

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

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

Wards Affected: **All**

To: **Regulatory Sub-Committee** On: **16<sup>th</sup> January 2025**

Key Decision: **No**

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

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## 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 8<sup>th</sup> 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 25<sup>th</sup> 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 8<sup>th</sup> 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 25<sup>th</sup> 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 19<sup>th</sup> 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 4<sup>th</sup> of January 2021 until the 8<sup>th</sup> of September 2022 (LD0212). His licence was revoked on the 8<sup>th</sup> 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 26<sup>th</sup> 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 <sup>th</sup> of September 2022
Appendix 5	Letter to Mr Embley from Shaun Rackley (Licensing Department) requesting mitigating circumstances – dated 26 <sup>th</sup> of November 2024
Appendix 6	Email response from Mr Embley

#### **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 2022