

# **TORBAY COUNCIL**

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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: **11<sup>th</sup> November 2021**

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 whether the holder of a Torbay Council issued Driver's licence remains a 'fit and proper person to hold such a licence' following the criteria as set out in the current Hackney Carriage and Private Hire Licensing Policy 2019 to 2022.

## **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 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 By the provisions of the Local Government (Miscellaneous Provisions) Act 1976, 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 Local Government (Miscellaneous Provisions) Act 1976, 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 61 Local Government (Miscellaneous Provisions) Act 1976 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:-

(a) that he has since the grant of the licence—

(i) been convicted of an offence involving dishonesty, indecency or 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.

- 3.4 This report follows an anonymous tip off that Mr Green's vehicle was uninsured and that his MOT had expired. Investigations confirmed that this was the case, and the vehicle was immediately suspended, though both requirements were met later that day.
- 3.5 Subsequently, the Licensing Authority became aware that two sets of vehicle insurance had been cancelled in respect of Mr Green's vehicle. His first insurance was cancelled due to a payment not being made on the 3<sup>rd</sup> June 2021. It appears that Mr Green was informed of this and claims he stopped driving until new insurance was taken out with a second company on the 21<sup>st</sup> June 2021. This also was cancelled, but on what date, it is unclear. However, it is likely to have been shortly after it was taken out, as the cancellation related to missing documents. During this period Mr Green undertook approximately 1800 driving jobs.
- 3.6 In light of these facts, it is for the Licensing Sub-Committee to consider whether Mr Green remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire drivers' licence.
- 3.7 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 By the provisions of the Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.

A1.2 Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 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 Section 61 Local Government (Miscellaneous Provisions) Act 1976 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:-

(a) that he has since the grant of the licence—

(i) been convicted of an offence involving dishonesty, indecency or 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.

A1.4 The legislation does not set out the criteria as to what is considered 'fit and proper', therefore leaving it for the Licensing Authority to determine whether a driver or an applicant is indeed 'fit and proper' to hold such a licence. In Torbay, these matters are covered within its Hackney Carriage & Private Hire Licensing Policy 2019-22, which 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.*

A1.5 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.*

- A1.6 On the 5<sup>th</sup> October 2021 the Licensing Office was contacted anonymously about a vehicle, Registration number (withheld), which was not taxed or insured. Shaun Rackley, Licensing Officer, checked the online records, which confirm this to be the case and immediately suspended the vehicle, following a telephone conversation with Mr Green, the vehicle proprietor and licensed driver. See Appendix 1.
- A1.7 Mr Green subsequently contacted Shaun Rackley by email on the same day, to confirm that the vehicle was now taxed and an explanation about why it was not insured. See Appendix 2.
- A1.8 A further email, again on the 5<sup>th</sup> October 2021 from Shaun Rackley to Mr Green reconfirmed that the vehicle remained suspended until a new insurance document was submitted. See Appendix 3.
- A1.9 Mr Green subsequently contacted Shaun Rackley by email again on the 5<sup>th</sup> October 2021, to present a valid Insurance Certificate. See Appendix 4. Shaun Rackley arranged for the vehicle suspension to be lifted.
- A1.10 On the 6<sup>th</sup> October 2021, Shaun Rackley wrote to Mr Green seeking an explanation to why his vehicle had not been insured nor had been car taxed. See Appendix 5.
- A1.11 On the 6<sup>th</sup> October 2021, Shaun Rackley emailed the respective Insurer, seeking confirmation of when Mr Green’s policy expired. They emailed back on the 7<sup>th</sup> October 2021 to confirm it was cancelled on the 3<sup>rd</sup> June 2021, due to a failure to pay the balance. See Appendix 6.
- A1.12 Further emails were received from Mr Green on the 8<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> October 2021, see Appendices 7 for the 9<sup>th</sup> October 2021 email and Appendix 8 for the 8<sup>th</sup> and 12<sup>th</sup> October 2021 emails. The last of these includes a certificate of insurance for 21<sup>st</sup> June 2021, which was also subsequently cancelled. In the email on the 12<sup>th</sup> October 2021 Mr Green advises that he did not drive between being informed by the Insurer that the original policy was cancelled and taking out this new policy

with another Insurer on the 21<sup>st</sup> June 2021. However, the explanation then continues to advise that this new insurance policy was subsequently cancelled too, due to some paperwork not being submitted. This wasn't corrected until the 5<sup>th</sup> October 2021.

