

BETWEEN

MARTIN SPENCER BATH  
Plaintiff

AND

THE COMMISSIONER OF POLICE  
Defendant

Date: 15 February 2012

Appearances: N J B Taylor for the Plaintiff  
B M Finn for the Defendant

---

**DIRECTIONS OF JUDGE M-E SHARP**

---

**Introduction**

[1] Martin Bath was a licensed dealer of firearms with a number of endorsements. As a result of something called Operation Daisy in 2006 a number of individuals were prosecuted for offences against the Arms Act 1983. Mr Bath was one such. He pleaded guilty to a charge brought under the Arms Act 1983.

[2] Really, as a result of that and other matters which are dealt with in the evidence that I have heard of the police in opposition to the appeals before me, Mr Bath's licence and endorsements were revoked. He has been unable to reapply for a firearms license of any type, whether with or without endorsements, because the police's attitude, which I accept was honestly held and perhaps well-meaning, but unlawful, nevertheless, was that once a person has had their firearms licence revoked under the Arms Act 1983 they must have that state of revocation (which they obviously thought to be continuing) "lifted" before they could deal with any subsequent application for a new firearms licence. Because Mr Bath received that response when he tried recently to obtain another firearms licence, he and his counsel appealed both the initial police decision revoking his firearms licence and

endorsements as well as the police's fairly recent decision not to "lift the revocation."

### **Evidence on Appeal**

[3] We have heard two days of evidence and within that evidence some legal argument about different aspects of this appeal. It became apparent to me yesterday afternoon, after I had carefully considered the Arms Act 1983, that the police's stance in respect to revocation (that is that it was a continuing state of affairs) was wrong in law, and therefore unlawful. Thus, unlawfully, they had refused to allow Mr Bath to make a further application for a firearms licence.

[4] I discussed my views with counsel at the end of yesterday's hearing, indicated that I could not see how I could really properly deal with this appeal and that the way forward was for Mr Bath to make another application for a firearms licence; for the police to accept and action it and, if refused, for this appeal to be varied as to its grounds so that the matter could come back before me for a consideration of whether the police decision to decline Mr Bath a firearms licence was an appropriate one under all of the circumstances.

[5] Because we have spent two days on this matter I believe it would be counter-productive to merely find that I am unable to determine this appeal and to therefore make some sort of order declining it. A more pragmatic course of events is for the parties to agree to vary the terms of the appeal in the future should there be a refusal by the police of the firearms licence application. That would mean merely adjourning this appeal hearing for some time. Counsel are agreed that this is appropriate but have asked that I make a minute with some directions in it of what should take place from this point and what my view is of the matters that I have discussed under the Arms Act 1983 in this hearing.

**Directions**

[6] Accordingly:

- (a) This appeal hearing is adjourned for six months, or until such earlier date as counsel for the parties ask for by memorandum. It is adjourned for hearing before me.
- (b) If the matter requires to come back before me it will be because Mr Bath's new application for a firearms licence has been declined by the police. In that case the parties should jointly agree the variation of the grounds of the appeal and seek that it be set down for another day's hearing before me.

**Clarification**

[7] If I have not already clarified the matter I do so now. The lifting of a revocation by the police is a legal nonsense. It is, and was, unlawful for the police to maintain that such a state of affairs existed and to refuse to accept or action Mr Bath's new application for a firearms licence. Of course, the record that the police maintain of the revocation decision is entirely appropriate, but a record is merely that. It has no legal weight and the act of revocation ceases once it has occurred. It cannot be a continuing state of affairs, thus the police must accept any new application for a firearms licence that Mr Bath files in the future.

[8] There are separate offences, under the Arms Act 1983, for persons such as Mr Bath whose firearms licenses have been revoked and who have not been re-issued with a firearms licence since that event but are found to be in possession of a firearm. Those offences are identical to offences of being in possession of a firearm without a firearms licence. The difference, however, is that the previous revocation makes the penalty somewhat greater, and of course Mr Bath should be aware of that pending a receipt of a new licence.

[9] Counsel have virtually asked me for an opinion as to whether and what Mr Bath is entitled to touch by way of firearms since he has had his licence revoked and is presently without a licence. It is not for this Court to give such advice. However, it seems to me that the Arms Act is actually very clear and explanatory and I am sure that they will be able to work that out for themselves.

