

Wednesday, 30 September 2020

**LICENSING SUB-COMMITTEE**

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

**Thursday, 8 October 2020**

commencing at **9.30 am**

The meeting will be held remotely via Zoom (the links to the meeting are set out below)

<https://us02web.zoom.us/j/85681251681?pwd=N1NuOUgwSUU0MEpMVEV2U1k4cGtSdz09>

Meeting ID: 856 8125 1681

Passcode: 019281

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Meeting ID: 856 8125 1681

Passcode: 019281

**Members of the Committee**

Councillor Ellery

Councillor Foster

Councillor Kennedy

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**Together Torbay will thrive**

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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**

(Pages 4 - 17)

To consider a report on the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence.

**Instructions for the press and public for joining the meeting**

If you are using an iPad you will need to install Zoom which can be found in the App Store. You do not need to register for an account just install the software. You only need to install the software once. For other devices you should just be taken direct to the meeting.

## **Joining a Meeting**

Click on the link provided on the agenda above and follow the instructions on screen. If you are using a telephone, dial the Zoom number provided above and follow the instructions. (**Note:** if you are using a landline the call will cost up to 13p per minute and from a mobile between 3p and 55p if the number is not covered by your inclusive minutes.)

You will be placed in a waiting room, when the meeting starts the meeting Host will admit you. Please note if there are technical issues this might not be at the start time given on the agenda.

Upon entry you will be muted and your video switched off so that only the meeting participants can be seen. When you join the meeting the Host will unmute your microphone, ask you to confirm your name and update your name as either public or press. Select gallery view if you want see all the participants.

If you have joined the meeting via telephone, your telephone number will appear on screen and will be displayed for all to see until the Host has confirmed your name and then they will rename your telephone number to either public or press.

## **Speaking at a Meeting**

If you are registered to speak at the meeting and when it is your turn to address the Meeting, the Chairman will invite you to speak giving the Host the instruction to unmute your microphone and switch your video on (where appropriate) therefore please pause for a couple of seconds to ensure your microphone is on.

Upon the conclusion of your speech/time limit, the Host will mute your microphone and turn off your video.

## **Meeting Etiquette for Registered Speakers - things to consider when speaking at public meetings on video**

- Background – the meeting is public and people will be able to see what is behind you therefore consider what you will have on display behind you.
- Camera angle – sit front on, upright with the device in front of you.
- Who else is in the room – make sure you are in a position where nobody will enter the camera shot who doesn't want to appear in the public meeting.
- Background noise – try where possible to minimise background noise.
- Aim to join the meeting 15 minutes before it is due to start.

## **TORBAY COUNCIL**

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Public Agenda Item: **YES**

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: **8 October 2020**

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](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 1 speeding offence and 1 motoring offence during a 6 month period, which has left the licence holder on 9 current 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 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 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 an email on the 14<sup>th</sup> August 2020 from Mr Graham Tamplin, who holds a Torbay Council dual drivers' licence, number LD0262, informing the Licensing Department that he had accumulated 9 penalty points on his DVLA driving licence. These are 2 separate offences over a 6 month period. The most recent offence was for failing to give information as to the identity of a driver. This document can be found at Appendix 1.
- 3.6 Mr Tamplin was written to on the 18<sup>th</sup> August 2020 and requested to provide an explanation as to the events surrounding the DVLA points. This document can be found at Appendix 2.
- 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.

5.20 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.

#### Appendix A: Taxi and PHV Licensing Criminal Convictions' Policy

2.2 In the case of a licensed driver being convicted of an offence involving dishonesty 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 three years from the date of conviction of this type has elapsed.

#### 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 Tamplin 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 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. One of these is that they should possess a suitable driving ability and driving history.

A1.5 This report follows a notification from Mr Graham Tamplin, informing the Licensing Department that he had accumulated 9 penalty points on his DVLA driving licence on 2 separate occasions over a 6 month period. Mr Tamplin was convicted in respect of 1 speeding and 1 motoring offence, receiving the following penalties:

- 12<sup>th</sup> June 2019 – SP30: Exceeding statutory speed limit on a public road – Penalty Points: 3
- 12<sup>th</sup> December 2019 – MS90: Failure to give information as to identity of driver – Penalty Points: 6

A1.6 On the 21<sup>st</sup> March 2013, Mr Tamplin 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 its Convictions Policy. The signed receipt 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 3.

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 Tamplin was written to on 18<sup>th</sup> August 2020 and requested to provide an explanation as to the events surrounding the penalty points.

