

Wednesday, 8 January 2025

REGULATORY SUB-COMMITTEE

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

Thursday, 16 January 2025

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 Foster

Councillor Barbara Lewis

A Healthy, Happy and Prosperous Torbay

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Governance Support, 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. **Minutes** (Pages 3 - 6)
To confirm as a correct record the Minutes of the meeting of a Regulatory Sub-Committee held on 21 November 2024.
4. **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.)
5. **Urgent items**
To consider any other items that the Chairman decides are urgent.
6. **Application for Torbay Council Driver's Licence** (Pages 7 - 32)
To consider a report on the fit and proper status of an applicant who seeks to hold a Torbay Council Driver's Licence.

Minutes of the Regulatory Sub-Committee

21 November 2024

-: Present :-

Councillors Douglas-Dunbar, Foster and Barbara Lewis

4. Election of Chairman/woman

Councillor Barbara Lewis was elected as Chair for the meeting.

5. Minutes

The Minutes of the meeting of the Sub-Committee held on 11 July 2024 were confirmed as a correct record and signed by the Chairwoman.

6. Exclusion of the Press and Public

Prior to consideration of the item in Minute 4 the press and public were formally excluded from the meeting on the grounds that the item involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

7. Application for Torbay Council Driver's Licence

Members considered a report that set out relevant facts relating to an applicant for a Torbay Council issue dual Hackney Carriage and Private Hire Driver's Licence.

The applicant was not present at the hearing and Members chose for the hearing to proceed in his absence, having heard details from the Officer of the correspondence and contact made with the applicant prior to the hearing.

Subsequently, Members determined the Application based on the written facts before them, pertaining to whether or not the applicant of the dual Hackney Carriage and Private Hire Driver's Licence was a fit and proper person to hold such a licence.

Decision

That the application for a Torbay Council Dual Hackney Carriage and Private Hire Driver's Licence be refused.

Reason for Decision

As the Applicant was unable to attend the hearing due to being in Birmingham, Members made an initial determination as to whether the hearing should proceed in his absence. The Licensing Officer confirmed that the Applicant had sent email

correspondence to him at 06.00 hours that morning, saying that he would not be attending as the weather was too bad to undertake the drive back and requesting that his written submission that had been provided by him by email at 22.45 hours the previous day, was read out. This was circulated to Members for their consideration. Members were satisfied that sufficient notification of the date and time of the hearing had been given to the Applicant to gain his attendance and under these circumstances, determined unanimously that it was in the public interest for the hearing to go ahead in his absence.

Members proceeded to hear from the Licensing Officer that the Applicant had submitted an Application in August 2024 where one conviction for an out of school hours fight many years ago was disclosed. However, the certificate obtained from the Disclosure and Barring Service (DBS) showed that the Applicant had 3 convictions, all for offences involving violence, including one for assaulting a Police Officer which was the most recent conviction in June 2018. Furthermore, in answer to the question 'Have you ever been convicted of a driving offence', the Applicant had answered 'no'. However, an examination of the DVSA driving record revealed that the Applicant had received a motoring conviction in January 2024 for an LC20 offence for driving otherwise in accordance with a licence.

Members were directed to the Taxi & Private Hire Vehicle Licensing Criminal Convictions Policy, found at Appendix A, which states at section 3.3 that for convictions for offences involving violence '*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.*

And further at section 3.6, '*A licence will not normally be granted if an Applicant has more than one conviction for an offence of a violent nature*'.

In respect of the motoring conviction this is classed as a major traffic offence with the Council's Taxi Policy which states that '*A licence will not normally be granted if the Applicant has been convicted or previously disqualified from driving in respect of major traffic offences until a period of 5 years free from conviction or at least 5 years from the completion of the sentence (whichever is longer)*'.

Furthermore, Members were reminded that taxi and private hire drivers are exempt from the Rehabilitation of Offenders Act 1974 and any convictions can be taken into consideration, when determining whether an Applicant or a driver, is a 'fit and proper person' to hold a driver's licence.

Members viewed the Applicants failure to attend the hearing as disrespectful and demonstrated a lack of commitment for the position of responsibility for which he was applying. Furthermore, given that two of the convictions were relatively recent, being convicted in 2018 and 2024, Members were not satisfied that this was a genuine error on the part of the Applicant in failing to disclose, and found this to have been a deliberate attempt to mislead.