[10] The Police Arms Manual may well detail who and how a fresh application for a firearms licence by a person whose licence has previously been revoked should be dealt with. However, the Arms Act 1983 does not. As I see it paragraphs 23 and 24 govern the procedure so that the person applying must be over the age of 16 years, they must apply at an Arms Office, to a member of the police and a firearms licence shall be issued if the member of the police to whom the application is made is satisfied that the applicant is over the age of 16 years and is a fit and proper person to be in possession of a firearm or airgun. There then follows, s 24(2) which details instances where:

A firearms licence shall not be issued to a person if, in the opinion of a commissioned officer of the police, access to any firearm or airgun in their possession is reasonably likely to be obtained by another person whose circumstances fit within a), b), c) or d).

[11] My reading of the Arms Act is that the member of police at the Arms Office, to which the applicant applies for a firearms licence, is the person who should properly deal with it but is not necessarily the person who must issue it. However, that member of the police, at the Arms Office to whom the application is made, must be satisfied that the applicant fulfils the statutory criteria listed at s 23 and s 24. It seems to me that the police practice of referring an application from a person whose licence has previously been revoked to the District Commander may not necessarily properly fulfil the police's statutory obligations under s 23 and s 24. However, I leave it to Mr Finn to best advise the police as to how their present attitudes and, if I can loosely call it "code of conduct" in this respect is either in satisfaction of the statutory requirements, or not, as he sees fit.

[12] What I am really saying, in a rather roundabout way, is that police practice that has arisen over possibly decades, in respect to both this and the "lifting" of revocation status of persons, may not necessarily, and certainly in respect to the latter, does not have the force of law. Thus, it may well be that if the District Commander wishes to make the final decision on whether Mr Bath should be granted a new firearms licence then he should be the person to whom Mr Bath applies for a firearms licence. Of course, that will only be appropriate if in fact he can be said to be at an Arms Office. If he cannot be said to be at an Arms Office it appears to me that it is the preserve solely of the Arms Officer to accept, consider, and determine whether to issue a firearms licence to Mr Bath. But I go no further than that.

[13] Both parties agree that for the police to make a properly informed decision on the new firearms licence application, which will be lodged here after, they should have access to all of the materials which were filed, both in support, and in opposition, to Mr Bath's appeal, as well as to the notes of evidence. I direct that they be provided forthwith.

[14] The police also acted unlawfully on 20 December 2006, in my view, when they required Mr Bath to surrender all his weapons and his firearms licence without having actually made a decision to revoke his licence. Once again, a legal nonsense was perpetrated by the police when they indicated that they were giving notice to Mr Bath of their intention to consider revocation but then, in effect, revoked his licence in the same breath. That was, and is, if it continues, an unlawful practice. The significance of it is that in reality Mr Bath had his licence revoked on that date and has remained without a licence since. That is a period of well over five years.

[15] I have read, with interest, all of the material that has been proffered to me by, and on behalf of, Mr Bath. I have also read, with interest, all the material proffered to me on behalf of the police and I have heard all of the evidence that has been given thus far in this proceeding.

[16] Whilst I make no bones about the fact that I agree entirely with the decision to revoke Mr Bath's licence at the time hence I would not have interfered, even if I

could, with that decision (I say that because of course once the revocation has taken place, it has taken place), but the issue now for the police is whether Mr Bath has again become a fit and proper person to hold a firearms licence. It is for the Arms Officer, I believe, to entertain the application and to make an informed decision according natural justice to Mr Bath in the process. However, I make these comments hoping that whilst they cannot be binding upon the police, they will include them in the mix of material that they must consider.

[17] The first is that Mr Bath had, and has available to him, in the future, a great career as a theatrical armourer. Clearly, he was, and remains, notwithstanding that he has not had a licence for over five years, very well respected in that industry. Secondly, there is absolutely no suggestion that he has breached any part of the Arms Act since revocation. Thirdly, whilst I too, as the police obviously were, would have been extremely concerned about his drug use at the time that he had a licence, that appears no longer to be a concern. Fourthly, I consider in light of the glowing testimonials that have been presented to the Court that everything has changed greatly since revocation.

[18] The police should not continue to refuse Mr Bath a licence forever on the basis of his past criminal offending and/or lifestyle, in both of which he appears to have been substantially rehabilitated. Whether the time for him to be regranted a licence is now, or at some stage in the future, is a matter for the police but, provided that Mr Bath continues to live in the way that I am satisfied he has been for the last few years, I see no reason why at some stage in the future, whether now or whether a little later, he should not be granted a firearms licence again.

[19] Formally, I therefore adjourn, for six months, this appeal hearing and trust that the parties will now meaningfully engage in discussions as to how facilitate the consideration by the police of a new firearms licence application.

  
M-E Sharp  
District Court Judge