

MEMORANDUM – LIMITED LICENCE APPLICATIONS

1. The purpose of this memorandum is to achieve greater consistency in how limited licence applications are dealt with in District Courts. Its provisions are therefore to be regarded as guidelines for the use of the Police, the legal profession, and court staff.
2. An application relating to a court-imposed disqualification must be filed in the court where the disqualification was imposed (section 105(4)). However, the Registrar or a Judge may transfer an application to another court for hearing.
3. Such an application may be filed at any time after the disqualification was imposed (section 104(1) merely provides that in certain circumstances any order which is made cannot take effect until after 28 days from the commencement of the disqualification).
4. An application relating to a demerit points suspension cannot be filed until after the suspension notice has been served, and a copy of the notice should be filed with the application (preferably annexed to the applicant's affidavit).
5. Affidavits by applicants should include information regarding all issues which are relevant to the issues of hardship and public safety, including the following:
 - Any previous driving-related convictions (i.e. not only any convictions within the previous five years).
 - Arrangements made during the stand-down period (if applicable).
 - Arrangements made for payment of the fine for the offence for which the applicant was disqualified (if applicable).
 - Requirement for licence for home to work driving (if applicable).
6. Affidavits should state facts, not conclusions (i.e. it is inappropriate for deponents to refer to "extreme hardship" or "undue hardship", which are matters for the Court – however, headings such as "Hardship" are both appropriate and helpful).
7. Any letter containing information which is relevant to an application should be annexed as an exhibit to an affidavit which is sworn by the writer of the letter and in which its contents are confirmed.

Unless the writer of a letter is unavailable to swear an affidavit or the Police consent, the Judge may decide not to read any letter which is filed with an application or annexed to an affidavit by a deponent other than the writer. If such a letter is read, the fact that it has not been confirmed on oath by its author may affect the weight which is given to its contents.

8. If the application is based on hardship arising from potential loss of employment, an affidavit by the employer should be filed (a letter annexed to the applicant's affidavit will generally be regarded as insufficient – see paragraph 7).
9. An affidavit by a self-employed applicant should include sufficient financial information (re income and expenditure, etc) to establish the hardship contended for (financial statements or accounts are prima facie unnecessary but may be required if the information which is provided is challenged or insufficient).
10. Unless the parties agree (which should be before the date when the application is to be heard), the deponent of any supporting affidavit must appear at the hearing (section 104(4)).
11. The area within which the applicant is to be entitled to drive should be clearly and unambiguously defined in the draft order (by reference to either a route or an area with clear boundary points, not by using a radius from a central point). If a map is attached to the order, it should be of an appropriate scale, with the route(s) or limits clearly shown. If the area is defined in the draft order and a map is also attached, there must be no conflict between the draft order and the map.
12. In addition to the mandatory conditions under section 105(3)(a) (i.e. purpose, vehicle(s), days and times), any conditions which are specified in an order should be related either to alleviating the proved hardship (section 105(3)(a)(iv)) or facilitating reasonable enforcement of the order.

"Blanket" conditions, such as not driving if there is another licensed driver in the vehicle, complying with speed limits, and not consuming alcohol prior to driving, are generally not appropriate, and any such conditions must be both case-specific and enforceable.

Conditions which may be appropriate include the following:

- The applicant is not to drive if there is another licensed driver in the vehicle, unless for road safety, driving hours, medical or insurance reasons it is unsafe or impracticable for that other licensed driver to drive.

- The applicant must comply with applicable speed limits at all times. For the avoidance of doubt, any breach of this condition would be both a speeding offence and an offence against section 32(1)(b) of the Land Transport Act 1998.

The second condition should be imposed only if the applicant's driver licence has been suspended because of demerit points for speeding offences. Any such condition must not provide that the limited licence is deemed to be cancelled if a speeding infringement notice is issued.

If a log book condition is included, it should be framed in appropriate terms (if the applicant would be required to keep a log book under section 70C of the Transport Act 1962, a condition incorporating that obligation would generally suffice – i.e. only one log book should be required).

13. If an amended draft order is filed, it should clearly be described as such, and the amendments should be identified (e.g. in italics).
14. Applications must be heard in open court. With the exception of purely formal matters (e.g. variation of a current order or approval of an amended draft order), applications must not be dealt with in chambers.

R J Johnson
Chief District Court Judge
September 2005