A1.8 Of particular relevance is section 2.2 of Appendix A: Taxi and PHV Licensing Criminal Convictions' Policy, which states:

2.2 In the case of a licensed driver being convicted of an offence involving dishonesty 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 three years from the date of conviction of this type has elapsed.

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 Tamplin to undertake and pass the DSA as of yet. This is due to a greater concern that 9 penalty points within a 6 month period, along with the seriousness of the most recent offence of failing to provide information as to the identity of a driver, questions whether Mr Tamplin remains a fit and proper person to hold a Torbay Council issued dual Hackney Carriage and Private Hire Drivers' licence.

A1.10 Mr Tamplin has responded to the email of 18<sup>th</sup> August 2020 and included mitigating circumstances and supporting information regarding the two offences. This document can be found at Appendix 4.

A1.11 Members are requested to consider whether Mr Tamplin 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 Tamplin 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 Tamplin'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 Tamplin remains a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle
- (ii) To give a formal written warning
- (iii) To require additional training and/or to successfully undertake a Driving Standards test, or an equivalent higher standard test
- (iv) To suspend Mr Tamplin'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
- (v) To revoke Mr Tamplin'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 | Email from Mr Tamplin informing the Licensing Authority of DVLA convictions           |
| Appendix 2 | Letter to Mr Tamplin requesting further information                                   |
| Appendix 3 | Signed receipt for Torbay Councils Hackney Carriage and Private Hire Licensing Policy |
| Appendix 4 | Letter from Mr Tamplin with supporting information                                    |

#### **Background Papers:**

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2019

**Rackley, Shaun**

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**From:** Graham Tamplin  
**Sent:** 14 August 2020 10:03  
**To:** Rackley, Shaun  
**Subject:** Notification.

Good Morning Shaun,

This morning I have received confirmation of the court case I attended on Friday. My license has been endorsed with 6 penalty points for failure to provide the name of the driver doing 59 in a 50-mph speed limit in December. The most annoying thing about this is that if I had lied and said I was driving I would have only got a fixed penalty with 3 points, but I knew I was driving a different car to the one captured. It seems you're rewarded for dishonesty and penalised for honesty.

The reason I was unable to state who was driving was because I had had a lot of breakdowns and mechanical problems all at once and in order to keep drivers on the road, I was swapping cars around a lot, often taking myself off the road so that they could work.

The upshot of it is that I now have to pay £525 and have 9 points on my license including the sp30 that I got in Jan 2019 so I'd better be damn careful.

I've been through a lot in the past year and covid 19 has really hurt. Ken still can't get his medical because the doctors are refusing to do them and Ashley Townsend is shielding at the moment. The government grant doesn't cover loss of turnover only 80% of loss of net earnings.

I'm asking that you do not punish me further for this offence as I feel I have already been dealt with over harshly by the magistrates' court.

Kind Regards

Graham Tamplin.



Please reply to: Mr Shaun Rackley

Licensing & Public Protection  
Town Hall  
Castle Circus  
Torquay  
Devon  
TQ1 3DR

Mr G Tamplin



My ref: M:005584/SAR

Your ref:

Telephone: 01803 208025

Website: [www.torbay.gov.uk](http://www.torbay.gov.uk)

Date: 18 August 2020

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Dear Mr Tamplin

**Local Government (Miscellaneous Provisions) Act 1976  
Dual Hackney Carriage and Private Hire Drivers Licence No: LD0262**

I am writing to you following your notification by email about receiving 6 points on your DVLA Licence.

It is a matter of great concern that you have now received a total of 9 points on your DVLA licence within one licensing year, albeit, you was not awarded the most recent set of points until recently, however, the offence did take place in the last licensing year.

After carrying out a DVLA licence check, the offences listed on your DVLA licence are as follows:

Offence – SP30 Exceeding statutory speed limit on a public road - dated 12<sup>th</sup> June 2019 – 3 penalty points

Offence – MS90 Failure to give information as to identity of driver – dated 12<sup>th</sup> December 2019 – 6 penalty points

The current Policy 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.”*

The Policy also states, at Appendix A; Paragraph 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."*

Because of the seriousness of the most recent offence of failing to give information and the fact you have 9 penalty points on your DVLA licence in such a short period of time, I must now refer the matter to Torbay Councils 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 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 and 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. The Licensing Sub-Committee will decide on what action to take, if any. This could range from a warning about your future conduct, through to revocation of your Torbay Council issued Licensed Drivers badge. 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 Tuesday 1<sup>st</sup> September 2020**.

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.

