Adamson v Waveney District Council

QUEEN'S BENCH DIVISION (CROWN OFFICE LIST)

SEDLEY J

24 JANUARY 1997

Road traffic – Hackney carriage – Licence – Application for licence – Evidence – Spent convictions – Authority admitting evidence relating to applicant's spent convictions to decide whether applicant fit and proper person – Whether authority right to do so – Whether authority having to identify issues to which spent convictions must relate before considering their admissibility – Rehabilitation of Offenders Act 1974, s 7(3).

The applicant applied to the respondent local authority for a hackney carriage licence under s 59[a] of the Local Government (Miscellaneous Provisions) Act 1976. In order to determine whether the applicant was a fit and proper person to hold a hackney carriage licence, the local authority obtained a list of spent convictions from the chief constable. Having considered the list, which contained convictions for road traffic offences and dishonesty, the local authority refused the grant of a licence. The applicant appealed to the justices. At the hearing, argument was heard as to the admissibility of the list of spent convictions which had been provided to the justices by the local authority. The justices decided to admit that list in its entirety, without considering the relevance of each conviction on the list individually and before identifying the issue to which that evidence related, and upheld the local authority's refusal of a licence. The applicant appealed by way of case stated.

Held – On an application for a hackney carriage licence, the local authority or licensing justices (the judicial authority), when deciding whether, exceptionally, to admit in evidence spent convictions under s 7(3)[b] of the Rehabilitation of Offenders Act 1974 should first identify the issue to which those convictions related and then should receive representations from those responsible for presenting the material as to its relevance to the issue which had been identified. The judicial authority next had to consider whether it should admit the convictions in the light of the issue before it, having been given an indication as to the class of offence involved, its age and apparent seriousness. Once some or all of the spent convictions had been admitted, an applicant would be entitled to be heard and make representations to persuade the judicial authority of the irrelevancy of those convictions to the application before it. It was only after that stage that the judicial authority could finally decide whether to grant the licence, taking into account not only the interests of the applicant as a person with spent convictions, but also the interests of the public. In the instant case the justices had erred in their approach to the admission of the list of spent convictions. However, since even if they had taken the right approach it was a near certainty that properly directed they still would have done what they in the event did, it was right that their determination should be affirmed. Accordingly, the appeal would be dismissed (see p 904 *a* to *c e f j* to p 905 *a g h*, post).

a Section 59, so far as material, is set out at p 899 *j* to p 900 *a*, post

b Section 7, so far as material, is set out at p 900 *j*, post

Reynolds v Phoenix Assurance Co Ltd [1978] 2 Lloyd's Rep 22 and *Morton v City of Dundee DC* 1992 SLT (Sh Ct) 2 considered.

Per curiam. A chief constable, when replying to a local authority's request for information regarding an applicant, has to give careful consideration to whether the applicant's spent convictions, if any, are capable of relating to the issue the local authority will have to decide and to ensure that his disclosure is limited to what is capable of being relevant (see p 904 *c d*, post).

Notes

For principles of rehabilitation in respect of spent convictions, see 11(2) *Halsbury's Laws* (4th edn reissue) paras 1566–1567.

For the Rehabilitation of Offenders Act 1974, s 7, see 12 *Halsbury's Statutes* (1994 reissue) 643.

For the Local Government (Miscellaneous Provisions) Act 1976, s 59, see 38 *Halsbury's Statutes* (4th edn reissue) 302.

Cases referred to in judgment

Morton v City of Dundee DC 1992 SLT (Sh Ct) 2.
R v Hastings Magistrates' Court, ex p McSpirit (1994) Times, 23 June.
Reynolds v Phoenix Assurance Co Ltd [1978] 2 Lloyd's Rep 22, CA.

Case stated

Bernard Charles Adamson appealed by way of case stated by the justices for the County of Suffolk in respect of their adjudication as a magistrates' court sitting at Lowestoft on 4 April 1995 whereby they upheld the refusal of the respondent, Waveney District Council, to grant a hackney carriage licence to the appellant. The questions for the opinion of the High Court are set out at pp 901, 902, post. The facts are set out in the judgment.

