

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE BY SKYPE
on WEDNESDAY, 19 AUGUST 2020**

Present: Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Jean Moffat
Councillor Lorna Douglas	Councillor Alastair Redman
Councillor Audrey Forrest	Councillor Sandy Taylor
Councillor Graham Hardie	Councillor Richard Trail

Attending: Patricia O'Neill, Governance Manager
Shona Barton, Committee Manager
Sheila MacFadyen, Senior Solicitor
Graeme McMillan, Solicitor

Members were asked to suspend Standing Order 5.4 – the Member who is presiding at the meeting must do so from the specified location for the meeting and cannot join by video conferencing.

The requisite two thirds of Members present agreed to suspend Standing Order 5.4 to enable discussion of reports on the Agenda.

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Gordon Blair, Robin Currie, Mary-Jean Devon, George Freeman, Donald MacMillan and Roderick McCuish.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: REQUEST FOR SUSPENSION OF TAXI DRIVER LICENCE (NO. 4272) (D MACINTYRE, OBAN)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given options for participating in the meeting. The options available were by Video Call, by Audio Call or by written submission. For this hearing both the Licence Holder and Police Scotland opted to proceed by way of written submissions and copies of these were circulated to the Committee in a Supplementary Agenda Pack for this hearing.

The Chair invited the Council's Solicitor, Mr McMillan, to advise of Police Scotland's written submission.

Mr McMillan advised that this was a continuation from the hearing held on 22 June 2020 where the Committee had agreed to continue consideration of the matter to allow Mr MacIntyre to be legally represented following a request to that effect. Mr McMillan then read out the complaint by Police Scotland as contained at Appendix 1 to the report by the Head of Legal and Regulatory Support.

POLICE SCOTLAND

Mr McMillan referred to the letter from Police Scotland dated 5 May 2020 that referred to a request from the Chief Constable that, in terms of Paragraph 11(1) of Schedule 1 of the Act that the Licensing Committee suspends Mr MacIntyre's licence. Mr MacMillan advised that the Chief Constable complained in terms of Paragraph 11(2)(a) of Schedule 1 of the Act that Mr MacIntyre was no longer a fit and proper person to hold the licence. In addition, Mr McMillan advised that the Chief Constable was requesting the Committee to order the immediate suspension of the licence, in terms of Paragraph 12(1) of Schedule 1 of the Act, on the grounds that the carrying on of the activity to which the licence relates was likely to cause a serious threat to public order or public safety. In support of the Chief Constable's request Mr McMillan read out the details of an incident which occurred on 29 April 2020. As the matter was sub-judice, the Chief Constable was unable to comment further at this time.

Mr MacMillan then read out an email received from the Chief Constable dated 18 August 2020 confirming that as far as they were aware Mr MacIntyre's trial date had been set for a date in October, however, due to the serious nature of the charge they were still requesting the immediate suspension of Mr MacIntyre's licence.

The Chair then invited Mr McMillan to advise of the licence holder's written submission.

LICENCE HOLDER

Mr McMillan read out the email submission received from Mr MacIntyre's representative, Mr Murdanaigum, as follows –

Thank you for your email.

I wish to confirm that Mr. Damien McIntyre has Sheriff Court proceedings at Oban Sheriff Court on 19 October 2020.

Since this matter is in the Sheriff Court, it would be inappropriate and against the rules of natural justice to have it heard and considered before another jurisdiction. This may, of course, affect any fair hearing that he is entitled to.

In this respect, as mentioned to you, I would respectfully request that members of the Planning, Protective Services, and Licensing Committee defer any consideration of this matter until disposal thereof on 19 October 2020.

I am grateful for your assistance. I would also appreciate if you would kindly advise me of the new date fixed by the Council.

The Chair then invited Members questions.

