

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

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

Wards Affected: **All**

To: **Regulatory Sub-Committee** On: **27th February 2025**

Key Decision: **No**

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

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1. What we are trying to achieve

- 1.1 This report asks Members to consider relevant facts relating to the holder of a Torbay Council issued dual Hackney Carriage and Private Hire drivers' licence. This follows receipt of information from the DVLA that the licence holder had been disqualified from driving. The licence holder has also failed to inform Torbay Council of their disqualification and additional DVLA penalty points. Members are requested therefore to determine on the facts laid before them, whether or not the licence holder remains a 'fit and proper person' to hold such a licence.

2. Recommendation(s) for decision

- 2.1 This matter must be determined on its individual merits and any supporting facts or testimony advanced at a hearing. Therefore, there is no recommendation. The options available to Members, however, are highlighted in paragraph **A3.1 of Annex 1** to this report.

3. Key points and reasons for recommendations

- 3.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriage and Private Hire Vehicles and drivers within Torbay.
- 3.2 Sections 51 and 59 of the 1976 Act, in conjunction with section 46 of the Town Police Clauses Act 1847, make provision for the licensing of drivers and state that a district council shall not grant a licence to drive a Private Hire or Hackney Carriage vehicle unless they are satisfied that the driver is a 'fit and proper' person to hold a driver's licence.

- 3.3 This report follows a review of the DVLA driver data base in respect of Mr Tamas Pataki, who holds a Torbay Council dual drivers' licence. It was discovered on the 20th of January 2025 that Mr Pataki has 3 current points for speeding on his DVLA issued licence. In addition, Mr Pataki was disqualified from driving any motorised vehicle for a period of 6 months on the 29th of May 2024.
- 3.4 Upon checking the Torbay Council licensing data base and other background systems in respect of Mr Pataki, it shows no reports have been made since March 2023 to report any penalty points, or the disqualification of his DVLA licence. Therefore, Mr Pataki has failed to meet specific requirements as set out in the Torbay Council's Taxi Policy 2022, by virtue of having failed to inform Torbay Council of any DVLA penalty points and a change in circumstances.
- 3.5 There is a right of Appeal to the Magistrates' Court as provided under section 61 (3) 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)
Community & Customer Services**

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 This report follows a review of the DVLA driver data base on the 20th of January 2025 in respect of Mr Tamas Pataki, who holds a Torbay Council dual drivers' licence, licence number LD0350. Mr Pataki has held this licence since the 1st of May 2008.
- A1.4 From the DVLA licence check, it was identified that Mr Pataki currently has the following driving convictions:

Conviction 1

Conviction date –	5 December 2023
Sentencing date –	29 May 2024
Offence –	To signify a disqualification under 'totting up' procedure if the total penalty points reach 12 or more within 3 years, the driver is liable to be disqualified (TT99)
Disqualification period –	6 months

Conviction 2

Offence date –	6 November 2023
Conviction date –	31 May 2024
Offence –	SP30 Exceeding statutory speed limit on a public road
Penalty Points –	3 Points
Fine -	£40

A screen shot taken from the DVLA licence database can be found at Appendix 1.

- A1.5 Upon checking the Torbay Council licensing data base and other background systems in respect of Mr Pataki, it shows no reports have been made since March 2023 to report any penalty points, or the disqualification of his DVLA licence.

The last record of a notification, or report was made in March 2023, where Mr Pataki submitted his licensed driver renewal application. On this application he stated that he had received 3 DVLA penalty points for an SP30 (exceeding statutory speed limit on a public road) offence on the 9th of February 2023. There are no other records since this date.

Therefore, Mr Pataki has failed to meet specific requirements as set out in Torbay Council's Taxi Policy 2022 and conditions of his licence, by virtue of having failed to inform Torbay Council of any DVLA penalty points received, and a change in circumstances.

A1.6 Mr Pataki was emailed by Shaun Rackley from Torbay Council's Licensing Department on the 20th of January 2025 to request his submission which would be put before the Regulatory Sub Committee. This document can be found at Appendix 2.

A1.7 Mr Pataki responded in writing with his mitigating circumstances. This document can be found at Appendix 3.

A1.8 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:

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.

