

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held BY SKYPE  
on WEDNESDAY, 17 FEBRUARY 2021**

**Present:** Councillor David Kinniburgh (Chair)

Councillor Mary-Jean Devon	Councillor Donald MacMillan BEM
Councillor Lorna Douglas	Councillor Jean Moffat
Councillor Kieron Green	Councillor Alastair Redman
Councillor Graham Hardie	Councillor Richard Trail

**Attending:** Patricia O'Neill, Governance Manager  
Sheila MacFadyen, Senior Solicitor  
Sgt Wendy McGinnis, Police Scotland  
Catherine Crowe, Licence Holder's Solicitor

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Gordon Blair, Rory Colville, Audrey Forrest, George Freeman, Roderick McCuish and Sandy Taylor.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: REQUEST FOR SUSPENSION OF TAXI DRIVER LICENCE (NO. 5105) (J LEACH, DUNBEG)**

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by Video Call, by Audio Call or by written submission. For this hearing Police Scotland and the Applicant's Solicitor opted to proceed by way of Audio Call and they both joined the meeting by telephone.

The Chair outlined the procedure that would be followed and invited Police Scotland to speak in support of the Chief Constable's complaint.

**POLICE SCOTLAND**

Sgt McGinnis referred to a letter from Police Scotland dated 7 January 2021 which advised of a request from the Chief Constable that, in terms of Paragraph 11(1) of Schedule 1 of the Act, that the Committee suspend Mr Leach's Taxi Driver Licence. The Chief Constable complained, in terms of Paragraph 11(2)(a) of Schedule 1 of the Act that Mr Leach was no longer a fit and proper person to hold the Licence. In addition the Chief Constable asked the Committee to order the immediate suspension of Mr Leach's 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 his licence relates was likely to cause a serious threat to public order or public safety. In support of the Chief Constable's request the letter referred to an incident which took place on 5

August 2020 which resulted in Mr Leach receiving a Procurator Fiscal fine and having his driving licence endorsed.

## **QUESTIONS FROM THE LICENCE HOLDER**

Ms Crowe referred to the Fiscal fine and asked Sgt McGinnis to confirm if this was the lowest level of fine and endorsement that the Fiscal could have imposed. Sgt McGinnis advised that Mr Leach received a fine of £100 and his driving licence was endorsed with 3 penalty points. She said that she could not comment on the level of the penalty imposed by the Procurator Fiscal.

## **LICENCE HOLDER**

Ms Crowe advised that Mr Leach was a married man with one step child whom he supported financially. Mr Leach's Taxi Driver's Licence was granted on 18 November 2019 and would expire on 17 November 2022. In respect of the incident that occurred, which Ms Crowe said happened over 6½ months ago, she advised that a member of the public had made a formal complaint to the Police and after Mr Leach attended the Police station he was charged and the penalty imposed was a Fiscal fine and his driving licence endorsed. Ms Crowe advised that this was the lowest penalty available in terms of what she understood could have been imposed. She advised that it was her submission that this was a reflection of the incident which occurred. She said that her client had apologised refutably and was very remorseful over what had happened. Given the passage of time since the incident, Ms Crowe advised that she would say it would be unreasonable for the Committee to grant the immediate suspension of Mr Leach's Taxi Driver's Licence and asked that the Committee consider not suspending the Licence. She said that her client was clearly remorseful and that this was his livelihood and only source of income. She advised that Mr Leach was the sole provider and supported both his wife and child, who was in their final year at University. She said that there had been no further criminal proceedings and that she was content that Mr Leach was a fit and proper person to hold a Taxi Driver's Licence. She asked the Committee not to suspend his Licence. She pointed out that this had been a one off incident and that she did not consider Mr Leach to be a serious threat to public safety.

## **MEMBERS' QUESTIONS**

Councillor Trail asked if Ms Crowe could explain Mr Leach's version of events of what happened on that occasion on the pedestrian crossing. Ms Crowe explained that Mr Leach had admitted his guilt and did so by paying the fine. She advised that at the time of the incident a member of the public alleged that Mr Leach had failed to stop to make sure they had been able to cross the road safely. She said that the taxi was 17 metres away from the crossing and travelling at between 26 – 30 mph. Referring to the stopping distances in the Highway Code, she advised that in the interests of public safety, Mr Leach had believed it would have been more dangerous to try and stop. He believed this would have put the pedestrian and the passenger in his car in a more dangerous situation so he continued to drive through the crossing.

Councillor Trail commented that Mr Leach was travelling fairly quickly and questioned if Mr Leach was surprised by the pedestrian stepping out on the road and asked if he was able to avoid hitting the pedestrian just by carrying on. Ms Crowe referred to the location of the crossing in question. She advised that it was in the centre of Oban with Lidl supermarket on one side of the road and a garage on the

other. She advised that there was always a lot going on at that location with comings and goings from the garage and the supermarket. She said that it was the case that her client carried on through the crossing to avoid hitting the pedestrian.

Councillor Trail sought and received confirmation from Ms Crowe that no one had been injured as a result of the incident.

Councillor Kinniburgh asked Sgt McGinnis how such an incident would be dealt with by the Police if it was reported to them by someone. Sgt McGinnis explained that when the incident occurred the witness, who was the person crossing the road, went to speak to Mr Leach but did not get the response they were looking for so reported the incident to the Police and gave a witness statement. Police Officers reviewed CCTV footage and noted and confirmed that the accused had failed to stop as stated by the witness so Mr Leach was reported to the Procurator Fiscal.

