

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held BY SKYPE on WEDNESDAY, 21 APRIL 2021**

Present: Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Roderick McCuish
Councillor George Freeman	Councillor Jean Moffat
Councillor Kieron Green	Councillor Alastair Redman
Councillor Graham Hardie	Councillor Richard Trail

Attending: Shona Barton, Committee Manager
Graeme McMillan, Solicitor
Maureen Munro, Applicant
Sgt Wendy McGinnis, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Mary-Jean Devon, Audrey Forrest, Donald MacMillan and Sandy Taylor.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR RENEWAL OF TAXI DRIVER'S LICENCE (NO. 5011) (M MUNRO, 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 the Applicant and Police Scotland opted to proceed for way of Audio Call and both joined the meeting by telephone.

It was noted that the Applicant's Taxi Driver Licence was suspended for the unexpired portion following a hearing held by the PPSL Committee on 19 August 2020.

At a meeting of the PPSL Committee held on 23 September 2020, the application for renewal of this licence was before the Committee for consideration. The Committee agreed not to proceed with the hearing at that time and continued consideration until the outcome of criminal proceedings, as per the objection lodged by Police Scotland, were known. The Council's Solicitor, Mr McMillan, confirmed that the Committee at that time dealt with a continuation request and arguments from both parties were not explored. In view of that, and in view of the fact that a supplementary letter has now been submitted by Police Scotland confirming the outcome of these criminal proceedings, he recommended that the Committee run the hearing afresh with the Members in attendance today.

The Chair outlined the procedure that would be followed and invited the Applicant to speak in support of her application.

APPLICANT

Ms Munro said she had not been informed about the hearing today until yesterday, so she did not have any notes. She said she did not know where to start. She said she would like her licence renewed but did not know about the objections as she had no notes. She said she would have to hear what was being objected to in order to defend herself. She said she wanted to continue as a taxi driver and that she loved and needed her job. She said there had been no complaints from customers. She referred to the complaint by Police Scotland and confirmed that there was a court case. She said she was appealing one conviction of assault. She said that as far as she knew there were a further two cases against her which she had pled not guilty to. She advised that as far as she knew the court still worked on the presumption of innocence until proven guilty. She said she has been put in the position of defending herself when she was not sure what the accusations were.

POLICE SCOTLAND

Sgt McGinnis referred to a letter dated 24 March 2021 which provided an update on the matters outlined in a previous letter dated 25 May 2020. The case in respect of the incident which took place on 31 August 2019 when Ms Munro had been reported to the Procurator Fiscal for three contraventions of Section 52(1) & (3) of the Criminal Law (Consolidation) (Scotland) Act 1995 and a contravention of Section 38(1) of the Criminal Justice & Licensing (Scotland) Act 2010 was currently pending with the Procurator Fiscal. As a result of the incident which took place on 4 March 2020 when Ms Munro was reported to the Procurator Fiscal for a contravention of Section 1 of the Domestic Abuse (Scotland) Act 2018, Ms Munro was found guilty at Oban Sheriff Court on 20 October 2020 and received a Community Payback Order of 100 hours to be completed within 12 months. The letter also referred to incidents that occurred on 14 July 2020, 18 July 2020, 8 January 2021 and 17 January 2021. As a result of the incident which took place on 14 July 2020, the Procurator Fiscal issued Ms Munro with a Compensation Order for Contravention of the Section 38(1) of the Criminal Justice & Licensing (Scotland) Act 2010. In respect of the incidents which took place on 18 July 2020, 8 January 2021 and 17 January 2021, the Procurator Fiscal was proceeding with 15 charges – Five contraventions of Section 38(1) of the Criminal Justice & Licensing (Scotland) Act 2010, three charges of Assault, six contraventions of Section 90(1)(a) of the Police & Fire Reform (Scotland) Act 2012 and contravention of Section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995. A hearing took place on 11 January 2021 and Ms Munro was released on bail with conditions. As these matters were sub judice, Sgt McGinnis advised she was constrained with regard to the nature of any further information she could provide at this time.