All Applicants must confirm at the submission stage of their application that they have read and understood the Taxi Policy, which had the Applicant done, he would have been aware of the Licensing Authority's Convictions Policy contained within, and the requirement to share all convictions.

Having carefully considered all the evidence before them, Members unanimously resolved to refuse the application, as they found no reason to depart from Torbay Council's Taxi Policy which should only be done in exceptional circumstances and for justifiable reasons.

In coming to their decision, Members carefully considered having been charged with the responsibility to determine the drivers' licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care, or any other vulnerable person known to them to get into a vehicle with the Applicant alone. The unanimous answer by Members to this question, was 'no'.

In concluding, having carefully considered the all the evidence before them and the criteria set out in Torbay Council's Hackney Carriage and Private Hire Policy, Members unanimously resolved to refuse the application, as they could not be satisfied on the evidence before them, that the Applicant was a 'fit and proper' person to hold a Torbay Council Drivers Licence and found no reason to depart from the Policy. This, coupled with the concerns referred to above as regards the Applicant's honesty, resulted in what Members determined to be a proportionate and appropriate decision, in refusing the application at this time, in the interest of public safety.

Chairman/woman

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TORBAY COUNCIL

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

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

Wards Affected: **All**

To: **Regulatory Sub-Committee** On: **16th January 2025**

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

This report concerns an application for a Torbay Council Driver's Licence. The Applicant has previously had their licence revoked by a Licensing Sub-Committee on the 8th of September 2022. Within their application they have failed to declare a previous conviction and driving offences. 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 Sam Embley on the 25th of September 2024 for a Torbay Council issued dual drivers' licence. Mr Embley declared on his application that he has not previously been convicted of any offences, however, upon carrying out pre application checks information shows that he has a previous criminal conviction and a current driving endorsement on his DVLA issued licence.
- 3.5 Mr Embley's previous Torbay Council issued Drivers Licence was revoked by a Licensing Sub-Committee on the 8th of September 2022. Following that revocation Mr Embley was placed on the National Register for Revocations, Refusals and Suspensions (NR3S) by Torbay Council.
- 3.6 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 DBS check and DVLA licence checking. Further to this a check is made on the National Register of Revocations, Refusals & Suspensions (NR3S).
- A1.5 This report follows an application made by Mr Sam Embley on the 25th of September 2024 for a Torbay Council issued dual drivers' licence. A check is made on the NR3S register and Mr Embley appears on this register listed as previously having a drivers licence revoked by Torbay Council.
- A1.6 Upon Mr Embley's application form which he submitted to Torbay Council it asks separately 'Have you ever been charged or convicted of any criminal offence?' and 'Have you ever been convicted of any driving offence?', Mr Embley declared 'No' for both questions.

A copy of Mr Embley's application form can be found at Appendix 1.

- A1.7 An online DVLA licence check was carried out on Mr Embley's driving licence as part of the application process where it was identified he has had the following driving convictions:

Conviction 1

Offence date –	23 November 2015
Conviction date –	30 December 2015
Offence –	DR10 Driving or attempting to drive with alcohol level above limit
Penalty Points –	Disqualification from driving 1 year, 1 month and 25 days
Fine -	£400

Conviction 2

Offence date – 7 October 2023
Expiry date – 7 October 2026
Offence – SP10 Exceeding goods vehicle speed limits
Penalty Points – 3 Points

A screen shot taken from the DVLA licence database can be found at Appendix 2.

A1.7 Mr Embley submitted a copy of his Enhanced Disclosure & Barring Service (DBS) check to the Licensing team on the 19th of November 2024. The DBS showed that Mr Embley has previously been convicted of the following:

Conviction 1

Date: 30 December 2015
Court: South and West Devon Magistrates

Offence 1: Driving a motor vehicle with excess alcohol on 23 November 2015.
Road Traffic Act 1968 S.5(1)(A)
Disposal: Fine £400.00
Costs £85.00
Disqualification from driving reduced if course completed
Disqualified from driving – obligatory 18 months
Victim surcharge £40.00

A copy of Mr Embley's Enhanced DBS can be found at Appendix 3.

A1.8 Mr Embley previously held a Torbay Council issued Licensed drivers badge from the 4th of January 2021 until the 8th of September 2022 (LD0212). His licence was revoked on the 8th of September 2022 by a Licensing Sub-Committee further to a determination that he was not a fit and proper person to hold a driver's licence. A copy of the Decision and Reasons for the Decision can be found at Appendix 4.

