to make that decision because his previous licence had been revoked by Members of that Committee. See Appendix one.

Mr Imran Nasim wrote to Torbay Council on the 5th May 2015 with regard to this request. See Appendix Two. Mr Imran Nasim was subsequently written to on the 29th June 2015 that in the absence of any supporting evidence as to why he might now be considered a 'fit and proper person', it would not be appropriate for Officers of the Council to take this back to a Licensing Committee hearing. See Appendix Three. A further letter was received from Mr Imran Nasim dated 12th July 2015 laying out the reasons why he thought he could now be considered a 'fit and proper person'. See Appendix Four.

A1.6 Mr Imran Nasim was subsequently advised that he need to formally make an application for a Torbay Council issued Drivers Licence, which he made on the 8th October 2015. A DBS application was also made, which was issued on the 28th October 2015.

A1.7 Mr Imran Nasim previous Torbay Council issued Drivers Licence was revoked following a violent incident, on the 3rd November 2013, with another licensed driver whilst they were both on duty. Other concerns were also raised by the Members of the Licensing Sub-Committee on the 19th December 2013, as can be seen in the minutes. See Appendix One.

A1.8 Mr Imran Nasim's DBS check revealed one relevant matter, for the Caution he received for Battery in relation to the incident on the 3rd November 2013, as mentioned above.

A1.9 Torbay Council's Hackney Carriage & Private Hire Licensing Policy does not set a time period where a driver would not be normally granted a licence following a Caution. However, Members are referred to Section 3.6 of the policy, which states that:

*3.6 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s), which replace the offences below and the conviction, is less than 5 years old prior to the date of application:*

- *Assault occasioning actual bodily harm*
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- *Criminal damage*
- *Harassment*
- *Or any similar offences (including attempted or conspiracy to commit offences), which replace the above*

A1.10 It is important to note that Mr Imran Nasim was not convicted of the offence, so Section 3.6 does not strictly apply, but is available as a guide to the seriousness of the offence.

A1.11 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 reasons why Mr Imran Nasim's previous Torbay Council issued Drivers Licence was revoked, there is a potential risk of violence in future should a Torbay Council issued Drivers Licence be granted.

A2.1.2 If following an application, Mr Imran Nasim 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 Imran Nasim's application for a Torbay Council issued Driver's Licence with no added conditions
- (ii) to grant Mr Imran Nasim's application for a Torbay Council issued Driver's Licence with added conditions
- (iii) to refuse Mr Imran Nasim's application for a Torbay Council issued Driver's Licence

## **A4. Summary of resource implications**

A4.1 There are some resource implications if there is a future 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 Imran Nasim is granted a Torbay Council issued Driver's Licence, due to previous conduct of the Applicant.

## **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 Licensing Sub-Committee minutes 19<sup>th</sup> December 2015

Appendix 2 Letter from Mr Imran Nasim dated 5<sup>th</sup> May 2015

Appendix 3 Letter to Mr Imran Nasim dated 29<sup>th</sup> June 2015

Appendix 4 Letter from Mr Imran Nasim dated 12<sup>th</sup> July 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