

Submissions on the draft Animal Licensing Policy V1 submitted for consideration by the Environment Overview and Scrutiny Committee of South Kesteven District Council on 4 June 2024

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Here are my submissions on the current draft of the policy:

Misuse of the ‘fit and proper person’ test

The fit and proper person test is found in regulation 4(7) of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

<https://www.legislation.gov.uk/ukxi/2018/486>

It reads:

“(7) In considering whether the licence conditions will be met, a local authority must take account of the applicant’s conduct as the operator of the licensable activity to which the application for the grant or renewal relates, whether the applicant is a fit and proper person to be the operator of that activity and any other relevant circumstances.”

Note that the fit and proper person test is to be applied, along with other considerations, “in considering whether the licence conditions will be met”. It is not a standalone test of whether the local authority considers the person to be a fit and proper person. That is not the legal test.

The test is related to the licence conditions and not to other considerations.

The “licence conditions” referred to in this paragraph of the legislation are the General conditions which are found in schedule 2 and the Specific conditions are found in schedules 3 to 7.

When determining if a person is fit and proper the local authority must be able to identify which of the conditions in schedule 2 and/or the applicable schedule in schedule 3 to 7 is the relevant condition that the authority was considering when the authority applied its mind to the question of whether the person is a fit and proper person to carry out the licensable activity.

Looking through each of the conditions in schedule 2 and schedules 3 to 7 it is difficult to identify a licensing condition set out in those schedules where the presence or

absence of the specified conviction (specified in the local authorities' policy document) would be a relevant consideration in determining whether or not the applicant would be able to satisfy the relevant licensing condition.

Looking at the Secretary of State's guidance, to which the local authority must have regard, the relevant paragraph in the guidance reads:

"The inspector must consider whether the conduct displayed by the applicant indicates that they are a fit and proper person to carry out the licensable activity and meet their licence conditions."

Here the guidance focuses the attention of the inspector appointed by the local authority to inspect the premises and to examine the applicant on whether or not the applicant can "carry out the licensable activity and meet their licence conditions".

There is nothing in the Secretary of State's guidance which would indicate that the possession of a conviction for specified offences (specified in the local authorities' policy document) was a relevant consideration for the inspector.

Discrimination

The policy as currently drafted clearly discriminates against, in that it treats differently and to their detriment, those with specified convictions as compared to those without specified convictions.

Persons without specified convictions are not classed as a group of persons who would not normally be granted a licence whereas those with one of the specified convictions ARE classed as persons to whom a licence would not normally be granted.

This is as clear an example of discrimination as you could find. In order for this discrimination to be legal there must be a clear legal basis for operating this discriminatory rule. I can find no explanation in the policy document of the legal basis for such discrimination.

Children Act 2004

<https://www.legislation.gov.uk/ukpga/2004/31>

The local authority relies upon the provisions in the Children Act 2004 for excluding persons with specified criminal convictions from operating one of the licensable activities.

But this legislation has no applicability in the context of Animal Welfare and licensing of related activities.

The headnote to the Act reads:

"Children Act 2004

An Act to make provision for the establishment of a Children's Commissioner; to make provision about services provided to and for children and young people by local authorities and other persons; to make provision in relation to Wales about advisory and support services relating to family proceedings; to make provision about private fostering, child minding and day care, adoption review panels, the defence of reasonable punishment, the making of grants as respects children and families, child safety orders, the Children's Commissioner for Wales, the publication of material relating to children involved in certain legal proceedings and the disclosure by the Inland Revenue of information relating to children."

This Act is about services provided to and for children .. by local authorities. The other persons referred to are those providing services on behalf of or under contract to the local authority. This Act does not apply to independent traders providing animal related services to the public at large.

Care Act 2014

<https://www.legislation.gov.uk/ukpga/2014/23>

The local authority relies upon the provisions in the Care Act 2014 for excluding persons with specified criminal convictions from operating one of the licensable activities.

But this legislation has no applicability in the context of Animal Welfare and licensing of related activities.

The headnote to the Act reads:

"Care Act 2014

An Act to make provision to reform the law relating to care and support for adults and the law relating to support for carers; to make provision about safeguarding adults from abuse or neglect; to make provision about care standards; to establish and make provision about Health Education England; to establish and make provision about the Health Research Authority; to make provision about integrating care and support with health services; and for connected purposes.

Whilst it is debatable as to whether this legislation has any relevant to decisions on whether to grant, suspend or revoke a licence related to animal welfare, any intervention by the local authority in pursuit of their wider objectives to prevent abuse or neglect must be the necessary proportionate and reasonable actions necessary to prevent that anticipated abuse or neglect so as to not interfere with the legitimate rights of other individuals.

It can hardly be argued that banning an individual from pursuing a legitimate economic activity based on an apprehension that a person with specified criminal convictions may abuse or neglect individuals in the operation of that economic activity is a reasonable and proportionate decision by a local authority.