MEMBERS' QUESTIONS

The Chair referred to the representation received from Mr Murdanaigum and the reference made to the Sherriff Court. He asked Mr McMillan what the significance of the Sheriff Court was. Mr McMillan advised that as it was a criminal matter, Mr Murdanaigum was concerned that any decision made by the Committee to suspend the licence could jeopardise the outcome of the criminal case. He referred to the

differences between the court case which was a criminal matter and the matter before the committee which was a civil matter and the different standards of proof for each.

Councillor Colville asked Mr McMillan if there was information available on the alcohol readings taken and if that could be taken into account when considering the matter. Mr McMillan advised that Police Scotland had not disclosed this information but this was something that could be requested. Councillor Colville commented that it would be useful to know the reading regardless of the outcome of the court case.

Councillor Trail asked Mr McMillan what he understood from the request from Mr Murdanaigum to inform him of the new date fixed by the Council and if this meant that he had made an assumption that the matter would be continued. Mr McMillan replied that he understood this to read that if the Committee agreed to continue the matter then Mr Murdanaigum would like to be informed of such date.

Councillor Moffat asked that if something was sub-judice did it mean that the Committee were required to make a decision before the case came to court. The Chair advised that the Committee were required to consider the complaint received from Police Scotland which was a separate matter to the court case.

DEBATE

The Chair advised that he felt there was a reluctance by the Committee to make a decision on a matter which was awaiting a court date in case the person was found not guilty and that this was due to a decision of the Committee in the past. He referred to the point made by Councillor Colville in respect of the alcohol readings, as that type of information could have a bearing on the decision made by the Committee.

The Chair referred to the new legislation which allowed for the provision of written submissions instead of participation through audio or video advising that he felt this would be better removed as the Committee did not have the ability to access information the way they would by being able to question the licence holder and Police Scotland directly.

Councillor Moffat advised that the Committee were reluctant to make a decision before the trial; as once the trial had taken place there would be more information available to them such as the alcohol readings to allow them to make an informed decision.

Mr McMillan informed the Committee that the Coronavirus Act 2020 had amended the Civic Government (Scotland) Act to allow for parties to access three means of participating in the meeting - by Video Call, by Audio Call or by written submission and the Council were obliged to give that choice while hearings could not take face to face. In relation to the point raised in relation to the quality of written submissions received Mr McMillan advised that Members were required to decide whether they had sufficient information before them to come to a decision, and could therefore request further information if required. He suggested the continuation of the matter to another date to request any specific detail required and therefore the Committee would have the best information before them to come to a decision.

The Chair commented that the system that was now in place prolonged the decision making process, which meant that the licence holder was therefore gaining extra time from their licence that they may not have had if they had appeared before the Committee. He reiterated his point that having written submissions was not suitable and that it should be removed from the legislation.

Councillor Redman referred to the reluctance of the Committee to come to a decision before the court date advising that people have a natural reluctance to punish someone who has not yet been proven guilty in a court of law. She advised that since the gentleman had not yet been proven guilty the Committee should not be making prior judgement.

Councillor Taylor highlighted that the Committee did not know any information about the licensee other than what was before them in the paperwork. He asked if the licence holder held any prior convictions. Mr McMillan advised that he was not aware of any previous convictions or ongoing complaints from the trade or the public about the licence holder.

Councillor Colville highlighted that if the licence holder had appeared before the Committee under normal circumstances, or joined the meeting by audio or video, that they may have taken a more lenient view as they would be able to make a judgement of character. Mr McMillan referred Councillor Colville to the legislation advising the written submissions were a legitimate means of making their case. He said that he understood this was not the preferred method for Members but they could request further information if required.

Councillor Moffat added that she felt people had a reluctance to attend these meetings by telephone and that written submissions would be the preferred choice by people. She advised that she was reluctant to come to a decision without having the person before the Committee. Councillor Trail agreed and said that written submissions did not give enough detail about the person or the case.

The Chair said that as they did not know how long the situation would continue, the emergency legislation was not adequate for dealing with these cases as the Committee required to ask questions. He said that the Committee were required to determine whether they felt the licensee was a fit and proper person and take appropriate action. Councillor Trail added that the job of the Committee was to protect public safety.

