

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 21 AUGUST 2019**

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Jean Moffat
Councillor Robin Currie	Councillor Alastair Redman
Councillor Lorna Douglas	Councillor Sandy Taylor
Councillor Audrey Forrest	Councillor Richard Trail
Councillor Donald MacMillan	

Attending: Patricia O'Neill, Governance Manager
Graeme McMillan, Solicitor
Annette Weaver, Solicitor
Sgt Iain MacNicol, Police Scotland
Allan Gallacher, Licence Holder
Jane MacLeod, Licence Holder's Solicitor

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Rory Colville, Mary-Jean Devon, George Freeman, Graham Archibald Hardie 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'S LICENCE (NO. 2664) (A GALLACHER, DUNOON)

The Chair welcomed everyone to the meeting and introductions were made. He outlined the procedure that would be followed and before inviting Police Scotland to speak in support of the Chief Constable's complaint, the Committee agreed to the circulation of a letter from the Licence Holder's lawyers who represented him in Court.

POLICE SCOTLAND

Sergeant MacNicol 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 Gallacher's Licence. He advised that the Chief Constable complained, in terms of Paragraph 11(2)(a) of Schedule 1 of the Act that Mr Gallacher was no longer a fit and proper person to hold the licence. He confirmed that the Chief Constable was also asking the Committee to order the immediate suspension of Mr Gallacher'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 would likely cause a serious threat to public order or public safety. In support of the Chief Constable's request Sergeant MacNicol read out the details of an incident which occurred on 31 October 2018. He confirmed that as a result of this incident Mr Gallacher was charged with Section 3 of the Road Traffic Act 1988 and a report was sent to the Procurator

Fiscal. He confirmed that Mr Gallacher pled guilty at Court on 19 June 2019 and that he was fined £135 and had his licence endorsed with 3 penalty points.

LICENCE HOLDER

Mrs MacLeod spoke on behalf of Mr Gallacher. She advised that he was 69 years old and had been married almost 50 years and had 2 daughters and 5 grandchildren. She advised that he was a retired postman and that he had also been driving taxis since the mid-1970s. She referred to the day in question when the incident happened and explained that Mr Gallacher had stopped on Hillfoot Street, Dunoon to allow a passenger to call into her work premises to get money to pay for her fare. She explained that the street was very busy at the time with traffic, pedestrians and children going to school. She advised that while Mr Gallacher was negotiating to a car parking space he failed to notice the lollipop man who had stepped off the pavement onto the road. She referred to the letter circulated to the Committee and pointed out that a video of CCTV footage was watched by the Court and that it had been decided by the Court that what had happened was at the lower end of the scale of careless driving. She said that Mr Gallacher had made an unfortunate mistake which he had admitted to. She advised that he had provided a valuable driving service to Dunoon since the mid-1970s and that he had an unblemished record. She said that he had worked very hard for his family and his country and she suggested that to suspend his Taxi Driver Licence would be a step too far. She stated that the Court decided that this was at the lower end of the scale of careless driving and that he had been imposed with a small fine and only 3 penalty points. She said that his punishment at Court was enough, given his long and unblemished record and she asked the Committee not to suspend Mr Gallacher's licence.

MEMBERS' QUESTIONS

Councillor Kinniburgh sought and received confirmation from Mr Gallacher that he was not speeding at the time of the incident. He said he was crawling to a parking space. Mr Gallacher also confirmed that later in the day, when he was on the taxi rank, the lollipop patrol man approached him and that it was only at that point he was made aware that he had not stopped for the patrol man. Mr Gallacher explained that he apologised and that the patrol man had said that he could see that Mr Gallacher was distracted at the time. Mr Gallacher said that this was the first time he had made a mistake in his life. He confirmed that he had not been aware of the patrol man at the time as he was busy watching for children, cars and vans at that time in the morning. He also advised that he was normally super cautious on that street even when the schools were off as it was such a busy street.

Councillor Kinniburgh asked Sgt MacNicol to confirm when Police Scotland first became involved in this matter. Sgt MacNicol advised that the school crossing patrol man had reported the incident to the Police. He confirmed that he had seen the CCTV footage and though it was not the crime of the century, the lollipop man was on the road and people had just come off the road onto the pavement. He said that the taxi had kept crawling along and had disobeyed the sign to stop held by the school crossing patroller.