A1.13 An email was sent to Mr Green on the 20<sup>th</sup> October 2021, by Steve Cox, seeking clarification of the points above and seeking any further explanations. A reply was received dated 31<sup>st</sup> October 2021. See Appendix 9

A1.14 On the 7<sup>th</sup> October 2021, Shaun Rackley received a reply, from a Taxi company who provided jobs to Mr Green, to his enquiry on the 5<sup>th</sup> October 2021, asking about how many jobs Mr Green had undertaken during this period. They listed approximately 1800 journeys undertaken by Mr Green. I attach the email, though not the 4 CVS files which cover the journeys for the months June-September 2021, inclusive and which contain significant amounts of personal data. See Appendix 10.

A1.15 Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2019-22 says;

*15.11 Where the Applicant has made an application for the grant or renewal of a vehicle licence, the Applicant must declare and supply information in relation to the insurance and MOT of that vehicle. If at any point during the term of the licence it is found that insurance and/or the MOT is not in place or lapsed, the Licensing Authority will suspend the vehicle licence immediately until a valid insurance document and/or the MOT is submitted to the Licensing Authority. The Licensing Authority may decide to take the matter further upon investigation, which may include revocation of that licence.*

A1.16 Members are requested to consider whether Mr Green remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence, taking into account that his MOT had expired, and his vehicle insurance was cancelled twice, and that he undertook approximately 1800 fares throughout this period.

A1.17 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 Green presents a public safety 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 Green's licence be suspended or revoked and/or have additional conditions imposed.

## **A3. Options**

A3.1 The options are:

- (i) To do nothing, if satisfied that Mr Green remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire Vehicle,
- (ii) To give a Written Warning,
- (iii) To suspend or revoke Mr Green's Torbay Council issued Driver's Licence on the grounds that he is no longer considered to be a 'fit and proper' person to hold such a licence, though any temporary suspension must relate to an action that is time based.

#### **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, as there is no requirement for the Licensing Sub-Committee to consult the public in this regard.

#### **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**

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| Appendix 1 | Email from Shaun Rackley dated 5 <sup>th</sup> October 2021 to Mr Green suspending his vehicle licence                       |
| Appendix 2 | Emailed from Mr Green dated 5 <sup>th</sup> October 2021 confirming car now taxed, along with screen shot of confirmation.   |
| Appendix 3 | Email from Shaun Rackley dated 5 <sup>th</sup> October 2021 to Mr Green, following up that Insurance Documents still needed. |
| Appendix 4 | Email from Mr Green dated 5 <sup>th</sup> October 2021 providing Insurance certificate                                       |
| Appendix 5 | Letter to Mr Green dated 6 <sup>th</sup> October 2021, seeking an explanation for committee to consider.                     |
| Appendix 6 | An email dated 7 <sup>th</sup> October 2021 from Riviera Insurance confirming the cancellation of the Insurance Policy.      |
| Appendix 7 | Email from Mr Green dated 9 <sup>th</sup> October 2021 providing further information   |

- Appendix 8            Emails from Mr Green dated 8<sup>th</sup> & 12<sup>th</sup> October 2021 providing further information, including an additional Insurance Certificate from June 2021
- Appendix 9            An email from Steve Cox to Mr Green dated 20<sup>th</sup> October seeking further clarification.
- Appendix 10           An email from Price First Taxis confirming the journeys undertaken during June to September 2021.

**Background Papers:**

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2019 to 2022