

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: **28th November 2019**

Key Decision: **No**

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

Contact Officer: **Shaun Rackley**
Telephone: **01803 208026**
E.mail: Shaun.rackley@torbay.gov.uk

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 3 separate speeding offences during a 12 day period, which has left the licence holder on 9 current penalty points. Further to this, the licence holder has failed to meet specific requirements as set out in the current Hackney Carriage and Private Hire Licensing Policy 2018 to 2022, by virtue of having failed to inform Torbay Council of the penalty points. 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 local tests have developed over time which have stood up to scrutiny in the Courts and are therefore commonly accepted practices amongst the majority of Licensing Authorities.
- 3.4 Torbay Council has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants. One of these is that they should possess and maintain a suitable driving ability and driving history.
- 3.5 This report follows a review of the DVLA driver data base in respect of Mr John Robert Cree, who holds a Torbay Council dual drivers' licence number LD0521, where it was discovered on the 18th October 2019, Mr Cree had received 9 penalty points. These are 3 separate offences over a 12 day period. Further to this, Mr Cree has failed to notify the Licensing Authority as required by virtue of its Policy.
- 3.6 Mr Cree was written to on the 22nd October 2019 and requested to provide an explanation as to the events surrounding the DVLA points, as well as stating reasons as to why the Licensing Authority was not informed. This document can be found at Appendix 1.

3.7 Relevant aspects of the Policy state:

5.12 Where an existing licensed driver receives over 6 (six) endorsement/s or penalty points on their licence within each licensing year, the Licensing Authority will require that person to undertake and pass a DSA. If this is not obtained within 3 months of the notification to the Licensing Authority, then the existing licensed drivers badge will be suspended until the necessary driving standards assessment is completed and confirmation of this has been provided to the Licensing Authority.

5.13 Where an existing licensed driver receives more than 9 (nine) penalty points on their driving licence that are current at any given time, that driver will be required to appear before a Licensing Sub-Committee. This will be in order to explain the circumstances and for consideration as to whether they remain a 'fit and proper' person to continue to hold a Torbay Council dual drivers licence.

5.14 Drivers who fail to notify the Licensing Authority of any endorsements received may face disciplinary action, which could result in appearance before a Licensing Sub-Committee and/or suspension or revocation of the drivers licence issued to them.

5.20 The Licensing Authority at its discretion, may require specific training to be undertaken where deemed appropriate. This training may include disability awareness, manual handling, equalities awareness, or anything else as deemed appropriate by the Licensing Authority.

6.4 Failure to inform the Licensing Authority within 5 working days of any convictions, cautions and fixed penalty notices during the licensing application and/or licensed period (i.e. once the licence is granted), may result in suspension or revocation of the drivers licence. Similarly, where convictions, cautions or fixed penalty notices are notified, depending on the nature of the infraction, this may result in suspension or revocation of the drivers licence.

Appendix A: Taxi and PHV Licensing Criminal Convictions' Policy

7.2 In the case of a licensed driver accumulating nine or more penalty points the Licensing Authority may refuse to renew, suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 12 months free from convictions of this type has elapsed. A list of minor traffic offences can be seen in table 1.

- 3.8 It is for the Licensing Sub-Committee to consider whether Mr Cree remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire drivers' licence.
- 3.9 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 local tests have developed over time which have stood up to scrutiny in the Courts and are therefore commonly accepted practices 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. One of these is that they should possess a suitable driving ability and driving history.
- A1.5 This report follows a review of the DVLA driver data base in respect of Mr Cree, where it was discovered that on 3 separate occasions over a 12 day period, Mr Cree was convicted in respect of 3 SP30 (speeding offences), receiving the following penalties:
- 27th February 2019 – SP30: Exceeding statutory speed limit on a public road – Penalty Points: 3
 - 28th February 2019 – SP30: Exceeding statutory speed limit on a public road – Penalty Points: 3
 - 11th March 2019 – SP30: Exceeding statutory speed limit on a public road – Penalty Points: 3

In addition, it is noted that Mr Cree has failed to report these penalty points to the Licensing Authority, as required under its current Policy.

- A1.6 On the 12th March 2013, Mr Cree signed a receipt for the latest version of Torbay Councils Hackney Carriage and Private Hire Licensing Policy which has remain unchanged from that date in relation to both its Convictions Policy and notifying the Licensing Authority of penalty points. The signed receipt also states that he had received the Policy and it was his responsibility to familiarise himself with the contents of the Policy. This document can be found at Appendix 2.
- A1.7 Relevant excerpts of the Policy are highlighted in 3.7 of the report (above), where section 5.13 refers to matters where more than 9 penalty points are received. There is also a duplication within Appendix A: Taxi and PHV Licensing Criminal Convictions' Policy, section 7.2, which highlights minor traffic offences and existing licensed drivers that accumulate 9 penalty points or more.

Therefore, Mr Cree was written to on 22nd October 2019 and requested to provide an explanation as to the events surrounding the penalty points, as well as stating reasons as to why the Licensing Authority was not informed.

A1.8 Of particular relevance is section 5.14 of the Policy, which states:

5.14 Drivers who fail to notify the Licensing Authority of any endorsements received may face disciplinary action, which could result in appearance before a Licensing Sub-Committee and/or suspension or revocation of the licence issued to them.

And 6.4 of the Policy, which states:

6.4 Failure to inform the Licensing Authority within 5 working days of any convictions, cautions and fixed penalty notices during the licensing application and/or licensed period (i.e. once the licence is granted) may result in suspension or revocation of the driver licence. Similarly, where convictions, cautions or fixed penalty notices are notified, depending on the nature of the infraction, this may result in suspension or revocation of the driver licence.

A1.9 Under section 5.12 of the Policy, it states:

5.12 Where an existing licensed driver receives over 6 (six) endorsement/s or penalty points on their licence within each licensing year, the Licensing Authority will require that person to undertake and pass a DSA

The Licensing Authority has not requested Mr Cree to undertake and pass the DSA as of yet, this is due to a greater concern that 9 penalty points within a 12 day period questions whether Mr Cree remains a fit and proper person to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence.

A1.10 At the time of writing this report, there has been no response from Mr Cree to the letter of 22nd October 2019. Therefore, no details are available as to the actual offences themselves other than that on the DVLA driver data base. Mr Cree has been invited to attend the hearing in order to answer any questions and to explain the circumstances surrounding these offences.

A1.11 Members are requested to consider whether Mr Cree remains a 'fit and proper person' to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence.

A1.12 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 Cree 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 Cree'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 Cree remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle
- (ii) To require additional training and/or to successfully undertake a Driving Standards test, or an equivalent higher standard test
- (iii) To suspend Mr Cree's licence to drive a Hackney Carriage or Private Hire vehicle and to require that additional training and/or a Driving Standards, or the equivalent higher standard test is required
- (iv) To revoke Mr Cree'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 Letter to Mr Cree requesting further information

Appendix 2 Signed receipt for Torbay Councils Hackney Carriage and Private Hire Licensing Policy

Background Papers:

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2018 to 2022