RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

MONDAY 19 SEPTEMBER 2022

APPELLANT DONNA GRECH

RESPONDENT GWIC

APPEAL AGAINST GWIC DECISION TO REFUSE APPLICATION FOR REGISTRATION AS OWNER TRAINER

DECISION:

1. **Appeal upheld**
2. **Appeal deposit refunded**

1. The appellant, an unlicensed but formerly licensed owner trainer, Ms Donna Grech appeals against the decision of GWIC of 17 May 2022 to refuse the application she made to it on 22 November 2021 for registration as an owner trainer.

2. The issue identified by the parties raises the test found in section 47(1) of the Greyhound Racing Act 2017, which is in these terms:

> "The Commission is to exercise its registration functions under this Division so as to ensure that any person registered by the Commission is a person who, in the opinion of the Commission, is a fit and proper person to be registered (having regard in particular to the need to protect the public interest as it relates to the greyhound racing industry)."

3. It is noted that the Commission decision took into account that provision but was based upon 49(3), which provides:

> "The Commission may refuse to register a person as a greyhound racing industry participant if it is of the opinion that it would be in the best interests of the greyhound racing industry to do so."

4. This this appeal is not a vehicle to determine any tension that might exist between 47(1) and 49(3).

5. The case is run on the basis of 47(1), fit and proper, not on the basis of best interests.

6. But the Tribunal is satisfied in passing, and without determining the matter to finality for future use, that the protection of the public interest as it relates to greyhound racing may mean that 49(3) is simply surplusage in any event, that what are the best interests of greyhound racing otherwise than a need to protect the public interest that relates to it. Anyway, that does not need to be decided.

7. The evidence has comprised what is described as the usual brief. The key points of that brief are that it contains the application, obviously, and a detailed questionnaire created by Inspector Hitchcock to which a very detailed reply was given by Mr Wilson, solicitor, and various statements relating to conduct that occurred in 2015, the actual decision itself. The bundle of evidence does in fact, in addition to those matters, which are not listed, contain the evidence that the appellant on 24 April 2018 was given a statement of attainment in respect of greyhound first aid, as it will be paraphrased, that there are numerous photographs of the appellant with ponies and the like, that she has in 2016 and 2018 suffered from two issues, that do not need to be analysed further, under medical certificates. And, critically, the Tribunal has the benefit of her statement of some 43

paragraphs of 29 July 2022, together with a statement of her son Mr Christopher Little of 3 August 2022. In addition, the appellant has given evidence, as has Mr Little.

8. Determinations by the Tribunal on licence refusal appeals are not new. There are many decisions of the Tribunal in this jurisdiction in which it has set out the law to be applied to an application such as this. The Tribunal notes in passing the numerous occasions in the harness racing jurisdiction, and slightly less number of occasions in the thoroughbred jurisdiction, in which it has undertaken the same assessment of the applicable law.

9. The Tribunal's most recent decision in this jurisdiction was that of Austen v GWIC of 20 April 2022. The more decisions the Tribunal gives, the more complicated the cross-references to past determinations become. Suffice it to say that there is no issue in these proceedings as to the legal principles to be applied

10. In Austen the Tribunal stated:

> "6. The law to be applied has been recently dealt with by the Tribunal in the thoroughbred racing appeal of Sweeney. That decision of 6 April 2022 is referred to because it incorporated a further legal principle in more detail to that which the Tribunal had set out on numerous occasions and in prior decisions in this jurisdiction in matters of Zohn and Vanderburg and other cases in particular. The relevant parts of the Tribunal's decision in Sweeney were paragraphs 4 and 5, which state: "4. The law to be applied has been considered by the Tribunal in numerous decisions in this and the other two racing codes. The respondent has referred to Zohn v Harness Racing NSW, a decision of the Tribunal of 11 July 2013. The Tribunal has referred to more recent decisions of 30 November 2015 of Vanderburg, a greyhound racing appeal, and Scott, 15 July 2015, a harness racing appeal. The law applied, therefore, in relation to the assessment of fitness and propriety and relevant, therefore, to what appropriate protective order is necessary in this case, was set out in Scott as follows:
> 'It is apparent therefore that the statutory or regulatory regime which has been put in place has a strong emphasis upon regulation and of the importance of the reputation of the industry in relation to matters of consumer confidence and the like. And for that reason a number of matters relating to conduct, which might have some impact upon the reputation of the industry, are to have a strong focus. Not only that, but it is to the proper conduct of racing and its general integrity that there must be a further focus. In the decision of Zohn 11 July 2013, which was an application by Zohn against a refusal of a trainer's licence, an appeal which was dismissed, the Tribunal set out the provisions it, in that matter, considered appropriate to be the tests

against which this applicant is to be assessed. Those parts of Zohn are:

