

Wednesday, 18 January 2023

LICENSING SUB-COMMITTEE

A meeting of **Licensing Sub-Committee** will be held on

Thursday, 26 January 2023

commencing at **9.30 am**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Ellery

Councillor Barbara Lewis

Councillor Mills

Together Torbay will thrive

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Governance Support, Town Hall, Castle Circus, Torquay, TQ1 3DR

Email: governance.support@torbay.gov.uk - www.torbay.gov.uk

LICENSING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman for the meeting.
2. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Sub-Committee.
3. **Minutes** (Pages 4 - 9)
To confirm as a correct record the Minutes of the meetings of the Licensing Sub-Committees held on 1 December 2022 and 5 January 2023.
4. **Declarations of interests**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
5. **Urgent items**
To consider any other items that the Chairman decides are urgent.
6. **Dual Hackney Carriage and Private Hire Drivers' Licence** (Pages 10 - 35)
To consider a report that seeks consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence.

Meeting Attendance

Please note that whilst the Council is no longer implementing Covid-19 secure arrangements attendees are encouraged to sit with space in between other people. Windows will be kept open to ensure good ventilation and therefore attendees are recommended to wear suitable clothing.

If you have symptoms, including runny nose, sore throat, fever, new continuous cough and loss of taste and smell please do not come to the meeting.

Minutes of the Licensing Sub-Committee

1 December 2022

-: Present :-

Councillor

Councillors Ellery, Douglas-Dunbar and Brooks

1. Election of Chairman/woman

Councillor Ellery was elected as Chairman for the meeting.

2. Apologies

It was reported that the membership of the Sub-Committee had been amended for this meeting by including Councillors Brooks and Douglas-Dunbar instead of Councillors Barbara Lewis and Atiya-Alla.

3. Minutes

The Minutes of the meeting of the Sub-Committee held on 27 October 2022 were confirmed as a correct record and signed by the Chairman.

4. The Jetty, 12 Victoria Parade, Torquay, TQ1 2BB

Members considered an application for a new Premises Licence in respect of the Jetty, 12 Victoria Parade, Torquay, TQ1 2BB.

Written Representations received from:

| Name | Details | Date of Representation |
|-------------------------|---|------------------------|
| Devon & Cornwall Police | Representation objecting to the application on the grounds of the "Prevention of Crime and Disorder" and the "Prevention of Public Nuisance". | 19 October 2022 |

Oral Representations received from:

| Name | Details |
|------|---------|
|------|---------|

| | |
|-------------------------|---|
| Applicant | The Applicant outlined the Application and responded to Members' questions. |
| Devon & Cornwall Police | The Member of the Public outlined their representation and responded to Members' questions. |

Decision –

That the application for a Premises Licence in respect of the Jetty, 12 Victoria Parade, Torquay, TQ1 2BB be approved as applied for, subject to the conditions proposed by the Police and agreed by the Applicant, and that condition two of the Police's proposed conditions shall be amended to read as follows:

'Signage outlining the permitted hours for all licensable activities, consumption of alcohol not being permitted within Public Space Protection Order and the opening hours of the premises shall be prominently displayed at the premises entrance and exit'; and

Licensable activities in respect of late-night refreshment shall be removed from the application.

Reasoning –

Having carefully considered all the written and oral Representations, Members were satisfied that the proposed additional conditions alleviated the concerns of the Police and in turn, would ensure that these premises operations, upheld the Licensing Objectives.

Licensable activities in respect of late-night refreshment were removed from the application, following acceptance by the Applicant that late-night refreshment will cease at 10.30pm which removed the need for this activity to be licensed.

Should issues arise as a result of this grant, Members noted that a Review of this premises licence can be sought by any Interested party or Responsible Authority.

Chairman/woman

Minutes of the Licensing Sub-Committee

5 January 2023

-: Present :-

Councillors Ellery, Sykes and Brooks

5. Election of Chairman/woman

Councillor Ellery was elected as Chairman for the meeting.

6. Apologies

It was reported that the membership of the Sub-Committee had been amended for this meeting by including Councillor Brooks instead of Councillor Barbara Lewis.

7. Minutes

The Minutes of the meeting of the Sub-Committee held on 17 November 2022 were confirmed as a correct record and signed by the Chairman.

8. Licensing Act Review of Devon Dumpling

Members considered a report on an application for a Review of a Premises Licence in respect of the Devon Dumpling, 108 Shiphay Lane, Torquay.

