

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 18 AUGUST 2021**

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Graham Hardie
Councillor Rory Colville	Councillor Donald MacMillan BEM
Councillor Mary-Jean Devon	Councillor Sandy Taylor
Councillor Audrey Forrest	Councillor Richard Trail
Councillor Kieron Green	

Attending: Shona Barton, Committee Manager
Graeme McMillan, Solicitor
Sgt Wendy Maginnis, Police Scotland
Damien MacIntyre, Licence Holder

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors George Freeman, Roderick McCuish, Jean Moffat and Alastair Redman.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: REQUEST FOR SUSPENSION OF TAXI DRIVER LICENCE (NO. 4274) (D MACINTYRE, OBAN)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, and following the Council's current approach to the Coronavirus pandemic, 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 and the Licence Holder opted to proceed by way of Audio Call and they both joined the meeting by telephone.

At a meeting of the Committee on 23 September 2020 it was agreed not to proceed with the hearing and to continue consideration of the suspension of this licence until criminal proceedings were concluded.

A letter dated 14 July 2021 from the Chief Constable, advising of the outcome of the criminal proceedings against Mr MacIntyre was now before the Committee for consideration.

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

POLICE SCOTLAND

Sgt Maginnis referred to a letter dated 14 July 2021 from Police Scotland which advised that on 14 June 2021 Mr MacIntyre had pled guilty to an amended charge and was convicted under the Road Traffic Act 1988 Section 5(1)(b) as a result of an incident which took place on 4 September 2020 when Mr MacIntyre was in charge of a vehicle and he

was found to have a proportion of alcohol in his breath which exceeded the prescribed limit.

LICENCE HOLDER

Mr MacIntyre apologised for any inconvenience caused. He said it had been a bit of a nightmare and had gone on for over a year and a half. He said that he had made a big mistake and could not hide from that. He said he could not deny it. He advised that the car had broken down and was not going anywhere. He said he had been self-isolating at the time. He went to see a friend when the car broke down and that he had a few drinks there. He advised that when going home he had to walk by the car and that he had stupidly went into the car and that this was a really bad mistake that he had made and that he had been punished quite badly for it. He said that he has been driving taxis for 12 years and had no points to his name. He said he had driven all over the country and all around Britain driving taxis with no complaints.

QUESTIONS FROM POLICE SCOTLAND

Sgt Maginnis sought and received confirmation from Mr MacIntyre that he had just been sitting in his car. She said that this was a slightly different version of events to what the witnesses had told the Police. Mr MacIntyre said he was not trying to sugar coat it. He explained that it was a mistake and that the witnesses had helped push his car to the side of the road and that he had continued to walk home after that. He said he had asked for help to move his car to the side of the road.

MEMBERS' QUESTIONS

Councillor Green referred to the penalty of £750 fine, 10 points on his licence and surcharge of £40 given to Mr MacIntyre. He asked Sgt Maginnis if he was right to say that would not have been the maximum penalty normally given when people were found in charge of a vehicle under the influence of alcohol. He asked if there were mitigating circumstances that she was aware of that the Committee should take into account. Sgt Maginnis said Mr MacIntyre had not received the maximum penalty because he had pled guilty.

Councillor Colville sought and received confirmation from Sgt Maginnis that there was an error in the Chief Constable's letter dated 5 May 2021. She confirmed that the incident had taken place on 29 April 2020 and not 4 September 2020.

Councillor Forrest asked Sgt Maginnis if she could share the witness's version of events. Sgt Maginnis read out the witness statement to the Committee. Witness within their home address heard car engine revving loudly and observed vehicle in middle of carriageway. Alerted two other persons to this. Looking out window they recognised the driver and formed the opinion that driver was drunk so went outside to prevent driver from driving off. Witness knocked on driver side window to get attention, and driver was still revving engine. Window rolled down and driver said vehicle wouldn't move. Witness offered assistance to move and at this point Mr MacIntyre exited the vehicle. Witnesses noted staggering/smell of alcohol and the Police were contacted after that.

Councillor Colville referred to Mr MacIntyre mentioning that this incident had happened during lock down. He asked Mr MacIntyre if he was working during that period or if he had been laid off. Mr MacIntyre said he was not laid off. He said he was working at Glen Sanda but at the time he was self-isolating as someone at his work had got ill. He said he

had to be off work for 14 days and that it was very early in lock down and that there was lots of confusion about the virus at that time. He said that he had gone out for a drive as he was struggling a bit and that his car had broken down so he went and had a drink. He said he knew the car was not going anywhere and that he had been at it for a good hour before that. He said it was a mistake which he looked back on with regret.