"The law relating to fitness and propriety falls, and has been considered in many different areas. Perhaps the key one is the decision of Hughes & Vale Pty Ltd v New South Wales [No 2] [1955] HCA 28, which dealt with the principles of fitness and propriety in this sense:

' ... their very purpose is to give the widest scope for judgment and indeed for rejection. "Fit" (or "idoneus") with respect to an office is said to involve three things, honesty knowledge and ability: "honesty to execute it truly, without malice affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it"". (A reference to Coke).

In determining that test is the question as Henchman DCJ said so long ago in the case of Sakallis, a real estate agent's licence application, that is:
'The Court is considering whether it can with safety to the interests of the public accredit to that public that the applicant is a fit and proper person to hold a licence and to be entrusted with the functions permitted to such a licensee by the Act. The Court acts in order that the public may be protected and the persons who receive the imprimatur of the Court should be such that the court can fairly recommend them to the public as honest persons in whom confidence may be reposed.'

Quoting from New South Wales Law Institute v Meagher he went on to say:
'There is therefore a serious responsibility on the court – a duty to itself, to the rest of the profession, to it suitors, and to the whole of the community to be careful not to accredit any person as worthy of public confidence who cannot satisfactorily establish his right to that credential. It is not a question of what he has suffered in the past, it is a question of his worthiness and reliability for the future.'

And again quoting from Ex Parte Meagher:

'By the words "fit and proper persons" is meant persons who have been proved to the satisfaction of the court not only to be possessed of the requisite knowledge of law but above all to be possessed of a moral integrity and rectitude of character so that they may safely be accredited by the court to the public as fit without further inquiry to be trusted by that public with their most intimate and confidential affairs without fear that the trust would be abused.'

I pause to note that of course was dealing with an application for a solicitor. The test here is not as high as that, but it does nevertheless give some

broader meaning to the words earlier expressed. As Judge Head said in the case of Trevor James Pye, unreported, District Court 19 August 1976:

> 'I think the investigation which the court should make in those circumstances is concerned more with an assessment of whether his disrespect for the law in the past is likely to influence his actions in the future.'

And it was said in Ziems v Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279 at 290:

> 'What has been dealt with, and importantly to be considered, is misconduct in the vocation concerned.'
> The Tribunal was taken to Australian Broadcasting Tribunal v Bond [1990] HCA 33 or otherwise (1990) 170 CLR 321, where Justices Toohey and Gaudron stated: 'The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.'

The Tribunal was taken to the Victorian Civil and Administrative Tribunal decision, VCAT reference number B352/2008, an appeal of Pullicino determined on 13 May 2009 by the refusal of an appeal against a rejection of an application for a licence. The Tribunal was taken to paragraph 13. Paragraph 13 is to be read in the context that it follows paragraph 12, which set out a number of authorities, including some to which reference was made in Zohn, as well as some Victorian decisions

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The Tribunal member, Deputy President Coghlan, then said the following at 13:

> 'It will be seen then that the term "fit and proper person"
> - gives the widest scope for judgment and rejection
> - involves notions of honesty, knowledge and ability
> - depends on its own circumstances

- may be manifested in a variety of circumstances in a multitude of ways
- may depend on the purpose of the legislation'.

I agree with those enunciated principles as being relevant. I consider, however, that the additional matters to which I made reference in Zohn have to be considered as well. And to focus on some key ones just at this point, they are that the function of this Tribunal in assessing Mr Scott's appeal is to focus upon conduct that has occurred to the present time and then look to the future as to whether there is likely to be a repetition of the subject conduct. In doing so, it is important to have regard to conduct in the vocation with which this application is concerned and it is important therefore to assess any disrespect for the law in the past on any likely influence that will have upon his actions in the future. Those are some of the key matters for consideration.

