

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](mailto: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 10<sup>th</sup> 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 10<sup>th</sup> 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 17<sup>th</sup> 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 18<sup>th</sup> 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 23<sup>rd</sup> 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 <sup>th</sup> of May 2024
Appendix 2	Email response from Nathan Drury – dated 18 <sup>th</sup> 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 <sup>rd</sup> 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