Councillor Kinniburgh sought and received confirmation from Sgt MacNicol that the patrol man had come on to the street on the other side of the road from the taxi and that he had returned to the pavement on that same side, opposite to where the vehicle was.

Councillor Kinniburgh asked for Mr Gallacher's version of events. Mrs MacLeod explained that it was a busy time of the morning with school children, vans and cars. She said that Mr Gallacher had been distracted by his passenger not having her fare that that he had been distracted looking for a parking space and it was at this point when he was looking for a space that he did not see the patrol man step off the road. She confirmed that Mr Gallacher was dropping his passenger off at her place of work.

Councillor Kinniburgh asked if Mr Gallacher was crawling to let the road clear. Mrs MacLeod advised that he was crawling trying to get to a parking place and that he had not noticed the patrol man on the road. She said that Mr Gallacher was aware of pedestrians and vehicles etc but did not see the patrol man.

Councillor Blair sought and received confirmation from Mr Gallacher that he had previously received 3 penalty points on his licence for speeding in 2011.

Councillor Blair asked Sgt MacNicol if 3 points on a licence was the minimum that could go on a licence. Sgt MacNicol confirmed that 3 penalty points was the minimum and that there was scope to increase that.

Councillor Kinniburgh asked Sgt MacNicol if it was still the view of Police Scotland that Mr Gallacher's Taxi Driver's Licence should be suspended. Sgt MacNicol confirmed this to be the case.

Councillor Kinniburgh referred to the incident being described as being at the lower end of careless driving. Sgt MacNicol advised that these were the words used by the defence lawyers. He pointed out that at the end of the day it was not speed that was the issue, but the fact that Mr Gallacher had disobeyed the sign to stop when the lollipop man was in the middle of the road.

Councillor Kinniburgh sought and received confirmation from Mr Gallacher that the parking space was beyond the patrol man. Mr Gallacher said that Hillfoot Street was only one way at the time.

Councillor Moffat questioned why the Committee had only received the one letter from Police Scotland which advised of the incident before the case had come to Court. She indicated her surprise that a follow up letter had not been received advising on the outcome of the Court case. She questioned whether or not you would expect more than 3 penalty points if you were found guilty of careless driving. Sgt MacNicol advised that the minimum was 3 points and a fine of £100 and that you could get a ticket at the side of the road for that. He advised that Police Scotland's view was the facts of the case had not changed regardless of the Court result. He said that the act had still happened and that had not changed. He confirmed that he knew what had happened back in December when this issue was first brought to the Committee's attention.

Mrs MacLeod said that she could not speak for Police procedure and she did not know why a follow up letter from Police Scotland advising on the outcome of the Court case had not been sent. She said that the facts of what happened were not in dispute but her contention was that Mr Gallacher was not a serious threat to public order or public safety. She said that he was a responsible taxi driver and had been

so for a very long time and that he had not been in any trouble before apart from a minor speeding incident in 2011. She asked that his Licence not be suspended.

Councillor Currie asked Mrs MacLeod if she would agree with him that this Committee was not a Court of Law and that the Committee were not deciding whether or not Mr Gallacher was in the wrong. He said that the Committee were here to judge whether or not he was a fit and proper person to drive a taxi. Mrs MacLeod agreed with Councillor Currie. She said that the Court matter was behind us and that Mr Gallacher had been driving taxis safely for many years and that there was no threat to public order.

Councillor Kinniburgh sought and received confirmation from Mrs MacLeod that initially Mr Gallacher had pled not guilty and that after discussions had changed his plea to guilty. She advised that the CCTV film was watched by the Sheriff who decided that the act was at the lower end of the careless driving scale and that he had imposed a small fine and points on Mr Gallacher.

SUMMING UP

Police Scotland

Sgt MacNicol reiterated the fact that Mr Gallacher had basically not stopped as required on the instruction of the lollipop man who was on the street to assist people to cross the road. He said that the vehicle slowly progressed towards the man and continued to do so once the people had crossed the road. He advised that it was slightly concerning that the mitigating issues were that it was busy and Mr Gallacher had been distracted. He said that Mr Gallacher should have stopped especially if it was busy with lots of people about and he was distracted by his passenger. He said that the safe thing to do would have been to stop as he was required to do.

