

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

Title: **Review of a Torbay Council Drivers' Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **21st December 2017**

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 asks Members to consider a number of complaints and other information relating to the conduct of the holder of a dual Hackney Carriage and Private Hire drivers licence and to determine on the facts laid before them, whether or not the licence holder continues to be regarded as a 'fit and proper' person to hold such a licence.

2. Recommendation(s) for decision

- 2.1 This matter must be determined on its individual merits and any supporting facts or testimony. Therefore, there is no recommendations. The options available to Members however, are highlighted in paragraph A3.1 of Annex 1 to this report.

3. Key points and reasons for recommendations

- 3.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), 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 of the 1976 Act in conjunction with section 46 of the Town Police Clauses Act 1847 make provision for the licensing of drivers and state that a district council shall not grant a licence to drive a Private Hire or Hackney Carriage vehicle unless they are satisfied that the driver is a 'fit and proper' person to hold a driver's licence.

- 3.3 Section 51 (2) of the 1976 Act permits the Council to attach to the grant of a licence to drive a Private Hire vehicle 'such conditions as they may consider reasonably necessary'. This provision extends to enabling the attachment of conditions on a dual licence as is issued in Torbay.
- 3.4 There is no prescribed test for 'fit and proper' laid down in legislation and it is therefore left to the individual Licensing Authorities to assess drivers and applicants under their own criteria. However, there is a wide scope for such assessment and certain processes have evolved over time which have stood up to scrutiny in the Courts and are therefore commonly accepted practices amongst the majority of Licensing Authorities.
- 3.5 Torbay has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. These include, a group 2 standard of medical fitness, an enhanced Criminal Records Disclosure (DBS), a driving standards test (DSA), scrutiny of DVLA penalty points and a test of the knowledge of both the area and conditions pertaining specifically to Torbay and local licensing Policy. A recent addition to this is the requirement to test the right to live and work in the United Kingdom.
- 3.6 Section 61 (1) of the 1976 Act 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:—
- (1) (a) that he has since the grant of the licence—
- (i) been convicted of an offence involving dishonesty, indecency 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.
- 3.7 Section 61 (2) of the 1976 Act states:
- (2) (a) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the district council the driver's badge issued to him...
- (b) If any person without reasonable excuse contravenes the provisions of this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

- 3.8 Under Section 61 (2A) a suspension or revocation of a drivers' licence takes effect at the end of a period of 21 days beginning with the day on which the notice is given to the driver. However, under section (2B) any suspension or revocation may take immediate effect if it is deemed to be necessary in the interests of public safety. In such circumstances the notice given to the driver notifying of the suspension or revocation must include a statement and explanation as to why section (2B) has been deemed necessary.
- 3.9 This report follows receipt of a number of complaints relating to the alleged actions and demeanour of Mr Philip Johnston, who has been a licensed driver with this Authority since August 2004. The complaints are attached as **Appendix 1** to this report and a transcript of an interview conducted with Mr Johnston on 23 October 2017 where the allegations were discussed is attached at **Appendix 2**.
- 3.10 An email exchange has taken place with Mr Johnston since the interview that was held on 23 October 2017, where he has agreed primarily to the written account of interview (save for minor alterations that have been included) by virtue of the fact that no other alterations were requested. A transcript of this email exchange has been attached for information at **Appendix 3**.
- 3.11 There is a right of Appeal to the Magistrates' Court as provided under section 61 (3) of the 1976 Act against the Licensing Sub-Committee decision. Such an appeal must be lodged 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.

Steve Cox
Environmental Health Manager (Commercial)

Annex 1 - Supporting information

A1. Introduction and history

A1.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.

A1.2 Sections 51 (in respect of Private Hire drivers) and 59 (in respect of Hackney Carriage drivers) of the Act 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 The test for 'fit and proper' as it applies in Torbay is outlined in paragraph 3.5 of the report.

A1.4 Since January 2016, there have been a total of nine (9) complaints made against Mr Johnston. Whilst ten (10) matters are highlighted in the interview transcript at Appendix 2, one of them was a notification of an incident made by Mr Johnston himself and from which no complaint followed, it is not therefore, recorded as a complaint. Due to the content and number of complaints received and notwithstanding the fact that some of these are unsubstantiated, this matter has been referred to Members in order that consideration may be given as to whether Mr Johnston remains a 'fit and proper' person to be the holder of a drivers' licence issued by this Authority.

A1.6 The full complaints that have been received since the warnings as outlined in paragraph A1.5 (above) are attached as **Appendix 1** and relate in the main to matters concerning Mr Johnston's behaviour, comments he has made and complaints about his manner of driving.

A1.7 Mr Johnston attended an interview at the Council offices, which took place on 23 October 2017. The interview was conducted by Gary O'Shea, Principal Licensing Officer and Craig Noble, a Licensing Enforcement Officer. Nobody else was present, however, the full content of the meeting was transcribed and sent to Mr Johnston, who agreed subsequently that it is a true reflection of the discussion that took place. This is attached at **Appendix 2**.

A1.8 Given the number of complaints and facts as outlined in Appendix 2, it is deemed appropriate that the relevance of these matters in relation to the 'fit and proper' status of Mr Johnston should be considered by Members of the Licensing Sub-Committee.

A1.9 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.

A1.10 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.*

A1.11 There is a right of Appeal to the Magistrates' Court against the Licensing Sub-Committee decision. Such an appeal must be lodged 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 Under current Policy and in full consideration of the overriding requirement to protect the safety of the travelling public, this is a matter that Officers consider best suited to determination by Members of the Licensing Sub-Committee.

A2.1.2 There are risks both potentially to the public and to the Council if a key decision were to be taken without full consideration of the facts. By placing this matter before a Licensing Sub-Committee, such risks are reduced as full consideration may be given in an open and transparent manner of all relevant facts.

A3. Options

A3.1 The options are:

- (i) to formally warn Mr Johnston and/or to add conditions to the scope of his Torbay Council Driver's Licence;
- (ii) to suspend Mr Johnston's Torbay Council Driver's Licence, with or without immediate effect, as outlined in paragraph 3.8 of the report which may or may not include the addition of conditions to the scope of the licence as deemed appropriate;
- (iii) to revoke Mr Johnston's Torbay Council Driver's Licence with or without immediate effect as outlined in paragraph 3.8 of the report;
- (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 issues. Whilst this report brings a number of matters to Members' of the Licensing Sub-Committees attention, there are no criminal convictions. In view of this, any crime and disorder impact is best assessed by the Licensing Sub-Committee having determined the facts. If any potential for crime and/or disorder on the balance of probability is deemed likely or possible, then this may lead Members to consider whether Mr Johnston meets the 'fit and proper' criteria. It is important to note however, this is not the only consideration.

A6. Consultation and Customer Focus

A6.1 There has been no public consultation on this matter and there is no requirement for the Licensing Sub-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.

Documents available in members' rooms

None

Appendices

Appendix 1 – Complaints Received

Appendix 2 – Transcript of Interview with Mr Johnston

Appendix 3 – Email Exchange post interview

Background Papers:

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2016

Documents supplied by the applicant, as referred to above.