Written Representations received from:

| Name | Details | Date of Representation |
|----------------------|---|------------------------|
| Application | Application and supporting correspondence for a Review of the Premises Licence in respect of the Devon Dumpling, 108 Shiphay Lane, Torquay. | Dated 31 October 2022 |
| Member of the Public | Representation objecting to the Application for a Review of the Premises Licence. | Undated |
| Member of the Public | Representation objecting to the Application for a Review of the Premises Licence. | Dated 5 December 2022 |
| Member of the Public | Representation objecting to the Application for a Review of the Premises Licence. | Dated 30 November 2022 |
| Public Protection | Report by Torbay Council as the Responsible Authority for Public | Dated 9 December 2022 |

| | | |
|----------------------|---|---------|
| Officer | and Statutory Nuisance. | |
| Member of the Public | Representation objecting to the Application for a Review of the Premises Licence. | Undated |

Additional Information:

At the Hearing, the Public Protection Officer played two sound recordings which had been shared with the Respondent prior to the Hearing. With the agreement of all Interested Parties, the Public Protection Officer also circulated a site plan and colour photographs of the outside areas.

Oral Representations received from:

| Name | Details |
|------------------------------------|---|
| Applicant and supporting witnesses | The Applicant and those who had submitted statements to accompany the Application for a Review of a Premises Licence outlined the Application and responded to Members questions. |
| Public Protection | The Public Protection Officer outlined his representation and responded to Members questions. |
| The Respondent | The Respondent supported by the Premises Manager responded to the Application for a Review of a Premises Licence and responded to Members questions. |

Decision:

That the premises licence in respect of The Devon Dumpling, 108 Shiphay Lane, Torquay be modified with the following conditions:

1. The premises outside areas shall be closed by 10 pm every day except for the smoking area, known as the cage.
2. Regulated entertainment shall be prohibited in the premises outside areas.
3. All windows and doors shall be kept closed during regulated entertainment after 10 pm.
4. All use of amplification equipment during regulated entertainment shall be under the control of the duty manager and set at a level not to unreasonably disturb nearby residents.
5. The duty manager, or designated staff member each day to regularly check the premises outside areas at least once every half hour when in use, and affectively address any excessive noise by any person or group using that area.
6. A log shall be kept at the premises to record checks of the premises outside area, and is shall be recorded therein, where any action is taken. This log shall be available for immediate inspection by the Police or any Council Officer or agent visiting the premises, for a look-back period of at least one month.

7. Patrons causing a nuisance in the outside area shall be asked to cease causing a nuisance or come inside the premises or where necessary, be asked to leave the premises.
8. The duty manager, or designated staff member on every Friday and Saturday to effectively monitor and control noise from patrons on the car park and front outside areas after 11pm.
9. That the pre-existing conditions around prevention of public nuisance at Annex 3, point 1 of the current Premises Licence shall be reinstated.
10. Signage shall be prominently displayed in the premises outside area, notifying patrons to keep noise to a minimum so as not to unreasonably disturb nearby residents.
11. Patrons using the outside area shall be seated and signage shall be prominently displayed in these areas notifying patrons of this.
12. Lights in the outside area shall be turned off at 10 pm but for the smoking area, which is to be situated in the area known as the cage, and the area leading directly to the cage.
13. After 10 pm patrons wishing to smoke, must use the designated smoking area, known as the cage.
14. There shall be no more than 10 patrons at any one time permitted to use the designated smoking area after 10 pm.
15. Drinks shall be prohibited outdoors after 10pm.

Reasons for Decision:

Having carefully considered all the written and oral representations and audio recordings, Members unanimously agreed that the Applicant and their supporters had proven there to be excessive noise outbreak from the Premises, namely The Devon Dumpling. Members particularly noted the representation, both oral and written, from the Public Protection Officer and found this to be helpful and drew Members to the conclusion that noise outbreak from these Premises was causing a nuisance, and at times, this nuisance was significant.

In determining a nuisance, Members resolved that the imposition of additional conditions was both necessary and proportionate, given that the evidence before them which clearly demonstrated that excessive noise emanating from the premise outside area, was having a significant impact on the nearby residents.

Members considered the Applicant and supporters to have been reasonable in their expectation of wanting a quality of life and having heard the evidence before them, were in no doubt that the Applicant's quality of life was being detrimentally impacted, and that the noise outbreak was unreasonable. Members acknowledged that there

had clearly been a relationship breakdown between the Applicant and the Premises Licence Holder and his Manager, in what they resolved to be a direct consequence of the ongoing nuisance being experienced by the Applicant. However, Members recognised that despite a breakdown in the relationship, the Premises Licence Holder and Manager had taken steps to address these concerns, albeit some were not implemented fully, as agreed. In imposing conditions, Members were of the opinion that this would provide clear expectations, both to the Premises Licence Holder and the Applicant, and would aid in the premises being operated in a responsible manner which upheld the Licensing Objectives; namely, the Prevention of Public Nuisance.

