

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 23 FEBRUARY 2022**

Present: Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Roderick McCuish
Councillor Mary-Jean Devon	Councillor Jean Moffat
Councillor Kieron Green	Councillor Alastair Redman
Councillor Graham Hardie	Councillor Richard Trail
Councillor Donald MacMillan BEM	

Attending: Shona Barton, Committee Manager
Graeme McMillan, Solicitor
James Buchanan, Applicant
Jane MacLeod, Applicant's Solicitor
Sgt Wendy Maginnis, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Audrey Forrest and Sandy Taylor.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (J BUCHANAN, DUNOON)

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 the Applicant opted to proceed by way of audio call and joined the meeting by telephone. The Applicant's Solicitor opted to proceed by way of video call and joined the meeting by MS Teams. Additional paperwork was also submitted on behalf of the Applicant and this was contained within a Supplementary Agenda pack.

Police Scotland opted to proceed by way of audio call and Sgt Maginnis joined the meeting by telephone.

The Chair referred to a preliminary matter and advised that Police Scotland had requested the Committee take into account a number of matters that were considered "protected" in terms of the Rehabilitation of Offenders Act 1974. It was noted that the Committee may take into consideration evidence relating to protected matters where they were satisfied that justice could not be done except by admitting such evidence.

The Chair outlined the procedure that would be followed in this respect and invited Police Scotland to address the relevancy of the protected matters.

POLICE SCOTLAND

Sgt Maginnis said that the Applicant had a number of matters considered protected in terms of the Rehabilitation of Offenders Act 1974. She advised that it was the Chief Constable's contention that justice could not be done without admitting these issues as they were relevant to this application.

The Chair then invited the Applicant's Solicitor to ask Police Scotland questions and to address the relevancy of the protected matters to his application.

APPLICANT

Mrs MacLeod said that Mr Buchanan had no secrets but Sgt Maginnis had referred to matters which could be covered by the Rehabilitation of Offenders Act. She commented that she had listened to the latter part of the previous hearing and that more than one Councillor had referred to reformed character and matters that happened in the past. She said that if the protected matters Police Scotland were taking about were spent then that was what they were and the purpose of the Rehabilitation of Offenders legislation was to allow a person to move on afresh and rehabilitate themselves. She said she would speak later about Mr Buchanan's character and to the fact that he was a well-known character in Dunoon and a driver for many years. He was also a taxi driver for many years and the loss of this licence in 2017 would be spoken about later. She advised that under the Rehabilitation of Offenders legislation that offence would also shortly become spent. She asked the Committee to not look into the past and to not pay attention to matters now classed as spent.

The Chair invited Police Scotland to comment on the Applicant's submission. Sgt Maginnis advised that she had no comment to make.

The Chair then invited questions from Members.

MEMBERS' QUESTIONS

Councillor McCuish asked Sgt Maginnis why she believed the Committee should see these convictions. Sgt Maginnis said she believed they were relevant to someone driving a taxi.

Councillor Moffat said she thought the protected matters should be brought to the attention of the Committee.

Councillor Green said it would be helpful to ensure the Committee were coming to the fairest possible decision.

Councillor Colville also agreed that the Committee should see the protected matters and this was supported by Councillor Kinniburgh.

The Committee decided that the protected matters were relevant to the Application and a copy of a letter from Police Scotland was shared on screen and emailed to the Committee.

The Chair then outlined the hearing procedure that would be followed and invited the Applicant's Solicitor to speak in support of the application.

APPLICANT

Mrs MacLeod advised that Mr Buchanan was a long standing resident of Dunoon. He was 55 years old and had held a driving licence for over 31 years. She referred to a spell in his life before his licence when he had a form of epilepsy. He had recovered from that and she referred to a letter she had lodged from Mr Buchanan's GP which confirmed that he'd had no seizures since 1992. Mrs MacLeod commented that Police Scotland had mentioned in their correspondence, Mr Buchanan's failure to declare any medical conditions. She said that they were not aware of any other medical condition. She advised that Mr Buchanan was not on any medication. She said that he had held a taxi driver's licence from Argyll and Bute Council for a period of over 13 years until this licence was suspended in 2017. She advised that some Members may recall that this licence was suspended as a result of an extremely unfortunate incident in January 2015. She explained that Mr Buchanan had been picking up a taxi client near the Co-op in Dunoon. She said it was January and there was low sun. She advised that a gentleman was staggering across the road and was hit by Mr Buchanan as the sunlight had prevented him from seeing the pedestrian. She advised that regrettably the gentleman in question had passed away. She said that Mr Buchanan lost his driving licence for 3 years in 2017 and was given a community payback order. She confirmed that Mr Buchanan carried out the community payback order and his driving licence was returned to him in August 2020. She said that there had been no issues with his driving licence since then.