Timothy Straker QC (instructed by *Norton Peskett & Forward*, Lowestoft) for the appellant.
Meyric Lewis (instructed by *P R Cox*, Lowestoft) for the respondent.

SEDLEY J. This is an appeal by way of case stated from a decision of the justices for the Petty Sessional Division of North-East Suffolk. Their decision was to uphold the refusal of the local authority, Waveney District Council, to grant a hackney carriage licence to the applicant and present appellant, Mr Adamson.

The provisions of the Local Government (Miscellaneous Provisions) Act 1976 are such (for present purposes) that a local authority is not to grant a hackney carriage licence to an individual unless satisfied that he or she is a fit and proper person to hold such a licence. The issue which arose before the council at first instance and the justices at second instance was whether there should be admitted, as part of the material evidence, a list of spent convictions of the applicant. It was the view of the council that these were material to his fitness to hold a driver's licence, and they therefore proffered the list to the justices.

The way in which the obtaining of such a list of spent convictions is provided for is at present by means of s 47 of the Road Traffic Act 1991. This introduces into the 1976 Act a further subsection to s 59. It reads:

> '(1A) For the purpose of satisfying themselves as to whether an applicant is a fit and proper person to hold a driver's licence, a council may send to the chief officer of police for the police area in which the council is situated—(a) a copy

of that person's application, and (b) a request for the chief officer's observations; and the chief officer shall respond to the request.' *a*

The problem therefore arises, at that information-gathering stage, whether the chief officer's response can lawfully include any spent convictions of the applicant. This is determined by the Rehabilitation of Offenders Act 1974. The governing provision is in s 4(1): *b*

'Subject to sections 7 and 8 below, a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction 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 offence or offences which were the subject of that conviction …' *c*

Subsection (2) provides:

'… where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority—(a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer thereto may be framed accordingly …' *d*

Subsection (6) provides:

'For the purposes of this section and section 7 below "proceedings before a judicial authority" includes, in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person having power—(a) by virtue of any enactment, law, custom or practice; (b) under the rules governing any association, institution, profession, occupation or employment; or (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder; to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.' *e* *f*

It is common ground in this case that the initial consideration by the local authority of an application under s 59 of the 1976 Act for a hackney carriage driver's licence is a proceeding before a judicial authority within this provision. It appears *g* to follow that by virtue of the exception contained in s 4(2) the chief constable may treat the question put to him by the local authority as relating to spent as well as to unspent convictions. That, in any event, is what has happened here. It poses an immediate problem if the recipient local authority is to receive the whole of a previous offender's record, spent and unspent, relevant or irrelevant. It may be that *h* what I have to say shortly will help to resolve the problem that this, on the face of it, poses. The problem recurs, of course, on an appeal to justices of the kind that this case concerns.

When one turns to s 7(3), which is specifically referred to as regulating the effect of s 4(1), it provides: *j*

'If at any stage in any proceedings before a judicial authority … the authority is satisfied, in the light of any considerations which appear to it to be relevant … that justice cannot be done in the case except by admitting … evidence relating to a person's spent convictions … that authority may admit … the evidence in question … and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.'

Thus a power is given, not generally but under specific conditions, for the local authority and in turn the justices to admit certain spent convictions, evidence of which has been obtained from the local chief officer of police.

A list of spent convictions of the present applicant was in the hands of the local authority solicitor when the matter came before the justices. Quite properly, argument was heard as to the admissibility of any or all of it before a decision was taken as to whether the justices should look at the list. The case which has been stated sets out what was submitted to the justices. The submissions appear to have included (upon what legal basis I do not know) reference to a Parliamentary explanation to be found in Hansard during the passage of the 1991 Act; but I pass over this because it does not appear to have been directly influential in the conclusion reached.