Members gave serious consideration to reducing the Premises operating hours and licensable activities, and the appropriateness of removing the Designated Premises Supervisor but on this occasion, concluded that the additional conditions could achieve the required outcomes, alleviate the concerns and that being experienced by the Applicant and their supporters, and promote the Licensing Objectives.

In concluding, Members in their determination also took in to account the oral submissions of the Premises Licence Holder and his Manager, in their desire and efforts to operate these premises so as not to cause a nuisance and were reassured by this. Resolving that with compliance of these conditions, the Premises would operate in a manner which would uphold the Licensing Objectives.

Chairman/woman

TORBAY COUNCIL

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

Title: **Consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **26th January 2023**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Shaun Rackley**
☎ Telephone: **01803 208026**
✉ E.mail: Shaun.rackley@torbay.gov.uk

1. What we are trying to achieve

- 1.1 This report asks Members to consider relevant facts relating to the holder of a Torbay Council issued dual Hackney Carriage and Private Hire driver's licence. This follows receipt of information from Devon & Cornwall Police that the licence holder had been arrested on suspicion of assault occasioning actual bodily harm of his partner. The licence holder has failed to meet specific requirements as set out in the current Taxi Policy 2022, by virtue of having failed to inform Torbay Council of his arrest. Further to this the licence holder has now pleaded guilty to the charge of assault occasioning actual bodily harm in Magistrates' Court and is awaiting sentencing. Members are requested therefore to determine on the facts laid before them, whether or not the Applicant remains 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 advanced at a hearing. Therefore, there is no 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 Carriage and Private Hire Vehicles and 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 There is no judicially approved test of fitness and propriety and therefore it is the responsibility of Licensing Authorities to determine whether a driver, or an Applicant, is indeed fit and proper to hold such a licence. In the absence of such a test, a number of practices have developed over time and have stood up to scrutiny in the Courts and are therefore commonly accepted amongst the majority of Licensing Authorities.
- 3.4 This report follows information received regarding Mr Timothy Frost, who holds a Torbay Council dual drivers' licence number LD0587. In December 2021 information was received from Devon & Cornwall Police that Mr Frost had been arrested on the 31st of October 2021 on suspicion of assault, occasioning actual bodily harm of his partner at their home address. As a result of this information, Mr Frost was written to by Steve Cox of the Licensing Department to obtain additional information. Mr Frost failed to notify the Licensing Department of his arrest.
- 3.5 The Licensing Department requested that Mr Frost undertake a new Enhanced Disclosure and Barring Service (DBS) check. This has been completed and returned with no additional convictions, or relevant information other than an original conviction which was in place at the initial application stage.
- 3.6 Mr Frost has since February until June 2022 continued to update the Licensing Department regarding his case, with updates on Police bail extensions. In June 2022 Mr Frost notified the Licensing Department of his not guilty plea and his case going to trial at Court in October 2022.
- 3.7 In November 2022 Mr Frost had failed to update the Licensing Department regarding his Court outcome. Mr Frost was written to by Shaun Rackley of Torbay Council's Licensing Department regarding the matter and Mr Frost confirmed a new Court date had been set for the outcome and sentencing (if any).
- 3.8 Information was then found on Devon Lives website regarding Mr Frost's Court case which indicated that he had entered a guilty plea during the October 2022 Court trial.
- 3.9 Mr Frost was again written to by Shaun Rackley of Torbay Council's Licensing Department regarding this new information and requesting any mitigating circumstances. Mr Frost was advised that the matter would be referred to Torbay Council's Licensing Committee. Mr Frost provided a response to this letter.
- 3.10 It is for the Licensing Sub-Committee to consider whether Mr Timothy Frost remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire drivers' licence.
- 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 There is no judicially approved test of fitness and propriety and therefore it is the responsibility of Licensing Authorities to determine whether a driver, or an applicant is indeed fit and proper to hold such a licence. In the absence of such a test, a number of practices have developed over time and have stood up to scrutiny in the Courts and are therefore commonly accepted amongst the majority of Licensing Authorities.
- A1.4 Torbay Council has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants and this includes an Enhanced DBS check.
- A1.5 This report follows information received regarding Mr Timothy Frost, who holds a Torbay Council dual drivers' licence number LD0587.
- A1.6 In December 2021 information was received from Devon & Cornwall Police that Mr Frost had been arrested on the 31st of October 2021 on suspicion of assault, occasioning actual bodily harm of his partner at their home address. As a result of this information, Mr Frost was removed from his school contract by Torbay Councils School Transport team and was written to by Steve Cox of the Licensing Department to obtain additional information. Mr Frost is in breach of Torbay Council's Taxi Policy, as he failed to notify the Licensing Department of his arrest. This document can be found at Appendix 1.
- A1.7 Mr Frost responded by email to give details of the incident and an update on when he was due to answer Police bail. This document can be found at Appendix 2.
- A1.8 Mr Frost was written to by Shaun Rackley from Torbay Council's Licensing Department on the 29th of January 2022 to request a new Enhanced Disclosure & Barring Service (DBS) check be carried out to determine if there was any other relevant information. This document can be found at Appendix 3.
- A1.9 Mr Frost had a new DBS check carried out and returned the results by email to the Licensing Department as requested. The DBS showed an original conviction that the Licensing Department was aware of when Mr Frost became a licensed driver. The conviction details are set out in exempt appendix 14.

