IN THE RACING APPEALS TRIBUNAL

CAMERON FITZPATRICK
Appellant

v

HARNESS RACING NEW SOUTH WALES
Respondent

REASONS FOR DETERMINATION

Date of hearing:	**29 April 2024;** **Further submissions 6 May 2024; 13 May 2024.**
Date of determination:	**11 June 2024**
Appearances:	**Ms V Heath – Appellant** **Ms C Chua – Respondent**
ORDERS:	**1. The appeal is allowed.** **2. The determination of the Respondent of 8 January 2024 not to issue the Appellant with a licence is quashed.** **3. Any appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice of Appeal dated 10 January 2024, Cameron Fitzpatrick (the Appellant) has appealed against a determination made on 8 January 2024 by Harness Racing New South Wales (the Respondent) to refuse the issue of an A Grade Driver's Licence and a B Grade Trainer's Licence on the grounds that he is not a fit and proper person to hold such licences. The appeal was heard before me on 29 April 2024, at which time judgment was reserved. Further submissions were received by the parties on 6 May 2024 and 13 May 2024.

2. For the purposes of the appeal, I was provided with a Tribunal Book (TB) containing all relevant documentary material.

THE ONUS OF PROOF

Background

3. Before dealing with the appeal itself, it is necessary to address a preliminary issue, namely that of which party in a matter of this nature bears the onus of proof. Some brief background as to how that issue arises is necessary.

4. In *Bilal v Greyhound Welfare and Integrity Commission,*[1] I concluded that for the purposes of an appeal in the Greyhound Racing industry against a determination that an applicant was not a fit and proper person to be registered, the onus of proving that circumstance on appeal (i.e., that the applicant was not fit and proper) was on the Respondent (i.e. the Commission). That determination was made without the benefit of comprehensive submissions from the parties. I should say that irrespective of which party had the onus in that case, the result would have been the same.

5. In other proceedings that subsequently came before me to which the Commission was a party, those representing the Commission indicated that they wished to have a further opportunity to address the issue, and make submissions in relation to it. A similar indication was given by those acting for the Respondent in the

[1] A decision of this Tribunal delivered on 28 February 2024 at [6] and following.

present matter, following the filing of the Notice of Appeal. The issue was raised (but only in passing) in *Wilson v Greyhound Welfare and Integrity Commission*[2] but for the reasons given at the time, the circumstances of that case did not lend themselves to a further consideration of it. Those circumstances included the fact that those representing the Appellant were given no prior notice that the issue would be raised. I again came to the view in that case[3] that the appeal should succeed, irrespective of any question of onus.

6. The issue having been raised prior to this hearing taking place, I have had the benefit of comprehensive submissions from both parties in relation to it. This case is therefore a suitable vehicle through which to further consider the issue of where the onus of proof lies, at least in the context of proceedings involving this Respondent. What follows should be regarded (subject, of course, to any contrary view which might be expressed by a Court, be it on an application for judicial review or otherwise) as an authoritative statement, for the purposes of proceedings before this Tribunal, governing the issue of where the onus of proof lies in an appeal from a decision made by this Respondent to refuse to grant a licence on the basis that the applicant is not a fit and proper person. These reasons may also provide some guidance to those in the Thoroughbred and Greyhound Racing Industries. That said, it obviously remains open in any proceedings involving either of those regulators for any party to argue that the position should be different because of one or more distinguishing factors. If and when those matters arise, I will deal with them.

The statutory framework

7. It is appropriate to firstly consider the statutory framework which governs the issue of licences by the Respondent. In doing so, it is to be noted that there is no legislative provision which directly addresses the issue of onus.

8. Section 11 of the *Harness Racing Act 2009* (NSW) (the Act) provides as follows:

[2] A decision of this Tribunal delivered on 28 April 2024 at [30] and following.
[3] At [63].

11 Registration functions of HRNSW—general

(1) HRNSW is to exercise its registration functions so as to ensure that any individuals registered by HRNSW are persons who, in the opinion of HRNSW, are fit and proper persons to be so registered (having regard in particular to the need to protect the public interest as it relates to the harness racing industry).

(2) Without limiting subsection (1), a person is not to be so registered if the person has a conviction and HRNSW is of the opinion that the circumstances of the offence concerned are such as to render the person unfit to be so registered.

(3) This section does not limit any provisions of the rules relating to the exercise of the registration functions of HRNSW.

(4) In this section—

***conviction** has the same meaning as in the Criminal Records Act 1991 but does not include a conviction that is spent under that Act.*

***registration functions** means the functions referred to in Division 1 of Part 3.*

9. Section 18 of the Act is in the following terms:

18 Registration of harness horses and persons associated with harness racing

(1) HRNSW may, in accordance with the rules, register or refuse to register any harness racing horse, or any owner, trainer or driver of harness racing horses, bookmaker or other person associated with harness racing.

(2) HRNSW must not refuse to register any harness racing horse or any person under subsection (1) unless it is of the opinion that it would be in the best interests of the harness racing industry to do so.

10. Section 22 of the Act further provides (in part):

22 Rules in relation to harness racing

(1) HRNSW may make rules, not inconsistent with this Act or the regulations, for or with respect to the control and regulation of harness racing.

(2) Without limiting the generality of subsection (1), HRNSW may make rules for or with respect to the following—

(a) any matter that by this Act is required or permitted to be prescribed by the rules

...

11. Finally, s 42 of the Act makes provision for delegation:

> ***42 Delegation***
> *(1) Subject to subsection (2), HRNSW may delegate the exercise of its functions to—*
> *(a) a member of HRNSW or the chief executive officer of HRNSW, or*
> *(b) a committee comprised of, or a combination of, those persons, or*
> *(c) a member of staff of HRNSW.*
>
> *(2) HRNSW must not delegate a function relating to the registration of a harness racing club, or the suspension or cancellation of such registration, under this Act.*

12. In addition to the Act, some provisions of the Australian Harness Racing Rules (the Rules) are also relevant. In particular:

(i) r 90(1) confers power on a controlling body (which obviously includes the Respondent) to regulate any activity by licence;

(ii) r 90(2) provides that an application for a licence is to be made by persons in the manner and form determined by a controlling body;

(iii) r 90(4) confers power on a controlling body to grant or refuse a licence, and further provides that the power of refusal may be exercised absent provision of any reason.