As well as being a taxi driver, Mrs MacLeod advised that Mr Buchanan was employed as a Shelf Stacking Supervisor with the Co-op. She said that he has been employed by the Co-op for 15 years and that he participates in Co-op fundraising for the community and that he did a lot of good work for the community. She advised that should the Committee be good enough to grant Mr Buchanan his licence he would not be giving up his work with the Co-op. She said that he would drive his taxi at the weekends and evenings and that there would be no clash with his work with the Co-op.

She advised that as well as lodging the letter from his GP, she had also lodged 3 letters of support. One was from Alan Forrest of Cowal Cabs who had advised he would be prepared to re-employ Mr Buchanan. Letters from Isobel Macleod and Heather Good of Dunoon also spoke highly of Mr Buchanan and his ability to drive a taxi.

Mrs MacLeod commented that Sgt Maginnis had also referred to one offence in 2002. She pointed out that this was almost 20 years ago. She explained that on that occasion Mr Buchanan had lent his car to a friend and that friend told him he was insured to drive the car. That was not the case and as a result of that Mr Buchanan was convicted. She said this was a spent conviction of 19 years ago and that since that date the Committee had granted Mr Buchanan a taxi driver licence so they must have discounted that conviction then some 13 or 14 years ago.

Mrs MacLeod advised that the other matter referred to was in 1999 and no proceedings took place so the Procurator Fiscal did not consider it was serious enough to take matters further and subsequently Mr Buchanan was given a taxi driver licence by the Council.

She advised that Mr Buchanan was an upstanding and good member of the community in Dunoon and that he felt he had been punished enough. He lost his licence 3 years ago and also his income. He received his driving licence back almost 2 years ago and has had no problems since then. She advised that he worked hard in the Co-op and wanted to contribute further to life in Dunoon and work as a taxi driver.

POLICE SCOTLAND

Sgt Maginnis referred to a letter dated 23 September 2021 which advised that the Chief Constable objected to this application on the grounds that the Applicant was not a fit and proper person to be the holder of a licence. Sgt Maginnis advised that as a result of an incident which took place on 3 January 2015, Mr Buchanan was convicted at Glasgow High Court on 19 June 2017 under the Road Traffic Act 1988. s. 2B.

Mr Buchanan was also reported to the Procurator Fiscal for failing to disclose a relevant medical condition on his taxi driver applications to Argyll and Bute Council on 15 June 2012 and 22 June 2015. On 20 April 2017, for reasons unknown to the Police, the Procurator Fiscal decided to take no proceedings against Mr Buchanan.

The letter also advised that as a result of an incident on 17 December 2006, Mr Buchanan was reported to the Procurator Fiscal for s3 Road Traffic Act 1988. On 11 June 2017, for reasons unknown to the Police, the Procurator Fiscal decided to take no proceedings against Mr Buchanan.

Sgt Maginnis also referred to another letter also dated 23 September 2021 which advised that the Applicant had a number of matters regarded as 'protected' in terms of the Rehabilitation of Offenders Act 1974. As the Committee had agreed that these matters were relevant to this application, she proceeded to advise of a conviction Mr Buchanan received at Court on 5 December 2002 under the Road Traffic Act 1988 s.143(1) & (2). She also advised that as a result of an incident on 24 December 1999, Mr Buchanan was reported to the Procurator Fiscal for s.3 Road Traffic Act 1988. The Procurator Fiscal, having decided there was enough evidence to prosecute, issued a Fixed Penalty fine in respect of the charge libelled.

MEMBERS' QUESTIONS

Councillor Colville referred to the Police letter advising that no declaration of impediment to health was declared in Mr Buchanan's taxi driver applications in 2012 and 2015. He asked Mrs MacLeod if Mr Buchanan still stood by this. Mrs MacLeod said yes and that was why the letter from his GP was obtained. She confirmed there was no other medical reason apart from the form of epilepsy which had not occurred since 1992.

Councillor Colville commented that Mr Buchanan had an unfortunate record. He referred to the incident with a motor cycle, hitting another vehicle after veering onto the opposite carriageway and also hitting a pedestrian. He asked Mrs MacLeod if she would agree this was not normally something you would expect to see from someone driving every day to have so many instances. Mrs MacLeod advised that the incident in 2002 did not relate to Mr Buchanan's driving. He had allowed someone else to drive his car and this had been an error of judgement. She said the motor bike incident in 1999 was almost 20 years ago and advised that this matter should not really be considered due to the passage of such a long time. She advised that the 2017 incident was as a result of low sun and was extremely regrettable. Mr Buchanan was referred to the High Court and at the end of the day his sentence was to lose his licence for 3 years and to do a community payback order.

