

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

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Donald MacMillan BEM
Councillor Rory Colville	Councillor Roderick McCuish
Councillor Mary-Jean Devon	Councillor Alastair Redman
Councillor Kieron Green	Councillor Sandy Taylor
Councillor Graham Hardie	

Attending: Stuart McLean, Committee Manager
Sheila MacFadyen, Senior Solicitor
Sgt Wendy McGinnis, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Lorna Douglas, Audrey Forrest, George Freeman, Jean Moffat and Richard Trail.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: REQUEST FOR SUSPENSION OF TAXI DRIVER LICENCE (NO. 5977) (R GRAHAM, CAMPBELTOWN)

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 opted to proceed by way of Audio Call and Sgt McGinnis joined the meeting by telephone.

The Committee had agreed at a hearing on 17 February 2021 to continue consideration of this matter to give the Licence Holder the opportunity to attend as it had been intimated at that time that notification of the hearing had not been received by the Licence Holder within the requisite period of notice of 14 days.

It was noted that the Licence Holder was not present for this hearing. The Council's Senior Solicitor, Sheila MacFadyen, advised that a recorded delivery letter notifying Mr Graham of this hearing had been received at the address on his Licence within 14 days but he had not been in touch to confirm whether or not he would be in attendance. Mrs MacFadyen advised that an attempt to contact Mr Graham by phone had been made in respect of the previous meeting but there was no reply. A phone call had not been made on this occasion.

The Committee were asked to consider how they would wish to proceed.

The Committee agreed to proceed with the hearing.

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

POLICE SCOTLAND

Sgt McGinnis referred to a letter dated 15 January 2021 which advised that the Chief Constable requested, in terms of Paragraph 11(1) of Schedule 1 of the Act, that the Committee suspend Mr Graham's licence. The Chief Constable complained, in terms of Paragraph 11(2)(a) of Schedule 1 of the Act that Mr Graham was no longer a fit and proper person to hold the licence. In support of the Chief Constable's request the letter referred to an incident which occurred on 1 October 2020 whereby Mr Graham was charged with contravening Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and also charged under the Police and Fire Reform (Scotland) Act 2012, Section 90(2)(a). The letter also referred to an incident which occurred on 14 November 2020 whereby Mr Graham was charged with four contraventions of Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. He was also charged under the Police and Fire Reform (Scotland) act 2012, Section 90(1)(a) and 90(2)(a).

Sgt McGinnis advised that following submission of that letter, the Procurator Fiscal had rolled these 2 cases together and proceeded with 8 charges – 3 under Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, 2 for resisting arrest, 2 coronavirus charges and one for Police assault. A pleading diet was set for 1 April 2021.

MEMBERS' QUESTIONS

Councillor McCuish asked Sgt McGinnis if the Police knew where Mr Graham was. Sgt McGinnis said that they were aware of his home address and that she would be happy to check if that corresponded with the address held by the Council and, if necessary, the Police could assist with delivering any letters.

Councillor Blair expressed concern that attempts had not been made before this meeting to find out if Mr Graham would be in attendance. He questioned why an attempt to contact him by phone had been made last time but not this time.

Councillor Kinniburgh advised that Councillor Blair's concerns were noted and would be taken on board by the Legal Team. He said that it had been confirmed that notification of this hearing had been received at the address on the Licence and that there was no reason to suspect that the Licence Holder had moved to a different address.

Councillor Taylor commented on the pattern of behaviour reflected in these charges and that, for his part, it was clear the Committee had to take some action. He sought clarification on how the Police came to be alerted to these incidents. Sgt McGinnis advised that the first incident was witnessed by Police Officers and the second was reported by a member of the public.

Councillor Hardie sought and received confirmation that 2 of the charges against Mr Graham were under Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 – breach of the peace aggravated by sexual orientation. Sgt McGinnis explained that this was when there was threatening or abusive behaviour by way of making reference to someone's sexual orientation and that it became a hate crime.

SUMMING UP

Police Scotland

Sgt McGinnis advised that the 2 incidents were similar in nature and, the fact that 8 charges were being proceeded by the Procurator Fiscal, indicated that they have taken on board the seriousness of these incidents. She confirmed that Police Scotland stood by the request to suspend the Licence.