13. It is also appropriate to note two provisions of the *Racing Appeals Tribunal Act 1983* (NSW). First, s 16 makes provision for the procedure to be followed in an appeal of the present kind and is in the following terms:

> ***16 Procedure on Appeal***
>
> *(1) An appeal to the Tribunal is to be by way of a **new hearing** and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal* (emphasis added).

14. Secondly, s 17A sets out the powers of this Tribunal when determining an appeal:

> ***17A Determination of appeals relating to greyhound racing or harness racing***

(1) The Tribunal may do any of the following in respect of an appeal under s 15A or 15B—

(a) dismiss the appeal,
(b) *confirm the decision appealed against or vary the decision by substituting any decision that could have been made by the steward, club, ... or HRNSW .....;*
(c) *make such other order in relation to the disposal of the appeal as the Tribunal thinks fit*.

(2) The decision of the Tribunal is final and is taken to be a decision of the person or body whose decision is the subject of the appeal.

The Respondent's Licencing Policy and the Licencing Committee

15. The Respondent has published a Licencing Policy (the Policy) and, to assist in implementing the Policy, has established a Licencing Committee (the Committee), the functions of which include overseeing and implementing corporate governance responsibilities in respect of licencing decisions. The Committee has the delegated authority to deal with applications for licences and, if considered appropriate, to approve them. Needless to say, the Committee is bound to carry out its functions in accordance with the Policy, and according to principles of natural justice and procedural fairness.

16. Cl 2.13 of the Policy confers a discretion on the Committee to issue a B Grade Trainer's licence (that being one of the licences for which the Appellant applied)[4] upon being satisfied of a number of factors. One of those factors[5] is that the applicant has *"been interviewed and assessed to the satisfaction of the Stewards"*. Curiously, that clause in the Policy is silent as to the issue(s) about which the Stewards must be satisfied. However, given the context in which the italicised phrase above is used, it can be reasonably inferred that the Stewards must be satisfied that the applicant is a fit and proper person before issuing him or her with a licence.

[4] TB 18.
[5] Cl 2.13(5).

17. Cl 2.26 of the Policy sets out the criteria to be considered when determining an application for a licence. It is appropriate to set out that provision in full:

> ***2.26 Fit and Proper Person***
> ***Suitability of Licensees***
> *All Licensees and Applicants for licences must meet and continue to meet suitability requirements. These requirements address whether or not a licensee is a "fit and proper person" to be licensed.*
>
> *Criteria for a fit and proper person will be applied.*
>
> ***"Fitness"***
> *A person must be fit and able to perform the duties of the relevant licence*
>
> *1. Where a person is not physically fit to perform the duties of a particular license category in person, but is able to supervise and direct an exception may be considered provided there is no risk to other persons, animals or to the good conduct of racing and training. Such persons would require the facilities, equipment, experience, knowledge, and other personal qualities necessary for successfully functioning in this manner.*
>
> *2. Fit also requires the person to have the stated skills and knowledge required for a licence. HRNSW may require appropriate evidence of skills and knowledge through testing, training and assessment or other means.*
>
> *3. Fit includes the person's mental fitness to make correct decisions in relation to behaviour by demonstrating a continuing moral commitment to good behaviour and good character.*
>
> ***"Propriety"***
>
> *Propriety relates to the general level of integrity of the person. It is primarily concerned with general behaviour and conduct but not limited to:*
>
> *1. History*
> *2. Reputation*
> *3. Integrity*
> *4. Honesty*
> *5. Character*
>
> *Propriety will be assessed on the basis of general behaviour and conduct but not limited to, in particular:*
>
> *1. Disciplinary history*
> *2. Evidence of dishonesty*
> *3. Behaviour towards officials and staff of HRNSW and other NSW harness industry participants*
> *4. Any conduct or statement likely to impact the person's reputation and more broadly on the reputation of other licensees, officials of HRNSW and the NSW harness racing industry*

5. Demonstrated ability to consistently operate within the rules and policies of HRNSW, the Harness Racing Act 2009 and any other laws and regulations applicable to the conduct of the industry and its participants including gaming laws
6. Evidence of improper behaviour, misconduct, breach to adhere to the HRNSW Code of Conduct, including police records, court records and letters of complaint regarding the person.
7. A history of indebtedness including being bankrupt or a previous declared bankrupt.
8. A failure to adequately demonstrate sufficient and acceptable financial means to fulfil the requirements of the license
9. Where a licensee or applicant for a licence has been convicted of or pleaded guilty to a criminal offence in any state or territory of Australia or in any other country.

All offences will be considered, particularly those considered to have a direct impact on an applicant's suitability such as but not limited to offences relating to:
1. dishonesty, fraud or forgery
2. cruelty to animals
3. aggravated assault
4. sexual assault
5. possession, use or supply of illegal substances
6. serious crimes

In general crimes committed in the last 10 years will be considered relevant.

Submissions of the Appellant

18. Unsurprisingly, the Appellant embraced the determination in *Bilal*, and sought to apply it directly to the circumstances of the present case.[6] However, the Appellant went further, and submitted that in circumstances where the legislation and policy statements were silent on the issue, it was "arguable" that the question of onus was a matter for my discretion.[7] The Appellant's initial submissions did not engage, at least directly, with the distinction drawn by the Respondent which is discussed further below, between a decision to refuse an application for a licence, and a decision to withdraw, cancel, or suspend an existing licence, on the grounds of fitness and propriety.

[6] Initial submissions at [5] and following.
[7] Initial submissions at [9].

19. In supplementary submissions provided following the conclusion of the hearing, it was submitted on behalf of the Appellant that under s 11(1) of the Act, neither party has a formal legal onus arising from the terms of the section, but that the Appellant has an evidentiary onus of adducing evidence to engage the statutory privilege sought.[8] It was submitted that if, in an appeal from a refusal to grant a licence under s 11(1) of the Act, the Respondent relied upon a particular contested fact, it would bear the onus of establishing that fact. It was further submitted that the same position would apply in the event that the Respondent sought to depart, on some legal basis, from an earlier finding between the same parties, or where it sought to demonstrate that the finding was no longer operative. In these circumstances, it was submitted that in the present case, the issue of onus did not arise.[9]

Submissions of the Respondent

20. The Respondent firstly drew my attention to previous determinations of this Tribunal (differently constituted) in which statements had been made supporting the proposition that the onus in a matter of this nature lies on the Appellant. Initially at least, the Respondent did not take issue with, and in fact expressly conceded, the correctness of the analysis in *Bilal*,[10] and submitted that such analysis (although producing the opposite result in that case) supported its position in this appeal.