Councillor Green asked Sgt Maginnis if there was a particular reason why the Committee should be asking Mr Buchanan about his medical condition. Sgt Maginnis said the reason was there was an allegation that Mr Buchanan had epilepsy and this should be disclosed on application forms and it was not. She advised that Police records showed that he did

have epilepsy and this had been declared to the DVLA. She advised that the Committee should confirm whether there were any medical concerns that needed to be disclosed prior to granting a licence.

Councillor Kinniburgh referred to the GP letter which advised that Mr Buchanan last had a seizure in 1992. He sought and received confirmation from Mrs MacLeod that this related to his epilepsy. She advised that there was no evidence of anything after that.

Councillor Kinniburgh referred to the passage of time since the seizure. He asked Sgt Maginnis if this was what Police Scotland were referring to or if there was anything else that Police Scotland were aware of. Sgt Maginnis referred to the incident in 2015 and advised that as part of that investigation Mr Buchanan was sent certain medical forms from the DVLA. In these forms Mr Buchanan declared he had epilepsy. Sgt Maginnis advised she could not say how many episodes he'd had or if he was on any medication, but the disclosure was made by Mr Buchanan at that time and that was why Police Scotland charged him with failure to provide that information when applying for a taxi licence in 2012 and 2015. Sgt Maginnis read out the Police statement relating to the medical questionnaire completed by Mr Buchanan confirming he had epilepsy. She confirmed that was why these charges came about.

Councillor Kinniburgh asked Mrs MacLeod if Mr Buchanan was referring to the incident in 1992 when declaring his epilepsy in 2015. Mrs MacLeod said she thought it must have been. She advised that Mr Buchanan obtained his driving licence 31 years ago. She commented that she believed if you suffer from epilepsy you could not get a licence until you were 2 years free of seizures. She said that after he lost his licence he was given it back in August 2020 and that he had also been given a taxi driver's licence in the intervening years and at each of these stages, at least for the DVLA, he would have had to have fitness to drive. She said that it must have been 10 years since his seizure and the Committee may wish to ask Mr Buchanan why he declared it in 2015.

Councillor Kinniburgh asked Mr Buchanan why he declared his epilepsy in 2015 and if he was referring to the 1992 seizure. Mr Buchanan confirmed that his declaration in 2015 related to the 1992 seizure.

Councillor Kinniburgh commented that Mr Buchanan had not declared his epilepsy to the Council when applying for his taxi driver licence before 2015. Mr Buchanan said he did not think he needed to declare it.

Councillor Trail sought and received confirmation from Mr Buchanan that he was not on any medication for epilepsy.

Councillor Kinniburgh referred to the section in the taxi driver application which asked for medical conditions to be declared. He asked Mr Buchanan why he did not declare his epilepsy on the application form. Mr Buchanan said that he thought had declared everything.

Councillor Kinniburgh sought and received confirmation from Mr Buchanan that his GP did not think his epilepsy was an issue anymore.

Councillor Kinniburgh asked Mrs MacLeod if she was involved in the case in 2015. Mrs MacLeod advised she became involved in 2016 when Police Scotland wrote to the Committee calling for Mr Buchanan's licence to be suspended. At that stage the matter had not been dealt with at court and his licence was not suspended until 2017 after he

was convicted. She said that it was almost 5 years down the line and that this conviction was almost spent in itself.

Councillor Colville sought clarity on the 2016 incident. He asked for an explanation why the car had veered across the carriageway and crashed into a car. Mrs MacLeod said that case did not go to proceedings. Councillor Colville asked Mr Buchanan for an explanation. Mr Buchanan said he took his eyes off the road for 2 seconds to look for something that had dropped between his legs from the dashboard. This caused him to veer over the road.

SUMMING UP

Police Scotland

Sgt Maginnis said that as per the Chief Constable's letters, he objected to this application on the grounds that the Applicant was not a fit and proper person to hold a licence due to his previous convictions and for causing death by dangerous driving.