A1.9 Mr Embley was written to by Shaun Rackley from Torbay Council's Licensing Department on the 26th of November 2024 to request his submission which would be put before the Regulatory Sub Committee. This document can be found at Appendix 5.

A1.10 Mr Embley responded by email with his mitigating circumstances. This document can be found at Appendix 6.

A1.11 The Statutory Taxi and Private Hire vehicle standards 2022, as issued by the Department for Transport state:

5.4 Fit and Proper Test

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:

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.

Licensing authorities have to make difficult decisions but (subject to the General principles) 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
- vi) They have a satisfactory driving history, as verified through the DVLA and in accordance with the Convictions Policy at Appendix A
- vii) They are considered ‘fit and proper’ by the Licensing Authority, taking account of any other relevant information as may be requested and considered appropriate by the Licensing Authority.

APPENDIX A: Taxi and PHV Licensing Criminal Convictions’ Policy

1.6 The Licensing Authority will undertake whatever checks it considers necessary to ensure that licences are not issued to unsuitable people. In assessing the suitability of an Applicant or licence holder, the Licensing Authority will take into consideration the following factors:

- Criminality
- Number of endorsed DVLA driving penalty points
- The conduct of the applicant in making the application (e.g. whether they have acted with integrity during the application process)
- The previous licensing history of existing/former licence holders

A1.12 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

A3. Options

A3.1 The options are:

- (i) To grant Mr Embley's application for a Torbay Council issued Driver's Licence, if satisfied that Mr Embley is considered a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle.
- (ii) To refuse Mr Embley'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	Mr Embley's Application form for a Licensed Drivers badge (redacted)
Appendix 2	DVLA record of Mr Embley's endorsement record (Restricted)
Appendix 3	Copy of Mr Embley's Enhanced Disclosure & Barring Service (Restricted)
Appendix 4	Decision and Reasons for the decision from Licensing Sub-Committee hearing from the 8 th of September 2022
Appendix 5	Letter to Mr Embley from Shaun Rackley (Licensing Department) requesting mitigating circumstances – dated 26 th of November 2024
Appendix 6	Email response from Mr Embley

Background Papers:

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

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Personal Details

All mandatory questions must be answered

Are you Male or Female

Male

Female

What is your Date of Birth?

What Town or City were you born in?

What is your National Insurance Number?

Please provide a contact telephone number

Please provide an alternative contact number

Will this be your only employment?

Yes

No

If 'NO', please provide details of all other employment

Have you got the right to work in the UK?

Yes

No

Please note if 'NO', your application may not be able to proceed. Please contact the Licensing Team on 01803 208025 for further advice.

As part of the application process an Immigration check will be conducted when you attend the Knowledge Test. At this appointment you will need to produce selected documentation. You will be informed of which documents to provide when a member of the Licensing Team contacts you to book your Knowledge Test.

Driving Licence

DVLA Licence number (including issue number)

DVLA Licence issue date (to drive a motor car)

Please note, as part of the new application process, you must have held a licence to drive a motor car for a minimum of 1 year. This must be a full licence and NOT a provisional.

If you have completed all the additional questions including the mandatory questions, please scroll to the top of this page and click 'NEXT' to proceed.

Disclosure & Barring Service (DBS)

All mandatory questions must be answered

Have you ever been convicted of any driving offence?

Yes

No

If 'YES', please provide further details, e.g. offence, date, sentence & fine

Have you ever been charged or convicted of any criminal offence? Yes
 No

If 'YES', please provide further details, e.g. offence, date, sentence & fine

Are there any pending prosecutions against you? Yes
 No

If 'YES', please provide further details

Medical Information

Have you ever suffered from any injury or illness, whether physical or mental, which may affect your driving capabilities? Yes
 No

If 'YES', please provide further details

If you have completed all the additional questions including the mandatory questions, please scroll to the top of this page and click 'NEXT' to proceed.

Application Information

All mandatory questions must be answered

Have you obtained an 'Enhanced Disclosure & Barring Service' check (DBS)? Yes
 No

What date was the 'Enhanced Disclosure & Barring Service' check issued (this is the date on the DBS certificate)?