**Should you need to contact us please quote the reference number above.**

Yours sincerely

Mr Shaun Rackley  
Licensing Officer  
Licensing & Public Protection

*Please note that, apart from personal details subject to the Data Protection Act, information contained in this letter may be divulged to members of the public under the Freedom of Information Act 2000.*

## 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	GRAHAM TORBAY	BADGE NO.	LD0262
SIGNATURE		DATE	21/3/13

GRAHAM TAMPLIN



25<sup>th</sup> August 2020

Licensing and Public Protection  
Town Hall  
Castle Circus  
Torquay  
TQ1 3DR

Ref: M005584/SAR

Dear Shaun Rackley and Licensing Sub Committee,

I have been requested to give an account of the circumstances that led to me receiving 6 penalty points back dated to December 2019 which meant that I had a total of 9 penalty points in that licensing year.

Last year and since has been one thing after another and I've lost thousands of pounds. I have 4 taxis and 4 drivers besides myself. I was in hospital with pleurisy for a couple of weeks and then one by one every car developed a major issue which cost thousands of pounds. New inlet manifold a grand, new clutch a grand, 2 new headlights and command module etc. But the worst issue was the Kia. Some garage at some time had used a gasket sealer that had gone into the sump of the engine and clogged up the oil pick-up and blew the engine up at only 140,000 miles. It was off the road for ages as various unscrupulous suppliers of used engines sent wrong or damaged used engines to the garage. I then had to decide whether to scrap the car and get a new one or take out an expensive engine rebuild. Because the car is irreplaceable as a 6 seater and it's extended lifespan due to recent changes in licensing policy, I decided to spend a further £3000 on top of the thousands it had cost me so far.

I am not telling you all this to gain sympathy but to explain my circumstances and my state of mind. I always make sure as far as



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possible that drivers are prioritized over myself when it comes to the provision of a vehicle for them to trade in. I spent a long time without many days that I personally could work. I swapped cars around constantly to make sure drivers could work according to their preferred working hours and days off. It is for this reason that when I received a summons for FH14 ZVT doing 59 mph in 50 mph limit on the South Devon Highway in the early hours of the morning I could not be entirely certain who the driver was at that time. I could have lied and said it was definitely me and received a fixed penalty of 3 points and a fine. But what if there was evidence that it was not me? Then I am in a whole heap of trouble for attempting to pervert the course of justice. So I told the truth and went to court.

On the day of my court hearing my solicitor was offered a deal to plead guilty to speeding and receive 3 penalty points plus a fine. My solicitor asked me if I could say honestly that I was the driver and the truthful answer was that I could not say with absolute certainty that I was. I had hoped that my honesty would be taken into consideration but apparently you get penalised with 6 points for honesty and rewarded with only 3 points for lying. I am currently waiting to hear from my solicitor if it is possible for the court to review their decision because of the grave issues it has for me to have 9 points in the same year with licensing. When they awarded the penalty I didn't realise that it would be backdated to the time of the offence, I thought it would be dated 5<sup>th</sup> August 2020.

The earlier offence of exceeding a 30 mph speed limit was a lapse in concentration that even the best of drivers must succumb to occasionally, Who hasn't followed moderate traffic at 34 mph on a wide road without realising it. A lot of cars must have got caught that day by a manned speed detector and I have no excuse.

I was a taxi driver in 1987 and 1988 and resumed taxi driving in Feb 2007 until this current day. I don't believe that in all that time there has ever been a complaint about me, my conduct or my driving either from a member of the public or other licensed drivers.

My wife is a senior healthcare worker for an agency and as such she is sent to various locations to care for vulnerable people. Sometimes it's one to one in a residential area and sometimes it's in a nursing home or hospital. Many of these locations can be in places like the lanes around

Ogwell or Chudleigh or Bovey Tracy. If my badge was revoked or suspended it would cause severe hardship. My wife doesn't drive so she relies upon me to take her everywhere. My car is a taxi and can only be driven by a licensed driver and is only insured to be driven by a licensed driver which means I am effectively banned from driving even though the courts haven't disqualified me. I had only just got through 2019 and then Covid 19 kills the Taxi trade. [REDACTED] usually contributes more than £400 per week to my company and due to Covid 19 and a medical centre cock-up is still not back to work. [REDACTED] has just returned to work this week after shielding since the outbreak. All of this means that I am not in a financial position to buy and insure another car to use to take my wife to work. In fact, the way things are if I was to be out of a job I don't think I'd be able to survive and everyone would be out of a job.

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I think that the courts have already dealt over-harshly with me so I am asking the committee for leniency when reviewing my fitness as a taxi driver.

Yours Sincerely

Graham Tamplin.