MEMBERS' QUESTIONS

Councillor Trail sought and received confirmation from Mr McMillan that the paperwork for this meeting was sent out within the statutory timeframe to Ms Munro to the address the Licensing Team had on file for her. It was sent recorded delivery and delivered on 1 April 2021. When chasing Ms Munro up yesterday to find out if she would be attending the hearing, it was established that Ms Munro had moved address. Mr McMillan said that it was a condition of the licence that taxi drivers must inform the Council within 7 days of a change of circumstances and this included a change of address.

Councillor Freeman asked Mr McMillan to confirm what options were open to the Committee today if they found Ms Munro to not be a fit and proper person. Mr McMillan advised that if the Committee were of the view, based on the information before them, that the Applicant was not a fit and proper person to hold a licence then, in terms of paragraph 5 of Schedule 1 of the Civic Government (Scotland) Act 1982, the Committee would be obliged to refuse the application for renewal.

Councillor Freeman sought and received confirmation from Mr McMillan that if the Committee were satisfied on the balance of the information before them, they could come to a view regardless of the fact that some of the charges against Ms Munro were still pending.

Councillor Green referred to the letter from Police Scotland and the lengthy statement given by Sgt McGinnis, and asked Ms Munro if she had reflected on the offences she had been found guilty of. He asked if she had taken anything from that to modify or change her behaviour or activities. Ms Munro said she had reflected on this exhaustively. She said there were not 2 convictions, only one, which she said she was appealing. She said this had hurt her and these things had damaged her life. She said she had tried to overcome difficulties but had been met with a brick wall. She advised that in her defence, these charges against her involved people with ties to the taxi driving world. She said she had been ostracised, picked on and bullied. She said she had tried to reason with these people but they had refused to reason with her. She said she had modified her behaviour on countless times to try and adapt and fit in. She said she had been left without any resources or no one to listen to. She referred to the long Police statement, which, she said, sounded really bad. She referred to the word assault which, she said sounded quite shocking. She advised that this related a man who said he was harmed by only a scratch on his wrist. She said she was having the book thrown at her. She acknowledged that she should have notified the Council of her change of address. She explained that she was not working at the moment and that she was living in a homeless unit. She said she felt out of her depth and had tried to the point of exhaustion to overcome these things. She said that if anyone had tried to communicate with her properly these things would not have happened. She said that was why she was pleading not guilty. She said that people preferred to listen to gossip rather than listen to someone and show compassion.

Councillor McCuish sought and received confirmation from Sgt McGinnis that the home address the Police had on file for Ms Munro was the same address the Council had. Councillor McCuish referred to the curfew and asked how that could be adhered to if Ms Munro had moved. Sgt McGinnis advised that the Court may have a different address.

Councillor McCuish asked Ms Munro how she would be able to drive a taxi given the curfew which prevented her from entering the town of Oban. Ms Munro said she would try to find a way to make it work. She said she could ask her lawyer to seek to have the bail conditions changed. She said she was currently staying in Dunoon so there may be the possibility of staying and driving there and not returning to Oban. She said she was trying to make any kind of opportunity for herself to continue to work.

Councillor Colville sought and received confirmation from Mr McMillan that if this licence was not renewed today, there would be nothing to stop Ms Munro applying again in the future.

Councillor Freeman sought and received confirmation from Ms Munro that she had said she only had one conviction which she was appealing.

Councillor Freeman referred to the Police letter advising of 2 convictions. Ms Munro said she may have been confused. She said she had only been to court once.

Councillor Kinniburgh asked Ms Munro if she would have anyone to work for if her licence was granted. Ms Munro said that she wished that she did. She referred to being ostracised in the community but that she did have friends. She said she needed to be given the opportunity before going any further. She said she would bear in mind the fact that if this application was refused she would be able to apply again in the future. She said that if the application was renewed she would look at taking steps to recover from this mess and continue to do the job she wanted to do.