5. In addition, there is the further case, to which the Tribunal makes reference, of the appeal of Ian James Banks v The Council of Auctioneers, unreported, District Court of New South Wales, 29 June 1971, a decision of Judge Henchman, where he quoted his own decision in Sakallis, to which reference has been made in this matter already, where he said:

> 'I take this view with some sympathy and with the reminder that a man once found guilty of a crime involving dishonesty is not necessarily for ever debarred from his chosen profession as the cases of Macaulay, Davis, Lenehan 77 CLR 403 and Clyne (1962) SR 436 show. But I do not think this thought can permit the grant of a licence during the period while the appellant is under a recognizance imposed by a court resulting from a self-confessed crime of stealing. The application is refused.'"

7. In addition to those principles, the appellant has taken the Tribunal in the submissions made to the Commission, and repeated today, in addition to the cases referred to in the precedent decision, to matters which require emphasis on the length of time since the offending occurred, being R v L; ex parte Attorney-General [1996] 2 Qd R 63 at 66, and also the necessity to reflect upon rehabilitation, or progress towards rehabilitation, as established in R v CBQ [2016] QCA 125 at 37.

8. In the written submissions for the respondent today, there is also reference to the case of Nikolic, which was Nikolic v Racing Victoria Limited (Review and Regulation) [2017] VCAT 406, on which the principles:

> "an understanding of the statutory objectives and evaluation of the ability of an individual to discharge the responsibilities of a particular licence is what is required."

And later:

> " ... an individual's conduct within a vocation, but is not necessarily restricted in this way."

And later:

> " … a real nexus can be drawn between those offences and the holding of the licence to ride."

9. The respondent also referred to O'Connell, Racing Appeals Tribunal, 26 October 2018, which cited Frugtniet, which is Frugtniet v Board of Examiners [2005] VSC 332, of the necessity for the appellant:

> "has shed a past conduct; and that it may take years of demonstrated good conduct before that can be done."

10. Essentially, therefore, what has to be established is that the Tribunal, having regard to all the evidence before it at the present time, and having regard to the nature of the licence applied for, must project into the future to determine whether the appellant has satisfied the Tribunal today that he has the requisite degrees of fitness and propriety and that it is in the interests of the industry that he be licensed."

11. The history of the appellant is detailed. The Tribunal does not propose to go through all of those facts in great detail but to simply look to the key points that arise from them. The assessment of those individual matters will lead to a conclusion whether any of those taken individually mean that the appellant has not met the test. But, critically, there is then a need to assess them on a cumulative basis. In other words, are there simply so many matters under which this appellant has come under adverse notice that as of today and looking to the future she simply cannot overcome that weight of evidence against her?

12. The appellant was previously licensed for a number of years as an owner and trainer. She did not come under adverse notice.

13. In 2015 she was suspended because of animal cruelty matters. A brief description only is set out. The appellant sought guidance from a Mr Kadir, a licensed owner and trainer, to assist her in ensuring that she knew how to train properly. He had a facility to which she attended, it appears, with some frequency. He had been a friend of her father. Her father and her family had all been associated with the greyhound industry. She was introduced to Kadir. He took her on on that basis just described. She was there assisting at his property and, apparently, learning.

14. Under great controversy, Kadir was found to be participating in live baiting. That involved a finding of live possums and live rabbits on his property. Kadir was subsequently charged and received a 2 years 6 months intensive correction order, it appears, in or about 2020.

15. The appellant was filmed, surreptitiously, as was Kadir and others. It is quite apparent that the film which was subsequently produced on a Four Corners program was in fact a montage, an edited version of numerous film clips. Whilst the Tribunal does not have the benefit of a subsequent High Court decision in favour of Kadir, that evidence depicted in the video images was found to be not admissible against him.

16. The appellant had been filmed present at the property. The appellant had been filmed affixing rabbits to lures. The appellant had operated various equipment at the bullring where the adverse findings of live animals was made.