Sgt McGinnis confirmed that she had received a fair hearing.

DEBATE

Councillor Colville said that 1 April was not far away and advised that he thought it would be better to await the outcome of that Court Hearing before jumping to any conclusions. He commented that he thought he would be correct to say that if the Committee agreed to suspend the Licence, determination of the length of the suspension could not be taken without the Licence Holder or representative being present to address the Committee.

Councillor Kinniburgh sought clarification on that point. Mrs MacFadyen advised that normally the Licence Holder or their representative was given the opportunity to respond to a suspension. She said it would be better if they were given that opportunity. She pointed out that the Licence expired on 21 March 2021 and that it was open to Mr Graham to apply for renewal of that Licence. She confirmed that no application to renew the Licence had been received at this point.

Councillor Redman said that he would support what Councillor Colville said and that it was best to wait.

Councillor Taylor said that Mr Graham had been given notice that his Licence could be suspended and that he had denied himself the right to respond by not attending the hearing today. Councillor Taylor advised that it was his opinion that this was someone that had a clear disregard for the law at a time when there was great concern in the community with regard to adhering to coronavirus restrictions. He also referred to Mr Graham disrespecting Police Officers, which resulted in the assault and resisting arrest charges. He said he was quite clear where the Committee should be going with this but was concerned that this could be done legally and to the best effect.

Councillor Kinniburgh said that he accepted everything that Councillor Taylor said but wished to point out that Mr Graham had not been found guilty of any charges yet.

Councillor McCuish said that he was in agreement with Councillor Taylor. He advised that Mr Graham had been given ample opportunity to appear before the Committee. He commented that if a person's livelihood was threatened by a suspension he believed they would make sure they were in attendance. He acknowledged that the charges had still to be proven but said there appeared to be a pattern of offending.

Councillor Roderick McCuish lost connectivity at this point and outwith the meeting advised the Chair that he would take no further part in the proceedings.

Councillor Green said he did not think the Committee could not take a decision just because someone possibly refused to be heard. He commented that Mr Graham had been given reasonable opportunity to attend. He said that to the best of his knowledge the Committee could not compel Mr Graham to attend. He advised that he had noted the comments made about a pattern of behaviour and there being a risk to the public and that he would be taking that into account.

Councillor Kinniburgh said that he fully agreed that suspension was not about confirming guilt but about protecting customers and patrons.

Councillor Devon sought and received confirmation from Councillor Kinniburgh that the Committee could take a decision to suspend the Licence and that decision would not be about confirming guilt but would be made to protect customers and patrons. He said that decision could have been taken after hearing from the Licence Holder.

Councillor Devon said that she fully supported what Councillor Taylor had said.

Councillor Kinniburgh also confirmed that he fully supported what Councillor Taylor had said but he had wanted to make it clear that the Licence Holder had not yet been found guilty.

Councillor Hardie said that he also agreed with Councillor Taylor. He said that this person had been given plenty of opportunity to represent himself. He commented that the charges, though not proven yet, were very serious. He confirmed that he agreed with Councillor McCuish and Councillor Taylor.

Councillor Taylor referred to an earlier comment that he had made about suspension not being about confirming guilt, but about the protection of patrons and customers.

Councillor Colville said that he suspected that he was aware of the background to this but he was not certain. He advised that he was not saying there was mitigation there but felt the Committee needed to have further details on how this had arisen. He said that he did not believe that this gentleman had been before the Committee before. He pointed out that in the past the Committee had been fairly consistent in similar situations, by taking the decision to wait, especially when Court proceedings were so close. He said that he would move that the Committee take no action until the outcome of Court proceedings were known.

Sgt McGinnis pointed out that it was a pleading diet on 1 April and not the actual trial date. On 1 April 2021 the defendant would only be pleading guilty or not guilty.

Councillor Redman said his view remained the same. He advised that this was a common law society and that every man was innocent until proven guilty. He said that he realised this hearing process was different but he did not think the Committee should condemn a man until he had his day in Court. He said that he would likely second Councillor Colville's Motion.

