

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

Title: **Application for Torbay Council Driver's Licence**

Wards Affected: **All**

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

Key Decision: **No**

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

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1. What we are trying to achieve

This report concerns an application for a Torbay Council Driver's Licence, where the Applicant has previously had their licence revoked by a Licensing Sub-Committee on the 9th of December 2021. In addition, they do not meet Torbay Council's Hackney Carriage & Private Hire Licensing Policy (hereinafter referred to as 'the Policy') requirements. This report is to consider whether the applicant is considered a 'fit and proper person' to hold a Torbay Council Driver's 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 an application made by Mr Simon Setters on the 20th of September 2023 for a Torbay Council issued dual drivers' licence. In that application he submitted to Torbay Council, he had declared he had been convicted of three separate traffic offences and had a total of nine DVLA penalty points on his DVLA issued licence.
- 3.5 In considering the Policy, Mr Setters' three traffic offences fall into the category of 'minor' traffic offences, however, as he currently has nine points on his DVLA issued licence, the Policy states that 'Applicants that have seven or more penalty points on their driving licence will normally be refused and no further application will be considered until a period of at least one year free from conviction or at least one year since the completion of the sentence (whichever is longer)'.
- 3.6 Mr Setters previous Torbay Council issued Drivers Licence was revoked by a Licensing Sub-Committee on the 9th of December 2021 for three separate incidents.
- 3.7 There is a right of Appeal to the Magistrates' Court as provided under section 52 (1) 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.

**Rachael Hind
Regulatory Service 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 includes an Enhanced DBS check and DVLA licence checking to name a few.
- A1.5 This report follows an application made by Mr Simon Setters on the 20th of September 2023 for a Torbay Council issued dual drivers' licence. In the application he submitted to Torbay Council, he declared he had been convicted of three separate traffic offences and had received 9 penalty points on his DVLA issued licence.
- A1.6 An online DVLA licence check was carried out on Mr Setters driving licence on the 22nd of September 2023 where it was identified he had the following motoring convictions:

Offence date – 2 Aug 2021
Expiry date – 2 Aug 2024
Offence – SP30 Exceeding statutory speed limit on a public road
Penalty Points – 3 Points

Offence date – 13 Sep 2021
Expiry date – 13 Sep 2024
Offence – SP30 Exceeding statutory speed limit on a public road
Penalty Points – 3 Points

Offence date – 19 Sep 2021
Expiry date – 19 Sep 2024
Offence – SP30 Exceeding statutory speed limit on a public road
Penalty Points – 3 Points

A screen shot taken from the DVLA licence database can be found at Appendix 1.

- A1.7 Mr Setters previously held a Torbay Council issued Licensed drivers badge from the 14th of July 2021 until the 9th of December 2021 (LD0031). His licence was revoked on the 9th of December by a Licensing Sub-Committee due to three separate incidents. A copy of the minutes and decision from the Licensing Sub-Committee held on the 9th of December 2021 can be found at Appendix 2.
- A1.8 Mr Setters was written to by Shaun Rackley from Torbay Council's Licensing Department on the 22nd of September 2023 to request his submission which would be put before Licensing Committee, along with a request for his Enhanced Disclosure & Barring Service (DBS) check. This document can be found at Appendix 3.
- A1.9 Mr Setters responded by sending the requested documents along with two references from previous employers, but no written submission. These documents can be found at Appendix 4 and 5.
- A1.10 A copy of Mr Setters Enhanced DBS can be found at Appendix 6.
- A1.11 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:

5. Drivers

General Licensing Requirements

5.4 When determining whether a person is "fit and proper", the Licensing Authority will require the applicant to demonstrate that:

vi) They have a satisfactory driving history, as verified through the DVLA and in

accordance with the Convictions Policy at Appendix A

vii) They are considered 'fit and proper' by the Licensing Authority, taking account of any other relevant information as may be requested and considered appropriate by the Licensing Authority.

Appendix A: Taxi & PHV Licensing Criminal Convictions Policy –

7 Minor traffic offences

7.3 Applicants that have seven or more penalty points on their driving licence will normally be refused and no further application will be considered until a period of at least one year free from conviction or at least one year since the completion of the sentence (whichever is longer).

7.5 A list of minor traffic offences can be seen in table 1.

Table 1: Minor traffic offences

Code	Offence
SP30	Exceeding statutory speed limit on a public road

A1.12 There is a right of Appeal to the Magistrates' Court as provided under section 52 (1) 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.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.1.1 There are no significant risks

A3. Options

A3.1 The options are:

- (i) To grant Mr Simon Setters' application for a Torbay Council issued Driver's Licence, if satisfied that Mr Setters is considered a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle.
- (ii) To refuse Mr Simon Setters' application on the grounds that he is not considered 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	DVLA licence check of Simon Setters driving licence carried out on the 22 nd of September 2023
Appendix 2	Minutes and decision from Licensing Sub-Committee hearing from the 9 th of December 2021
Appendix 3	Letter to Simon Setters from Shaun Rackley (Licensing Department) requesting Enhanced Disclosure and Barring Service (DBS) check – dated 22 nd of September 2023
Appendix 4	Reference for Simon Setters from employer – dated 4 th of May 2023
Appendix 5	Reference for Simon Setters from employer – dated 3 rd of May 2023
Appendix 6	Copy of Simon Setters Enhanced DBS check (restricted)

Background Papers:

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

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