17. The appellant was interviewed by a then inspector for the RSPCA, a Mr Turner. The appellant gave evidence that she was totally shocked by the arrival of a large contingent involving the police, RSPCA inspectors, veterinarians and the like who had descended upon the property when they had been provided with the subject images.

18. The appellant was shown videos of images and spoken to by Inspector Turner. Part of the interview answers she gave, after declining an interview with a legal representative, was as follows:

> "Question: And you were present when they were using a live lure for greyhound coursing?
>
> Answer: Yeah.
>
> Question: Yep.
>
> Answer: I don't know if it was live. I don't know."

19. That is but an extract. The appellant, in a subsequent questionnaire answer, which was provided, as described by her solicitor Mr Wilson, with her application material, stated how she was in shock, she was not thinking properly, matters of that nature. The issue is not the legality or otherwise of that interview but it is that she explains today on oath that she had not participated in live baiting and that that was not an answer that was correct.

20. The appellant was charged with 10 Crimes Act offences and 10 Prevention of Cruelty to Animals Act offences relating to animal cruelty. She pleaded not guilty. It appears on her understanding of the evidence that she was committed for trial in the District Court on the basis of a hand-up brief,

as the Tribunal will describe it, not her evidence, that she was arraigned to stand trial, that the Kadir matters, which were travelling in parallel – the Tribunal does not know whether they were being heard together – went to superior courts and up to the High Court and back again, as described, on an inadmissibility of evidence basis.

21. For reasons unknown to the appellant, her charges were dropped by the Director of Public Prosecutions. There is no evidence as to why. There is an inference of considerable weight which can be attached to those facts that the matter was no-briefed on the basis that there was no admissible evidence against the appellant. And that would appear to include her interview with Inspector Turner. But those matters are simply conjecture. Suffice it to say that she was not the subject of trial.

22. The evidence establishes that the arraignment to which she was subject was based upon court attendance notices. This is not the vehicle to examine what is and is not a court attendance notice within the criminal procedures of New South Wales so as to distinguish it from a charge.

23. The appellant had also developed her relationship with Kadir not only because of that past association with her father but also because of the association the appellant formed with Kadir's wife. They became friends. Kadir's wife subsequently died, and on the sworn evidence of the appellant today, she was asked to continue to help Mr Kadir by his wife before she died. The appellant also described Mr Kadir – and the Tribunal will return to this – as not being a well man and she elected to remain friendly with him, not only because of that fact but because of the undertaking she gave to his wife.

24. It is, therefore, that when taken as a single set of facts, the live baiting, which is entirely denied by the appellant as to knowledge, is not able to be elevated to a level where this Tribunal could form an opinion that the appellant participated in live baiting – and that is not the allegation against her in these proceedings – but what reputationally should follow from the fact of live baiting and that she was there when it took place, and therefore because of her ongoing association with a person subject to a prison term – although subject to an ICO – that that could not be in the interests of the industry when taken as a single fact.

25. It is trite to say that presence at the scene of a crime does not involve a person present, without a great deal more, being implicated in the commission of a crime. It is not necessary to closely examine those concepts of criminal law. It simply is a reflection that at its highest the Tribunal can only note that the appellant was present when wrong conduct was taking place, and conduct of the gravest severity for the reputation of the industry. The continued association with a person imprisoned (subject to

ICO) for live baiting is of deep concern to the Tribunal, and the Tribunal will return to that.

26. The next issue in her history is post the 27 February 2020 withdrawal of charges, on 24 March 2020 the appellant made an application for registration as an owner trainer. In that application she answered “No” to the question “Have you ever been charged with any criminal offence including the Prevention of Cruelty to Animals Act?” On 3 April 2020, that registration was approved.

27. Prior to that registration being approved, the appellant had, in April and May 2019, when unlicensed, handled greyhounds at a trial – there were trials on five occasions – for Mr Kadir. As a result of that, on 18 September 2020, the appellant was warned off for nine weeks for a breach of then Rule 28(4), for handling greyhounds at greyhound trials when not registered to do so.

28. The appellant says that she was ignorant of the law. She says that she did not believe she was required to be so registered for that conduct at a trial. It is to be remembered that the appellant was previously a licensed person. It is, therefore, that it would have been expected of her when previously licensed that she learnt the rules and remembered them.