Enhanced 'Disclosure & Barring Service' (DBS) checks are now checked every 6 months. Please ensure that you have signed up to the DBS update service within 21 days of the issue of the DBS certificate. If you are not signed up, you will require a new check at the 6 month stage at your own cost

Please note, we can only accept a DBS check that is issued in the last 2 calendar months. If the DBS is older than this, please apply for a new check before a Licensed Drivers badge can be granted.

If you have not obtained an 'Enhanced Disclosure & Barring Service' check, please visit a registered provider who will carry out the DBS check on your behalf. Without the DBS check, a Licensed Drivers badge cannot be granted.

Do you have a medical certificate which has been signed by your own G.P. or a medical practitioner that has access to your medical records? Yes
 No

What date was the medical certificate issued?

Please note, if you have not undertaken a medical with your G.P. you will need to carry this out before a Licensed Drivers badge can be granted.

Have you undertaken the 'Driver & Vehicle Standards Agency Taxi Assessment'? Yes
 No

What date was the 'Driving & Vehicle Standards Agency Taxi Assessment' issued?

Please provide the 'Driving & Vehicle Standards Agency Taxi Assessment' certificate number

Assessment', you will need to carry out this assessment before a Licensed Drivers badge can be granted.

If you have completed all the additional questions including the mandatory questions, please scroll to the top of this page and click 'NEXT' to proceed.

Certificate of Good Conduct

Have you been a resident of another Country for a period of 3 months or more at any one time? Yes

No

If you have answered 'YES' to the question above, please list each Country you have been a resident of for 3 months or more.

If you have answered 'YES' to the question above you will need to apply for a Certificate of Good Conduct from EACH relevant embassy. Each certificate must be authenticated and translated.

Further details and a link on how to obtain a Certificate of Good Conduct can be found on the email notification once your application has been submitted.

If you have answered 'NO' to the question above, you DO NOT require a certificate of Good Conduct

If you have completed the additional questions including the mandatory questions, please scroll to the top of this page and click 'NEXT' to proceed

HMRC - Registering for Tax

All mandatory questions must be answered

As part of the application process to become a Licensed Driver, please ensure you read the guidance from HMRC regarding registering for tax.

Please view the HMRC tax guidance here - <https://www.gov.uk/guidance/confirm-your-tax-responsibilities-when-applying-for-a-taxi-private-hire-or-scrap-metal-licence>

Please confirm you have read the guidance and understand your tax responsibilities I confirm I understand my tax responsibilities

If you do not confirm you are aware, you will not be issued a licence

If you have completed the additional questions including the mandatory questions, please scroll to the top of this page and click 'NEXT' to proceed

National Licensing Register (NR3)

All mandatory questions must be answered

The Local Government Association (LGA), the representative body for Local Council's, has commissioned a new National Register of Refusals and Revocations (NR3).

This is to prevent drivers who have had a licence revoked or an application for one refused going to another authority to dishonestly secure a licence by failing to disclose their previous licensing history.

I understand as part of the application process, Torbay Council will check my information against the NR3 to ensure I have not had a licence revoked or application refused elsewhere. Yes

No

I also understand that should my application be refused, or my future licence revoked my information will be entered onto the NR3 pending appeal. This information is held for 25 years. Yes

No

If you have completed the additional questions including the mandatory questions, please scroll to the top of this page and click 'NEXT' to pr

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Consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence

- Meeting of Statutory Licensing Sub-Committee, Thursday, 8 September 2022 9.30 am (Item 27.)

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

1. Minutes:

Members considered a report on the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Driver's Licence. The Licensing Officer started to present his exempt report to Members. However, shortly after the Licensing Officer began to present his report the Respondent abruptly left the hearing, having tried to interject twice and becoming agitated and mildly aggressive. Members continued the hearing in the absence of the Respondent in the interests of public safety and the absence of any reasonable account or justification from the Respondent for leaving the hearing. Subsequently the Licensing Officer continued his submission and responded to Members questions.

Decision:

That the Respondent's Torbay Council Dual Hackney Carriage and Private Hire Drivers Licence be revoked in accordance with Section 61(1)(b) of the Local Government (Miscellaneous) Provisions Act 1976, and that this revocation shall have immediate effect, in accordance with Section 61(2B) of the Local Government Miscellaneous Provisions Act 1976.

Reasons for Decision:

In coming to that decision, Members carefully considered having been charged with the responsibility to determine the drivers' licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care, or any other vulnerable person known to them to get into a vehicle with the Respondent alone. An unequivocal and unanimous answer by Members to this question, was 'no'.

