

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

Title: **Review of Torbay Council Driver's Licence**

Wards **All**

Affected:

To: **Licensing Sub-Committee** On: **24th March 2016**

Key Decision: **No**

Change to **No** Change to Policy **No**

Budget: Framework:

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1. What we are trying to achieve

- 1.1 This report concerns a Torbay Council Licensed Driver who has been disqualified by Bodmin Magistrates' Court from driving for 56 days. This report is to consider 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 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.

- 3.4 On the 10th February 2016 Torbay Council Licensing Authority received an email from Mrs Nicola Lyness notifying them that she had been disqualified by Bodmin Magistrates' Court from driving for 56 days for exceeding the statutory speed limit on a public road, as a result of accruing 12 penalty points
- 3.5 This offence took place on the 2nd May 2015, and followed two similar offences on the 13th April 2014 and one failing to comply with traffic light signals on the 17th March 2014.
- 3.7 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.

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

Frances Hughes
Assistant Director Community and Customer Service

Supporting information to Report

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.

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A1.5 This offence took place on the 2nd May 2015, and followed two similar offences on the 13th April 2014 and one failing to comply with traffic light signals on the 17th March 2014. The details of this are included within Appendix two.

A1.6 Torbay Council's Hackney Carriage & Private Hire Licensing Policy 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.

A1.7 Torbay Council's Hackney Carriage & Private Hire Licensing 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 licences 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.*
- A1.8 Torbay Council’s Hackney Carriage & Private Hire Licensing Policy says the following regarding minor traffic offences;

7 *Minor traffic offences*

- 7.1 *Convictions for minor traffic offences will not prevent a person from being considered for a licence. If a new applicant has six live penalty points on their driving licence for such offences then the application may be granted subject to a strong written warning. If an applicant has more than six penalty points on their licence then the application will normally be refused and no further application will be considered until a period of at least 12 months free from convictions or fixed penalties of this type has elapsed.*
- 7.2 *In the case of a licensed driver accumulating nine or more penalty points 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 12 months free from convictions of this type has elapsed.*

- A1.9 Torbay Council’s Hackney Carriage & Private Hire Licensing Policy also says the following regarding endorsements;

- 5.11 *Where an existing licensed driver receives over 6 (six) endorsement/s or penalty points on their licence within each licensing year, the Licensing Authority will require that person to undertake the same assessment. If this is not obtained within 3 months, then the existing licensed drivers*

badge will be suspended until the necessary driving standards assessment is completed.

The assessment referred to is the Driving Standards Assessment run by the DVLA.

A1.10 A letter advising Mrs Nicola Lyness of this hearing was hand delivered to his home address on the 14th March 2016. See Appendix three.

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 Due to the number and nature of the driving misdemeanours, there is a risk to public safety, should Mrs Nicola Lyness continue to drive a licensed vehicle as granted by Torbay Council. This could be mitigated by successfully undertaking the Driving Standards Assessment and subsequent change in driving conduct.

A2.1.2 If Mrs Nicola Lyness Torbay Council issued Drivers Licence is suspended or revoked; there is a risk of an Appeal to the Magistrates' Court.

A3. Options

A3.1 The options are:

- (i) to revoke Mrs Nicola Lyness's Torbay Council Driver's Licence, without immediate effect;
- (ii) to revoke Mrs Nicola Lyness's Torbay Council Driver's Licence, with immediate effect;
- (iii) to suspend Mrs Nicola Lyness's Torbay Council Driver's Licence.
- (iv) to issue Mrs Nicola Lyness with a warning; and/or
- (v) require Mrs Nicola Lyness to undertake a Driving Standard Assessment within 3 months of this hearing date, as set out in Section 5.10 of Torbay Council's Hackney Carriage (Taxi) & Private Hire Policy;
- (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 environmental sustainability issues. However, should Mrs Nicola Lyness continue to work as a Torbay Council Licensed Driver, there is always the potentiality that a similar issue may arise, which would result in an equalities or crime and disorder matter that needs to be addressed.

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 Mrs Nicola Lyness dated 10th February 2016.

Appendix 2 DVLA report dated 18th February 2016.

Appendix 3 Letter to Mrs Nicola Lyness dated 14th March 2016.

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 2016