

Date Not Specified

REGULATORY SUB-COMMITTEE

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

Thursday, 11 July 2024

commencing at **9.30 am**

The meeting will be held in the Banking Hall, Castle Circus entrance on the left corner of the Town Hall, Castle Circus, Torquay, TQ1 3DR

Members of the Committee

Councillor Douglas-Dunbar

Councillor Johns

Councillor Barbara Lewis

A Healthy, Happy and Prosperous Torbay

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, Town Hall, Castle Circus, Torquay, TQ1 3DR

Email: governance.support@torbay.gov.uk - www.torbay.gov.uk

REGULATORY 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 Sub-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. **Application for Torbay Council Driver's Licence**
To consider a report on the fit and proper status of an applicant who seeks to hold a Torbay Council Driver's Licence.

(Pages 3 - 28)

TORBAY COUNCIL

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

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

Wards Affected: **All**

To: **Regulatory Sub-Committee** On: **11 July 2024**

Key Decision: **No**

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

Contact Officer: **Shaun Rackley**
Telephone: **01803 208025**
E.mail: Shaun.rackley@torbay.gov.uk

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 Nathan Drury on the 10th of May 2024 for a Torbay Council issued dual drivers' licence. Within the application form, it asks, 'Have you ever been charged or convicted of any criminal offence?', Mr Drury answered, 'YES lots as a juvenile will send photocopy of DBS that outlines them nothing since 2017'.
- 3.5 After receiving Mr Drury's Enhanced Disclosure & Barring Service (DBS) check and considering the Policy, Mr Drury has seven convictions which relate to a violent nature. In December 2017 Mr Drury was convicted of resisting or obstructing a constable, as well as assaulting a person designated/accredited under part 4 of Police Reform Act 2002 in the execution of his duty.

Mr Drury also has violence convictions dated September 2007 and April 2008 relating to an assault occasioning actual bodily harm. In December 2016 Mr Drury has a further conviction for resisting or obstructing a constable. In May 2017 there are further three separate convictions for destroying or damaging property.

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 offences involving violence.

The Policy also states that '*A licence will not normally be granted if an Applicant has more than one conviction for an offence of a violent nature.*'

- 3.6 Further to the violence convictions mentioned above, Mr Drury has received multiple convictions for other relevant offences listed within the Policy, these include, a drug offence, multiple theft offences and major traffic offences with the date range between September 2007 and December 2017.
- 3.7 There is a right of Appeal to the Magistrates' Court as provided under section 52 (1) of the 1976 Act against the Regulatory 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 1976 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 Nathan Drury on the 10th of May 2024 for a Torbay Council issued dual drivers' licence. Within the application form, it asks, 'Have you ever been charged or convicted of any criminal offence?', Mr Drury answered, 'YES lots as a juvenile will send photocopy of DBS that outlines them nothing since 2017'.
- A1.6 Mr Drury was sent an email by Shaun Rackley from Torbay Council's Licensing Department on the 17th of May 2024, to request a copy of his enhanced DBS check, along with confirmation that he had read and understood the Policy, specifically relating to Appendix A, the convictions policy. This document can be found at Appendix 1.
- A1.7 Mr Drury responded by email on the 18th of May 2024 and supplied a copy of his enhanced DBS check, along with confirmation that he had read the Policy. This document can be found at Appendix 2.
- A1.8 A copy of Mr Drury's Enhanced DBS can be found at Appendix 3.
- A1.9 A summary of the convictions from Mr Drury's Enhanced DBS listing which section of the convictions policy they do not meet can be found at Appendix 4.
- A1.10 Mr Drury was written to by Shaun Rackley from Torbay Council's Licensing Department on the 23rd of May 2024, to request his submission which would be put before the Sub- Committee. This document can be found at Appendix 5.
- A1.11 A search of Devon Live around the courts web pages found an article about Mr Drury from the incident which led to his convictions in December 2017. This document can be found at Appendix 6.

A1.12 Mr Drury has failed to respond to the request for any mitigating circumstances which could be put before the Sub- Committee.

A1.13 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 –

2 Dishonesty

2.1 A serious view is taken of any conviction involving dishonesty.

2.2 A minimum period of seven years free of conviction or at least seven years since the completion of sentence (whichever is longer), is required to have passed before a licence is granted. Offences involving dishonesty include:

- Theft*

- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- False representation
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- Fare overcharging
- Or any similar offences (including attempted or conspiracy to commit) or offences which replace the above

2.3 A licence will not normally be granted if an Applicant has more than one conviction for a dishonesty offence.

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.

3.5 A licence will not normally be granted until at least five years have passed since the completion of any sentence following conviction for an offence shown below:

- *Obstruction*
- *Criminal damage*
- *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.

5 Drugs

5.4 A licence will not normally be granted until at least five years have passed since the completion of any sentence following conviction for an offence shown below:

- *Possession of drugs*
- Any similar offences (including attempted or conspiracy to commit) or offences which replace the above

A1.14 There is a right of Appeal to the Magistrates' Court as provided under section 52 (1) of the 1976 Act against the Regulatory 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 Nathan Drury's application for a Torbay Council issued Driver's Licence, if satisfied that Mr Drury is considered a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle.
- (ii) To refuse Mr Nathan Drury'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 Regulatory 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 to Nathan Drury from Shaun Rackley (Licensing Department) requesting copy of Enhanced DBS check – dated 17 th of May 2024
Appendix 2	Email response from Nathan Drury – dated 18 th of May 2024
Appendix 3	Copy of Nathan Drury's Enhanced DBS check – Exempt
Appendix 4	Summary of Nathan Drury's convictions - Exempt
Appendix 5	Letter to Nathan Drury from Shaun Rackley (Licensing Department) requesting mitigating circumstances – dated 23 rd of May 2024
Appendix 6	Devon Live article

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

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From: Rackley, Shaun
Sent: Friday, May 17, 2024 10:09 AM
To: [REDACTED]
Subject: New Licensed drivers application

Hi Nathan,

I have received a Licensed drivers application from yourself, however, I am not able to proceed with this application at present as I require further information to determine if this application should be heard by Torbay Council's Licensing Committee.