Crime and Disorder Act 1998

<https://www.legislation.gov.uk/ukpga/1998/37>

The local authority claims that section 17 of the Crime and Disorder Act 1998 requires it to have regard to the question of whether or not an applicant has specified criminal convictions when deciding whether to grant, suspend, vary or revoke a licence in relation to an animal welfare licensable activity.

The relevant section of this legislation reads:

17 Duty to consider crime and disorder implications.

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent,

- a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and
- b) the misuse of drugs, alcohol and other substances in its area; and
- c) re-offending in its area; and
- d) serious violence in its area.

The policy does not explain how, by refusing to grant a licence (animal welfare licence) to a category of person with specified convictions, this will prevent crime and disorder in its area; or prevent the misuse of substances; or prevent re-offending; or prevent serious violence.

Is it the intention of the local authority to use its licensing functions to prohibit persons with specified convictions from participating in ANY economic activities within its area? And if so, on what legal basis?

Legal risk to the local authority

Refusal to grant a licence

If a local authority refuse to grant a licence based on whether or not the applicant has criminal convictions in the list specified by that local authority (and not the list of relevant convictions specified in the legislation), is there a risk to the local authority of a successful challenge and a potential liability for damages?

The applicant has the option of appealing the local authority decision to the First Tier Tribunal (General Regulatory Chamber). If a local authority has acted wholly unreasonably in resisting an action in the Tribunal then the applicant has the option of asking for costs to be awarded against the local authority.

If it is clear that the local authority has acted wholly unreasonably in refusing to grant a licence and the applicant has suffered economic loss as a result of the wholly unreasonable actions of the local authority then the local authority is potentially liable for damages.

Suspension of licence

The local authority has the power to suspend a licence for a period of a maximum of 28 days following which it must either reinstate the licence or revoke the licence.

The local authority must have proper grounds for suspending a licence. These grounds are set out in regulation 15:

Grounds for suspension, variation without consent or revocation of a licence

15. A local authority may, without any requirement for the licence holder's consent, decide to suspend, vary or revoke a licence at any time on being satisfied that—

- (a) the licence conditions are not being complied with,
- (b) there has been a breach of these Regulations,
- (c) information supplied by the licence holder is false or misleading, or
- (d) it is necessary to protect the welfare of an animal.

These grounds do not have any reference in them to the matters which the policy requires the applicant to report to them in paragraph 7.5 of the policy:

- They have any type of licence suspended or revoked;
- Are arrested (whether or not charged with an offence);
- Are charged with a criminal offence;
- Are convicted of a criminal offence;
- Receive any caution or warning;
- Allegations are made of involvement in criminal activity; or
- Any pending charges, to include any notices of intended prosecution.

Since none of these are instances of matters which would be a material consideration for the local authority when deciding if they were satisfied that one of the four conditions for suspending a licence pursuant to regulation 15 had been met, the local authority cannot require an applicant to provide this information to them, nor penalise the applicant for failing to provide such information.

The matters set out in section 7 of the policy are simply not matters to which the local authority should have regard when making licensing decisions under the Animal Welfare Act 2006 and subordinate legislation.

There is therefore a significant legal risk to the local authority if they refuse to grant or they suspend or revoke a licence when they have no legal basis to do so.

Comparison with similar businesses

If further consideration needs to be given to the aspects of the current draft policy as regards its discriminatory effect on those applicants with past convictions, then the author would suggest consideration of the following:

- a) would the Local Authority have the ability to prohibit an applicant from operating a tool hire shop, or operating car hire business, or operating a café or restaurant;
- b) would the Local Authority impose similar reporting requirements to those required under clause 7.5 of the policy;
- c) how does the Local Authority explain the difference between the criteria specified in section 7 compared with the conditions under which a licence could be refused as documented in section 13, or suspended or revoked as specified in section 15;
- d) clause 6.2 states that the Local Authority must consider safeguarding considerations, in particular around the protection of children and vulnerable persons and must consider these in light of the Children Act 2004 and the Care Act 2014, but will issue a licence for many other businesses without these considerations (as the law does not empower the Local Authority to refuse to allow a business to operate based on these grounds). Where is the justification for imposing these additional considerations on a business, simply because it is concerned with Animal Welfare, as opposed to the restrictions imposed on other businesses that the Local Authority licences.

END

References

Legislation

Acts

Animal Welfare Act 2006 <https://www.legislation.gov.uk/ukpga/2006/45>

Care Act 2014 <https://www.legislation.gov.uk/ukpga/2014/23>

Children Act 2004 <https://www.legislation.gov.uk/ukpga/2004/31>

Crime and Disorder Act 1998 <https://www.legislation.gov.uk/ukpga/1998/37>

Regulations

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 <https://www.legislation.gov.uk/uksi/2018/486>

Guidance

Department for Environment Food & Rural Affairs (2024) Statutory guidance

Animal activity licensing process: statutory guidance for local authorities Updated 15 May 2024

<https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities/animal-activity-licensing-process-statutory-guidance-for-local-authorities>