Applicant

Mrs MacLeod asked the Committee to not take account of the matters which had happened a long time ago in 1992. The most recent incident in 2006 was, some 15/16 years ago. She pointed out that for a period after these incidents referred to, the Council gave Mr Buchanan a taxi driver's licence until the incident in 2015. She said there was a pedestrian on the road that should not have been, which led to a very unfortunate incident when his sight was restricted by low sun glare. She advised that Mr Buchanan was an upstanding member of the community in Dunoon. She added that his epilepsy had not required treatment for 30 years, with the last seizure being in 1992. She said it was not surprising that someone could become confused as to whether it should be declared or not. She said that his driving licence was returned to him in 2020 and that the DVLA could have pointed out that he was not a fit and proper person to drive but they did not. She said that the references lodged spoke to his suitability to drive a taxi and his employability. She advised that he worked hard in the Co-op and worked hard in the community and that he deserved another chance. She asked the Committee to look at the old matters as spent and advised that the current matter would be spent soon.

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

DEBATE

Councillor McCuish referred to the old convictions and commented that the Committee had granted the man a licence on these old convictions before. He said that the one outstanding conviction was due to be spent very soon.

Councillor Green said he had not made up his mind about this. He advised that the additional material provided by the Applicant helped in terms of building a case for why he should be given a licence but the death by dangerous driving conviction was very serious. He said that he accepted the argument that convictions became spent but the Committee needed to think of the wider public safety.

Councillor Colville said he was not an expert in epilepsy and questioned whether it ever disappeared. He said this gave him concern. He said he had no doubt Mr Buchanan was an excellent driver but he had concerns given the history. He said he took on board what

Councillor McCuish said. He said it would be good to get assurance that regular testing was done.

Councillor MacMillan referred to the sun glare. He commented that it could happen to anyone and that he supported the view of Councillor McCuish.

Councillor Hardie said he had serious reservations about this application. He said he was not sure he could support granting a licence to someone who had a conviction of death by dangerous driving. He said that he had a friend with epilepsy and that it could come back at any time. He said he did not want to grant the licence.

Councillor Moffat commented that Mrs MacLeod had referred to the previous hearing and had suggested the Committee show the same leniency. Councillor Moffat pointed out that the previous Applicant was a much younger, healthy man. She said she felt immense sadness for Mr Buchanan. She commented that she had a sister with epilepsy and advised that she had never known it to just disappear. She said that she would like to be kind and agree with Councillors McCuish and MacMillan but she was pulled and constrained by the medical issue. She said she found it very difficult to come down on the side of the Applicant and that she did not think there was anything else that could be said to enlighten the Committee further.

Councillor McCuish commented that the Committee had to be careful when starting to mention a person's age and also mentioning epilepsy as the Committee were not experts in that. Confirmation had been received in a letter from Mr Buchanan's GP that he had not had a seizure since 1992 which, he said, almost guaranteed he had no outstanding medical issues. He said he was basing his thoughts purely on facts.

Councillor Redman said it was important as a Committee to judge each case on facts rather than feelings. He advised that as far as he could see factually the Applicant had not had a seizure since 1992 and the Committee had to go with the facts. In line with Councillor McCuish and others, he said he was probably minded to approve the application and that he was basing his decision on facts not feelings.

Councillor Kinniburgh noted that Members were finding it difficult to reach a decision on this case and he felt the same. He advised that the position in relation to epilepsy, he felt in this instance this was something the Committee needed to put to the back of their minds due to the passage of time since the Applicant last had an episode. He advised that his difficulty was why Mr Buchanan felt he needed to declare it in 2015 but not previous to that and not after that and not with this application. He said he felt the Committee needed to look at the convictions. He advised that he accepted what was said about sun glare and acknowledged that could happen. He noted that Mr Buchanan was convicted in 2017, got a community payback order and a disqualification for 36 months and his licence endorsed. He advised that his feeling at the moment was that it might just be too soon to consider granting this licence.

Motion

To agree to refuse Mr Buchanan's application for a taxi driver licence on the grounds that he was not a fit and proper person to hold a licence.

Moved by Councillor David Kinniburgh, seconded by Councillor Graham Hardie.

Amendment

To agree to grant a taxi driver licence to Mr Buchanan.

Moved by Councillor Roderick McCuish, seconded by Councillor Donald MacMillan.

A vote was taken by calling the roll.

Motion

Councillor Colville
Councillor Green
Councillor Hardie
Councillor Kinniburgh
Councillor Moffat

Amendment

Councillor Devon
Councillor MacMillan
Councillor McCuish
Councillor Redman
Councillor Trail

On there being an equality of votes the Chair gave his casting vote and the Motion was carried by 6 votes to 5 and the Committee ruled accordingly.

DECISION

The Committee agreed to refuse Mr Buchanan's application for a taxi driver licence on the grounds that he was not a fit and proper person to be the holder of the licence.

(Reference: Report by Head of Legal and Regulatory Support, written information from the Applicant submitted and written information from Police Scotland, tabled)