On the application form you have declared the following for both 'convictions' and 'driving convictions':

YES lots as a juvenile will send photocopy of DBS that outlines them nothing since 2017.

Please can you send a copy of each page of your Enhanced DBS to me by email and I will assess the information and ensure it is in line with Torbay Council's taxi policy before determining how to proceed with the application.

Also, can you confirm whether you have read Torbay Council's taxi policy (link below), especially in relation to convictions at Appendix A of the policy?

<https://www.torbay.gov.uk/media/15914/hc-and-ph-licensing-policy-may-edition.pdf>

Until I have this information your application is on hold. If this matter is to be heard by the Licensing Committee, this could take up to two months as a hearing will be required and a report written.

I look forward to hearing from you in due course.

Regards

Shaun

TORBAY COUNCIL

Shaun Rackley | Licensing Officer |
Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 208025 | shaun.rackley@torbay.gov.uk

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[Facebook](#) | [Twitter](#) | [LinkedIn](#) | [Instagram](#)

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From: Nathan Drury <[REDACTED]>
Sent: Saturday, May 18, 2024 2:11 PM
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Re: New Licensed drivers application

Good afternoon Shaun

Yes I have read Torbay council taxi policy, and dbs is attached along with a reference from a voluntary rehabilitation course i volunteered to attend in order to turn my life around.

Kind regards

Nathan Drury

Sent from my iPhone

<N Drury Letter May 2024.docx>

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Please reply to: Mr Shaun Rackley

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

Mr N J Drury
[REDACTED]

My ref: NEW/SAR

Your ref:

Telephone: 01803 208025

E-mail: Shaun.rackley@torbay.gov.uk

Date: 23 May 2024

Dear Mr Drury,

Re: Application for Licensed Drivers badge

I am writing to you following your submission of an application for a Licensed drivers badge with Torbay Council.

Unfortunately, after checking the Enhanced Disclosure & Barring Service (DBS) check, it has been identified you have relevant convictions which are listed within Torbay Councils taxi policy.

A decision on whether a Licensed driver's badge can be granted, or refused must be made by Torbay Council's Licensing Committee.

I have not yet set a hearing date, however, in order to assist me with writing the report which will be presented to members of the Licensing Committee on the day of the hearing, please can you respond in writing with any mitigating circumstances that will support your application as this will be included in the report.

Once I have the requested information, I will book a hearing date and you will be invited to attend and address the Committee members if you wish to and put your case before them.

Please can you return all requested information by no later than **Friday the 7th of June 2024**. Failure to return the documents may delay the hearing and a later date being set.

If you wish to withdraw your application, please let me know and I can arrange a refund of the fee paid.

I look forward to hearing from you in due course.

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

Yours sincerely



Shaun Rackley
Licensing Officer

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<https://www.devonlive.com/news/devon-news/took-seven-officers-arrest-man-1057624>

It took seven officers to arrest this man who shouted 'yum, yum' when police Captor sprayed him in the face

Nathan Drury, 25, of Temperance Street, Torquay, laughed loudly and said 'Yum, Yum,' when officers Captor sprayed him in the face

NEWS

BY **Paul Greaves** Senior News Reporter

16:19, 12 JAN 2018

A suspect caused such mayhem after his arrest that it took seven policemen to arrest him, a court has been told.

Nathan Drury, 25, of Temperance Street, Torquay, laughed loudly and said 'Yum, Yum,' when officers Captor sprayed him in the face.

He had been arrested for driving while disqualified but the situation quickly got out of hand when he was taken to Torquay police station.

Exeter Crown Court was told he injured two officers as they tried to put handcuffs on him.

Drury was jailed for nine months after admitting driving while disqualified, driving without insurance, obstructing a police officer, assaulting a police officer executing his duty, and breaching a suspended sentence.

Prosecutor Herc Ashworth said the offences happened on September 9 last year.

A motorist reported a collision with a Peugeot 307 on the A381 at Halwell near Newton Abbot.

At 11.45pm police found Drury and the car at a house in Torquay.

When an officer tried to arrest him he said: "Come on then, twist me up."

There was a struggle, which also involved a second officer, during which Drury made a 'high pitched laughing noise', said the prosecutor.

They managed to put leg restrains on him and take him to Torquay custody.

But Drury got angry again when he was told there was no mental health nurse available to see him.

He said: "You're going to have to drag me out of here."

He bear hugged the detention officer then started to twist his leg for 30 seconds. Officers again managed to overpower him and put him in leg restraints.

The detention officer suffered a large bruise to his torso and blurred vision as a result of the attack.

Drury has previous convictions for criminal damage, theft and driving while disqualified. In May 2017 he was given a suspended sentence for a series of thefts at a car wash in Teignmouth Road which caused thousands of pounds worth of damage. The latest offence put him in breach of that punishment

Paul Dentith, mitigating, asked the judge not to send him to jail. He said the defendant was taking cocaine at the time but now had a job and was getting his life back together.

Judge Erik Salomonsen said considering all the circumstances he would impose a sentence of nine months and disqualify Drury from driving for 16 months.