

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD
on MONDAY, 27 AUGUST 2018**

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair
Councillor Rory Colville
Councillor Robin Currie

Councillor Lorna Douglas
Councillor Audrey Forrest
Councillor Graham Archibald Hardie

Attending: Charles Reppke, Head of Governance and Law
Sheila MacFadyen, Solicitor
Sergeant McNicol, Police Scotland
Heather Murray, Police Scotland
Mr M McKim, Applicant

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Mary Jean Devon, George Freeman, Donald MacMillan, Roderick McCuish, Jean Moffat, Alastair Redman, Sandy Taylor, Richard Trail.

2. DECLARATIONS OF INTEREST

There were no declarations of interests.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR RENEWAL OF TAXI DRIVER'S LICENCE (M MCKIM, OBAN)

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed and invited the Applicant to speak in support of his application.

The Head of Governance and Law advised that a letter had been received from Mr McKim's solicitor and asked if the Committee and Police Scotland were happy to receive and consider this. After it was confirmed that they were happy to consider the letter, it was tabled.

APPLICANT

Mr McKim advised that on the day in question he had been on a hospital run to Inverness, on way back he had stopped for break then continued his journey after 15-20 mins. When he reached Benderloch he was aware of motorcyclists behind him, some of them tried to overtake on various corners, and on that day some of them had overtaken making a hand gesture. He advised that there were 3 motorcycles on the road between caravan site, bus stop and travellers site and looking in all three mirrors, he had overtaken the first, then carried on to overtake second; the third bike had then tried to overtake him and at this point he had put his hand out of the window gesturing the bike to get back. On his approach to the Connel Bridge, the first bike overtook 3 cars and a silver jeep had flashed its lights telling the bike to get back in. Another bike had tried to overtake just coming to bridge.

Mr McKim advised that when came to the Inn, some of the bikers were parked in the car park shouting and swearing and he had stopped. The one that had earlier given the hand gesture came over shouting and swearing at him and he had felt fear and alarm for his safety and had felt intimidated. The motorcyclist had put his hand into Mr McKim's car and removed keys from the ignition, sticking his elbow in Mr McKim's face. At this point he believes that his car may have rolled forward and hit one of the bikes. When Mr McKim got back into Oban, he phoned police from hospital around 3.50pm. He advised that he thought police would have come and taken his story but they did not come until 10pm that night while he was out driving the taxi. He stated his case, but noted that the Police didn't write it down. He took them to the back of hospital and showed them the car. There was a scratch to the front bumper on passenger side and they took a photo. He advised the Police that he did not touch the bike but thought that the car may have rolled forward into the bike as the motorcyclist took the keys from his ignition. He had put in the application for renewal of his taxi drivers licence on 22 June and had received a letter of objection in August, which had brought him before the Committee.

QUESTIONS FROM POLICE

There were no questions for Mr McKim from Police Scotland.

POLICE SCOTLAND

Sergeant Ian McNicol referred to a letter advising that the Chief Constable objected to this application on the grounds that Mr McKim was no longer a fit and proper person to be the holder of a Taxi Driver's Licence as he had been reported to the Procurator Fiscal for a contravention of Section 2 of the Road Traffic Act 1988 as a result of an incident which took place on 12 May 2018. He gave a brief account of the incident and advised that as the matter was sub-judice he was constrained with regard to the nature of any further information he could provide.

QUESTIONS FROM APPLICANT

The applicant had no questions for Police Scotland.

MEMBERS' QUESTIONS

Councillor Colville asked the Police if it was normal for 3 months to pass without a case going to court and if Mr McKim had been charged. Sergeant McNicol confirmed that Mr McKim had been charged and had been reported to the Procurator Fiscal. He added that the Procurator Fiscal would decide the next course of action and that the timeframe was not unusual for a case of dangerous driving.

Councillor Colville referred to the solicitors letter which advised that Mr McKim had held an unblemished licence for 26 years and asked Mr McKim to confirm this, which he did. Councillor Colville asked Mr McKim how many miles he travelled daily. Mr McKim replied that he was unsure of the exact mileage but that it was a lot as he covered hospital runs to Inverness and Glasgow and travelled daily from Oban to places like Clachan Seil, Lochgilphead, Dalmally, Connel and Taynuilt.

Councillor Currie asked the Police if Mr McKim was the only one who had reported the incident. Sergeant McNicol advised that Mr McKim reported the altercation which had taken place after the actual driving incident he had been charged for. Councillor Currie asked who had reported the incident and Sergeant McNicol advised that it had been one of the motorcyclists. Councillor Currie then asked the Police why they had not spoken to Mr McKim until 10pm at night and Sergeant McNicol replied that they had been speaking to the motorcyclists to obtain sufficient evidence to charge Mr McKim and that Mr McKim would have an opportunity to defend himself in court.