Councillor Kinniburgh referred to the paperwork presented to the Committee and the question about whether or not Ms Munro was a fit and proper person. He asked Ms Munro what she thought about that. Ms Munro said that the evidence that she was not a fit and proper person was very heavy against her and it did not look like she had done anything right. She said it was a list of accusations and attacks on her character and no one was saying that she was good to her customers and did a good job. She said that these things had happened last year and did not happen for no reason. She said she had suffered a lot and no one was looking at why these things had happened, they were just looking at isolated incidents and asking people to assume she was not a fit and proper person which, she said, was not true. She said she was very capable and very nice but that was not being considered. She advised that she was going through a very hard time and that these incidents may not be what they seem to be. She said that an assault could be anything that is extremely bad to something that is just a scratch on the wrist.

Councillor Kinniburgh referred to the community payback order of 100 hours which Ms Munro was appealing. He sought and received confirmation from Ms Munro that she knew the driver involved. She said he had been a close friend for a very long time and that she had known him very well.

Councillor Colville referred to Ms Munro having her licence since 2017 and the incidents occurring in 2019. He said he was not making any judgements but noted that alcohol appeared to have been a factor. He sought and received confirmation from Ms Munro about how she has tried to get on with her life.

Councillor Colville and Councillor Hardie both sought and received confirmation from Ms Munro that she knew where she could get help if she felt she needed it.

Councillor Green sought and received confirmation from Sgt McGinnis on the dates of the incidents when Police Officers were present at the scene.

Councillor McCuish asked if it would be possible to renew the licence until the Court case had been dealt with and for the Committee to then look again at the issue. He said that this would give Ms Munro the opportunity to focus on something and get her life back on track. He commented that he knew the Oban taxi rank was not

easy. Mr McMillan advised that the licence could be renewed and that if anything came to light as a result of the outcome of the court proceedings, Police Scotland could submit a fresh suspension request on the back of that new information. That being said, he advised that the assessment the Members had to make today, based on the evidence before them, was whether or not Ms Munro was a fit and proper person.

Councillor McCuish said he agreed with the Police that Ms Munro was not a fit and proper person at the time of the incidents but hearing from her today let him hear the other side of the argument.

Councillor Moffat sought and received confirmation from Ms Munro that the other person involved was her closest friend. Councillor Moffat said that information disturbed her and that she believed something more was going on here.

Councillor Kinniburgh sought and received confirmation from Sgt McGinnis that 2 of the incidents occurred this year.

Councillor Kinniburgh sought and received confirmation from Mr McMillan that the Committee suspended Ms Munro's licence on 19 August 2020 for the unexpired portion of the licence and until the outcome of this renewal application.

Councillor Kinniburgh sought and received confirmation from Mr McMillan that some incidents had occurred since the suspension and that not all of these had been to court yet.

SUMMING UP

Police Scotland

Sgt McGinnis confirmed that there were 2 separate convictions for 2 separate incidents and she explained the details of these. She advised that the Procurator Fiscal had rolled 3 other incidents into one and the court case was proceeding with 15 charges. She confirmed that Police Scotland were of the opinion that Ms Munro was not a fit and proper person to hold an Argyll and Bute licence.

Applicant

Ms Munro advised that these separate incidents with separate people involved people who were taxi drivers who she had worked with. She said the Police were looking at this in a long and drawn out way. She said assault could be something minor or something very extreme. She said this had not gone to court yet and that she had not had discussions yet with her lawyer. She said she was hoping for the best possible outcome. She said that some of the 15 charges were questionable and had not been argued yet in court. She said she had struggled to resolve a life changing thing that had happened to her. She said you could come up with an exhaustive list of why she was not a fit and proper person but there was nothing being said in her defence.

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

DEBATE

Councillor Freeman advised that the Committee had to consider whether the Applicant was a fit and proper person. He referred to all the charges and the 2 convictions. He also referred to incidents which had occurred following suspension of the licence. He said that Police Scotland had made it quite clear that Ms Munro was not a fit and proper person and he could not disagree with that. He commented that she did not live in Oban anymore so would not be able to drive in that area. He advised that he could come to no other conclusion, due to the record in front of the Applicant, that she was not a fit and proper person.

