

PRACTICE DIRECTION NUMBER 6

APPLICATION OF REHABILITATION OF OFFENDERS ACT 1974 (AS AMENDED) TO PROCEEDINGS BEFORE A TRAFFIC COMMISSIONER

Effective from 26 June 2008

Section 1 of the Act provides that a person is to be treated as a rehabilitated person and a conviction to be treated as “spent” provided the following conditions are satisfied in relation to any offence or offences committed before or after commencement of the Act:

- the sentence imposed is not excluded from rehabilitation under the Act;
- and
- since the conviction and during the relevant rehabilitation period, there has not been a subsequent conviction and sentence which is excluded from rehabilitation.

A person can only become a rehabilitated person if the sentence has been served in full or there has been full compliance with the requirements of the sentence.

However, a failure to pay a fine or breach of a community penalty does not exclude a person from subsequently becoming rehabilitated.

A sentence of imprisonment is deemed to have been served as at the time that the order requires the offender to be released from prison.

Any references in the Act to “a conviction” include references to a conviction by or before a court outside Great Britain. It should be noted that “conviction” is a legal term which is not the same as a court hearing resulting in a finding of guilt. This was considered in *R v Rupal Patel No 2006/4890/B5* where it was pointed out that a conditional discharge is not strictly a conviction. The same applies to other court disposals including an absolute discharge. Accordingly an operator who might otherwise be under a duty to notify the Traffic Commissioner of a conviction may not be required to do so. Similarly a discharge from a court will NOT be a disposal that renders a licence liable to automatic revocation under Schedule 3 paragraph 2 of the Goods Vehicles (Licensing of Operator’s) Act 1995.

Important guidance to employers (which would equally apply to traffic area offices) was issued by the Court of Appeal in the *Patel* case (above) where Lord Justice Hughes said:

It is perfectly open to...employers to ask a question such as “Have you ever been found guilty of a criminal offence?” or indeed “Have you ever committed a criminal offence?” or, if necessary, “Have you ever appeared in court and been sentenced, including an absolute or conditional discharge, for an offence?”

Application forms and paperwork issued should reflect the above guidance from the Court of Appeal.

Section 4 sets out the effect that rehabilitation has on an offender. A person who has become a rehabilitated person shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offences which were the subject of the conviction. As a result:

- no evidence is admissible in any proceedings before a judicial authority in Great Britain to prove that the individual has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of the spent conviction; and
- no question can be put to that individual in any such proceedings, which cannot be answered, without acknowledging or referring to a spent conviction.

For the purposes of section 4 “proceedings before a judicial authority” include, in addition to proceedings before a court of law, proceedings before any tribunal, body or person having power:

- by virtue of any enactment, law, custom or practice;
- under the rules governing any association, institution, profession, occupation or employment; or
- under any provision of an agreement providing for arbitration with respect to questions arising under there;

to determine any question affecting the rights, privileges, obligations or liabilities of any person or to receive evidence affecting such matters.

Section 4(2) and (4) provide for questions to be put seeking information with respect to previous convictions for offences in proceedings which are not those before a judicial authority (see above) in circumstances where the Secretary of State makes an order exempting certain classes, or classes of case, from the provisions of section 4. These exemptions are set out in the Rehabilitation of Offenders Act 1974 (Exceptions) Order. However, there appears to be no reference in any of the schedules to that Order (which have been substantially

amended over the years) either to proceedings before a Traffic Commissioner or to professions, offices, employments and work, which fall within the jurisdiction of a Traffic Commissioner.

Section 7 of the Act sets out specific limitations on rehabilitation. Of these, the following are relevant:

- section 7(1)(d) – the operation of any legal provision by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period; This could for example include being placed on a sex offender register.
- section 7(2)(a) – nothing in section 4 affects the determination of any issue relating to a person's previous convictions or to circumstances ancillary thereto in any criminal proceedings before a court in Great Britain.

Again, there appears to be no reference to section 7(1)(d) being adopted with reference to proceedings before Traffic Commissioners and section 7(2)(a) specifically applies to criminal proceedings before a court.

However, proceedings before Traffic Commissioners may fall within the provisions of section 7(3), which state:

“If at any stage in any proceedings before a judicial authority in Great Britain the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it) that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of section 4(1) and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.”

The purpose of Section 7(3) is not to confer a dispensing power to be exercised by way of discretion by adjudicating bodies, but to ensure that spent convictions stay spent unless in the classes of case where it is permissible to do so, the party applying to put the spent conviction in can satisfy the judicial authority concerned that there is no other way of doing justice. (R v Hastings Magistrates' Court ep McSpirit (1994) 162 JP 44).

The procedure to be adopted when admitting spent convictions before a local authority or justices considering the grant of a licence to drive a hackney carriage was considered in *Adamson v Waveney District Council* [1997] 2 All ER 898.

The case of *Adamson v Waveney District Council* contains useful parallels in terms of determining the relevance of previous convictions to proceedings before a Traffic Commissioner. In this case a district council refused to grant a Hackney Carriage Licence and the applicant appealed to the local magistrates' court. Summarising the relevant legislation, a local authority is not to grant a hackney carriage licence to an individual unless satisfied that the individual is a fit and proper person to hold such a licence. In effect, therefore, a similar situation to that before a Traffic Commissioner where the question of "good repute" arises.

