

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

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: **3rd December 2020**

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 relevant facts relating to the holder of a Torbay Council issued dual Hackney Carriage and Private Hire drivers licence. This follows receipt of a relevant conviction under Torbay Council's Taxi Policy. Members are requested therefore to determine on the facts laid before them, whether or not the respondent driver 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 Torbay has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. One of these is an enhanced Disclosure and Barring Service Disclosure (DBS), which is relevant in this case.
- 3.5 This report follows an email on the 9th October 2020 from Mr Liam Calderbank, who holds a Torbay Council dual drivers' licence, number LD0559, informing the Licensing Department that he had been sentenced and giving a brief apology. This follows an email exchanged with Mr Calderbank's employer, on the same day, the 9th October 2020. These documents can be found at Appendices 1 & 2.
- 3.6 Mr Calderbank was written to on the 20th October 2020 to gather more information in relation to what he was convicted of, as his previous email didn't give enough detail. This document can be found at Appendix 3.
- 3.7 The Licensing Department obtained information from South and West Devon Magistrates' Court in relation to Mr Calderbank's conviction and sentence. This document can be at Appendix 4.
- 3.8 Mr Calderbank was written to on the 9th November 2020 and requested to provide an explanation as to the events surrounding the conviction. This document can be found at Appendix 5.
- 3.9 Relevant aspects of the Policy state:

7.6 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.*

7.7 In general terms, the more recent, serious and relevant the offence is, the less likely that an application will be granted or that an existing licence will be permitted to remain in effect.

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.

3.10 It is for the Licensing Sub-Committee to consider whether Mr Calderbank 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 has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. One of these is an enhanced Disclosure and Barring Service Disclosure (DBS), which is relevant in this case.
- A1.5 This report follows a notification from Mr Liam Calderbank, informing the Licensing Department that he had received a sentence and giving details of said sentence along with a brief apology. This document can be found at Appendix 2.
- A1.6 Mr Calderbank was written to on the 20th October 2020 to request further information in order for the Licensing Department to investigate the matter further. This document can be found at Appendix 3.
- A1.7 The Licensing Department obtained information in relation to Mr Calderbank's conviction from South and West Devon Magistrates' Court and found Mr Calderbank was convicted of the following:-

Date of Conviction: 6th October 2020

Offence: On 03 Mar 2020 at Torquay in the County of Devon assaulted PC [REDACTED], an emergency worker, namely Police Constable, acting in the exercise of his functions as such a worker, by beating him. Contrary to section 39 of the Criminal Justice Act 1988 and section 1 of the Assaults on Emergency Workers (Offences) Act 2018.

Court: South and West Devon Magistrates Court

Disposal: Community order made
120 hours of unpaid work
Compensation £150
Victim surcharge £90
Cost to Crown Prosecution Service £40

- A1.7 Relevant excerpts of the Policy are highlighted in 3.9 of the report (above), where sections 7.6 and 7.7 of Torbay Council's Taxi Policy refers to previous

convictions and how the Licensing Authority will have regard to the age, nature and seriousness of previous convictions.

A1.8 Of particular relevance is sections 3.4 and 3.5 of Appendix A: Taxi and PHV Licensing Criminal Convictions' Policy, which states:

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.

A1.10 Mr Calderbank was written to on the 9th November 2020 and requested to provide an explanation as to the events surrounding the conviction and provide any mitigating circumstances. This document can be found at Appendix 5.

A1.11 Mr Calderbank failed to respond within the time limit given on both letters from the Licensing Department dated 20th October and 9th November 2020. However, on the 21st November 2020 Mr Calderbank finally responded with 2 emails supplying some details as previously requested, but past the deadlines set within the letters. This document can be found at Appendix 6.

A1.12 Members are requested to consider whether Mr Calderbank remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence.

A1.13 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 Calderbank 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 Calderbank'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 Calderbank remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle
- (ii) To give a formal written warning
- (iii) To suspend Mr Calderbank's drivers licence
- (iv) To revoke Mr Calderbank'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 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, 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 correspondence with Mr Liam Calderbank's employer informing the Licensing Authority of Mr Calderbank's sentence – 9th October 2020

Appendix 2 Email from Mr Liam Calderbank with details of his sentence – 9th October 2020

- Appendix 3 Letter to Mr Calderbank requesting further information of his conviction – 20th October 2020
- Appendix 4 Copy of register from South and west Devon Magistrates' Court showing Mr Liam Calderbank's conviction and sentence
- Appendix 5 Letter to Mr Calderbank requesting information and mitigating circumstances – 9th November 2020
- Appendix 6 Email responses from Mr Calderbank – 21st November 2020

Background Papers:

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2019