The DBS check did not show any new convictions, nor show any other relevant information. A copy of the email can be found at Appendix 5.

- A1.10 From March to May 2022 Mr Frost continued to notify the Licensing Department

regarding his case and updates on when he was due to answer Police bail. He then notified the Licensing Department that a Court date had been set for the 30th of June 2022. These documents can be found at Appendices 4, 6 and 7.

A1.11 Mr Frost notified the Licensing Department on the 30th of June 2022 that he had pleaded not guilty to the charge of actual bodily harm and his case was due to go to trial on the 21st of October 2022. This document can be found at Appendix 8.

A1.12 In November 2022 the Licensing Department had failed to receive any notification from Mr Frost regarding the Court case on the 21st of October 2022. Shaun Rackley from Torbay Council's Licensing Department sent an email to Mr Frost chasing an update. Mr Frost responded by email confirming he was due back in Court on the 30th of November 2022 for the outcome and sentencing (if any). This document can be found at Appendix 9.

A1.13 Mr Frost then notified the Licensing Department on the 30th of November 2022 that his case had been adjourned until the 6th of February 2023. This document can be found at Appendix 10.

A1.14 The Licensing Department upon checking Devon Live's around the Courts web pages found that Mr Frost had attended Court on the 21st of October 2022, and had pleaded 'guilty' to the charge of assault, occasioning actual bodily harm. This information had not previously been supplied by Mr Frost to the Licensing Department. This document can be found at Appendix 11.

A1.15 Mr Frost was written to by Shaun Rackley of Torbay Council's Licensing Department regarding his failure to supply the Licensing Department with relevant information and to request his submission which would be put before Licensing Committee. This document can be found at Appendix 12.

A1.16 Mr Frost has responded by email to the letter of the 28th of December 2022 and supplied his mitigating circumstances. This document can be found at Appendix 13.

A1.17 The Statutory Taxi and Private Hire vehicle standards, as issued by the Department for Transport state:

5.12 Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:

5.13 Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.

5.14 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the

benefit of doubt'. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

Relevant excerpts of Torbay Councils Taxi policy state:

Appendix A: Taxi & PHV Licensing Criminal Convictions Policy –

1.10 - In this Policy, the word "conviction" is to be defined as including convictions, cautions, warnings, reprimands, endorsable fixed penalties and other relevant information.

3.3 - A licence will not normally be granted until at least ten years have passed since the completion of any sentence following conviction for an offence shown below:

- Assault occasioning actual bodily harm

3.4 - In the case of a licence holder being convicted of any of the above offences, the Licensing Authority may suspend, revoke or refuse to renew the licence. If a licence is revoked, no further application will be considered until a period of at least ten years free of conviction or at least ten years since the completion of the sentence (whichever is longer).

9.1 - Licence holders must notify the Licensing Authority within 48 hours of an arrest and release, charge or conviction of any offences listed within this Policy. An arrest for any of the listed offences, will result in a review by the Licensing Authority as to whether the licence holder is fit to continue to hold a licence. It is not a predetermination that the licence should be revoked, it is for the Licensing Authority to consider what, if any action in terms of the licence should be taken, based on the balance of probabilities.

9.2 - Failure by a licence holder to disclose an arrest, or charge of conviction to the Licensing Authority, might be seen as behaviour that questions honesty and the suitability of the licence holder, regardless of the initial allegation.

A1.18 Members are requested to consider whether Mr Timothy Frost remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence.

A1.19 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 There are two risks. The first risk to be considered is whether Mr Timothy Frost presents a risk to the general public should he continue to hold a licence to drive a Hackney Carriage or Private Hire vehicle.

A2.1.2 The second risk relates to the potential for an Appeal should Mr Timothy Frost's licence be revoked or suspended, and/or have additional conditions imposed.

A3. Options

A3.1 The options are:

- (i) To do nothing, if satisfied that Mr Timothy Frost remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle
- (ii) To suspend Mr Timothy Frost's licence to drive a Hackney Carriage or Private Hire vehicle.
- (iii) To revoke Mr Timothy Frost's drivers' licence on grounds that he is no longer considered to be a 'fit and proper' person to hold such a licence

A4. Summary of resource implications

A4.1 There may be 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, equalities or crime and disorder issues other than as outlines in this report.