The decision in this case was as follows:

- where a judicial authority is considering whether justice cannot be done in a particular case except by admitting evidence of spent convictions, it would be contrary to the purpose of the 1974 Act to receive all spent convictions and then decide which ones to take into account;
- where an application is before a local authority the Chief Constable who is asked to provide information should identify the issue to which the spent convictions would relate if they were admitted and then should not only limit his disclosure to those convictions which are relevant but should also provide a covering letter indicating in general terms the class, age and seriousness of each of those offences in order to help the local authority to decide whether, once it has heard the applicant on the matter, it wishes to be informed of the details of the spent convictions so that it may treat them as material convictions;
- where there is an appeal before the magistrates' court the local authority's advocate should indicate to the court in general terms the class, age and seriousness of the offences in order to help the court decide whether, once it has heard the applicant on the matter, it wishes to admit evidence of the convictions;
- in any event it may be that only some of the spent convictions should be received and the applicant should be given an opportunity to persuade the tribunal that any spent convictions which have been disclosed are either irrelevant or should not prejudice the application because of their age, circumstances or lack of seriousness;

- the tribunal should come to its own dispassionate conclusion having regard to the interests of both the applicant and the public in whose interests the exceptional power to have regard to spent convictions is being exercised.

Conclusions

1. The Rehabilitation of Offenders Act 1974 applies to proceedings before a Traffic Commissioner. As such, convictions that are spent according to the schedule attached to this Practice Direction should not be raised as a matter of course in PI hearings.
2. PI hearings are “proceedings before a judicial authority” for the purposes of s.7(3) of the Act and, therefore, spent convictions can be raised if it is concluded that justice cannot be done in the case except by admitting or requiring evidence relating to a person’s spent convictions or to circumstances ancillary thereto.
3. There must be no other way of doing justice in the case other than putting in the spent conviction.
4. Not all spent convictions will be relevant to PI hearings and each case and the application of s.7(3) will have to be considered on its own individual merits. Thus, for example, previous convictions for violence or of a sexual nature will invariably be relevant in cases where a bus operator is applying for a licence, but convictions for dishonesty may or may not be relevant to both goods and PSV operator applications depending upon their age and the seriousness of the matters for which the conviction was recorded. The same principle may be applied when Traffic Commissioners consider vocational driver conduct cases.
5. There is no reason why the procedure in *Adamson v Waveney DC* cannot be adopted in respect of proceedings before a Traffic Commissioner. The Chief Constable for an area can be asked to provide information identifying the issue to which the spent convictions would relate, should be asked to limit disclosure to those convictions which are relevant and should provide a covering letter indicating the class, age and seriousness of those offences.

At the Public Inquiry the applicant, operator or vocational licence holder (as the case may be) can be given an opportunity to persuade the Traffic Commissioner that the spent convictions which have been disclosed are either irrelevant or should not prejudice the case because of age, circumstances or lack of seriousness.

The Traffic Commissioner can then reach a dispassionate conclusion having regard to the interests of both the party before the hearing and the public as to whether or not the exceptional power to have regard to spent convictions should be exercised.

6. In Practice Direction (Criminal: Consolidated) [2002] the Lord Chief Justice advised that when previous spent convictions are admissible they should not be referred to if it can be reasonably avoided (and in any event should not be referred to without the authority of the Judge).

APPENDIX – REHABILITATION PERIODS

A sentence of imprisonment for life or a sentence of imprisonment, detention in a YOI, a sentence of preventative detention or a sentence of detention during Her Majesty's pleasure for terms exceeding 30 months are excluded from rehabilitation. Otherwise:

Where on a conviction the sentence imposed is:	The rehabilitation period begins on conviction and lasts for:
IMPRISONMENT IN A YOI, CORRECTIVE TRAINING for MORE THAN 6 MONTHS but not exceeding 30 months	10 years*
IMPRISONMENT NOT EXCEEDING 6 MONTHS	7 years*
FINE (or other order not specified below)	5 years*
BORSTAL TRAINING	7 years
DETENTION (PCC(S)A 2000, s.91) under CYPA 933, s.53 for MORE THAN SIX MONTHS but not exceeding 30 months	3 years
DETENTION under PCC(S)A 2000, s.91, s.53 for NOT MORE THAN 6 MONTHS	3 years
Detention in a YOI	3 years
PROBATION (COMMUNITY REHABILITATION) ORDER, where offender 18 years or over at date of conviction; Where offender under 18 at date of conviction	5 years 2½ years from conviction or a period beginning with date of conviction and ending when order ceases to have effect (whichever is the longer)
DETENTION AND TRAINING ORDER under CDA 1998, S.73	In the case of a person aged 15 or over a date of conviction, 5 years if order was, 3½ years if it was not, for a term exceeding 6 months. In the case of a person under 15, a period beginning with date of conviction, and ending 1 year after the date on which the order ceases to have effect

SECURE TRAINING ORDER. BIND OVER to keep the peace or be of good behaviour, CARE ORDER, SUPERVISION ORDER under PCC(S)A 2000, s.63(1), Care order under CYPA 1933, S.57, Supervision order under CYPA 1933 or CYPA 1963	1 year or duration of order (whichever is longer)
Attendance at an ATTENDANCE CENTRE	Duration of the order plus 1 year
HOSPITAL ORDER (with or without restriction order)	5 years or duration of the order plus 2 years (whichever is longer)
DISQUALIFICATION, disability, prohibition or other penalty	The duration of the order

* Reduced by half if the offender was under 18 at the date of conviction.