

Public Agenda Item: **Yes**

Title: **Consideration of an Application for a New Dual Hackney Carriage and Private Hire 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 an application for a dual Hackney Carriage and Private Hire drivers licence, where the applicant does not meet with the requirements set out in the current Hackney Carriage and Private Hire Licensing Policy, by virtue of holding a current unspent conviction and to determine on the facts laid before them, whether or not the Applicant is 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 Officer recommendation. 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 states 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 51 of the 1976 Act (with regard to Private Hire drivers) states:

(1) Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:

Provided that a district council shall not grant a licence—

- a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence; or
- b) to any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver's licence so authorised.

(2) A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary.

3.7 Section 45 of the 1976 Act gives power to the Licensing Authority to apply the requirements of section 51 to Hackney Carriage drivers as well as to Private Hire drivers. Notwithstanding this, the licence issued by Torbay is a dual licence, which therefore permits the holder to drive both vehicle types.

3.8 This report follows receipt of an application from Ms Beverley Loader, which was made on 8 November 2017. In her application, Ms Loader has declared that she holds a current conviction where in the relevant section she has entered:

*Making a false statement representation 26 April 2017 unpaid work (min hours)
court costs £85*

3.9 Ms Loader did approach the Licensing Authority prior to submission of the application to explain about her conviction. Craig Noble, Licensing Enforcement Officer, advised Ms Loader that whilst she was at liberty to make an application, it

would not be one that could be granted under officer delegated powers and that it could be refused given the conviction and the recent date and nature of that conviction.

- 3.10 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 This report follows receipt of an application from Ms Beverley Loader, which was made on 8 November 2017. In her application, Ms Loader has declared that she holds a current conviction where in the relevant section she has entered:

Making a false statement representation 26 April 2017 unpaid work (min hours)
court costs £85

A1.5 As part of the application process, Ms Loader submitted an Enhanced Certificate from the Disclosure and Barring service (DBS), which corroborated the declaration made by Ms Loader on the application.

A1.6 The DBS provides the information that Ms Loader was convicted at South and West Devon Magistrates on 26 April 2017 for an offence which was committed on 4 July 2014 of making a false statement to obtain benefit, which was contrary to section 111A of the Social Security Administration Act 1992.

The disposal for the offence was:

A community order until 25 April 2018 (1 Year)

A costs award of £85

Unpaid Work Requirement

Victim Surcharge of £85

Rehabilitation Activity Requirement

A1.7 The Councils Hackney carriage and Private Hire Licensing Policy at paragraph 7.3 states:

Upon receipt of the enhanced DBS check, the Licensing Authority will assess whether any or all of the convictions and/or cautions are capable of having real relevance to the issue of whether or not the applicant or licensed driver is a fit and proper person to hold a licence. The Licensing Authority will also take into account any fixed penalty notices and other information, but only insofar as they are relevant to an application for a licence or impact on the continuance of an existing driver licence. In certain cases, the matter may be referred to the Council's Licensing Committee for determination.

A1.8 At 7.6 the Council's Policy says:

In relation to previous convictions, the Licensing Authority will have regard to the following:

- The nature of the offence/s;
- The age of the offence/s;
- The apparent seriousness, as gauged by the penalty applied.

A1.9 Torbay Council's Hackney Carriage & Private Hire Licensing Policy goes on to state;

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 **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 Convictions Policy

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*

A1.12 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 grant a three year licence on the basis that Members are satisfied that Ms Beverley Loader is a fit and proper person to hold such licence
- (ii) to grant a three year (or lesser term as deemed appropriate) licence with additional conditions, provided that Members are satisfied that Ms Beverley Loader (with or without conditions) is a fit and proper person to hold a licence
- (iii) to refuse to grant the application on the basis that Members are not satisfied that Ms Beverley Loader is a fit and proper person to hold such licence

Option (ii) would be most likely to apply where Members consider that circumstances were on the balance of probability such that whilst considered fit and proper a trial period and/or conditions would provide a means of ensuring that there was no repeat of any activity that may affect the decision to grant a 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 environmental sustainability issues. Any crime and disorder impact is best assessed by the Licensing Sub-Committee having determined the facts. If any potential for future crime and/or disorder on the balance of probability is deemed likely or possible, or if the merits of this individual case are such that Members do not feel it appropriate to grant at this time, then this may lead Members to consider whether Ms Loader 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

None

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.