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 on 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 Email to Timothy Frost from Mr Steve Cox (Licensing Department) requesting information - dated 6th January 2022
- Appendix 2 Email from Timothy Frost regarding incident and Police bail date - dated 10th January 2022
- Appendix 3 Letter to Timothy Frost from Shaun Rackley (Licensing Department) requesting new Enhanced Disclosure and Barring Service check – dated 28th January 2022
- Appendix 4 Email from Timothy Frost regarding extension to Police bail date - dated 7th March 2022

- Appendix 5 Email from Timothy Frost with pictures of Enhanced Disclosure and Barring Service check - dated 22nd March 2022
- Appendix 6 Email from Timothy Frost regarding extension to Police bail date - dated 6th April 2022
- Appendix 7 Email from Timothy Frost regarding extension to Police bail date and Court date - dated 3rd May 2022
- Appendix 8 Email from Timothy Frost notifying the Licensing Department of trial date after he pleaded not guilty - dated 30th June 2022
- Appendix 9 Email communication between Shaun Rackley (Licensing Department) and Timothy Frost after he failed to inform us of outcome of Court on 21st October 2022 - dated 24th November 2022
- Appendix 10 Email from Timothy Frost informing the Licensing Department of new Court date - dated 30th November 2022
- Appendix 11 Devon Live around the Courts web page article showing guilty plea in Court from Timothy Frost on the 21st October 2022
- Appendix 12 Letter to Timothy Frost from Shaun Rackley (Licensing Department) for failure to supply relevant information and requesting information to be put before Licensing Committee – dated 28th December 2022
- Appendix 13 Email from Timothy Frost with mitigating circumstances to be put before Licensing Committee - dated 29th December 2022
- Appendix 14 Details of previous conviction

Background Papers:

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2022
Department of Transports, Statutory Taxi and Private Hire vehicle standards 2020

From: Cox, Steve <Steve.Cox@torbay.gov.uk>
Sent: Thursday, January 6, 2022 2:52:31 PM
To: [REDACTED]
Subject: Police investigation

Dear Mr Frost

You have, I understand, been informed that Licensing at Torbay Council are party to some information about a Police investigation into your alleged behaviour. I also have been led to believe you are on Police bail currently. The information I have on this is limited, so I am seeking further information from the Police on whether this is in fact the case.

However you do have a duty under the Taxi Policy, dated March 2021, Section 9 to report to us any 'arrest and release, charge or conviction of any offences listed within this Policy'. I am not assuming you have met this threshold, but if you have then it would be helpful to understand what the allegations relate to. I attach a link to the taxi policy below.

[taxi-policy-march-2021.pdf \(torbay.gov.uk\)](#)

If you have any questions then please come back to me and I will answer them if I can.

Steve Cox
Environmental Health Manager (Commercial)
Torbay Council
C/o Town Hall
Castle Circus
Torquay
TQ1 3DR
Tel: 01803 208025
Fax: 01803 208043



Food Safety and Licensing
@TorbayFSL

TORBAY COUNCIL
Community Safety
Tel: 01803 208025 www.torbay.gov.uk/licensing

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From: Cox, Steve
Sent: 10 January 2022 08:33
To: Tim Frost [REDACTED]
Subject: RE: Police investigation

Thank you

Steve Cox
Environmental Health Manager (Commercial)
Torbay Council
C/o Town Hall
Castle Circus
Torquay
TQ1 3DR
Tel: 01803 208025
Fax: 01803 208043



Food Safety and Licensing
@TorbayFSL



Community Safety
Tel: 01803 208025 www.torbay.gov.uk/licensing



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From: Tim Frost [REDACTED]
Sent: 09 January 2022 16:46
To: Cox, Steve <Steve.Cox@torbay.gov.uk>
Subject: Re: Police investigation

Dear Mr Cox,

Following on from our telephone conversation on 7th January 2022. I am putting in writing as requested what we discussed.

On October 31st 2021, my now ex partner and I were involved in an argument together that got out of hand. One of the neighbours overheard our commotion and phoned the police. I was arrested and released on bail the following day without charge. I am on bail to the 24th January 2022 pending further inquiries.

I would like to express my sincere apology in not contacting the licensing department about the matter. It was a genuine, honest mistake about my understanding of the licensing policy and procedures. I was not trying to be deceitful or non-cooperative.

As soon as I attend the police station on the 24/01/22, I will immediately inform you of any outcome.

If there is any further information you require, I am more than happy to provide it.