Mr McMillan asked the Committee to consider whether they felt they had enough information to proceed and if they did not they then had the opportunity to seek further information.

Councillor Colville suggested offering the opportunity for the licensee to appear before the Committee.

Councillor Hardie expressed his view that the role of the Committee was to protect the public and therefore suspend the licence.

Councillor Douglas referred the Committee to the email submitted by Police Scotland advising suspension due to the serious nature of the offence. She advised that as the Committee were there to ensure the safety of the public they should agree to suspend the licence.

Councillor Moffat advised that she would like to know the reading from the breath test and that she felt she did not have sufficient information to come to a decision. She said she was disappointed about the level of information before the Committee.

Councillor Forrest said that she understood why Members would like to know the results of the breath test but in her opinion being over the limit was enough and in terms of a taxi driver, this was very serious.

Councillor Douglas agreed with Councillor Forrest advising that it did not matter how much the licence holder was over the limit it was the fact that they had made the decision to drive a car over the limit especially when their livelihood involved driving.

Councillor Taylor advised that the problem was that the Committee had very little information before them. He said that the lack of information available did not allow the Committee to make a subjective decision about the individual. He agreed with the points made by Councillor Forrest and Douglas and suggested that the Committee make the decision to suspend due to the lack of information available and the seriousness of the offence.

Mrs O'Neill advised that people were following the process set down by legislation and although the written submissions did not provide sufficient information, people were still following the process. She reminded the Committee that there was the option to request further information.

The Chair highlighted that it was the new process that was the issue and asked if other authorities could be contacted to see if they were facing the same challenges and if a request could be made to the Scottish Government to amend the legislation. Mr McMillan advised that could be picked up separately out-with the Committee meeting.

The Chair advised of his concerns over the seriousness of the offence adding that it would make the decision easier if the Committee knew how much the licence holder had been over the limit. He asked if the time taken for the case to come to court was normal or if it had been affected by the coronavirus pandemic. Mr McMillan advised that it was hard to know for certain if there had been a delay but the date set for October was a trial diet and therefore a decision on whether to convict or not would be made on that date.

The Chair advised that he was minded to suspend the licence but was unsure how to make a decision on how long to suspend the licence for. Mr McMillan advised that there had been the opportunity for this to be covered in the written submissions but that it was up to parties what they included in their submissions. He advised that if the Committee felt they did not have sufficient information then it may be appropriate to continue the meeting and seek further information.

Councillor Taylor proposed that the Committee continue the meeting and request further information. There was discussion around the type of information that was required which included the alcohol readings recorded by the Police, the time of day the offence took place, was the licensee driving a taxi or private hire car at the time, were there any previous convictions on record, was the licensee responding to an emergency and how long to suspend the licence for.

MOTION

To continue consideration of the matter to the next meeting of the Planning, Protective Services and Licensing Committee to allow for further information to be requested.

Moved Councillor Sandy Taylor, seconded Councillor David Kinniburgh.

AMENDMENT

To suspend the licence as per the recommendation by Police Scotland and due to concern for public safety.

Moved Councillor Graham Archibald Hardie, seconded Councillor Richard Trail.

As the meeting was held virtually, a vote was taken by calling the roll and Members voted as follows.

Motion

Councillor Rory Colville
Councillor David Kinniburgh
Councillor Jean Moffat
Councillor Alastair Redman
Councillor Sandy Taylor

Amendment

Councillor Lorna Douglas
Councillor Audrey Forrest
Councillor Graham Archibald Hardie
Councillor Richard Trail

The Motion was carried by 5 votes to 4 and the Committee resolved accordingly.

DECISION

The Committee agreed to continue consideration of the matter to the next meeting of the Planning, Protective Services and Licensing Committee to allow for further information to be requested.

(Reference: Report by Head of Legal and Regulatory Support, submitted; and written submissions from Police Scotland and Licensee's Representative, submitted)