Members were disappointed that the Respondent abruptly left the hearing shortly after the Licensing Officer began to present his report to the Committee, having tried to interject twice. As the Respondent appeared agitated and mildly aggressive, leaving his Drivers Badge as he went, no-one present at the committee hearing felt it appropriate to go after him. In the interests of public safety, given the nature of matters before them, and contrary to any reasonable justification or explained account for leaving the hearing, Members determined to proceed with the hearing in the absence of the Respondent, however, they did carefully consider his written submissions, in forming their determination.

Members of the Committee heard from the Licensing Officer that the Respondent had held his Torbay Council Drivers Licence since 4 January 2021, with the granting of his application being

delayed to accommodate the passing of 5 years following a conviction for driving under the influence of alcohol, and that this was in line with Torbay Council's Taxi Policy.

It was of great concern to Members, to learn that the Respondent in completing his application form, had not declared to the Licensing Authority, despite the form specifically asking the question, the existence of 6 DVLA penalty points on his driving licence, received for a speeding offence committed on 17 January 2019. These penalty points only coming to light during the Licensing departments own checks.

On 20 June 2022, it was brought to the attention of the Licensing Department, by the Devon and Cornwall Police, that the Respondent had received 4 DVLA penalty points on 29 January 2021 for driving without due care and attention. In accordance with the Council's Hackney Carriage and Private Hire Policy, this is categorised as a major traffic offence and should have resulted in the Respondent coming before a Licensing Committee that time, to determine whether he remained a fit and proper person to hold a Torbay Council Drivers Licence, as it brought the Respondents total live DVLA penalty points to 10.

It was of great concern to Members to learn that the Respondent had not declared this pending conviction on his application form or notified the Licensing Team of the subsequent conviction, or the penalty points received, as required under Torbay Council's Taxi Policy.

Of further concern, Members noted that reported by Devon and Cornwall Police, in processing a further recent speeding offence committed on 17 May 2022, their records had shown that the Respondent had nominated out a different driver in respect of a speeding offence committed on 14 May 2021, and when written to by the Licensing Department on 30 June 2022, the Respondent initially stated that he had not permitted any other person to have access to the vehicle but has since admitted lending his vehicle to a person who does not hold a Hackney or Private Hire Vehicle Licence, again in contravention of the Taxi Policy, and in doing so committed an offence under the Town Police Clauses Act 1847.

Members had regard to the fact that the Respondent had in his written reply to the Licensing Officer dated 19 July 2022 admitted to the oversight in declaring his convictions and penalty points, however, resolved in their opinion, that his actions were intentional and showed a blatant disregard for the Taxi Policy. In respect of allowing use of the licensing vehicle by an unlicensed driver, Members took a dim view, particularly in respect of the differing accounts provided by the Respondent in his correspondence with the licensing department.

In respect of a complaint from the retail worker, Members did not find the Respondent to be believable in his written account of the events that occurred that day. Members found the complainants account more than likely to be an accurate reflection of what had occurred, having regard to how the Respondent presented at the hearing, and it being unlikely that the retail worker would take the time and trouble to report the incident if it was minor, no doubt being the subject of disgruntled customers regularly. It was unfortunate that no CCTV footage of the incident was available.

Notwithstanding the mitigating explanations presented by the Respondent in his email to the Licensing Officer dated 19 July 2022, Members were concerned that only having been issued with his Torbay Council's Driving Licence on 4 January 2021, he was before the Committee having committed further driving offences, having received a complaint against him as regards his conduct and behaviour, and had repeatedly failed to comply with the Taxi Policy.

It was also worthy of note that the Driving Standards Assessment that the Respondent should have completed within 6 months of issue of his Torbay Council Drivers Licence (i.e., by 4 July 2021) was not completed until 9 August 2021, and that the Licensing Officers suggestion that he book a more advanced driving assessment was not considered.

In concluding, Members unanimously resolved to revoke the Respondent's drivers' licence with immediate effect, as they could not be satisfied that he remained a 'fit and proper person' to hold a Torbay Council Dual Hackney Carriage and Private Hire Drivers Licence. In determining this, Members believed that the Respondent as a professional driver had been aggressive in his behaviour, dishonest in his application and submissions to Officers, and subsequently, his conduct had fallen well below the high standard reasonably expected by them. Having considered all options available to them, revocation of the licence with immediate effect was in their opinion, both necessary and proportionate in all the circumstances, to ensure public safety.