21. The Respondent submitted that there was an important distinction to be drawn between a circumstance in which a regulatory authority refuses what might be described as a "fresh application" for a licence on the basis that the applicant is not a fit and proper person, and a circumstance in which a regulator or governing authority seeks to withdraw or cancel an existing licence.[11] The Respondent submitted that in a case of the former kind (of which the present is one), the onus

[8] Supplementary submissions at [27].
[9] Supplementary submissions at [28] – [29].
[10] Initial submissions at [22](d).
[11] Initial submissions at [22](f).

is on the applicant for the licence (i.e., the Appellant) to satisfy the Respondent that he or she is a fit and proper person to be licenced. In circumstances where, for the purposes of this appeal, the Tribunal stands in the shoes of the Respondent, and where the appeal proceeded as a hearing *de novo,* it was submitted that the onus similarly lay upon the Appellant.

22. In supplementary submissions received following the conclusion of the hearing, the Respondent cited the general principle that the burden of proof is on the moving party.[12] It was submitted that in the present case, the Appellant is the moving party, given that he was the applicant for a licence. Consistent with the initial submissions which had been made, reference was made to a number of authorities in which members of various professions had sought admission or registration, and in which it had been accepted that the relevant onus lay upon the individual, and not upon the relevant professional body or regulator.[13]

23. The Respondent's supplementary submissions took issue with the decision in *Bilal.*[14] The adoption of that position seemed to be something of a departure from that which had previously been taken by the Respondent and whilst I do not necessarily agree with the entirety of that seemingly revised position, the conclusion I have reached on this appeal does not require me to take that issue any further.

CONSIDERATION

24. I have come to the view that in the circumstances of this case, the onus lies on the Appellant to establish that he is a fit and proper person to be granted a licence. My reasons for reaching this conclusion are as follows.

25. First, such a conclusion derives some support from the Policy generally, and from cl 2.13(5) in particular which confers a discretion to issue a B Grade Trainer licence

[12] Supplementary submissions at [5].
[13] Supplementary submissions at [13] – [17].
[14] Supplementary submissions at [24].

to a person who has *"been interviewed and assessed to the satisfaction of the Stewards"*. For the reasons previously stated, and bearing in mind the provisions of cl 2.13(3) and (4), the phrase "*to the satisfaction of the Stewards"* in cl 2.13(5) can only be sensibly read as referring to the Stewards reaching a state of satisfaction regarding an applicant's fitness and propriety. Whilst the Policy does not have the force of statute, there is an obligation to have regard to it in resolving the present question and, where appropriate, to make determinations in accordance with its provisions.

26. Secondly, although the Act is silent on the issue of onus (at least directly), there are nevertheless some provisions which lend support to the Respondent's position. For example, the obligation imposed on the Respondent by s 11(1) to ensure that a person seeking registration is a fit and proper person supports a conclusion that the onus will be on such a person to establish that this is so. In that respect, I accept the submission of the Respondent[15] that, viewed in this way, the Appellant in the present case is the moving party, and as such, bears the onus.

27. Thirdly, such a conclusion is fortified by the submission of the Respondent,[16] which I also accept, that r 90(2) of the Rules, and the reference within it to an application for a licence being "*made by [a] person,"* clearly suggests that the applicant for a licence, as the moving party, will bear the onus.

28. Fourthly, I have had regard to previous determinations of the Tribunal.[17] I should say, however, that whilst those determinations are supportive of the Respondent's position, they are generally expressed (at least to the extent that they address this specific issue) in terms which appear to simply assume that the onus lies on the Appellant, absent any real analysis of why that might be so. For example, in *Zohn* it was stated:[18]

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[15] Supplementary submissions at [5]; [9] – [10].
[16] Supplementary submissions at [7].
[17] In particular *Zohn v Harness Racing New South Wales* (11 July 2013); *Bennett v Harness Racing New South Wales* (21 May 2019); *Bennett v Harness Racing New South Wales* (12 August 2021).
[18] At p 2 – 3.

> *What is not in doubt is that on this application the onus remains on the appellant, the applicant for a licence, to satisfy that he is a fit and proper person .....*

29. The reason(s) why the issue was "*not in doubt"* were not exposed. In fairness, it would appear that in that case the issue with which I am confronted may not have been squarely raised. However, a conclusion that a certain state of affairs exists, absent some exposition of the reasoning process which led to that conclusion, is of limited assistance where, as here, the issue is contested. Whilst I have had regard to the Tribunal's previous determinations, they are of limited assistance in the circumstances.

30. Finally, the analysis of the authorities set out in the supplementary submissions of the Respondent support the conclusion that the onus lies on the Appellant.[19]

31. Accordingly, I am satisfied that in the circumstances of this case, the Appellant, as the applicant for a licence, had the onus before the Stewards of establishing that he was a fit and proper person. It follows that he bears the same onus on this appeal. Bearing in mind the issue involved, that onus is a heavy one.

THE APPEAL

The position of the Respondent

32. In turning to the substantive appeal, I should firstly note that the position taken by the Respondent was that it neither opposed nor consented to the orders sought by the Appellant. A consequence of that position is that the evidence upon which the Appellant relies in support of his appeal is entirely unchallenged. That does not, of itself, mean that such evidence *must* be accepted, but it does mean that there must be a clear and cogent basis on which to *reject* it. I therefore turn to that evidence.

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[19] See for example *Incorporated Law Institute of NSW v Meagher* (1909) 9 CLR 655; *Re B* [1981] 2 NSWLR 372; *Wentworth v Bar Association of New South Wales* [1994] NSWCA 342; *Ex parte Tziniolis; Re The Medical Practitioners Act* (1966) 1 NSWLR 57; (1966) 67 SR (NSW) 448.

The Appellant's history of participation in the Harness Racing Industry

33. There is no dispute about the underlying facts. The following summary is drawn from the entirety of the material which has been made available to me, including the submissions of the Appellant.

34. The Appellant was born on 27 June 1985 and is now 38 years of age. He obtained a B-Grade Driver's licence in or about 2002, and an A-Grade Driver's licence in or about 2003, and participated in the industry until 2011.[20] That participation was a continuation of that of other members of the Appellant's family, beginning with his grandfather.[21] The Appellant met with considerable success, driving in more than 3,000 races, and winning more than 400.[22] He won the Metropolitan Driver's Premiership in 2009, and was placed amongst the top 10 drivers in the industry.[23] He also won the Harold Park Medal at the age of 24.[24] The Appellant's disciplinary record, although not blemish free, consisted of relatively minor breaches, and did not include anything which called into question his honesty or integrity.