Councillor Kinniburgh sought confirmation from Sgt McGinnis that because of the response of the Taxi Driver to the complainer, this had led to the complainer going to the Police. Sgt McGinnis read out the Police report which stated that the witness had begun crossing the road during the time the taxi entered the controlled area of the crossing and that the witness had reached a 1/3 of the way across the crossing when the vehicle failed to stop. The witness had gone to the rank, approached the vehicle and challenged the driver who appeared to be dismissive.

Councillor Kinniburgh sought confirmation from Ms Crowe that the witness was 1/3 of the way across the crossing. Ms Crowe said she was not aware of that.

Councillor Kinniburgh sought and received confirmation from Sgt McGinnis that the CCTV footage backed up what the witness had said. Referring to the Police report, she said that the CCTV footage captured the incident in HD and that the vehicle had failed to stop when the witness had already started to cross and continued without any common sense. It was noted that the accused was clearly not speeding and that the crossing had not been busy so the pedestrian should have been easily seen.

Councillor Kinniburgh sought and received confirmation from Sgt McGinnis that the penalty issued was an alternative to court proceedings.

Councillor Hardie asked Ms Crowe if her client had any other serious criminal convictions in respect of driving. Ms Crowe advised that her client had not made her aware of any and that she had not seen any previous convictions. She said that Mr Leach was a very experienced taxi driver and that he was extremely remorseful and very upset with regard to what had happened.

Councillor Kinniburgh commented that the situation described by Sgt McGinnis appeared to him to be very serious and asked if the Procurator Fiscal had issued the fixed penalty and endorsed the driving licence on admission of guilt or if he would have viewed the CCTV footage in order to reach the decision. Sgt McGinnis confirmed that the CCTV footage could have been viewed as it was lodged but she could not confirm if it had been viewed by the Procurator Fiscal or if the fine was offered on reading the case.

Councillor Kinniburgh referred to the Licence Holder's Solicitor saying this was the minimum fine handed out and sought comment from Sgt McGinnis. Sgt McGinnis referred to the victim impact section of the Police report and advised that the witness

at the time had said they were concerned about the manner of driving by the accused and had tried to speak to him about that. The witness had said they did not want to get the driver into trouble but wanted to make sure he moderated his driving in the future. Sgt McGinnis suggested that this may have had something to do with the level of penalty imposed.

## **SUMMING UP**

### **Police Scotland**

Sgt McGinnis advised that the facts of the matter were that on 5 August 2020 Mr Leach, while driving his licensed taxi, drove without due care and attention which resulted in him receiving a Procurator Fiscal fine of £100 and 3 points on his driver's licence.

### **Licence Holder**

Ms Crowe said that given the passage of time, she would submit to the Committee that it would be unreasonable to grant the immediate suspension of Mr Leach's Taxi Driver's Licence and asked the Committee not to suspend his Licence. She said that her client was extremely remorseful and had paid the fine and accepted his guilt of this incident which, she said occurred over 6½ months ago. She said that this matter had caused him and his family great stress and anxiety. She pointed out that he was the sole earner and provided for both his wife and step child, who he was supporting financially through their final year at University. She asked the Committee to find her client a fit and proper person to hold a Taxi Driver's Licence and to not suspend it.

When asked, both parties confirmed that they had received a fair hearing.

## **DEBATE**

Councillor Trail said that he hoped that Mr Leach had learnt his lesson and commented that if only he had expressed his remorse at the time when the person came to the rank, he might not have been in this bother. Councillor Trail advised that he did not approve of people driving through crossings with pedestrians on it but said he thought that this had been a mistake on Mr Leach's part and did not warrant removal of his Taxi Driver's Licence.

Councillor Redman agreed with what Councillor Trail had said. He commented that mistakes happened and he said he believed that Mr Leach would be a lot more cautious in the future and that he appeared to be genuinely remorseful. He advised that it would be wrong of the Committee to condemn the man so harshly and that he was a great believer in second chances. He confirmed that he was minded not to support the suspension of the Licence.

Councillor Green said he was mindful that the Committee expected that people with Licences should be driving to an approved standard. He echoed what had been said before about a lesson being learned. He pointed out that just because this was a fairly quiet part of the world, it did not mean you could not pay attention to what was on the road and he hoped that had been taken on board. Bearing in mind the comments made by the Police and Solicitor, he said he was minded to not approve any suspension.

Councillor Hardie said he agreed that he thought it would be harsh to suspend the Licence. He commented that Mr Leach had shown remorse and knew he had made a mistake. He confirmed that he would not approve suspending the Licence.

Councillor Douglas said she wanted to reinforce what others had said and that she would not wish to suspend this Licence.

Councillor MacMillan confirmed that he was of the same opinion.

Councillor Moffat said she was in total agreement with the rest of the Committee.

Councillor Kinniburgh said that he tended to be in agreement with the Committee now but half way through the hearing he was of a mind to suspend the Licence. He advised that he was glad that the Committee had managed to tease out the circumstances of what had happened. He said that this was a serious thing that had happened. He advised that what had changed his mind was the comment from Sgt McGinnis about the witness not wanting anyone to get into trouble. He confirmed that he was satisfied from what he had heard that the Licence should not be suspended. He said that he hoped Ms Crowe would take the message back to Mr Leach that the Committee viewed this as a serious incident that had happened. He advised that he thought that Mr Leach had learnt his lesson. He moved that the Licence not be suspended and no one was otherwise minded.

## **DECISION**

The Committee unanimously agreed not to suspend Mr Leach's Taxi Driver Licence.

(Reference: Report by Head of Legal and Regulatory Support, submitted)