

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

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

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **11th April 2024**

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 does 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 Scott Hannaford-Hill on the 23rd of January 2024 for a Torbay Council issued dual drivers' licence. In his application, Mr Hannaford-Hill has failed to declare to Torbay Council that he had been convicted of a relevant violence offence, dated the 3rd of February 2022. This conviction was discovered when the Licensing Team checked Mr Hannaford-Hill's Enhanced Disclosure & Barring Service (DBS) check.
- 3.5 In considering the Policy, Mr Hannaford-Hill's violence offence is listed within, and the Policy states that '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:
 - *Any offence (including attempted or conspiracy to commit offences) similar to those above.'*
- 3.6 Further to the conviction in 2022, Mr Hannaford-Hill received a conviction for another relevant violence offence in 2004. Although this is classed as spent under the Rehabilitation of Offenders Act 1974, he has two separate offences in relation to violence and the Policy states that '*A licence will not normally be granted if an Applicant has more than one conviction for an offence of a violent nature.'*
- 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 Disclosure & Barring Service (DBS) check to name a few.
- A1.5 This report follows an application made by Mr Scott Hannaford-Hill on the 23rd of January 2024 for a Torbay Council issued dual drivers' licence. In his application, Mr Hannaford-Hill has failed to declare to Torbay Council that he had been convicted of a relevant violence offence relating to, Battery, dated the 3rd of February 2022. The conviction was identified after Mr Hannaford-Hill submitted his Enhanced DBS check to the Licensing Team.
- A1.6 Mr Hannaford-Hill was written to by Shaun Rackley from Torbay Council's Licensing Department on the 8th of February 2024, to request his submission which would be put before Licensing Committee. This document can be found at Appendix 2.
- A1.7 Mr Hannaford-Hill responded by email and supplied his mitigating circumstances. This document can be found at Appendix 3.
- A1.8 Mr Hannaford-Hill also supplied a reference from his current employer Mr Gary King. This document can be found at Appendix 4.
- A1.8 A copy of Mr Hannaford-Hill's Enhanced DBS can be found at Appendix 1. The conviction which he failed to declare on the application form is listed as follows:
- | | |
|------------|----------------------------------|
| Date – | 03 February 2022 |
| Offence – | Battery |
| Court – | South and West Devon Magistrates |
| Disposal – | Fine £400 |
| | Costs £85 |
| | Victim Surcharge £40 |

A previous conviction for violence in 2004 is also listed upon Mr Hannaford-Hill's Enhanced DBS, this is as follows:

Date – 05 March 2004
Offence – Wounding
Court – Exeter Crown
Disposal – Community punishment order 100 hrs
Compensation £500
Licensed premises exclusion order 9 mths from all the Torbay licensed block exclusion scheme
Costs £250
Subsequently varied 03/03/06
Community punishment order 80 hrs
Community rehabilitation order 12 mths
Order revoked 16/04/07
Subsequently varied 16/04/07
Imprisonment 28 days

A1.9 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:

v) *They satisfy the requirements of the Licensing Authority with regard to any previous or current criminal conduct and has produced an acceptable Enhanced Disclosure and Barring Service (DBS) certificate to that effect*

Appendix A: Taxi & PHV Licensing Criminal Convictions Policy –

3 Offences Involving Violence

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:

- Arson*
- Malicious wounding or grievous bodily harm which is racially aggravated*
- Actual bodily harm*
- Assault occasioning actual bodily harm*
- Grievous bodily harm*
- Robbery*
- Possession of firearm*
- Possession of a weapon*
- Riot*
- Assault police*
- Violent disorder*
- Common assault*
- Resisting arrest*
- Any racially-aggravated offence against a person or property*
- Affray*
- Any offence that may be categorised as domestic violence*
- Harassment, alarm or distress, intentional harassment, or fear of provocation of violence*
- Any offence (including attempted or conspiracy to commit offences) similar to those above.*

3.6 A licence will not normally be granted if an Applicant has more than one conviction for an offence of a violent nature.

A1.10 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, as no preferred option is indicated by the author of the report.

A3. Options

A3.1 The options are:

- (i) To grant Mr Scott Hannaford-Hill's application for a Torbay Council issued Driver's Licence, if satisfied that Mr Hannaford-Hill is considered a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle.
- (ii) To refuse Mr Scott Hannaford-Hill's 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	Copy of Scott Hannaford-Hill's Enhanced DBS check (restricted)
Appendix 2	Letter to Scott Hannaford-Hill from Shaun Rackley (Licensing Department) requesting mitigating circumstances – dated 8 th of February 2024
Appendix 3	Email from Scott Hannaford-Hill with mitigating circumstances to be put before Licensing Committee – dated 28 th of February 2024
Appendix 4	Reference for Scott Hannaford-Hill from employer Mr Gary King – dated 28 th of February 2024

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