Licence Holder

Mrs MacLeod confirmed that Mr Gallacher had pled guilty and had admitted his mistake. She said that 3 points was a small fine. She advised that she had already described his length of service as a taxi driver and said that he was an asset to the community and that this was someone who was supplementing his pension with taxi driving. She advised that he did not pose a serious threat to public safety or order. She said that he regretted what had happened and she asked the Committee not to suspend his licence.

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

DEBATE

Councillor Redman advised that he was someone who held a strong belief in law and order. He referred to the 3 penalty points and £135 fine and the suggestion that perhaps this incident was at the lower end of the scale when it came to traffic violations. He questioned whether the Committee would be willing to strip a man of his livelihood in addition to the Court decision. He commented that Mr Gallacher was not taking anything out of the system and that he had always paid into the system and that otherwise he was a safe driver. He advised that morally it would be hard for him to support taking Mr Gallacher's Licence away.

Councillor Blair referred to the street outside Dunoon Primary School at the other end of the day. He suggested that other aspects of traffic management needed to be raised with Roads Officers to see if a risk assessment of traffic management could be carried out. He advised that he could understand how Mr Gallacher could have made a mistake and acknowledged that he had paid for that mistake. He suggested that in future Mr Gallacher would be mindful the next time he seen a lollipop man. He advised that he thought it would be quite reasonable in this case for the Committee not to take Mr Gallacher's Licence away.

Councillor Kinniburgh advised that from what had been said today he was surprised that the school crossing patrol officer had not raised the issue with Mr Gallacher at the time of the incident. He said that the Patrol Officer had the responsibility of seeing people safely across the road so maybe he wanted to continue with that and wait until later to address the incident. Councillor Kinniburgh advised that he took a different view from his colleagues. He said that he thought this was an incident that Mr Gallacher regretted. He noted what was said about the road being busy at the time and advised that it was his view that when a road is busy and when there are children crossing the road and you are aware of them crossing the road then you should stop until the road is clear of everyone. He confirmed that it was his view that Mr Gallacher's Licence should be suspended.

Motion

To agree to suspend Mr Gallacher's Taxi Driver's Licence as he was no longer a fit and proper person to be the holder of that Licence.

Moved by Councillor David Kinniburgh, seconded by Councillor Sandy Taylor

Amendment

To agree not to suspend Mr Gallacher's Taxi Driver's licence.

Moved by Councillor Alastair Redman, seconded by Councillor Robin Currie

Councillor Currie explained why he was supporting the Amendment. He advised that Mr Gallacher had accepted his guilt and that he had been to Court and accepted the fine and paid the price. He advised that it was his opinion that Mr Gallacher was remorseful and for these reasons he did not think this meant Mr Gallacher was not a fit and proper person to drive a taxi.

Councillor Taylor explained why he supported the Motion. He advised that as a taxi driver, Mr Gallacher was a professional that had to drive to a higher standard and that he was trusted with members of the public. He said that the conflicting demands of passengers and obstacles on the road were the stuff of life for a taxi driver. He advised that Mr Gallacher sought to ignore a duly authorised person and that he put that person at risk. He confirmed that for these reasons he considered Mr Gallacher not to be a fit and proper person to hold a Taxi Driver's Licence.

Councillor Redman in support of his Amendment, said that this Committee was not a Court of Law and that the Committee were being asked to assess Mr Gallacher's fitness to hold a badge. He commented that 3 points and £135 fine was close to a minimum which, he said, told you what you needed to know. He confirmed that he thought it would be unreasonable to strip a person of his livelihood for this.

Councillor Kinniburgh advised that he slightly disagreed with Councillor Currie's comment that Mr Gallacher had accepted his guilt. He pointed out that Mr Gallacher had not pled guilty in the first place. He advised that the Procurator Fiscal was unwilling to accept a plea of not guilty.

Motion 2 Amendment 7

On a show of hands vote the Amendment was carried by 7 votes to 2 and the Committee ruled accordingly.

DECISION

The Committee agreed not to suspend Mr Gallacher's Taxi Driver's licence.

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