The justices, having set out the arguments advanced to them, then set out the advice they were given. It included the following:

> 'i. We had a discretion, having regard to Section 7(3) of the Rehabilitation of Offenders Act 1974, whether or not to admit spent convictions.
>
> ii. We could consider that justice could not be done without admitting the spent convictions, notwithstanding Section 4(1) of that Act, because the list of spent convictions … includes convictions for dishonesty and breaches of the Road Traffic Act 1988 which are directly relevant to whether the applicant is a fit and proper person to hold a hackney carriage/private hire vehicle driver's licence.'

After recording that the accuracy of the tendered list was not in dispute they go on:

> 'iv. It was not necessary, in determining whether the previous convictions were admissible, to identify whether collectively or individually the convictions listed related to any issue which we had to determine. This we would do after we had considered all the evidence adduced by the Appellant and the Respondent council.
>
> v. The Chief Officer of Police having responded to the request by the council and having provided a list of previous convictions which was considered by the council to be relevant to the issue which had to be determined, we could consider the list to be relevant to the issue that we had to determine without having to consider the relevance of each item on that list individually.'

Unhappily the case stated contains no further paragraph setting out what the justices decided. It is known, however, that they decided in the event to admit the full list of previous convictions. The case stated therefore has to be read as if it included a further paragraph to the effect that the justices had accepted the advice they were given and decided accordingly on the course which I have described.

Three questions are posed for this court. The first is:

> 'Whether on an application for a hackney carriage/private hire vehicle driver's licence the Rehabilitation of Offenders Act 1974 applies so as to require, before receipt of any evidence as to spent convictions (within the meaning of that Act), a magistrates' court hearing an appeal against a refusal of such a licence to be satisfied, in the light of any considerations which appear to be relevant, that justice cannot be done without receipt of such evidence.'

The question does no more in substance than ask whether the Act means what it says, and both Mr Straker QC, for the appellant, and Mr Lewis, for the respondent, agreed that the answer is Yes.

The second question is in the following terms:

> 'Whether there was in the instant case any proper basis for the receipt of any or all of the spent convictions of the Applicant.'

The third question is:

> 'Whether before determining whether to receive such evidence a magistrates' court has to identify or have identified the issue for it to which such evidence relates.'

Mr Straker submits that the second question is to be answered in the negative, both as to the receipt of any of the spent convictions and as to the receipt of all of the spent convictions. He submits that the third question is to be answered in the affirmative. Mr Lewis offers opposite answers.

The way in which Mr Straker puts his case is as follows. He focuses on para (iv) of the advice given to and evidently accepted by the justices. It is, he says, wrong advice. It allows the authority to be influenced by convictions which are capable of being entirely irrelevant to any issue which they have to determine. He gives as an example (and it is a good example) a criminal record which includes a spent conviction for consensual homosexual activity which was, but no longer is, a crime. Knowledge of such a conviction, he submits with force, could be heavily prejudicial to an individual's chances, while legally it could have no relevance.

Further, he submits that to allow the admission at large of spent convictions on the basis adopted by the justices—that is to say that it need not relate to any particular issue—is to deprive the Act of any purpose. It is contrary to the plain meaning of s 7(3), which requires the decision-making body first of all to be satisfied that justice cannot be done except by the admission of spent convictions, and secondly, to that end, to treat 'relevant' as meaning relevant to the issue to be determined, all three words appearing, as they do, in s 7(3).

Mr Lewis, who appears for the local authority, submits that the justices rightly considered admissibility as a preliminary issue. With that I agree. He defends the fact that in the course of hearing argument the justices were told what the list of spent convictions contained, because, he submits, if the recital had included anything irrelevant, the justices were perfectly capable of disregarding it. They were then, he says, at liberty to determine any issue to which the evidence related. He points to the fact that the word 'convictions' in the relevant subsection is in the plural, and he submits that once the entire list of convictions is in, irrelevant ones can be disregarded, with the ultimate sanction that to take irrelevant convictions into account would be judicially reviewable.

I have to say that I find Mr Lewis' argument entirely unpersuasive in this regard. To argue, as he does, that the justices, having let in the list, were then at liberty to determine any issue to which the evidence related is to stand the entire statutory scheme on its head. It is to allow the list of spent convictions to be put in speculatively, in order to see if it is capable of having a bearing on anything that the court is dealing with. That, in my judgment, is entirely wrong. Mr Straker is right when he submits that any such approach subverts the entire purpose of the Act.