Councillor Taylor referred to the Committee being fairly consistent in the past about waiting on the outcome of Court proceedings. He said that on these occasions the Police were not directly involved but in this case the Police had intervened and Police Officers were assaulted. He pointed out that the Committee were here to determine whether or not the Licence Holder was a fit and proper person to hold the

Licence and they were not here to judge the incidents. He referred to the Licence Holder having no respect for the law or no respect for Police Officers. He said this was about protecting society given his inappropriate behaviour. He advised that as a taxi driver you were privileged to be granted a Licence to look after and protect others but when you yourself were the person that endangered others then that privilege should be taken away. He said he was quite clear this was not something the Committee had looked at before.

Councillor Blair said he agreed with Councillor Taylor that this was about the protection of patrons and customers. He said that the behaviour of this individual had resulted in the Police being involved and for him to continue to behave in this way was unacceptable. He confirmed that he would be content with the Committee withdrawing his Licence as this would be doing what was right for patrons.

Councillor Redman said that what was right and what was wrong could be an interpretation or opinion. He said that he made his opinions based on what was real and not how he felt. He said that he tried not to bring raw emotion into a decision. He confirmed that he stood by his original comments that he believed in common law and that it was his view that every man was due their day in Court. He said that he realised this Committee was not a Court and advised that the business of pre-emptive punishment based on feelings was worrying and that the Committee should not take this up.

Councillor Devon advised that taking everything that had been said into account she was not comfortable with allowing the Licence Holder to continue.

Councillor Green said that the Committee had a duty to protect society at large as well as taking account of the individual driver. He advised that if this was a Council employee in a similar situation they might end up being suspended from their job. He said that the Committee had the power to protect the public and that this should be done on this occasion.

Councillor Taylor said his decision was not based on emotion. He said this was not about the Committee being a trial and finding the Licence Holder guilty. He said this was about assessing whether or not he was a fit and proper person to hold a Licence, given the evidence about his behaviour. He said there was evidence of repeated behaviour. In terms of employment law, if a person committed a serious breach they would be suspended while an investigation took place. He advised that the suspension in this case was not a punishment but a measure to protect the public.

Councillor Hardie agreed with Councillor Green, that as a Committee, the Members had a duty to protect the public. He advised that from what he had heard he would support a Motion to suspend the Licence.

Councillor Kinniburgh advised that he had listened to all that had been said and that he was in full agreement with Councillor Taylor and others that the Committee were here to determine whether or not Mr Graham was a fit and proper person. He referred to there appearing to be a repeated pattern of behaviour. He said that he respected that the case had still to be go Court but by the same token, taking account of a pattern of behaviour forming by the Licence Holder, the fact that this was the second invitation to attend a hearing and he had not done so, he was minded to move suspension of the Licence.

Motion

To agree to suspend Mr Graham's Taxi Driver 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 Graham Hardie.

Amendment

To agree not to suspend the Licence and await the outcome of Court proceedings before taking a decision.

Moved by Councillor Rory Colville, seconded by Councillor Alastair Redman.

A vote was taken by calling the roll.

Motion

Amendment

Councillor Blair
Councillor Devon
Councillor Green
Councillor Hardie
Councillor Kinniburgh
Councillor MacMillan
Councillor Taylor

Councillor Colville
Councillor Redman

The Motion was carried by 7 votes to 2 and the Committee resolved accordingly.

The Committee then debated the duration of the suspension.

Councillor Kinniburgh said that he thought the Licence should be suspended for the unexpired portion of the Licence and that if the Licence Holder applied for another licence in the future that his application should come before the Committee for consideration irrespective of the outcome of Court proceedings.

Councillor Taylor supported Councillor Kinniburgh.

Mrs MacFadyen sought clarification on whether or not this was an immediate suspension. She pointed out that Police Scotland had not requested the immediate suspension of the Licence and that the incidents had taken place last year. She confirmed that it was open to the Committee to suspend the Licence with immediate effect for the unexpired portion of the Licence if they felt the circumstances met the test for immediate suspension. The Committee could also agree to have the suspension take effect after the appeal period of 28 days.

DECISION

The Committee agreed that Mr Graham's Taxi Driver's Licence be suspended with immediate effect for the unexpired portion of the Licence and should Mr Graham re-apply for a Taxi Driver's Licence in the future, his application should come before the Committee for determination irrespective of the outcome of the Court proceedings.

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