Councillor Colville sought and received confirmation from Mr MacIntyre that he was not driving his taxi at the time.

Councillor Forrest sought and received confirmation from Mr MacIntyre that he had been driving his car before it broke down.

Councillor Blair sought and received confirmation from Mr MacIntyre that he had been driving his own car when it broke down. At that point he went to a friend's house for a drink and when he returned to the vehicle he tried to see if he could move it out of the way. Mr MacIntyre said it was a moment of madness.

Councillor Kinniburgh sought and received confirmation from Mr MacIntyre that his car had broken down and that he had tried to get it going but the gear box was gone. After that he went to a friend's house and had a drink. He then came back to walk home.

Councillor Kinniburgh commented that Sgt Maginnis had advised that witnesses had observed Mr MacIntyre rewing the car in the middle of the road and asked Mr MacIntyre if this was correct. Mr MacIntyre said the car was not in the middle of the road.

Councillor Kinniburgh sought and received confirmation from Mr MacIntyre that the car was on the road and that he only decided to move it off the road after he'd had a drink. Mr MacIntyre advised that he had already left before the Police arrived and that they were waiting for him when he got home.

Councillor Kinniburgh sought and received confirmation from Mr MacIntyre that he had no intention of driving the car.

Councillor Blair asked Mr MacIntyre if he thought the abandoned car would cause an obstruction on the road. Mr MacIntyre said he thought it did a wee bit. He said that he planned to get someone to collect it the next day but maybe he should have got it recovered right away. He advised that he was half a mile away from his home.

Councillor Devon commented that she was really confused as Mr MacIntyre's story appeared to keep changing.

Councillor Green sought and received confirmation from Sgt Maginnis that Mr MacIntyre was 5 times over the legal limit to drive.

Councillor Kinniburgh commented that he would have thought a person would have lost their licence if they were that much over the legal limit, regardless of whether they pled guilty or not. He established from Sgt Maginnis that Mr MacIntyre had pled guilty to an amended charge of drunk in charge of a vehicle rather than drunk driving. It could not be proven that the vehicle was actually driven. Witnesses spoke of hearing a car engine and seeing a car in the middle of the carriageway but they did not see it being driven. They went out and helped push the vehicle to the side.

Mr MacIntyre said it was sitting on the road and was not off the carriageway and he wanted to get it off the road.

SUMMING UP

Police Scotland

Sgt Maginnis advised that the incident had occurred on 29 April 2020 and that Mr MacIntyre had pled guilty to being drunk in charge of a motor vehicle.

Licence Holder

Mr MacIntyre agreed that this was fact and he could not deny it.

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

DEBATE

Councillor Hardie advised that anything involving alcohol was criminal and the Committee had to suspend the licence in view of public safety so he was minded to suspend the licence.

Councillor Green agreed that the Committee should suspend the licence as he did not think Mr MacIntyre was a fit and proper person to hold the licence.

Councillor Colville said that normally he would be very concerned about alcohol but he believed in this case there were extenuating circumstances. He commented that Mr MacIntyre was self-isolating at the time and had no intention of driving his taxi. He said that these were very strange times. He advised that he would have been worried if it had been Mr MacIntyre's intention to drive the next day but clearly this was not the case. He said he did not believe the licence should be suspended.

Councillor Trail commented that Mr MacIntyre had held onto his licence for nearly a year and a half and the Court had not ruled that he was unfit to drive a car. He said he thought it was not the job of the Committee to punish and that it was the Committee's job to ensure public safety. He advised that Mr MacIntyre had been contrite and had regrets over what he had done. He said he would not wish to suspend his licence.

Councillor Blair referred to Mr MacIntyre being 5 times over the limit and said the Committee had to make sure there was a high standard of taxi drivers to ensure safety of passengers and pedestrians. He advised that it was his view there should be zero tolerance and he would not support Mr MacIntyre continuing with his licence.

Councillor Devon said she was quite concerned about Mr MacIntyre's conflicting story so she would support suspending the licence.

Councillor Kinniburgh said he was really concerned about the amount of alcohol being 5 times over the limit. He also advised of being confused about the information given by Mr MacIntyre. He noted that the gear box had gone so the car would not drive. He said he found it difficult to think that there was no intention to drive from what he had heard and that he would be moving for suspension of the licence.