Councillor Douglas asked the Police to clarify how serious the charge was. Sergeant McNicol advised that it was a serious driving offence that normally carried a 1 year ban from driving. He advised that careless driving was a lesser offence and was more of a misjudgement or mistake but dangerous driving was seen as a more deliberate action and viewed as a serious driving offence.

Councillor Hardie asked the Police if anyone else had been charged in addition to Mr McKim. Sergeant McNicol confirmed that it was only the applicant who had been charged.

Councillor Hardie asked the applicant if he could describe the motorcyclists. Mr McKim advised that he could remember 2 of them and described them. He advised that he had felt intimidated and frightened and when the motorcyclist had put his hand in the window he had felt that he was going to elbow him in the face, which is why he had reported the incident to the Police.

Councillor Blair asked the Police if they knew the occupation of person who had made the complaint as sometimes the perception of bikers is that they are naturally aggressive. Sergeant McNicol advised that the Police did not judge complainers by their occupation, but advised the occupations of some of the witnesses were regional operations manager, fabricator, mechanic and public house manager.

Councillor Blair asked the applicant if he had been disciplined by the NHS for the incident. Mr McKim advised that he had told his manager on the Monday after it happened and not been disciplined as yet.

Councillor Douglas asked the Police if they knew the likelihood of the case being dealt with quickly. Sergeant McNicol advised that he could not confirm how long it would be and that a letter would be sent out from the Procurator Fiscal with a date in the next few months but could not say for certain.

Councillor Forrest asked if there was a possibility that the Procurator Fiscal may not proceed with the case. Sergeant McNicol advised that it was unlikely as there had been 7 witnesses saying that Mr McKim's driving had been dangerous and out of order.

Councillor Kinniburgh referred to the letter from Mr McKim's solicitor and the paragraph which said although Mr McKim had been charged he had not received service of complaint and asked the Police what this meant. Sergeant McNicol advised that Mr McKim would receive a letter stating the charge and asking whether he wants to plead guilty/not guilty. He added that if wanted to plead not guilty then the case would go to a court date.

Councillor Douglas asked if Mr McKim still had his driving licence and if he would keep it until a decision was reached. Sergeant McNicol confirmed that he did have his licence and would until a decision was reached.

Councillor Kinniburgh asked the Police if the Committee decided to issue the licence and Mr McKim was convicted if Police Scotland would then put in another objection. Sergeant McNicol confirmed that it would be monitored and the Police would come back following any conviction.

SUMMING UP

Police Scotland

Sergeant McNicol summed up by saying that it was a dangerous driving case and the Police were making the Committee aware that it had been reported to the Procurator Fiscal. He added that there had been a number of witnesses reporting that Mr McKim's behaviour was so bad that it had been categorised as dangerous driving. He advised that the case would come to court in the future but currently the Police were advising that this was underway.

Applicant

Mr McKim summed up by saying that he had held a clean driving licence for 26 years and had been driving a taxi for more than 10 years and that he had never been refused a taxi drivers licence.

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

DEBATE

Councillor Colville advised that he had reported a motorcyclist to the Police for overtaking a lorry and that he had a family member who had advised of the difficulty he had when he came across groups of motorcyclists as they could become aggressive in a pack. He advised that under the circumstances and due to the fact that Mr McKim's record was exemplary he had no issue with awarding the licence.

Councillor Currie advised that it was not a job for the Committee to decide whether the applicant was guilty or not guilty and that he had been driving for 3 months since incident reported. He advised that as the Police letter stated that no trial date had been set it was premature for the committee to make a decision.

Councillor Hardie advised that after weighing up facts he could not see any reason not to renew the licence.

Councillor Forrest advised that she found it a struggle to come to a decision when there was no formal letter received about the charge and no date for a court case. She advised that it would not be fair to at the current stage and that Mr McKim was innocent till proven guilty. She advised that she would be happier if the Committee could grant the licence now knowing that the Police can come back if Mr McKim was convicted.

Councillor Kinniburgh advised that it was an important fact that Police had the opportunity to come back if Mr McKim was convicted and that it was well within

Police Scotland's rights to put an objection before the Committee at this stage. Councillor Kinniburgh added that he felt that as Mr McKim had an unblemished record for 26 years it was therefore inappropriate to take the licence from Mr McKim before any conviction.

Councillor Blair advised that he took comfort by the fact that Mr McKim was employed by the NHS and no disciplinary action had been taken against him.

DECISION

The Committee agreed to grant the renewal of a taxi driver's licence to Mr McKim.

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