

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**

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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 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

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| Appendix 1 | Email to Timothy Frost from Mr Steve Cox (Licensing Department) requesting information - dated 6 th January 2022 |
| Appendix 2 | Email from Timothy Frost regarding incident and Police bail date - dated 10 th January 2022 |
| Appendix 3 | Letter to Timothy Frost from Shaun Rackley (Licensing Department) requesting new Enhanced Disclosure and Barring Service check – dated 28 th January 2022 |
| Appendix 4 | Email from Timothy Frost regarding extension to Police bail date - dated 7 th 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