29. The appellant served her warning off, and the Tribunal notes the gravity of a warning off relevant to the reputational matters to which it will return.

30. After that had expired, 19 January 2021, a second application was made. Again, the question “have you been charged” was answered “no”. A wrong answer. But the form stated: “I was suspended and cleared of all charges in the High Court.” Now, the correctness or otherwise of that statement does not need to be examined. It is obviously not correct. But it obviously does refer to “cleared of all charges”.

31. The Tribunal considers today that in looking to that form as a whole and the reason that those questions are asked, that that was a more than adequate answer when read as a whole, despite the incorrectness of the word no to a direct question, and that the mischief of informing the regulator of something to which it should make investigation was enlivened.

32. This Tribunal is not here, as it said in submissions, to redetermine the adequacy, correctness or otherwise of the penalty of 9 months’ disqualification that was imposed upon her whether that second false statement was properly embarked upon or not. No issue was taken that in respect of the first application of 24 March 2020, no such footnote was attached to the application and the Tribunal is not invited to consider that first matter in other way other than it was a proper determination.

33. But the relevance of those remarks goes to the issue of honesty. The Tribunal will return to that.

34. There is then the third application, the subject application, of 22 November 2021 in which a correct answer was given.

35. It is, therefore, that there is, when taken individually, aspects of potential participation in live baiting. Then there is the aspect of not understanding what the registration requirements of a person participating at greyhound trials was. And, thirdly, there is certainly one occasion on which a dishonest answer is given in an application.

36. Again, it is trite to say that the regulator, in providing an expeditious means of enabling people to become registered, puts the onus upon the applicant to put the regulator on notice if there are any matters which it should be concerned about. And the applicant has failed totally in respect of the application of 24 March 2020. But the Tribunal makes no such determination in respect of the second occasion of 19 January 2021 in these proceedings.

37. There is then the further association with Kadir. It continued beyond the charging process to which they were subjected in 2015 right up until 2020 when he was sentenced, right up until early 2022. It is, of course, of concern to the regulator that the appellant has continued to associate with a person who participated in live baiting and was subject to such a severe criminal sanction. That is of equal concern to the Tribunal. It is a factor which appears to scream out a lack of understanding of reputational conduct and reputational need of the industry.

38. As the submissions touch upon, the industry, as a result of that live baiting scandal, was in fact abolished. It was subsequently reinstated with a new regulatory regime. But it was of such a grave effect upon the greyhound industry and its participants that that was the necessary reaction of the government of the day.

39. Therefore, when it comes to issues of reputation, which as mandated by Australian Broadcasting Tribunal v Bond, it is necessary to have regard in respect of this appellant's apparent misunderstanding of what was required of her. Indeed, her application was made in November 2021, yet she continued to associate with Kadir.

40. The appellant has given evidence that she only achieved educational standards to Year 8. The following remarks are made to put the appellant's understanding of issues in context and not to look down upon her or to criticise her.

41. It is apparent to the Tribunal that the appellant has struggled to grasp a number of issues relevant to this industry over the last seven years or so. Those are troubling failings and they are not just one.

42. For example, the appellant did not grasp the fact that Kadir, with whom she was associating, had been sentenced to a term of imprisonment of 2 years and 6 months for live baiting. That is almost breathtaking. One wonders what they talked about. But she was not asked that, so there will be no conjecture on it.

43. The answer to some extent is to be found in fact in her favour in respect of her association with Kadir for two reasons. One, her own assessment that he was not travelling well – a Tribunal summary of words – and that he needed her personal support. Secondly, that undertaking to Kadir's deceased wife that she would continue to look after him.

44. The Tribunal does not stand back on a fair assessment basis and say those matters should not have been in the forefront of the mind of this appellant, rather, she should have been thinking about the reputation of herself and the industry. That, to the Tribunal, would be a harsh conclusion. It would lack compassion. It may be correct on a reputational basis. But the Tribunal does not form that conclusion of her as an individual.