The Green Light Scandal

35. The *"Green Light Scandal"* is the colloquial term given to corrupt practices within the Harness Racing industry which were uncovered in or about 2011. Put simply, those practices involved arrangements in which Stewards, in return for the payment of money by participants, would ensure that horses would not be subject to drug testing after competing in races. Generally speaking, the implementation of those arrangements would involve a Steward advising a participant, in advance, that he (i.e. the Steward) would be in charge on a particular day. Upon receiving that advice, a horse would be given a prohibited substance to enhance its performance. If and when the horse won, an agreed amount would be paid into

[20] TB 358 at [22] – [23].
[21] TB 357 at [13].
[22] TB 358 at [24].
[23] TB 358 at [24] – [26].
[24] TB 358 at [27].

an account nominated by the Steward.[25] In the circumstances explained more fully below, the Appellant was found to be involved in those corrupt practices.

36. Unsurprisingly, the discovery and exposure of such corruption had a significantly adverse impact upon the integrity of the Harness Racing industry generally, and the public confidence in the industry in particular. It is clear that a great deal of work has been done, by a great many people, over a long period of time, to restore that integrity and public confidence.

The disciplinary charges against the Appellant arising out of the Green Light Scandal

37. Rule 241 of the *Australian Harness Racing Rules* (the Rules) is in the following terms:

> *A person shall not in connection with any part of the Harness Racing industry do anything which is fraudulent or corrupt.*

38. The Appellant was charged with, and eventually pleaded guilty to, two charges of corruption contrary to r 241. Those charges were essentially in the following terms:[26]

> *Charge 1:*
> *[The Appellant] corruptly gave former HRNSW steward Mr Matthew Bentley a monetary reward to ensure that harness racing horse, Lombo Baccarat, was not drug tested at the race meeting held at Bankstown racetrack on Friday, 1 July 2011.*
>
> *Charge 2:*
> *[The Appellant) corruptly gave former HRNSW steward Mr Matthew Bentley a monetary reward to ensure that harness racing horse, Lombo Baccarat, was not drug tested at the race meeting held at Penrith racetrack on Thursday, 7 July 2011.*

39. The factual circumstances of those charges were set out in a previous appeal decision of the Tribunal as follows:[27]

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[25] See *Fitzpatrick v Harness Racing NSW* (RAT decision of 19 June 2018) at [6] (to which I will refer as "the previous appeal decision").
[26] TB 368 at [2].
[27] Decision of 19 June 2018 at [6]; TB 369.

> *[6] The appellant accepts that prior to races on 1 and 7 July 2011 he entered into an arrangement with a steward, Matthew Bentley, whereby Mr Bentley would ensure that his horse would not be drug tested after the race. And, if the horse won, the appellant would pay Mr Bentley $500. On each occasion, Mr Bentley confirmed in advance that he would be in charge. The appellant drenched his horse with bicarbonate of soda, which then won, and then, pursuant to the arrangement, the appellant paid $500 into an account nominated by Mr Bentley.*

The criminal charges against the Appellant arising out of the Green Light Scandal

40. The Appellant was charged with three counts of corruptly giving Mr Bentley a benefit, contrary to s 249B(2) of the *Crimes Act 1900* (NSW) (although it would appear that the prosecuting authorities proceeded with only two of those charges). The Appellant pleaded guilty and was sentenced to a Community Service Order of 150 hours. That order was completed satisfactorily, and without incident.[28]

The decision of the Special Stewards Panel

41. A Special Stewards Panel (the Panel) was convened for the purposes of hearing and determining the charges against the Appellant. After initially indicating that the charges would be defended, the Appellant pleaded guilty to both.[29] Following the disposal of the criminal charges in the Local Court, the Panel imposed a disqualification of 15 years for the offending.[30]

The Appeal to the Racing Appeals Tribunal against the penalty imposed by the Panel

42. The Appellant brought an appeal to this Tribunal against the decision of the Panel. The Tribunal (differently constituted) upheld that appeal, quashed the determination of the Panel and imposed, in lieu thereof, a disqualification of 12 years.[31] That disqualification expired on 25 November 2023.[32] Aspects of that decision are relevant by way of background.

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[28] TB 359 at [45]; T 360 at [56].
[29] TB 138 – 139 at [12] – [14].
[30] TB 151 at [44].
[31] TB 174 at [120].
[32] TB 135 – 174.

43. To begin with, and in terms of the Appellant's relationship with Mr Bentley, the Tribunal said:[33]

> *[24] The appellant formed a friendship with the now corrupt steward Matthew Bentley, the person named in the charges and to whom he made payments. That friendship developed, notwithstanding the appellant's knowledge that some stewards were engaging in corrupt conduct. He met Bentley for the first time at the races. Their interests were similar because of age and the industry. They engaged in social interaction. For example, they would go out to dinner and drinks together, they would go to the casino together, they would constantly text and telephone each other. The friendship was on foot. The appellant agreed in this hearing that was an unhealthy relationship. That is particularly so for a licensed person with knowledge corruption is occurring.*

44. In terms of the investigation into the Appellant's conduct, the Tribunal said:[34]

> *[32] The appellant was then compelled to produce his telephone and betting records. He did so, and the Tribunal particularly notes it was under a compulsory requirement. He then participated in an interview with the stewards. That interview was on 17 November 2011 and Mr Sanders conducted it. It is not necessary to deal with that in detail, suffice it to say that the appellant denied any corrupt conduct in any fashion at all. He denied knowledge, phone calls, placing bets, putting money into Bentley's account and the like.*
>
> *[33] In November 2011 the police attended his premises and arrested him. It appears that that led to the three charges subsequently dealt with in the Local Court and it was pointed out, so far as a humiliation factor relevant to subjective circumstances is concerned, that when the appellant arrived at the police station in the company of police and under arrest, television crews were there and filmed him and that was subsequently broadcast. The charges were for corruptly give/offer benefit to an agent- s249b(2) (sic) Crimes Act NSW.*
>
> *[34] Those charges did not come on for hearing until 23 October 2012. The appellant had maintained pleas of not guilty on the charges. There is an issue about the statement of agreed facts tendered to the court. The issue is about a third charge, which has not been reflected in the charges dealt with by the Special Stewards Panel. That related to the 13 May 2011 activities. He had spoken to Detective King prior to that court date to indicate his innocence in respect of the matter but was told it was too late. The appellant maintains at all times that he did not engage in corrupt conduct on 13 May 2011 and only pleaded guilty to that charge on the advice of his barrister with a desire to ensure a quick disposal of the proceedings and to avoid a jail term. He was sentenced to 150 hours' community service, concurrent, in respect of those charges.*

[33] TB 373 at [24].
[34] At [32] – [36]; TB 374 – 375.

