

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held in the COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 20 MARCH 2019**

Present: Councillor David Kinniburgh (Chair)

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| Councillor Rory Colville | Councillor Roderick McCuish |
| Councillor Robin Currie | Councillor Jean Moffat |
| Councillor Audrey Forrest | Councillor Alastair Redman |
| Councillor Graham Archibald | Councillor Richard Trail |
| Hardie | |
| Councillor Donald MacMillan | |

Attending: Charles Reppke, Head of Governance and Law
Graeme McMillan, Solicitor
Allegra Evans-Jones, Trainee Solicitor
PC Alison Simpson, Police Scotland
Henry MacIntyre, Licence Holder
Mrs McManus, Licence Holder's Solicitor

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Mary-Jean Devon, Lorna Douglas, George Freeman and Sandy Taylor.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: REQUEST FOR SUSPENSION OF A TAXI DRIVER'S LICENCE (NO. 677) (H MACINTYRE, DUNOON)

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed and invited Police Scotland to speak in support of the Chief Constable's complaint.

POLICE SCOTLAND

PC Simpson referred to a request from the Chief Constable that, in terms of Paragraph 11(1) of Schedule 1 of the Act, the Licensing Committee suspend Mr MacIntyre's Licence. She 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. She confirmed that the Chief Constable was also asking the Committee to order the immediate suspension of Mr MacIntyre's licence, in terms of Paragraph 12(1) of Schedule 1 of the Act, on the grounds that the carrying out 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 PC Simpson read out the details of an incident which occurred on 16 November 2018. She confirmed that as a result of this incident Mr MacIntyre was reported to the Procurator Fiscal. She advised that as this matter was sub-judice,

she was constrained with regard to the nature of any further information she could provide at this time.

QUESTIONS FROM LICENCE HOLDER

Mrs McManus referred to Mr MacIntyre attending the police station after the alleged incident. She asked PC Simpson to confirm if it was correct that no concerns were made at that time about Mr MacIntyre continuing to work as a taxi driver. PC Simpson advised that she could not confirm.

LICENCE HOLDER

Mrs McManus spoke on behalf of Mr MacIntyre. She advised that he took this matter very seriously but asked that she address everyone on his behalf. She confirmed that Mr MacIntyre has held a taxi driver's licence for around 35 years and that other than this matter coming to light there have been no other indications that he was not a fit and proper person. She advised that he lived with his mum and siblings. She said that his mum had dementia and that his income from his taxi was one of two income streams for the household. She advised that he has been driving taxis for over 35 years with no issues. She also advised that he had done charitable work for several years which required him to have enhanced disclosure checks. She referred to the incident alleged to have taken place in November. She said that Mr MacIntyre was interviewed by the Police on 29 November 2018 and heard nothing further until 7 February 2019 when he was in the Police station and given an undertaking to attend Court on 21 February 2019. She advised that the Procurator Fiscal (PF) did not make a decision at that time and the matter was continued until tomorrow (21 March 2019). She advised that at this stage the matter was still before the PF to make a decision on whether Mr MacIntyre was going to be charged. She advised that the complaint had come from one person and this was denied by Mr MacIntyre. She confirmed that if faced with a charge Mr MacIntyre would plead not guilty. She asked the Committee to give Mr MacIntyre the benefit of innocent until proven guilty and as the matter was sub-judice at this time, asked the Committee to continue this matter in the meantime. She said that she appreciated this matter was of some concern but asked the Committee to continue until the situation was known at Court.

MEMBERS' QUESTIONS

Councillor McCuish asked Mrs McManus, if Mr MacIntyre really did depend on the licence for income, what sort of income did he make from his two Operator's Licences. Mrs McManus advised that this was quite a small business which Mr MacIntyre operated in partnership with his brother. She advised that his brother generally did the hospital contracts and Mr MacIntyre would bring in around £200 to £300 through his own car in a good week.

Councillor Trail advised that he was not familiar with criminal law or court procedures and asked what was intended to happen at Court tomorrow. Mrs McManus advised that a report from the Police was submitted to the PF and it was for the PF to decide whether or not there was a case against Mr MacIntyre. She said that if the PF determined that there was a case to be raised then they may be in a position to serve him with court papers tomorrow. She said that if Mr MacIntyre pled not guilty this would result in further procedures. She advised that Mr MacIntyre may turn up at Court tomorrow and find that a decision has still not been made by the PF.

Councillor Trail sought and received confirmation from Mrs McManus that if the PF does not make a decision tomorrow then they may extend the undertaking for perhaps another month. She advised that Mr MacIntyre had no control of that and that Mr MacIntyre would only have input if papers were served.

Councillor Kinniburgh asked if this was the same understanding as Police Scotland. PC Simpson advised that she was told it was a pleading diet tomorrow. Mr Reppke commented that both PC Simpson and Mrs McManus could be right. He said that Mr MacIntyre could turn up tomorrow and be served and dealt with but if complaint was not available tomorrow then Mr MacIntyre may get a further undertaking.

Councillor Currie sought and received confirmation from Mr Reppke that there were a number of ways that this matter could be dealt with.

Councillor Moffat advised she believed that as a rule in Great Britain everyone was presumed innocent until proven guilty and based on that she was finding it difficult that the Committee were being asked to take away something before a decision was made. She sought and received confirmation from PC Simpson that a decision had still to be made at Court.

Councillor Colville referred to the final paragraph of the letter from the Chief Constable which stated that there were serious concerns for public safety and the immediate suspension of Mr MacIntyre's licence was requested and he advised that this gave him serious concerns. He asked PC Simpson to concur that this statement in the letter indicated how serious this matter was. PC Simpson advised that there has been a charge allocated here and that was why it had been brought to the Committee today.