Councillor Taylor advised that he tried to be consistent. He said that this was not about the Road Traffic Act. He said the Committee had to have a responsibility for others. He advised that he appreciated the circumstances which led to the taking of alcohol but when he heard of witnesses describing Mr MacIntyre as staggering and having obviously taken excess alcohol, he would support the suspension of the licence.

Motion

To agree to suspend Mr MacIntyre's Taxi Driver's Licence as he was no longer a fit and proper person to hold the Licence.

Moved by Councillor David Kinniburgh, seconded by Councillor Audrey Forrest.

Amendment

To agree not to suspend Mr MacIntyre's Taxi Driver's Licence.

Moved by Councillor Rory Colville, seconded by Councillor Richard Trail.

A vote was taken by calling the roll.

Motion

Councillor Blair
Councillor Devon
Councillor Forrest
Councillor Green
Councillor Hardie
Councillor Kinniburgh
Councillor Taylor

Amendment

Councillor Colville
Councillor Trail

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

The Committee then considered the duration and commencement date of the suspension and Mr MacIntyre was given the opportunity of commenting.

Mr MacIntyre said that at the end of the day he had obviously lost the vote by quite a bit. He said that it had been a mistake at a strange time and that he had no intention of driving his taxi. He advised that he had been driving taxis for a long time with a very busy firm and that he had travelled all over Britain. He added that at his work staff were frequently drug and alcohol tested. He said it was a mistake and not in his nature and that he would leave it to the Committee to decide.

Councillor Green sought and received confirmation from Mr McMillan that the licence was due to expire on 16 April 2022. Mr McMillan advised that in terms of the duration of the suspension of the licence, the Committee could chose to either suspend for the unexpired portion of the licence or for a shorter time, whatever was seen as proportionate in the circumstances. In terms of the commencement date, the default position was to delay for 28 days from today's hearing. However, if the Committee were of the opinion that the circumstances of the case justified the licence being suspended from today's date then the licence could be suspended immediately.

Councillor Colville sought and received confirmation from Mr McMillan that if the Committee agreed to suspend the licence then Mr MacIntyre could reapply come 22 April 2022. Councillor Colville said it was his view that the licence be suspended for the minimum time reasonable. He said that a period of 3 months was more than adequate. He suggested that the licence be suspended with immediate effect for 3 months.

Councillor Green agreed that the licence should be suspended with immediate effect. Taking account that when people receive a sentence for drink driving a disqualification is usually for a year or so. He advised that as the licence had less than a year to run, he would recommend suspending the licence for the remainder of the duration of the licence.

It was noted at this point that Mr MacIntyre had left the call. Mr McMillan advised that as Mr MacIntyre had exercised his legal right to be heard there was no reason not to proceed as normal and continue to debate the outstanding points.

Councillor Taylor said he would be quite happy to support Councillor Colville.

Councillor Hardie said he would agree with Councillor Green as any form of alcohol and driving was a serious offence in his eyes.

Councillor Kinniburgh said he did believe that the licence should be suspended. He said he thought it would be difficult to prove the intention to drive in a court of law and that was why Mr MacIntyre had not received a driving ban. He acknowledged that some Members were minded to take Mr MacIntyre at his word but said he was concerned about the amount he was over the limit. He also commented that his story kept changing and that he had difficulty with that. He advised that he believed there was an element of remorse and regret over the actions he took and that he should have just walked past the vehicle. Councillor Kinniburgh said he was not minded to suspend the licence for the unexpired portion.

Motion

To agree to suspend Mr MacIntyre's Taxi Driver's Licence with immediate effect for a period of 3 months.

Moved by Councillor David Kinniburgh, seconded by Councillor Rory Colville.

Amendment

To agree to suspend Mr MacIntyre's Taxi Driver's Licence with immediate effect for the unexpired portion of the Licence.

Moved by Councillor Graham Hardie, seconded by Councillor Kieron Green

A vote was taken by calling the roll.

Motion

Councillor Colville
Councillor Devon
Councillor Kinniburgh
Councillor Taylor
Councillor Trail

Amendment

Councillor Forrest
Councillor Green
Councillor Hardie

The Motion was carried by 5 votes to 3 and the Committee resolved accordingly.

DECISION

The Committee agreed to suspend Mr MacIntyre's Taxi Driver's Licence (No. 4274) as he was no longer a fit and proper person to hold the Licence. It was agreed to suspend the Licence with immediate effect for a period of 3 months.

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