

The “Fit and Proper Person” test – what you need to know

Many readers of Aviation News will have gone through the fit and proper person (FPP) test at least once during their time as participants in the civil aviation industry, and will have some knowledge of the concept and how it applies. General information and guidance on the FPP process, the statutory criteria and how these are assessed, is also available on the CAA website, and is not the focus of this article.

This article explores some of the more specific questions and concerns that have been raised by participants, concerning the implications of criminal or traffic convictions and land transport infringements (such as speeding fines) on a participant’s FPP status. It will also cover what you need to know about your ongoing FPP disclosure obligations.

Okay, so what *are* the implications of convictions and traffic infringements for your FPP status?

The simple, but not terribly helpful, answer is “it all depends”. The reason for this is that the FPP test is intended to be applied on a case by case basis, and with due regard to the nature of the privileges or role being performed, and the person’s overall character and behaviour. For existing participants, their history within the aviation system is also relevant. Any convictions and any history of traffic infringements must therefore be considered within this context. I explore this further by reference to some specific fact scenarios and questions that have been raised by participants, and those applying to enter the system for the first time.

1. If a pilot is convicted of driving with excess breath alcohol will this result in an automatic determination that he or she is no longer fit and proper to fly?

No. A conviction for alcohol related vehicle offences, while potentially adverse, must be considered in accordance with the FPP principles stated above. For a pilot with no other convictions and a good operating history in the civil aviation system, a first conviction may not of itself be sufficient concern for the Director of Civil Aviation (the Director) to determine he or she is no longer fit and proper to fly. However, if the offence was particularly serious or resulted in a custodial sentence, or if there was repeat offending of this nature, this may be cause for a much closer review of (any) participant’s FPP status. The same rationale generally applies to any other transport safety offence for which a participant may be convicted in Court and which is considered relevant by the Director. That is, it will be considered in the context of the seriousness of the offence, and with regard to the participant’s involvement in the civil aviation system as a whole.

2. Are participants required to disclose drink driving, traffic or other relevant convictions to the CAA?

Yes. It is an offence under the Civil Aviation Act not to disclose information to the Director that is *relevant* to the continuing requirement to remain a fit and proper person. An alcohol related driving offence, and most other transport safety related offences for which you are convicted in Court, will almost certainly be considered relevant information. Name suppression for vehicle related offences is also rare, especially for those involving alcohol, and this does not absolve you of the obligation to disclose a conviction in any event. Non transport convictions that may also be relevant to your FPP status should also be disclosed.

If a participant has been charged with an offence but has not yet gone through the process, or is defending a charge, it may be more difficult to ascertain whether, and at what point, disclosure is required to be made. A participant in this position should at least ensure their lawyer is aware of the disclosure obligations and take advice as appropriate.

Participants should also bear in mind that, all too often, you may be at more risk of doing damage to your FPP status by attempting to conceal information about a relevant conviction (as well as risking prosecution for failing to disclose it), than the effect a conviction itself would have had on your FPP status had you disclosed it at the outset.

If in doubt as to whether you have relevant information (whether about a charge, conviction or otherwise), discuss the matter in confidence with other participants who you trust, and if necessary seek appropriate professional advice.

3. What if a participant is convicted of a Civil Aviation offence?

Once again, it must be assessed like any other adverse information, after taking into account all relevant factors. In some cases, the fact a participant has been prosecuted and dealt with by the Courts might be considered to be sufficient to address the offending, particularly for minor offences. However, the fact of the prosecution will remain on a participant's file and could be taken into account at a later time if further adverse events arose.

In other cases where the facts of the offending might lend towards an adverse FPP decision, a participant's early acceptance of responsibility for the offending and demonstrated efforts made to ensure it is not repeated, might convince the Director that the participant is fit to remain in the system, particularly if there are no other concerns. This is not to suggest that acceptance of responsibility in every case will be enough to prevent an adverse fit and proper person decision, but the right attitude certainly goes a long way.

4. What are the implications of land transport infringements on a person's FPP status?

Land transport infringement offences, such as speeding fines that attract demerit points, could have implications for a person's fit and proper person status, particularly if there is a pattern of non-compliant behaviour over a period of time. This will be of particular relevance for new entrants into the system, as the ability of the Director to assess their compliance with aviation regulatory requirements will be relatively limited, and inferences will therefore be more heavily drawn from their compliance with, and attitude towards, the rules of the road.

For example, an applicant for a PPL who has clocked up a two page record of traffic infringements for speeding and other minor offences, culminating in a loss of vehicle licence within the last twelve months, might well struggle to convince the Director that he or she has a healthy attitude to transport safety regulatory requirements and should be given a ticket to fly aircraft.

While existing participants might be able to point to their good safety record in the aviation sector, they should also be mindful that a pattern of this type of behaviour on the road could also raise questions about their FPP status.

5. CAA have told some training pilots that they should have no convictions or traffic infringements for 2yrs before applying for a PPL or 5yrs for a CPL. Is this mandatory or strictly enforceable?

No. There is no statutory requirement for any minimum conviction or infringement free period. Some convictions, even if recent, may not have any relevance or may carry little weight in determining whether to issue a pilot licence. For example, a six month old conviction for a minor offence such as disorderly conduct, when viewed in the context of the offence, and a participant's overall character and behaviour, might in fact be viewed as of little overall significance.

While such time indications are intended to try and be helpful by attempting to provide some kind of reference point for those considering entering the system, they should be viewed, and indeed, relied on with caution. Even if you have a "clean record" within the suggested time period, this does not guarantee that the Director will consider you fit and proper for any purpose, if there are other adverse factors. Equally, not complying with those indicative time periods does not necessarily mean you will *not* be fit and proper. New entrants with any concerns about their potential FPP status should consult with and seek help and guidance from their flight instructors or other experienced industry participants or, where necessary, seek professional advice.

Summary

The message that I hope readers will take from this article, is that a conviction or a few minor traffic infringements does not give rise to any statutory presumption that you will no longer be considered fit and proper to participate in the aviation system and may not be as detrimental as you think. The FPP test does not require participants to be perfect and does recognise that, like all mortals, aviation participants may make mistakes. What is most important is to ensure that the Director has all relevant information that you want him or her to consider, including any information that might help to explain or mitigate your circumstances and that might strengthen the Director's overall assessment of your character and behaviour, and thus fitness to participate in the system.

In the next edition of *Aviation News*, I will address what to do if the Director proposes to make an adverse decision that you are not a fit and proper person to exercise any privilege or to remain in the system.

Angela Beazer is a lawyer and Director of AMC Legal Services Ltd, a law firm specialising in aviation and public law matters. Previous articles from *The Legal Lounge* series may be viewed at www.amclegal.co.nz

Disclaimer: The information and views expressed in this column are necessarily general and do not address any specific individual or entity's circumstances. This column may not be relied on or construed by any person as the provision of advice within a lawyer and client relationship. Legal or other professional advice should be sought in particular matters.