Kind regards

Tim Frost

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Please reply to: Shaun Rackley
Community Safety, C/o Town Hall
Castle Circus,
Torquay, TQ1 3DR

Mr T Frost
[REDACTED]

My ref:

Your ref:

Telephone: 01803 208025

Sent by email to
[REDACTED]

E-mail: Shaun.Rackley@torbay.gov.uk

Date: 28th January 2022

Dear Mr Frost

**Re: Request for new Enhanced Disclosure & Barring Service check and suspension of school contract work
Licensed Driver number - LD0587**

I am writing to you following the receipt of information from Devon & Cornwall Police regarding your recent arrest and being released on Police bail. This information was provided to both the Licensing Authority and the School Transport Team at Torbay Council.

In order for me to investigate this matter further and decide if any further action is required at this time with regard to your Licensed Drivers badge with Torbay Council, I now require you to undertake a new Enhanced Disclosure and Barring Service check immediately and by no later than the **7th February 2022**. The Enhanced DBS check must cover working with vulnerable adults and children.

I am making this request as per Torbay Council's Taxi Policy where it states the following.

6.9 The Licensing Authority may, where necessary, require licensed drivers to submit an additional Enhanced DBS check at the licensed drivers cost, or if the driver has subscribed to the DBS update service an additional check may be carried out through this service. The Licensing Authority will not require this, unless it has good reason to do so – for example, the reasonable belief that the licensed driver has a criminal conviction not notified to the Licensing Authority. Failure to provide this additional enhanced DBS check may result in the licence being immediately suspended or revoked.

Once you have made the application with a registered provider, please email the proof to shaun.rackley@torbay.gov.uk. I understand that this check could take a number of weeks to be returned, however once returned, I also require a copy of the check to determine if there is any further information which may question if you are a fit and proper person to hold a Licensed Drivers badge with this Local Authority.

Whilst investigating this matter I have been in communication with Torbay Council's School Contract team who have provided the following information in regard to you carrying out school contract work.

If you require this in a different format or language, please contact me.

Torbay Council School Contracts

Under the conditions that Transport Operators agree to, Torbay Council are entitled to request the removal of a Driver allocated to a contract. Concerns have been raised by the team responsible for the safeguarding of children in Torbay regarding your suitability to operate Torbay Council school contracts.

Having considered their concerns, a decision has been made to extend the request to 209 Contracts LTD to refrain from allocating you to school services. This will be reviewed in the future, pending the return of an Enhanced DBS check and a decision from the CPS regarding the case that is currently outstanding.

The above decision also includes school contracts held by other operators not solely 209 Contracts LTD. If it comes to our attention that you have not observed this, there will be repercussions for the operator that you are providing services for, including an impact on their ongoing clearance as an approved contractor.

I look forward to your co-operation on this matter and if you have any further questions, please do not hesitate to contact me directly at the number or email address above, however, I look forward to receiving confirmation in due course that you have made an application for a new Enhanced DBS by the specified date.

Yours sincerely



Shaun Rackley
Licensing Officer
Community Safety

From: Tim Frost [REDACTED]
Sent: 07 March 2022 10:43
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Bail

Hi Shaun,

Just to keep you updated. I've just had a message regarding my bail date. My bail date was today but it has been extended again for a further four weeks until 4/4/2022. Regarding my DBS certificate, I have not received that either yet.

Kind regards

Tim Frost.

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From: Tim Frost [REDACTED]
Sent: 22 March 2022 12:11
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Re: DBS Certificate

Hi Shaun,

Please find photo attachments of DBS certificate.

I have no contact information for anyone within the School Contracts department. All this was done behind my back without any liaison with myself. They've taken it upon themselves to bar me without any formal interview process with myself as well. I've not been charged with anything. How this has been undertaken is unacceptable in my opinion. I'm losing out on a considerable amount of income because of what exactly? I have no idea why I've been barred from school contacts because nobody has spoken to me. If you could forward me an email address of someone I could speak to, I would be most grateful.

Kind regards,

Tim Frost.

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From: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Sent: Tuesday, March 22, 2022 11:41:43 AM
To: Tim Frost [REDACTED]
Subject: RE: DBS Certificate

Hi Tim,

Thanks for the email.

Please can you take a picture of the DBS and send it to me via email.

Unfortunately it isn't my place to get involved with school contracts. I simply deal with the licensing side of things as to whether you can hold a drivers badge. You would need to take this up with school contracts. I understand they have different powers and can suspend anybodys school run on safety or safeguarding concerns.

