



Wednesday, 27 November 2019

## **LICENSING SUB-COMMITTEE**

A meeting of **Licensing Sub-Committee** will be held on

**Thursday, 5 December 2019**

commencing at **10.30 am at the rising of the Licensing Committee**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,  
Torquay, TQ1 3DR

### **Members of the Committee**

Councillor Ellery

Councillor Mills

Councillor David Thomas

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**Lisa Antrobus, Town Hall, Castle Circus, Torquay, TQ1 3DR**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) - [www.torbay.gov.uk](http://www.torbay.gov.uk)

# LICENSING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**  
To elect a Chairman/woman for the meeting.
2. **Apologies**  
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
3. **Declarations of interests**
  - (a) To receive declarations of non pecuniary interests in respect of items on this agenda  
**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
  - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda  
**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.  
  
(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
4. **Urgent items**  
To consider any other items that the Chairman decides are urgent.
5. **Consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence**  
To consider a report regarding a Hackney Carriage and Private Hire Driver's Licence.

(Pages 3 - 12)



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: **28<sup>th</sup> November 2019**

Key Decision: **No**

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

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✉ E.mail: [Shaun.rackley@torbay.gov.uk](mailto:Shaun.rackley@torbay.gov.uk)

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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 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 18<sup>th</sup> 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 22<sup>nd</sup> 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:
- 27<sup>th</sup> February 2019 – SP30: Exceeding statutory speed limit on a public road – Penalty Points: 3
  - 28<sup>th</sup> February 2019 – SP30: Exceeding statutory speed limit on a public road – Penalty Points: 3
  - 11<sup>th</sup> 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 12<sup>th</sup> 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 22<sup>nd</sup> 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 22<sup>nd</sup> 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



Please reply to: Gary O'Shea

Town Hall  
Castle Circus  
Torquay  
TQ1 3DR

My ref:

Your ref:

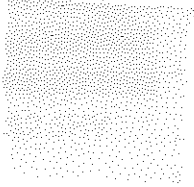
Telephone: 01803 208025

Fax: 01803 208854

E-mail: gary.oshea@torbay.gov.uk

Date: 22 October 2019

Mr J R Cree



Dear Mr Cree

**Local Government (Miscellaneous Provisions) Act 1976  
Dual Hackney Carriage and Private Hire Drivers Licence No: LD0521**

You will be aware that under the terms of the Torbay Council Hackney Carriage and Private Hire Licensing Policy (the Policy), the licensing team undertakes 6 monthly checks through the Driver and Vehicle Licensing Agency (DVLA) of the driving records of all licensed drivers.

A check was made on Friday 18<sup>th</sup> October 2019 of your own record, where the following information was obtained:

Offence – SP30 dated 27<sup>th</sup> February 2019 – 3 Penalty Points

Offence – SP30 dated 28<sup>th</sup> February 2019 – 3 Penalty Points

Offence – SP30 dated 11<sup>th</sup> March 2019 – 3 Penalty Points

The licensing authority has received no notification from you relating to any of these offences. Failure to notify the licensing authority of any conviction received is contrary to the Policy, which at section 5.14 states:

*"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."*

It is a matter of greater concern however, that these offences for which you have failed to notify the licensing authority, have been committed in a space of only 2 weeks. The total amalgamation of penalty points on your DVLA licence stands at 9.

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*forward thinking, people orientated, adaptable - always with integrity.*

If you require this in a different format or language, please contact me.

The current Policy also states, at Paragraph 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."*

And at 5.12, the Policy states;

*"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".*

Whilst you have not exceeded 9 points, the close nature of accumulation of the 9 that you have (which also totals over 6 points in the same licensing year), combined with your failure to notify the Licensing Authority means that I must now refer the matter to Licensing Sub Committee for consideration as to your fit and proper status to remain licensed by this authority. You are therefore, advised that a date will be set for a hearing to which you will be invited and given opportunity to address the Committee.

The Licensing Sub Committee will consider the nature of the convictions that you hold and will take account of any testimony that you may wish to put forward. In advance of the hearing therefore, I request from you, written explanation as to why you did not notify the licensing authority of either conviction, a summary of the incidents leading to each conviction and details of any mitigating factors that may assist your case.

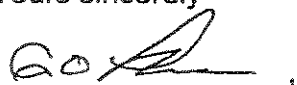
Whilst no decision has been made as to the future status of your Torbay Council drivers' licence, I must advise you of the serious nature of this matter and that there is a possibility that you may have your licence revoked. In view of this I stress the importance of timely and detailed information being supplied to me that I may then put before Committee for consideration. I request that you submit the above information, in writing, to include any matter (including any mitigating circumstances) that you believe to be relevant by **no later than Friday 1<sup>st</sup> November 2019**. Please email this to [licensing@torbay.gov.uk](mailto:licensing@torbay.gov.uk) or write to Licensing Department at the address at the head of this letter.

The Licensing Sub-Committee will be established to take place soon after that date and you will be written to further to advise you of the date and time of the hearing.

You are advised that you may be assisted or represented by a Solicitor or legally qualified person, or by any other person of your choosing. However, if you wish to be represented I would ask that you kindly provide the name and capacity of your representative at the earliest opportunity.

Please do not hesitate to contact me on the above number to discuss this matter further or alternatively please contact your legal advisor should you prefer.


Yours sincerely

A handwritten signature in black ink, appearing to read 'G O'Shea', followed by a comma.

**Gary O'Shea**  
Principal Officer  
Licensing and Public Protection

Receipt for Torbay Council Licensing Policy

I have today received my copy of the new Torbay Council Licensing Policy and understand it is my responsibility to familiarise myself with all the contents of this policy, and understand it must be carried within the licensed Hackney Carriage or Private Hire vehicle at all times. I understand that this Policy will from time to time be updated following consultation and the latest edition will always be available on the [www.torbay.gov.uk](http://www.torbay.gov.uk) website.

NAME	JOHN CREE (TURN)	BADGE NO.	LD0521
SIGNATURE		DATE	12/03/13