5.5 The Licensing Authority will not have regard to the age of an applicant when determining their suitability where it can be shown that:

- The applicant holds a valid full United Kingdom (UK) driving licence (licence issued in accordance with Part III of the Road Traffic Act 1972 (as amended) and that this licence must have been held for no less than 12 months at the time of application).*

7.6 The Licensing Authority will have regard to fixed penalties when considering if an Applicant is a fit and proper person or if it will impact on the continuance of an existing licence holder.

APPENDIX A: Taxi and PHV Licensing Criminal Convictions' Policy

1 General Policy

1.1 There is no judicially approved test of fitness and propriety and, accordingly, a number of local tests have developed. These tend to be based on a test similar to the following:

'Would you (as a member of the licensing committee or other person charged with the ability to grant a licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?'

(Paragraph 10.21 Button on Taxis – Licensing Law and Practice; Fourth Edition; Ed Bloomsbury Professional)

If the answer to this question is an unqualified 'yes' then a licence should normally be approved. If there are any doubts in the minds of those who make the decision, then the licence must be refused, suspended or revoked. It is the responsibility of the Applicant or existing licence holder to satisfy the Licensing Authority they are a 'fit and proper' person.

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

1.7 The overriding consideration is the safety of the public. The Licensing Authority has a duty to ensure so far as possible, that those licensed to drive Hackney Carriage and Private Hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit. An aspect of this is the extent to which previous convictions, including but not limited to convictions of

dishonesty, sexual offences, traffic offences, violence and drugs, indicate that a person is not a “fit and proper” person and would not take advantage of passengers or abuse or assault them.

1.10 In this Policy, the word “conviction” is to be defined as including convictions, cautions, warnings, reprimands, endorsable fixed penalties and other relevant information.

8 Major traffic offences

8.1 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 five years free from conviction or at least five years since the completion of the sentence (whichever is longer).

A1.9 Mr Tamas Pataki has been invited to attend this Regulatory Sub-Committee, in order that the matters contained within this report may be considered. He has also been advised that should he fail to attend, then Members may resolve to hear and make a determination based solely on the content of the report in his absence.

A1.10 There is a right of Appeal to the Magistrates’ Court as provided under section 61 (3) 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

Outline of significant key risks

A2.1 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 take no further action, if satisfied that Mr Tamas Pataki remains a ‘fit and proper’ person to drive a Hackney Carriage or Private Hire vehicle
- (ii) To give a written warning. Where this happens, the warning remains on file and can be referred to at future disciplinary hearings. A warning will usually remain relevant to the consideration of whether a licensed driver is a ‘fit and proper’ person for a rolling period of three years.
- (iii) Ask an existing licensed driver to successfully undertake competence assessments or re-training where the skill-base or health of the licensed driver is not to the required standard, within a defined period. For example, requiring driving lessons, completing relevant training, further medical examination or assessment, at their own expense. Should the driver fail to successfully complete additional requirements within the prescribed period the Council may consider further action.
- (iv) To suspend Mr Tamas Pataki’s licence to drive a Hackney Carriage

or Private Hire vehicle. Licences can be suspended as punishment or pending further training or assessments being completed (amongst other things). Where it is used as a punishment, the following periods are usually imposed:

- Minor Contraventions, a 1 to 14 days suspension
 - Serious contraventions, a 14 day to 3-month suspension
- (v) To revoke Mr Tamas Pataki's drivers' licence on grounds that he is no longer considered to be a 'fit and proper' person to retain such a licence

A3.2 Each case will be considered on its own merits and in all cases, when deciding whether a licensed driver is a fit and proper person to hold or retain a licence, the Council will consider:

- a) All relevant information even where these matters may already have been considered in a previous hearing
- b) Cumulative impact of a range of relatively minor contraventions
- c) Passenger safety
- d) The maintenance of public confidence in the licensed trade
- e) Whether there are multiple offences/ contraventions/ behaviours
- f) The circumstances of each situation and any patterns
- g) Attitude of the driver

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 outlined 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 with 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 DVLA record of Mr Pataki's licence (restricted)

Appendix 2 Email to Mr Pataki from Shaun Rackley (Licensing Department)
requesting mitigating circumstances – dated 20th of January 2025

Appendix 3 Letter from Mr Pataki – dated 21st of January 2025

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
Institute of Licensing Suitability Guidance 2024