I venture (only because both counsel adopt it as a correct statement of the law) to quote what I said in *R v Hastings Magistrates' Court, ex p McSpirit* (1994) Times, 23 June.

> 'If it were open to justices in a situation such as faces the Hastings Justices simply to say, "The management of licensed premises is a responsible situation and it is important that we should know anything that may be known to the

a detriment of the individual concerned", then there would be very little point in having s 4(1) of the Rehabilitation of Offenders Act on the statute book at all. In my judgment, the purpose of s 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 b authority concerned that there is no other way of doing justice.'

That is why, in my judgment, the justices were also wrongly, because too baldly, advised that they had a discretion to admit spent convictions. It is misleading so to describe the power conferred by s 7(3). Section 7(3) creates a specific and limited exception to an otherwise overriding statutory exclusion of evidence of spent c convictions. It is an exception that has to be applied with regard both to the letter of s 7(3) and to the overriding purpose of the Act itself. It is a matter of judgment, not discretion. None of this is reflected in the advice which the justices received.

There is surprisingly little authority on the proper construction and application of s 7(3). However, in *Reynolds v Phoenix Assurance Co Ltd* [1978] 2 Lloyd's Rep 22 d the Court of Appeal had to consider it in a different context. Lord Denning MR (at 24) gave a general explanation of the subsection. He described its concluding words as 'somewhat confusing', but held the subsection to mean—'that the judicial authority can determine "any issue" by having regard to the spent conviction if it thinks it necessary.'

Lord Denning MR went on immediately to say: 'So we have to look at the issues e in the case.' That, it seems to me, gives a clear indication of the right procedural approach to the problem thrown up in a case such as the present one, of how early or late the deciding body should be prepared to look at the very list of convictions which it is being submitted that it ought not to be looking at.

The only other authority that counsel have been able to put before me (and again f it is helpful) is the decision of the Sheriff for Tayside, Central and Fife sitting at the Dundee Sheriff Court in *Morton v City of Dundee DC* 1992 SLT (Sh Ct) 2. The sheriff says (at 3):

'In my opinion this subsection envisages and requires two distinct stages in the deliberations of a judicial authority such as the respondents' licensing g committee. First, having been informed that an applicant has "spent" convictions but not having been given any details thereof, the authority must decide whether it is satisfied that justice cannot be done in the case except by admitting or requiring evidence of these "spent" convictions. This decision must be taken "in the light of any considerations which appear to [the h authority] to be relevant". Having reached the decision that it *is* so satisfied, the authority may then (and only then) look at the "spent" convictions in detail and reach its decision on the merits of the case having regard to them. It is not, in my opinion, within either the letter or the spirit of s. 7(3) of the 1974 Act that the judicial authority should have knowledge of the full details of the "spent" j convictions before deciding whether or not it should admit or require them in evidence.'

There is only one word (but it is an important word) that I would respectfully demur to in this formulation, and that is the use of the definite article in the phrase 'look at the spent convictions'. There is, in my judgment, a very careful distinction which has to be made between those spent convictions which are and those which are not potentially relevant.

Doing the best I can to give guidance in this situation, it seems to me that the following stages have to be gone through in any application such as that with which the justices were here concerned. First, with the help of the advocates before them, they have to identify what the issue is to which any spent convictions must relate if they are to be admitted. The issue here was the fitness of the applicant to hold the material licence. Secondly, those responsible for presenting material to the court must give their own objective, professional consideration to the question whether any or all of the spent convictions on the record are capable of having a real relevance to the issue which has been identified. When the matter is before justices, it will be the advocate for the local authority who must consider that. When the matter is before the local authority, it will be the chief constable who must consider it.

It may therefore very well be (and I offer this for consideration only) that the chief constable, when the matter is before the local authority, needs himself to give careful consideration to what spent convictions, if any, are capable of relating to the issue which the local authority will have to decide, and to ensure that his disclosure (which is, after all, in the form of observations, according to the statutory language) is limited to what is capable of being relevant.