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Please reply to: Mr Shaun Rackley

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

Mr S Embley
[REDACTED]

My ref: NEW/SAR

Your ref:

Telephone: 01803 208025

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

Date: 26 November 2024

Dear Mr Embley,

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 carrying out pre application checks, it has been identified your name appears on the National Register for Revocations, Refusals and Suspensions (NR3S). This was added by Torbay Council following the revocation of your previous Licensed Drivers badge in 2022.

A decision on whether a Licensed driver's badge can be granted, or, refused must be made by Torbay Council's Licensing Committee. The decision from the 2022 committee hearing where your drivers badge was revoked will be used as evidence to determine if you are a fit and proper person to hold a licence again with Torbay Council.

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 **Monday 9th of December 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

A handwritten signature in black ink, appearing to read 'S. Rackley', written in a cursive style.

Shaun Rackley
Licensing Officer

From: Sam Embley [REDACTED]
Sent: 02 December 2024 18:50
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>; Lewis, Barbara <Barbara.Lewis@torbay.gov.uk>
Subject:

Dear Shaun Rackley,

Firstly, thank you for your email.

I am writing to you today to inform that I would like to move forward to the Committee Stage at their earliest convenience, regarding re- obtaining my Licensed Driver Badge.

I would like to start with the points in the first committee meeting.

My first point is regarding to my friend using my licensed vehicle.

I let my friend use my car to drive to Exeter to pick up his daughter.

I naively didn't realise that he wasn't permitted to drive it, even though I had taken the taxi signs off the vehicle, except the vehicle licence plate. Having read the taxi manual in depth, I saw where I had made an error in judgement. However, its noted that this was an error at the very beginning of my taxi career.

My second point regarding

The accusation that I had lied on my application in regards to how many points I had at the time. I still believe this is a false claim. I made my application with the help of [REDACTED], who was at the time [REDACTED]

When I made my application I had 6 points, that is what I declared and was true at the point of application. [REDACTED] is willing to provide a statement to that affect. The additional points that were added, I was unaware of as I had no fixed abode at the time. This was at the beginning of my taxi career. It maybe becoming apparent that I hadn't read the taxi manual as well as I should have, and that I bitterly regret. I've certainly learned my lesson in that respect.

My third point regarding the incident at Morrisons. I was going through an incredibly tough time in my life. At the time, I was extremely frustrated and anxious. I know that I came across rude and in reflection, I am embarrassed how I reacted. To reiterate, I was going through a hard time. However, at the time I felt like she was being awkward, but that doesn't excuse the way I dealt with the situation. I didn't swear, however I admit I didn't handle the situation well, I would say that either of us did.

Now I would like to address how I acted in the meeting.

I was already off work sick following a car accident whilst, on duty as a Taxi Driver.

My partner and son had both left me due to stresses of money. Further more, the impact of the accident had affected my mental state. I had entered the meeting in an anxious and depressive state. Admittedly, not the ideal mindset to be in before such an important meeting.

After spending the months leading up to the hearing in contact with you shaun, you made me feel like I had your support which lead me to believe me you were on my side, for which I was truly grateful. Especially at such a stressful time. when I attended the hearing it felt that I had been lead into a false sense of security.

I felt intimidated, I felt that I didn't have the mental energy to go through with the meeting and that there was nothing I could say or do. I should Page 31 up and asked if I would be allowed to

compose myself. Instead, I acted irrationally and I felt like it was going one way and one way only, I felt like no matter what I had said, the out come was already decided, which was why I left so abruptly. I can only apologise.

What's changed since the hearing.

I have bought my own house, and reconnected with the mother of my son and we are now an amazing, loving and strong family unit.

I have been to the doctors to address my Mental Wellbeing, and have made huge strides in the right direction. With that in mind and following my accident I have had professional help and advice with how to deal stressful situations, and I now feel a much better person for it.

In summary, I believe everyone deserves a second chance.

It's clear to see the errors that were made at the beginning of my career, and I take full responsibility for that. I have learnt from them.

I have done many different jobs since, but taxiing gave me freedom not only financially, but also personally, it would allow me to spend time with my family. When I was working I did really well, I put the hours in. I was consistent with my school runs and worked the ranks when ever possible.

Thankyou for giving me the oppportunity to air my views on the last hearing.

Kindest regards.

Sam Embley.