Councillor Currie asked was it not the case that all Police Scotland letters to Civic Government Hearings were from the Chief Constable. PC Simpson confirmed that all letters to this Committee and the Licensing Board were signed from the Chief Constable.

Councillor Kinniburgh sought and received confirmation from PC Simpson that the wording in the final paragraph of the letter was not standard for every letter.

Councillor Trail asked if it would be fair to say that it would be a standard comment to make on the assumption that a person was guilty. PC Simpson advised that Police Scotland have charged Mr MacIntyre and that it was up to the Court what happened next. She confirmed that this was a serious charge.

Councillor Colville asked Mr Reppke, if the licence was suspended today and at Court it was determined that there was no offence and no charges brought, was there anything that would restrict Mr MacIntyre from applying for his licence again. Mr Reppke advised that if the Committee decided to suspend the licence they would need to also decide the length of the suspension. He advised that Mr MacIntyre could make an application for his suspension to be withdrawn.

Councillor Kinniburgh referred to Mr MacIntyre also having an Taxi Operator's Licence. He asked Mr MacIntyre if his Taxi Driver Licence was suspended today, would he consider putting another driver into this car. Mr MacIntyre confirmed that he would have an opportunity to do that but the difficulty he would have would be

finding someone that was trustworthy and careful with the car. He advised that at this stage he did not think he would do this but it would depend on the outcome of this issue.

SUMMING UP

Police Scotland

PC Simpson advised that as this matter was sub-judice she could not share more information until after the court proceedings.

Licence Holder

Mrs McManus advised that this allegation was based on the statement of one person and was something which Mr MacIntyre denied. She confirmed that he was charged by the Police and that the next phase was the legal part of that. She confirmed that the PF had yet to make a decision as to whether or not there was a case against him and that tomorrow may well move that on. She advised that at this stage this was still an allegation and Mr MacIntyre was innocent until proven guilty. She confirmed that he would plead not guilty. She referred to him driving taxis for over 35 years and asked that he be allowed to carry on with this business. She advised that when Mr MacIntyre first went to the Police Station in November after the alleged incident he was told by the Police Officer there that he could continue with his business and that there have been no issues since then.

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

DEBATE

Councillor Currie advised that he did not think the Committee should be having this hearing before the matter was brought to Court. He said that the hearing should be after the Court. He commented that it has been 4 months since the alleged incident and that Mr MacIntyre has been driving taxis for these 4 months without complaint. He advised that if Mr MacIntyre is found guilty at court of this crime then the Committee could be called immediately to deal with the licence at that point. He advised that it was wrong to deal with something before it had gone to Court.

Councillor McCuish advised that he disagreed. He referred to the Chief Constable's serious concerns about public safety and that he did not want to take that risk. He commented that Suspension Hearings have been deferred before but not for a serious issue like this.

Councillor Redman advised that he agreed with Councillor Currie that we should always presume innocence until proven guilty. He advised that a decision on this Licence should be made after the Court decision.

Councillor Hardie advised that the Committee had received a stark warning from Police Scotland about the seriousness of this matter and that he supported Councillor McCuish's view that the Licence should be suspended.

Councillor Colville advised that this was quite difficult and whatever the decision he was passing no judgement here as he did not have all the facts. He advised that Police Scotland were in a very difficult position and that the Committee were elected

to take a decision. He said that he was prepared to hear what other Members had to say before making a decision but he was inclined to agree with Councillor McCuish.

Councillor Trail said that he had noted Police Scotland's concerns about public safety and commented that it had taken until 7 February 2019 for them to write a letter to the Legal Services Team. He said that he presumed that Mr MacIntyre had continued to drive and that he saw no reason not to allow him to continue to drive until the outcome of the Court case.

Councillor Moffat advised that she concurred with what Councillor Currie had said. She advised that it would seem that this was one person's story against another person's story and until one was proven she said that the Committee should not be making any formal judgement. She pointed out that Mr MacIntyre had 35 years good service and that he should not be stopped by something that is unproven.

Councillor Forrest advised that she was struggling with this matter. She said that she always struggled when Police Scotland raised concerns but could not give any further information. She said that her issue was that there was no case to answer yet and that she would feel more comfortable if the PF was going ahead with a charge. She advised that she would struggle to suspend the Licence at the moment.

Councillor Kinniburgh advised that he too found it difficult to make a decision in this case. He said that the Committee were not here to put Mr MacIntyre on trial – that was for the Court. He said that the seriousness of the allegations make it very difficult to make judgement. He advised that in instances such as this his tendency was for the benefit of everyone and was to go down the course of suspension until such time as a decision was made at Court. He advised that in this case Mr MacIntyre has held a licence for 35 years and given that he moved continuation until next month.

Motion

To agree to continue deliberation of this request for suspension of Mr MacIntyre's Taxi Driver's Licence until the next month.

Moved by Councillor David Kinniburgh, seconded by Councillor Jean Moffat

Amendment

To agree to suspend Mr MacIntyre's Taxi Driver's Licence due to Police Scotland's serious concerns for public safety.

Moved by Councillor Roderick McCuish, seconded by Councillor Graham Archibald Hardie

The Motion was carried by 6 votes to 4 and the Committee ruled accordingly.

DECISION

The Committee agreed to continue deliberation of this request for suspension of Mr MacIntyre's Taxi Driver's Licence until the next month.

(Reference: Report by Head of Governance and Law, submitted)