I have no doubt that it would be wrong and dangerous to adopt the approach commended by Mr Lewis, which is to put in everything and leave it to first the local authority and then to the justices to put out of their minds what should never have been put into their minds; for example, the kind of spent conviction which Mr Straker was able to instance. Justice is not seen to be done in such circumstances.

Next, the 'judicial authority', as the Act calls it, has to consider whether it should admit the convictions in the light of the issue before it. Inevitably there will be procedural differences between what can happen before a local authority committee and what will happen before justices. These may, however, be able to be brought satisfactorily into line in the following way. Before justices I have no doubt that the right course is for the local authority advocate to indicate what is the class of offence, the age of the offence and perhaps, in broad terms, the apparent seriousness (gauged by penalty) of the offence shown by the record before him. That is the best that can be done, without pre-empting the very decision that the justices have to take, to enable the justices to decide (having heard anything the applicant wishes to say to the contrary) whether to admit any spent convictions. They may decide that some but not others in the list ought to be put before them.

Translating this back to the stage where the matter is before the local authority, it may very well be that the chief constable should correspondingly be invited to provide a covering letter giving the same broad indications, but no more, so that the committee can decide whether it needs to go into some or all of those offences, the existence of which has been indicated to them. That indication will of course, as I have said, already have been pruned of those which are clearly not relevant and should not be considered under any circumstances.

Once some or all of the spent convictions are admitted in evidence, either before the local authority committee or before justices, the applicant is then entitled naturally to be heard, not by way of suggesting that the convictions were incorrectly arrived at but in order to persuade the judicial authority that they are either, in truth, irrelevant or such, by reason of their age, circumstances or lack of seriousness, that they should not jeopardise his application. All of that is simple natural justice.

The judicial authority must then come to its own dispassionate conclusion, having in mind not only the interests of the applicant as a person with spent

convictions but also the public in whose interests these exceptional powers are being exercised.

I conclude, therefore, that the justices have erred in their approach to the admission of this list of convictions. The list, however, is a list of convictions between 1986 and 1989, each of them attracting a fine, most of them for road traffic offences, and two for offences of dishonesty. The first was an attempted theft with two offences of theft taken into consideration. That was followed by the fraudulent use of a vehicle licence and an offence of driving without insurance, for which the appellant was disqualified, together with several other unspecified Road Traffic Act offences which were dealt with at the same time. Following the disqualification there came two offences of driving whilst disqualified and (no doubt because of the disqualification) driving without insurance.

Mr Lewis submits that if the proper procedure—that which I have now described—had been gone through, it is as near certain as makes no odds that, having heard of the nature of the offences and their dates, the justices, with the duties they had, would have admitted the whole list of convictions and then made of it precisely what they did make of it in coming to their conclusion. Mr Straker submits that one simply cannot know, and that it cannot be said that the justices would inevitably, if the matter had been properly approached, have let the whole list or indeed any part of it in.

Cases stated are governed by RSC Ord 56, and the jurisdiction for disposal of such cases is now contained in s 28A of the Supreme Court Act 1981, as amended. This, by sub-s (3), now provides:

> 'The High Court shall hear and determine the question arising on the case (or the case as amended) and shall—(a) reverse, affirm or amend the determination in respect of which the case has been stated, or (b) remit the matter to the justice or justices with the opinion of the court, and may make such other order in relation to the matter (including as to costs) as it thinks fit.'

I regret that Mr Straker has not persuaded me that there is any real doubt about what would have happened in practice had the justices taken the right approach. In my judgment it is as certain as anything can be that, properly directing themselves and being told what the nature of the record of spent convictions was, the justices would have considered themselves duty-bound to admit the evidence in the exercise of their power under s 7(3). Because of the near certainty that properly directed the justices would have done what they in the event did, the right course is to affirm their determination, notwithstanding my critique of the errors made in arriving at it.

Accordingly the appeal, for all its legal merits, must be dismissed.

Appeal dismissed.

Dilys Tausz Barrister.