Thanks

Shaun

TORBAY COUNCIL

Shaun Rackley | Licensing Officer |
Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 208025 | shaun.rackley@torbay.gov.uk

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From: Tim Frost [REDACTED]
Sent: 22 March 2022 10:18
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: DBS Certificate

Hi Shaun,

My DBS subscription is now up and running. I'm not sure what details you need to check it? As you can see it's no different from when I started as a taxi driver. I would like to get back on school runs as soon as possible please. Having a domestic argument with an ex partner shouldn't really have anything to do with it, in my opinion. I am in no way a danger to children, nor the public. To be portrayed as being so, I find highly offensive in all honesty. I've worked in the NHS as a Healthcare Assistant for 6 years, did a year at university on a Social Work degree. I know all about safeguarding and prioritising safety. Please could you speak to the relevant authorities to get me reinstated as a driver, if your able to?

Kind regards,

Tim Frost.

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From: Tim Frost [REDACTED]
Sent: 06 April 2022 09:59
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Bail

Hi Shaun,

Just to let you know I've been bailed again for another month. New bail date is 5/5/2022.

Kind Regards,

Tim Frost.

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From: Tim Frost [REDACTED]
Sent: 03 May 2022 10:24
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Tim Frost Bail

Hi Shaun,

I attended my bail date yesterday and a court date has been set for 30/6/2022.

Kind regards

Tim.

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From: Rackley, Shaun
Sent: 01 July 2022 10:32
To: Tim Frost [REDACTED]
Subject: RE: Court Case

Hi Tim,

Thanks for the update. As normal just keep us up to date with the case.

Thanks

Shaun

TORBAY COUNCIL

Shaun Rackley | Licensing Officer |
Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 208025 | shaun.rackley@torbay.gov.uk

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From: Tim Frost [REDACTED]
Sent: 30 June 2022 17:55
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Court Case

Hi Shaun,

I had my court date today. I pleaded "not guilty" to ABH. The case is now going to trial and that date is set for 21st October 2022.

Regards,

Tim Frost.

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From: Tim Frost [REDACTED]
Sent: 24 November 2022 15:16
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Re: Court outcome

Hi Shaun,

I'm back in Court on Wednesday 30th November for outcome and sentencing (if any). I was waiting for that date and then email/book an appointment to see you.

Kind regards

Tim.

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From: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Sent: Thursday, November 24, 2022 2:51:56 PM
To: Tim Frost [REDACTED]
Subject: Court outcome

Hi Tim,

I am emailing you as I have not heard from you, or had an update from the last time we spoke.

You confirmed in writing last time that a trial date had been set for the 21st October 2022.

Please can you confirm the outcome of this trial.

Regards

Shaun

TORBAY COUNCIL

Shaun Rackley | Licensing Officer |
Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 208025 | shaun.rackley@torbay.gov.uk

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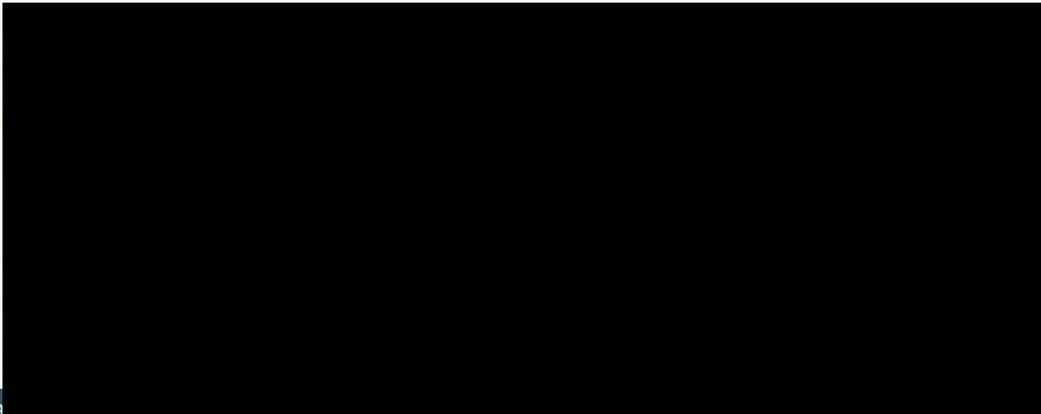
From: Tim Frost [REDACTED]
Sent: 30 November 2022 11:42
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Re: Court outcome

Hi Shaun,
My case has been adjourned once again till Monday 6th February 2023.
Kind regards
Tim.



OCTOBER 21

Timothy Paul, Frost, Foxhole Road, Paignton. Age: 41. On 31/10/2021 at Newton Abbot assaulted a female occasioning her actual bodily harm. Plea: Guilty. Remanded on bail until 30/11/2022 for pre-sentence report.



incident



Pedestrian hit by car on Christmas Eve badly injured



Mystery as man found dead in wet-suit yet to be identified

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Please reply to: Mr Shaun Rackley

Licensing & Public Protection
Town Hall
Castle Circus
Torquay
Devon
TQ1 3DR

Mr T Frost



Email: Shaun.rackley@torbay.gov.uk

Telephone: 01803 208025

Website: www.torbay.gov.uk

Date: 28th December 2022

Dear Mr Frost,

Local Government (Miscellaneous Provisions) Act 1976 – Notification of potential conviction

I am writing to you regarding your ongoing Court case and your failure to supply the Licensing department with relevant information about your case.