> *[35] The stewards had, in the meantime, stood him down from the date of his charge by the police on 25 November 2011. On 15 December 2011 the stewards proffered the charges against him which were dealt with by the Special Stewards Panel and which are before this Tribunal. He indicated on 13 January 2012, through his solicitor, that he was not admitting those two matters.*
>
> *[36] When it came to the Special Stewards Panel hearing, he had changed his mind and admitted the breaches of the rules and received the penalty in question. He gave an undertaking to the Special Stewards Panel that he would repay the prize money and his percentages. And he has done so in a sum of $6077.*

THE APPELLANT'S APPLICATION FOR A TRAINER AND DRIVER LICENCE

The Respondent's notification to the Appellant of 26 October 2023

45. On 26 October 2023, the Respondent wrote to the Appellant confirming the expiration of his disqualification on 25 November 2023, and advising that if he wished to make application for a licence he would be required to submit various documents.

The Appellant's application for a licence

46. On 27 November 2023, the Appellant lodged an application for an A Grade Driver's Licence, and a B Grade Trainer's Licence[35]. That application was supported by the material which had been requested by the Respondent.

The Respondent's request that the Appellant show cause

47. On 5 December 2023, the Respondent wrote to the Appellant ("the show cause letter") advising him that the Committee had resolved that he "*show cause as to why [he] should be granted a licence and in doing so, address the issue of a 'fit and proper person'.*"[36] That correspondence set out the criteria in cl 2.26 of the Policy.[37] The Respondent asked the Appellant to respond to the show cause letter *"with specific reference to the factor of propriety".*[38]

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[35] TB 24 and following.
[36] TB 68.
[37] Set out at [17] above.
[38] TB 70.

48. The Appellant's response of 9 December 2023 to the show cause letter forms part of the material before me.[39] It is appropriate that I set out that response in full:

> *I have just finished serving my disqualification of 12 years on November 25th 2023 and would like to reapply for my trainers and drivers licenses. I believe I am more than ready to come back and am fit and proper.*
>
> *As far as fitness goes, I am a regular gym attendee at Vale Tudo training at Picton averaging 5-6 classes a week which is a mixture of CrossFit and high intensity interval training which requires full effort every class from your entire body and mind and have excelled there and at other previous gyms before that without injury or ill health.*
>
> *When it comes to propriety I made one silly mistake on an otherwise clean career in racing with minimal suspensions handed to me over a lot of drives and many years. It was a very costly mistake to me especially mentally and I have learnt a lot away from the game while serving my time. I really struggled the first few years trying to start a new career when racing was all I knew and this caused a lot of mental struggles. I got the help I needed and got back on my feet and kept a strong work/life balance and finished the last nine years of my sentence strong, working at Oak Ridge Spelling for four years as a maintenance man surrounded by champion thoroughbreds without any issues then worked for National Cable Installations for the last five. Years in most of Sydney's biggest jobs like the new road tunnels and high rise buildings which require stringent security checks and medical checks to make sure you are fit and proper for the job. I have kept good relationships with both companies still to this day and was held in high regard at both for being reliable and trustworthy.*
>
> *I also handed in two character references from A Grade trainers who were not just any trainers. Jimmy Douglas is the President of the UHRA and Belinda McCarthy is the leading trainer in New South Wales and runs one of the biggest studs. Both know me well and were more than happy to give a character reference for me hoping to help me get back to the game of harness racing that they know I have missed, [sic] am sorry for what I did and am ready to return to.*

Convening the meeting of the Committee

49. The Respondent wrote to the Appellant on 20 December 2023 in (inter alia) the following terms:[40]

> *...[A]s a result of your harness racing disqualification and criminal convictions for corruption offences related to the Green Light*

[39] TB 72 – 73.
[40] TB 75.

> *investigation, the HRNSW Licencing Committee resolved that you should 'show cause' as to why you should be granted a licence, and in doing so, address the issue of a 'fit and proper' person to be licensed by HRNSW.*
>
> *Your response to the Notice to Show Cause was received on Monday 11 December 2023 and was provided to the HRNSW Licencing Committee.*

50. The letter went on to advise the Appellant that it had been resolved that he appear before the Committee on 27 December 2023.

The meeting of the Committee

51. On 27 December 2023, the Committee comprising Michael Prentice (Chief Integrity Officer), Mr Clint Bentley (Chairman of Stewards) and Mr Grant Wootton (Registrar) met with the Appellant.

52. The Chairman explained[41] that the role of the Committee was to determine whether the Appellant was a fit and proper person to be licenced by the Respondent. At the Chairman's request, the Appellant then summarised his account of the facts which led to his disqualification.[42] The Appellant was then questioned by the Chairman, at considerable length, about those facts.[43]

53. The Appellant was also asked about penalties imposed on others arising from the investigation. In particular, the following was put to him:[44]

> *…. So I mentioned Mr Atkinson. He's back. He's a licenced person. Other than Mr Atkinson, anyone that was directly involved in the Green Light is not back involved in harness racing. The question that I have for you is why [the Respondent] should relicense you when there's only been one other person from the Green Light investigation that has been relicenced, being Mr Atkinson.*

54. This appeal proceeds before me as a hearing *de novo*. It follows, that a determination that the appeal should be allowed does not depend upon a finding

[41] TB 177.1 – TB 177.3
[42] Commencing at TB 179.14.
[43] Commencing at TB 182.34.
[44] TB 218.43 – TB 219.2.

that there was some error in the original decision. However, any suggestion that the Appellant's application for a licence should be refused because the majority of others who were involved in offending of the same kind have not been "allowed back", would arguably constitute an error in the exercise of the relevant discretion. The issue of whether the Appellant is a fit and proper person to be issued with a licence is to be determined by the facts and circumstances of ***his*** case. The individualised justice to which he is entitled is a fundamental cornerstone of fairness.

55. The Committee also drew the Appellant's attention to his response to the show cause letter,[45] with the Chairman appearing to question the completeness of that response.[46] The Appellant replied by explaining that (to use his words) he is *"not the best letter writer"* but that he had *"thought he did all right ...."*.[47] True it is, that the Appellant did not address each and every one of the matters which had been drawn to his attention. At the same time, the show cause letter specifically requested that he address the issue of propriety. The Appellant's response did so. In my view, no adverse should be drawn against him simply because he may not be a particularly sophisticated or articulate person. That has little or no bearing on questions of fitness and propriety.

