

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 convicted of an offence under the Crime and Disorder Act 1998 Section 31(1)(b) for racially/religiously aggravated intentional harassment/alarm/distress. 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 3rd March 2016 Torbay Council's Licensing Authority received a phone call from a Mr Michael Dewick that he had been to court and convicted of a racial aggravated offence. This was confirmed in writing the following day.
- 3.5 On 7th March 2016 Torbay Council received a letter from the CLPD Co-Ordinator of Devon and Cornwall Police, advising that Mr Michael Dewick had been convicted under the Crime and Disorder Act 1998 Section 31(1)(b) for an offence of racially/religiously aggravated intentional harassment/alarm/distress.
- 3.6 Whilst Mr Michael Dewick has been convicted of a serious offence, the Council's Licensing Department has never received any complaints about him during the ten years he has been a licensed driver.
- 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

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A1.4 On the 3rd March 2016 Torbay Council Licensing Authority received a phone call from a Mr Michael Dewick that he had been to court and convicted of a racially aggravated offence. This was confirmed in writing the following day. See Appendix one.

A1.5 On 7th March 2016 Torbay Council received a letter from the CLPD Co-Ordinator of Devon and Cornwall Police, advising that Mr Michael Dewick had been convicted under the Crime and Disorder Act 1998 Section 31(1)(b) for racially/religiously aggravated intentional harassment/alarm/distress. See 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;

- 1.1 *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 racially aggravated offences;
- 3.4 *A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) that replace the offences below and the conviction is less than 10 years old prior to the date of application:*
- Arson, with intent to endanger life*
 - Malicious wounding or grievous bodily harm which is racially aggravated*
 - Actual bodily harm which is racially aggravated*
 - Grievous bodily harm with intent*
 - Robbery*
 - Possession of firearm*
 - Riot*
 - Assault on Police*
 - Racially aggravated offences*
 - Violent disorder*
 - Resisting arrest*
 - Or any similar offences (including attempted or conspiracy to commit offences), which replace the above*
- 3.5 *In the case of a licensed driver being convicted of any of the above offences, the Licensing Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 10 years free from the date of conviction has elapsed.*
- A1.9 The Council has no previous history of any racially aggravated

harassment/alarm/distress or any other complaints in respect of Mr Michael Dewick. He has been a licensed driver for over ten years.

A1.10 A letter advising Mr Michael Dewick 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 Although the offence is of a serious nature, given the excellent record that Torbay Council holds in respect of Mr Michael Dewick, he is not considered to be a significant risk to public safety, should he continue to drive a licensed vehicle as granted by Torbay Council.

A2.1.2 If Mr Michael Dewick 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 formally warn Mr Michael Dewick.
- (ii) to suspend Mr Michael Dewick Torbay Council Driver's Licence, with or without immediate effect;
- (iii) to revoke Mr Michael Dewick Torbay Council Driver's Licence with or without immediate effect.
- (iv) 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 or equalities issues. However, should Mr Michael Dewick continue to work as a Torbay Council Licensed Driver, there is always the potential that a similar issue may arise, which would result in a 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 Letter from Mr Michael Dewick dated 4th March 2016.

Appendix 2 Letter from Devon and Cornwall Constabulary dated 7th March 2016.

Appendix 3 Letter to Mr Michael Dewick 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