

GENERAL PURPOSES AND LICENSING COMMITTEE – 15 JANUARY 2010

CRIMINAL RECORD CHECKS FOR BOATMEN LICENCES

1. Introduction

- 1.1 The purpose of this report is to consider the introduction of a criminal records check for boatmen licence applications.

2. Background

- 2.1 On the 13 November 2009 the General Purposes and Licensing Committee agreed changes to the current system for the licensing of both Boatmen and Pleasure Boats. It was noted that the undertaking of criminal checks for boatmen licences should be explored.

3. Criminal Record Checks

- 3.1 The Criminal Records Bureau (CRB) was established to provide a service called Disclosure, which allows employers to access the conviction history of people working or seeking to work with children or vulnerable adults. Certain posts are excluded from the Rehabilitation of Offenders Act 1974 and in such posts the employer can request details of all spent and unspent convictions. Organisations registered with the CRB can only apply for a CRB check if that position is included in the list of 'eligible posts'. There is currently no disclosure access category code for boatmen.
- 3.2 The alternative would be to require the applicant to provide a criminals record check issued by Disclosure Scotland, as currently required by applicants for personal (alcohol) licences. Anyone can apply for a basic disclosure in their own name but the information given is restricted to unspent convictions only. Requests for either the standard or enhanced disclosure, which provides additional information such as cautions, spent convictions and other confidential material, have to be made by a registered body. This organisation is not registered as such a body.

4. Legal Implications

- 4.1 The advice received from legal services is detailed below:
- 4.2 Relevant legislation relating to pleasure boats and vessels should be considered, namely: -
- 4.3 Section 94 of the Public Health Acts Amendment Act 1907

This states that local authorities may grant licences to the persons in charge of or navigating pleasure boats/ vessels *'upon such terms and conditions as they may think fit'*.

The 'terms and conditions' referred to, most likely relate to the terms and conditions of the licence itself (e.g. how the long the licence will be valid,

which boats it relates to etc) rather than to pre-conditions for a person being granted a licence. Interpretation of the legislation and case law imply that the courts would allow local authorities to refuse a licence for anyone who has criminal convictions.

In relation to the impact of the Rehabilitation of Offenders Act 1974, the Act would usually prevent the Council from taking account of spent convictions. However, decisions about granting licences for boatmen would almost certainly be '*proceedings before a judicial authority*' and the Council could therefore consider whether we can rely upon sections of the Act which effectively states that the Council could obtain and admit evidence of spent convictions if, in light of any relevant considerations, justice cannot be done without such evidence.

The Council applies this reasoning when dealing with hackney carriage licence applications where the Council is likely to refuse an application if it's determined that the applicant is not a fit and proper person.

The Committee will need to consider whether they wish to establish their own (non-statutory) 'relevant consideration' (i.e. licenses should not be granted if the applicant has past convictions) when dealing with applicants who have relevant convictions. In deciding this, the Committee should be made aware that under section 94 of the Rehabilitation of Offenders Act any person aggrieved by the withholding of a licence may appeal to the Magistrates' Court. The Members may decide to accept this risk but the view of this office is that any appeal may well succeed and the Council could end up with an adverse costs order. Alternatively, the Council could face a judicial review in respect of its procedures if the Council introduces CRB checks as part of the process.

4.4 Section 185(1) (b) of the Local Government, Planning and Land Act 1980

This states that local authorities have powers to make bye-laws '*for fixing the qualifications of the boatmen or other persons in charge of such boats or vessels*'.

There are problems in relying upon this section:

- The Legal Department is not clear whether the absence of criminal convictions is the sort of 'qualification' envisaged by Section 185. 'Qualification' has the dictionary definition of 'an ability, quality or attribute'. Not having a criminal past could conceivably be a 'quality' or 'attribute' but that may possibly be stretching the reasonable interpretation too far.
- The Section 185 option would not allow the Council to obtain a CRB check and then exercise discretion; it would require specific qualifications to be set out in a bye-law and this would be very problematic in light of the Rehabilitation of Offenders Act 1974.

4.5 The Legal Department is of the view that neither of the above two bits of legislation provides the Council with a convincing entitlement to obtain, and then rely upon, CRB checks in deciding whether to issue a licence.

5. Conclusion

- 5.1 The main principle for licensing boatmen is to ensure that they are competent seafarers, whereas the purpose of hackney carriage and private hire licensing is to protect the public.

6. Recommendations

- 6.1 The Committee is asked to consider undertaking Criminal Records Bureau checks for applicants for boatmen licences.

Further information:

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Background Papers:

None.