56. The Appellant was also questioned about how he viewed his offending with, as it were, the benefit of hindsight. The Appellant variously described his actions as *"one silly mistake",*[48] *"a very costly mistake",*[49] and *"a bad look"* which *"didn't help the reputation"* (of harness racing).[50] It has to be said that, taken in isolation, those responses had a tendency to understate the significance of the offending, and its consequences for, and impact upon, the Harness Racing industry. That said, and

[45] TB 209.20 and following.
[46] TB 201.1.
[47] TB 201.4 – TB 201.5.
[48] TB 185.35.
[49] TB 185.40.
[50] TB 186.10.

for the reasons I have expanded upon below, I am satisfied that the Appellant is nevertheless genuinely remorseful for his conduct.

The Respondent's determination

57. On 8 January 2024, the Respondent wrote to the Appellant stating the following:[51]

> *At a meeting of the HRNSW Licencing Committee on Monday 8 January 2024, it was resolved that you would not be issued with a licence as you were not considered to be a 'fit and proper' person based on the following:*
>
> - *Your criminal convictions and harness racing disqualification for corruption related offences directly linked to the NSW Harness Racing industry, subject of the 'Green Light" investigation.*

58. It will be evident from the terms of that determination that no reference was made to the vast majority of the criteria in cl 2.26 of the Policy. That may suggest, as the Appellant has submitted, that the members of the Committee were satisfied that the Appellant had satisfied those criteria, and that they based their decision solely upon the circumstances of his previous offending. Whether that is the case or not, in looking at the matter afresh I have considered the entirety of the criteria as set out below.

<u>THE EVIDENCE ON THE APPEAL</u>

The medical evidence

59. I have been provided with a comprehensive psychological assessment of Mitchell McLean, Psychologist, of 29 February 2024. From the point of view of issues of cognitive and/or mental health, Mr McLean has no concerns as to the Appellant's fitness to perform the duties and responsibilities of a participant in the Harness Racing industry.[52] Mr McLean also said:[53]

> *71. A detailed description of [the Appellant's] risk of repeating his misbehaviour is outlined. ... His risk is low. No general or specific risk*

[51] TB 222 – 223.
[52] TB 354 at [70].
[53] TB 354 at [71] – [72].

factors were identified which require specialist risk management to lower his risk.

72. His remorse appeared genuine. His suspension period has allowed him to reflect on those factors which led to his disqualification. As such, his insight regarding those factors is now strong, and there is no indication that he is at risk of engaging in the same misconduct.

The Appellant's evidence

60. The Appellant provided a comprehensive statement of 4 March 2024.[54] Consistent with the position which was outlined at the commencement of the hearing, Ms Chua, who appeared for the Respondent, did not seek to cross-examine him on the contents of that statement when given the opportunity to do so.[55] Whilst I do not propose to canvass the entirety of what the Appellant said, the following matters are significant.

61. First, the Appellant has acknowledged the ramifications of conduct on the Harness Racing Industry as a whole.[56] I have no reason to think that this acknowledgement was anything other than genuine and insightful.

62. Secondly, he has expressed unequivocal remorse for his conduct,[57] and has stated an intention to redeem himself if this appeal is successful.[58]

63. Thirdly, he has done his best to rehabilitate himself in a number of respects during his disqualification.[59]

64. Fourthly, he has pointed out that for the entirety of his disqualification he continually engaged with the Respondent so as to ensure that anything he did

[54] Commencing at TB 357.
[55] T 3.33 – T 3.40.
[56] TB 362 at [71]; [78]-[80].
[57] TB 362 at [72]; [77].
[58] TB 363 at [82].
[59] TB 372 at [73] and following.

might prejudice an application for registration at the conclusion of his disqualification period.[60]

65. Finally, he has undertaken to comply with all rules and regulations if he is registered as a participant.[61]

The testimonial evidence

66. The Appellant relies on a substantial body of (unchallenged) testimonial evidence in support of his position generally, and the issue of his fitness and propriety in particular. Whilst I do not propose to set out the entirety of that evidence, the following matters of significance emerge from it.

67. To begin with, the Appellant relies on a testimonial provided by Graeme Campbell OAM, the current Chair of Harness Racing Australia, and a former Chair of the Respondent, dated 12 August 2021.[62] Whilst that testimonial was prepared in association with a previous unsuccessful application by the Appellant for a remission of his disqualification, there is nothing to suggest that the views expressed by Mr Campbell have changed in the intervening period. Importantly, whilst the testimonial is obviously written by Mr Campbell on his own behalf, he has expressly stated that it is also written on behalf of Rex Horne, Chris Edwards, Graham Kelly and Rod Smith, each of whom, I was informed in the hearing of the appeal, is a former Chair of the Respondent. Mr Campbell and his colleagues are unequivocally supportive of the Appellant's return to the industry. It can be readily inferred that each of them, in expressing that support, is cognizant of the importance of maintaining and advancing the integrity of, and public confidence in, the industry, and that they do not view the Appellant's return to the industry as presenting any impediment or threat in that respect. That is, obviously, highly significant, particularly bearing in mind the positions occupied by those expressing such views. to those factors being advanced.

[60] TB 363 at [87].
[61] TB 364 at [99].
[62] TB 390.

68. The remaining testimonials relied upon by the Appellant establish:

(i) his rehabilitation;[63]

(ii) his capabilities as a "horseman";[64]

(iii) his genuine remorse, and otherwise positive contributions to the industry;[65]

(iv) his acceptance of responsibility for his offending;[66] and

(v) his prowess as a driver.[67]

69. It is also important to recognise that a number of those who have provided testimonials are current industry participants. They include persons for whom the Appellant may work, and persons against whom he may (directly or indirectly) compete, if granted a licence.[68] Clearly, all of those persons are confident that in the event that he is granted a licence, the Appellant will conduct himself, and will compete, fairly, honestly, and with integrity. As a matter of common sense, they would not be prepared to support the Appellant's return to the industry if the contrary were the case.

THE RELEVANT PRINCIPLES

70. I have already set out the legislative scheme in the Act for the licencing of participants. Unsurprisingly, one of the fundamental principles underlying that scheme is that registration functions are to be exercised by the Respondent so as to ensure that individuals who are registered are fit and proper persons to be so registered, having regard, in particular, to the need to protect the public interest.[69] For the purposes of the present appeal, the Tribunal stands in the shoes of the Respondent, and must therefore have regard to that scheme, and its provisions.

