

Minutes of the Licensing Sub-Committee

8 September 2022

-: Present :-

Councillors Ellery, Barbara Lewis and Mills

24. Election of Chairman/woman

Councillor Ellery was elected as Chairman for the meeting.

25. Minutes

The Minutes of the meeting of the Sub-Committee held on 30 June 2022 were confirmed as a correct record and signed by the Chairman.

26. Exclusion of the Press and Public

Prior to consideration of the item in Minute 27 the press and public were formally excluded from the meeting on the grounds that the item involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

27. Consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence

Members considered a report on the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Driver's Licence. The Licensing Officer started to present his exempt report to Members. However, shortly after the Licensing Officer began to present his report the Respondent abruptly left the hearing, having tried to interject twice and becoming agitated and mildly aggressive. Members continued the hearing in the absence of the Respondent in the interests of public safety and the absence of any reasonable account or justification from the Respondent for leaving the hearing. Subsequently the Licensing Officer continued his submission and responded to Members questions.

Decision:

That the Respondent's Torbay Council Dual Hackney Carriage and Private Hire Drivers Licence be revoked in accordance with Section 61(1)(b) of the Local Government (Miscellaneous) Provisions Act 1976, and that this revocation shall have immediate effect, in accordance with Section 61(2B) of the Local Government Miscellaneous Provisions Act 1976.

Reasons for Decision:

In coming to that decision, Members carefully considered having been charged with the responsibility to determine the drivers' licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care, or any other vulnerable person known to them to get into a vehicle with the Respondent alone. An unequivocal and unanimous answer by Members to this question, was 'no'.

Members were disappointed that the Respondent abruptly left the hearing shortly after the Licensing Officer began to present his report to the Committee, having tried to interject twice. As the Respondent appeared agitated and mildly aggressive, leaving his Drivers Badge as he went, no-one present at the committee hearing felt it appropriate to go after him. In the interests of public safety, given the nature of matters before them, and contrary to any reasonable justification or explained account for leaving the hearing, Members determined to proceed with the hearing in the absence of the Respondent, however, they did carefully consider his written submissions, in forming their determination.

Members of the Committee heard from the Licensing Officer that the Respondent had held his Torbay Council Drivers Licence since 4 January 2021, with the granting of his application being delayed to accommodate the passing of 5 years following a conviction for driving under the influence of alcohol, and that this was in line with Torbay Council's Taxi Policy.

It was of great concern to Members, to learn that the Respondent in completing his application form, had not declared to the Licensing Authority, despite the form specifically asking the question, the existence of 6 DVLA penalty points on his driving licence, received for a speeding offence committed on 17 January 2019. These penalty points only coming to light during the Licensing departments own checks.

On 20 June 2022, it was brought to the attention of the Licensing Department, by the Devon and Cornwall Police, that the Respondent had received 4 DVLA penalty points on 29 January 2021 for driving without due care and attention. In accordance with the Council's Hackney Carriage and Private Hire Policy, this is categorised as a major traffic offence and should have resulted in the Respondent coming before a Licensing Committee that time, to determine whether he remained a fit and proper person to hold a Torbay Council Drivers Licence, as it bought the Respondents total live DVLA penalty points to 10.

It was of great concern to Members to learn that the Respondent had not declared this pending conviction on his application form or notified the Licensing Team of the subsequent conviction, or the penalty points received, as required under Torbay Council's Taxi Policy.

Of further concern, Members noted that reported by Devon and Cornwall Police, in processing a further recent speeding offence committed on 17 May 2022, their records had shown that the Respondent had nominated out a different driver in respect of a speeding offence committed on 14 May 2021, and when written to by the Licensing Department on 30 June 2022, the Respondent initially stated that he had not permitted any other person to have access to the vehicle but has since

admitted lending his vehicle to a person who does not hold a Hackney or Private Hire Vehicle Licence, again in contravention of the Taxi Policy, and in doing so committed an offence under the Town Police Clauses Act 1847.

Members had regard to the fact that the Respondent had in his written reply to the Licensing Officer dated 19 July 2022 admitted to the oversight in declaring his convictions and penalty points, however, resolved in their opinion, that his actions were intentional and showed a blatant disregard for the Taxi Policy. In respect of allowing use of the licensing vehicle by an unlicensed driver, Members took a dim view, particularly in respect of the differing accounts provided by the Respondent in his correspondence with the licensing department.

In respect of a complaint from the retail worker, Members did not find the Respondent to be believable in his written account of the events that occurred that day. Members found the complainant's account more than likely to be an accurate reflection of what had occurred, having regard to how the Respondent presented at the hearing, and it being unlikely that the retail worker would take the time and trouble to report the incident if it was minor, no doubt being the subject of disgruntled customers regularly. It was unfortunate that no CCTV footage of the incident was available.

Notwithstanding the mitigating explanations presented by the Respondent in his email to the Licensing Officer dated 19 July 2022, Members were concerned that only having been issued with his Torbay Council's Driving Licence on 4 January 2021, he was before the Committee having committed further driving offences, having received a complaint against him as regards his conduct and behaviour, and had repeatedly failed to comply with the Taxi Policy.

It was also worthy of note that the Driving Standards Assessment that the Respondent should have completed within 6 months of issue of his Torbay Council Drivers Licence (i.e., by 4 July 2021) was not completed until 9 August 2021, and that the Licensing Officers' suggestion that he book a more advanced driving assessment was not considered.

In concluding, Members unanimously resolved to revoke the Respondent's drivers' licence with immediate effect, as they could not be satisfied that he remained a 'fit and proper person' to hold a Torbay Council Dual Hackney Carriage and Private Hire Drivers Licence. In determining this, Members believed that the Respondent as a professional driver had been aggressive in his behaviour, dishonest in his application and submissions to Officers, and subsequently, his conduct had fallen well below the high standard reasonably expected by them. Having considered all options available to them, revocation of the licence with immediate effect was in their opinion, both necessary and proportionate in all the circumstances, to ensure public safety.