Although you have notified the Licensing department regarding your Court dates from early 2022, it has come to light that at your latest Court hearing on the 21st of October 2022, you pleaded guilty to assaulting a female occasioning her actual bodily harm. At no point during discussions with the Licensing department have you supplied this information about a guilty plea. This information has been obtained from Devon Live around the Courts webpage. Details of this are shown below:

OCTOBER 21

Timothy Paul, Frost, Foxhole Road, Paignton. Age: 41. On 31/10/2021 at Newton Abbot assaulted a female occasioning her actual bodily harm. Plea: Guilty. Remanded on bail until 30/11/2022 for pre-sentence report.

Because you have pleaded guilty to the offence and are awaiting sentencing which is due to take place on the 6th of February 2023, I am referring this matter to Torbay Council's Licensing Committee for consideration as to whether you remain a fit and proper person to hold a Licensed Drivers badge with this Local Authority.

I stress the importance of timely and detailed information being supplied to me that I may then put before Committee for consideration. I request that you submit any information that you consider relevant which you would like presented to members, including any mitigating circumstances surrounding your case, in writing to the address above, or, via email to shaun.rackley@torbay.gov.uk, by no later than **Tuesday 3rd January 2023**.

A Licensing sub-committee hearing has been set for **Thursday 26th of January 2023 at 09:30 hrs**. Once I have written the report which will be presented to members, I will

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forward a copy onto you along with an official invite. At this hearing, you will have the opportunity to present your case and answer any questions that members may have.

I look forward to receiving the requested information in due course.

Yours sincerely



Shaun Rackley
Licensing Officer
Licensing and Public Protection

Please note that, apart from personal details subject to the Data Protection Act, information contained in this letter may be divulged to members of the public under the Freedom of Information Act 2000.

From: Tim Frost [REDACTED]
Sent: 29 December 2022 12:06
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Mitigating circumstances

Dear Mr Rackley

In answer to your letter dated 28 December 2022.

I am sincerely sorry that I did not give you enough detail about my ongoing Court case. I was not being duplicitous, I genuinely thought I was providing enough information as the case had been adjourned once more.

The quote from Devon Live has no detail and I can see why you would be very concerned. The assault happened because my ex-partner and I had a drunken argument which escalated outside. She ran outside and sat down in the road whilst shouting at me. It was late in the evening and dark. I was worried for her and for myself that if a car came along, it could cause a nasty accident. I tried to lift her, however, due to my drunken state and her fighting against me, I couldn't. I therefore ended up pulling her out of the road causing grazes and scratches to her buttocks. The police were called by a neighbour because of the fracas. I was arrested and my ex-partner pressed charges.

In my police interview, I admitted to causing the grazes, stressed there was no malicious intention and that I had unwittingly caused them. However, they advised me that due to my ex-partner pressing charges they had to continue with the process.

The grazes are the cause of the actual bodily harm charge. My solicitor tried to get the charge reduced to common assault but this was blocked by my ex-partner.

The incident happened in October 2021 and as you know I have been on bail since this time. It will not come to a conclusion until February 2023 - this is due to a request from the Magistrate for a Probation Officers assessment which was not done at the initial request. The outcome of this report will help to inform the final decision for my sentence. I am waiting for the date of this meeting to be finalised but it is expected to be in January.

I have continued to work and have never done anything that would be a cause for concern to you. I love my job and I have always had a great rapport with customers, who frequently give me positive feedback. Since becoming a taxi driver in 2019, I have worked through Covid and worked hard to build up a regular customer base who are happy to wait for me rather than use anyone else.

I would not do anything to jeopardise my job, as I have too much to lose. I have a ten year old daughter to support and I am now in a new relationship and very happy; we are expecting a baby in the summer. My new partner is a professional person and well aware of my circumstances and has been an amazing support.

I can't apologise enough for you finding out the information in the way that you did. I had no idea myself that this had been reported and published in the local media. I would not want to offend you or cause difficulty to you.

I am truly shocked by the reporting of my case in the local media especially as the outcome has not been finalised.

I can't stress enough that there was no ulterior motive to my not giving as much detail as you clearly needed. I was not trying to hide anything and I thought I was doing the right thing by waiting for the final outcome.

The information I have given you is the truth and I hope this will provide the mitigating circumstances necessary for the Committee to allow me to continue working.

Kind regards,

Tim Frost.

Document is Restricted