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[63] Chris Barsby at TB 414; Wally Mann at TB 417; Jim Douglass at TB 424; Christopher Wood at TB 425; Colin McDowell at TB 426; Peter Hanson at TB 428.
[64] Jim Douglass at TB 424.
[65] Stephen Wilson at TB 416; Andrew Spagnolo at TB 423; Colin McDowell at TB 426; Lisa McCann at TB 427.
[66] Scott McDonald at TB 429.
[67] Scott McDonald at TB 429.
[68] Jim Douglass at TB 424; Peter Hanson at TB 428; Scott McDonald at TB 429.
[69] Section 11.

71. The authorities which set out the general principles to be applied in considering whether someone is a "fit and proper person" for a particular purpose are well known.[70] This Tribunal (differently constituted) has consistently been called upon to apply those principles to determinations of the present kind.[71] The approach adopted, and the observations made, in those determinations have generally been drawn from decisions of superior Courts. Whilst those decisions have generally been in the context of decisions made by organisations regulating various professions, they nevertheless set out a number of fundamental principles which are applicable in matters of the present kind. Many of those principles were succinctly summarised, and in some instances expanded upon, by Beech-Jones J (as his Honour then was) in *Hilton v Legal Profession Admission Board*.[72] They include the following:

    (i) a conviction is important to an assessment of whether someone is fit and proper;[73]

    (ii) a conviction is not necessarily determinative, and the controlling body may inquire into the offending to ascertain its real facts;[74]

    (iii) the question of whether an applicant is a fit and proper person is to be determined at the time of the hearing;[75]

    (iv) consideration must be given to the passage of time which has passed since the commission of any offence, and the age of the person when such offence was committed;[76]

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[70] See for example *Hughes & Vale Pty Limited v New South Wales (No. 2)* (1955) 93 CLR 127 at 156.
[71] See for example the decisions in *Zohn v Harness Racing New South Wales* (11 July 2013) at p, 2 and following; *Bennett v Harness Racing New South Wales* (21 May 2019) commencing at [12].
[72] (2016) 339 ALR 580; [2016] NSWSC 1617.
[73] At [6], citing *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 57 CLR 279.
[74] At [102] citing *Ziems*.
[75] At [101] citing *Ex Parte Tziniolis; Re the Medical Practitioners Act* [1967] 1 NSWLR 57; (1966) 67 SR (NSW) 448 at 475.
[76] At [103].

(v) a long passage of time may tend in favour of a conclusion that a person is fit and proper, although by itself, a passage of time without a transgression does not necessarily prove a change in character;[77]

(vi) there may be little or no public interest in denying forever the chance of redemption and rehabilitation.[78]

72. In *P v Prothonotary of the Supreme Court of New South Wales,*[79] Young CJ in Eq cited other factors which, in his view, provided general guidance in cases of this kind. They included:

(i) the absence of any prior disciplinary or criminal record;
(ii) honesty and co-operation with the authorities after detection;
(iii) evidence of good character; and
(iv) clear and convincing evidence of rehabilitation.

73. It must, of course, be emphasised that no single consideration is determinative. What I am required to do, is conduct a balancing exercise which takes into account all relevant considerations. The weight to be given to individual factors may well vary.

SUBMISSIONS OF THE APPELLANT

74. The submissions made on behalf of the Appellant advanced the following propositions:

(i) a significant penalty was imposed on the Appellant, which has been served;[80]

[77] At [103] citing *Tziniolis,* and *Saunders v Legal Profession Admission Board* [2015] NSWSC 1839 at [62].
[78] At [105] citing *Dawson v Law Society (NSW)* [1989] NSWCA 58 per Kirby P at [7].
[79] [2003] NSWCA 320.
[80] TB 15 at [49].

(ii) it was evident that the Committee was satisfied that the Appellant was a fit and proper person, other than in respect of the matters which saw him disqualified;[81]

(iii) no new facts or circumstances have emerged since the imposition of the disqualification which would render the Appellant other than a fit and proper person;[82]

(iv) the medical and testimonial evidence overwhelmingly supports a conclusion that the Appellant is a fit and proper person, and that he presents little or no risk of reoffending;[83]

(v) the Appellant is genuinely remorseful, has insight into his offending, and has accepted responsibility for his previous offending;[84]

(vi) the testimonial evidence unequivocally supports a conclusion that the Appellant is a fit and proper person;

(vii) irrespective of where any onus might lie, the evidence overwhelmingly supports the appeal being allowed.[85]

CONSIDERATION

75. I preface what follows by making two preliminary observations which, although obvious, nevertheless need to be stated. The first, is that on any view of it, the Appellant's offending exhibited a high level of objective seriousness. The second, is that such offending had a direct, and adverse, effect, upon the integrity of the harness racing industry. That said, and for the reasons I have already stated, those matters are not determinative.

76. As I have previously noted, it is not clear from the Respondent's determination whether, as the Appellant submitted, the Committee was satisfied that the Appellant is a fit and proper person in all respects other than those stemming from his offending. Whatever might be the case, I am required to consider all relevant

[81] TB 15 at [50].
[82] TB 16 at [53].
[83] TB 16 at [59] – [60]; TB 17 at [62].
[84] TB 17 at [62].
[85] T 13.29 – T 13.42.

factors, including those for which provision is made in the Policy. For the reasons that follow, I am satisfied that the Appellant has discharged the substantial onus he bears, that he has established that he is a fit and proper person, and that the appeal should therefore be allowed.

77. First, and whilst not seeking in any way to minimise its high level of objective seriousness, it remains the case that the Appellant's offending was constituted by two instances of offending, committed six days apart. The importance of such a circumstance is that this is not a case in which the offending extended over a long period of time. In this regard, I respectfully disagree with the conclusion reached by the Tribunal, when determining the Appellant's previous appeal, that the offending was a "*worst case scenario*".[86] One can readily envisage a range of factors which, if present, would have rendered the Appellant's offending of even greater gravity than was already the case. I am fortified in that view by the fact that the Magistrate who dealt with the criminal proceedings saw fit to impose a Community Service Order, a sentencing option which was substantially less than the maximum term of imprisonment which is reserved for the worst possible case. I should also make the point again that although obviously relevant, the offending is not determinative of the question whether the Appellant is a fit and proper person.