Councillor Green said this was a really difficult situation for the individuals involved. He said that he had been hoping, when he had invited Ms Munro to reflect on what had happened, that she would have given some sort of indication that she had recognised her problematic behaviours. He said he was disappointed that there was not much sign of reflection on that. He said her responses to Councillors Colville and Hardie also concerned him as well as the comment made that it might have just been a little bit of assault. He said that it had been enough for the Police to be in attendance and for the Procurator Fiscal to bring the matter to court. He said he would not be trying to belittle the assault in anyway. He advised that Ms Munro may need to think on what was acceptable behaviour. He said that given everything that had been said, he did not think at the present time, that Ms Munro was a fit and proper person. He said that he hoped that would change.

Councillor Colville said it was quite hard for him to disagree with what had been said by Councillors Freeman and Green. He referred to the 2 convictions and the further charges still to go to court. He said the court might well decide there is no case to answer. He questioned whether it would be possible to grant the renewal and then immediately suspend the licence until the outcome of the court proceedings were known.

Councillor McCuish said he agreed with Councillor Colville. He said he was proud that the Committee had never suspended a licence pending a court case. He referred to the 2 convictions and noted that one was being appealed. He also referred to the other charges being charges and that nothing had been proven. He said he would go along the same lines as Councillor Colville.

Councillor Moffat said she was of the same view as Councillors Colville and McCuish. She advised Ms Munro to get a good lawyer. She said that she knew that a taxi business in any small area like Oban was almost incestuous. She said that Ms Munro needed to learn anger management and to turn the other cheek and that would stand her in good stead.

Councillor Freeman said he would not support renewing this licence and then immediately suspending it. He suggested that the Committee should withhold making a decision on this licence until the outcome of court proceedings.

Councillor Kinniburgh asked Mr McMillan to comment on the suggestions made by Councillors Colville and Freeman.

Mr McMillan explained it would not be competent to renew the licence and then immediately suspend it as there would have to be a separate suspension hearing held. He also advised that a suspension could not be for an indefinite period of time,

ie until the outcome of criminal proceedings were known. In terms of a suspension it has to be for a stipulated period, eg, for the unexpired portion of the licence or a shorter period and the Committee would have to be confident of when matters would come to a conclusion. That being said, he advised that the Committee had information before them from Police Scotland and, although there was a long list of outstanding charges still to reach a conclusion, the burden of proof for this Committee was different to a criminal court. On the balance of probability, based on the information before the Committee, if it was the view of the Committee that the Applicant was not a fit and proper person, by virtue of the Act, there was an obligation on the Committee to refuse the application.

Mr McMillan referred to Councillor Freeman's suggestion that the Committee should continue consideration of the application until the outcome of the court proceedings was known. He advised that by 1 May 2021 it will have been 12 months since this application was lodged. He advised that under Section 3 of the Act, amended by COVID legislation, a licence would be deemed granted if no decision was taken after 12 months and, as a result of that, the current suspension would be lifted.

Councillor Kinniburgh advised that in his mind there was only one option available. He referred to the licence being suspended at the moment and the information before the Committee. He pointed out that 2 further incidents had occurred after the suspension had taken place. He said that he had listened to what Ms Munro had said and advised that he believed there were other issues in the background for her. He advised that at this moment in time he could see no option but to refuse the application on the basis that at this time Ms Munro was not a fit and proper person to hold a licence.

Motion

To agree to refuse Ms Munro's application for renewal of her Taxi Driver's Licence as at this time she was not a fit and proper person to hold this Licence.

Moved by Councillor David Kinniburgh, seconded by Councillor George Freeman.

Amendment

To agree to grant the renewal of Ms Munro's Taxi Driver's Licence.

Moved by Councillor Roderick McCuish, seconded by Councillor Alastair Redman.

A vote was taken by calling the roll.

Motion

Councillor Colville
Councillor Freeman
Councillor Green
Councillor Hardie
Councillor Kinniburgh
Councillor Trail

Amendment

Councillor McCuish
Councillor Moffat
Councillor Redman

The Motion was carried by 6 votes to 3 and the Committee resolved accordingly.

DECISION

The Committee agreed to refuse Ms Munro's application for renewal of her Taxi Driver's Licence as at this time she was not a fit and proper person to hold this Licence.

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