78. Secondly, the offending occurred almost 13 years ago. Indeed, the Appellant has now served approximately six months longer than the disqualification which was imposed. He has spent the period of his disqualification wisely, productively, and to his general benefit. He has worked in varying capacities. He has been careful to ensure that he did not engage in any practice or behaviour which was adverse to the Harness Racing industry, to the point of verifying, with the Respondent, the acceptability of a number of activities before he undertook them. He sought and obtained help to deal with personal anxiety issues. All of these matters are indicative of the Appellant exhibiting insight into the seriousness of his conduct.

[86] TB At [60].

79. Thirdly, and at least at a level of generality, the lapse of a long period of time since the imposition of a disqualification may be a factor which goes some way to supporting a conclusion that an applicant for a licence is a fit and proper person. To adopt the phraseology of Young CJ in Eq in *P*, the evidence of the Appellant's rehabilitation is clear and convincing. I would add, in this respect, that the Appellant satisfactorily completed the Community Service Order imposed on him by the Local Court. That reflects respect for the Magistrate's order, and constitutes conduct which necessarily forms part of his rehabilitation.

80. Fourthly, and bearing in mind the matters to which I have referred in [79] above, there is no evidence to suggest that the Appellant did anything at all during his period of disqualification which reflects adversely on his character. That is significant, bearing in mind that his fitness and propriety is to be assessed as at the present time.

81. Fifthly, at the time of the offending the Appellant was aged in his mid-twenties. He was not, as it were, a child, and he cannot rely upon youth as an excuse for his conduct. At the same time, the evidence, particularly his unchallenged statement which I accept, supports a conclusion that he has matured significantly in the intervening period. In this regard, it is not without significance that when determining the Appellant's previous appeal and reducing his period of disqualification, the Tribunal (differently constituted) found:[87]

> … *[the Appellant] is a changed person, understanding of the wrongfulness of his conduct, reformed, and unlikely to re-engage in such conduct.*

82. Whilst I am obviously not bound by factual findings of that kind, the views expressed by the Tribunal on that occasion, which is now almost 5 years ago, accord entirely with my own, independently formed views, which are based on the evidence before me. I too consider that the Appellant is unlikely to re-offend, a conclusion which is specifically supported by the evidence of Mr McLean.

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[87] At [92].

83. Sixthly, it is significant that the views of the Tribunal to which I have referred above were expressed to be fortified "*by the referees".*[88] I am similarly fortified in the conclusion I have reached by the voluminous testimonial evidence which is before me, and which unequivocally supports the conclusion that the Appellant is a fit and proper person at this time. Much of that evidence has been provided by participants in the Harness Racing industry and, in some instances, by persons who have held significant positions of authority and responsibility within the industry. Clearly, all of those persons are well aware of the *"Green Light Scandal",* its deleterious effect on the industry as a whole, and the Appellant's involvement in it. With full knowledge of all of those matters, each and every one of those persons has unequivocally supported the Appellant's return.

84. Seventhly, I am satisfied that the Appellant is genuinely remorseful for his offending. The evidence of that remorse comes from his own statement which I accept, the opinions of a number of persons who have provided testimonials, his pleas of guilty (albeit late) to the Panel, and his pleas of guilty to the offences before the Local Court. In reaching this conclusion, I am obviously mindful of the fact that, to begin with, the Appellant did not co-operate with, and in fact lied to, Stewards, and sought to evade responsibility for seriously corrupt conduct. Those matters are not to his credit and were, along with a myriad of other considerations, the subject of adverse comment by the Panel which was entirely justified.[89] What can be said, however, is a that a significant period of time has elapsed since then. I reiterate that a long passage of time which, in the absence of further transgression, may go some way to supporting a conclusion that a person is fit and proper, notwithstanding their previous offending.

85. Eighthly, issues of propriety aside, considerations of fitness incorporate the notion that any applicant for a licence must have the necessary knowledge, skill and ability to perform the functions which the licence permits be undertaken.[90] There

[88] At [92].
[89] See for example at [37] – [43].
[90] See *Hughes & Vale* at 156.

can be no doubt that the Appellant has all of those attributes, which he can utilise to make a positive contribution to the industry. That conclusion is supported his history in the industry, and the testimonial evidence.

86. Finally, I have previously acknowledged what I regard as my obligation to consider, and to act in accordance with, the Policy.[91] The application of the criteria in cl 2.26 of the Policy involves an overall evaluation. It must not be approached in a mechanistic fashion, in which relevant factors are "tallied". Bearing in mind the evidence in the present case, the application of the criteria in cl 2.26 overwhelmingly supports the conclusion that the appeal should be upheld. In particular, the application of the criteria establishes that the Appellant:

    (i) is physically fit;
    (ii) has the requisite skills and knowledge to be an industry participant;
    (iii) has the requisite mental fitness;
    (iv) has (but for the offending) a good reputation in the industry, and is a person of otherwise good character;
    (v) would be welcomed back by current participants in the industry who are clearly of the view that he would act honestly and with integrity if permitted to return
    (vi) has no other significant disciplinary history;
    (vii) has, but for the offending, demonstrated an ability to comply with the Respondent's rules and policies;
    (viii) is financially sound, as evidenced by the documentation which was provided with his application;
    (ix) has a previous (now spent) conviction arising out of the offending, the penalty for which has been successfully completed, and which was committed outside the relevant 10 year period referred to in the Policy; and

[91] At [25] above.

(x) has no convictions for any of the other offending to which reference is made in the Policy, being offending involving violence, cruelty to animals or the possession or use of illicit substances.

87. It follows that, whether or not these criteria were taken into account by the Committee when making its determination, they support the conclusion that the Appellant is a fit and proper person to be granted a licence.

ORDERS

88. Towards the end of the hearing, I discussed with the parties' representatives the form that any orders might take in the event that I concluded that the appeal should be upheld. Ms Chua explained[92] that if I reached that conclusion, the Respondent would act in accordance with it. I take that to mean that subject to addressing any regulatory or procedural considerations, the Respondent will issue the Appellant with the licences for which he applied. On that understanding, I have made the orders below. Should anything further be required to put those orders into effect, the parties can contact the Appeals Secretary and the matter can be relisted if necessary.

89. I make the following orders:

1. The appeal is allowed.
2. The determination of the Respondent of 8 January 2024 not to issue the Appellant with a licence is quashed.
3. Any appeal deposit should be refunded.

THE HONOURABLE G J BELLEW SC

11 June 2024

[92] T 17.43.