45. The appellant has been associated with the industry virtually all her life, principally through her father, then when she was licensed. She has a love greyhounds, which she has expressed. She has a desire to return to the greyhound industry. She could, of course, rekindle her love of greyhounds without being a licensed person and have greyhounds as pets. But she does not wish to do that, she wishes to train up to two greyhounds and she wishes to do so at her son Christopher Little's property.

46. The Tribunal is satisfied that Mr Little, in his statement and in his evidence, has facilities at which she can operate. He also refers to his mother, as would be expected, in positive terms as to her love and care towards animals and the like.

47. Incidentally, the Tribunal did not say, but the evidence about her not participating in live baiting and having any knowledge of it, because it would be abhorrent to her love of animals, including ponies, that she would not have participated in that. It was not suggested to her to the contrary.

48. The appellant does not call in aid any references besides that of her son. The Tribunal has often said that for it to know how the industry on a reputational basis will receive a person back, that it is important that licensed persons speak for them. That evidence is not available. Its reasons are not apparent on evidence. It is not, as the submissions touch upon, a

negative, but it is a failure to produce a positive. Essentially, she stands to be assessed on her own evidence.

49. The other factor in relation to this association with Kadir is that her continued friendship with him was not illegal. It was not as if he was a disqualified person and she being a licensed person was associated with him, or things like that. In fact, he was not licensed and therefore there was nothing under this regulatory regime, other than the reputational issues, that would prevent her from doing so.

50. It is interesting on the reputational issue that it did not occur to her, until her son advised her, that there was talk in the industry about her continued association with him. She immediately ceased that association once that became apparent to her, late as it was.

51. The appellant has given evidence of her learning the rules such that she will know what to do in the future. The Tribunal does not place any weight upon her now four-year-old first aid certificate. That does not mean to say it is not of relevance, but it is not an important factor on a fitness and propriety test.

52. Therefore, the appellant says, when all her evidence is taken into account, she has been able to say that she will comply with the rules in the future, she knows what those rules are and she will not be engaged in a repetition of conduct. And to the extent there has been past conduct, she says she has explained it and cured it.

53. It is important to reflect, as the Tribunal said a moment ago, upon character. That aspect of character is one which the Tribunal is satisfied that she is able to establish as described.

54. As to the issue of reputation, it is important to reflect upon not only what the High Court said in the Bond case, that is, an indication of the public's perception as to likely future conduct, but that it is also statutorily reflected in the test as what is in the best interests essentially of the industry.

55. The burden the appellant came with here today is compounded by the fact that there is not just one matter that the Tribunal is examining.

56. The Tribunal has made its conclusion in respect of the live baiting matter where that, taken as an individual factor, is in her favour.

57. In respect of the second series of matters of acting as a participant at a trial, there is no evidence to contradict her apparent ignorance of the rule at the time that she believed she was able to do it because it was a trial. As to that being projected to the future, she now knows the rules.

58. The third matter relates to her failure on aspects of honesty to indicate why she did not disclose the charge for the first of those applications, and the explanation has been given that she did not read it as referring to the type of conduct which had been proffered against her by way of a court attendance notice. As weak as that may be, that is her explanation. Here, the Tribunal does seize again upon what might be described as her struggling to grasp certain legal principles and issues of fact. The Tribunal accepts her explanation, on oath, that that was the reason why she made that statement incorrectly. Looking to the future, that is not the type of act of dishonesty which the Tribunal believes will be repeated by her.

59. In respect of the second of her applications, namely, the one in which she did make the disclosure, the Tribunal has already indicated that that taken on its own will not lead to an adverse outcome. There is nothing about this application which was adverse.

60. That then assesses each of the matters individually. But can they when collectively considered provide such a total weight of matters that the Tribunal cannot give her an imprimatur for an owner trainer licence, a licence of the highest category?

61. The Tribunal is slightly troubled by what will be the appellant's ability to understand issues and the rules that apply to them and ensure that she is not in breach in the future and, importantly, does not lead the industry to suffer under its reputation. Those are future considerations.

62. Having had the benefit of seeing the appellant in evidence and having considered the totality of it, in particular the detailed answers given in the questionnaire and in her statement, the appellant satisfies the Tribunal that that projection into the future is favourable for her. So, collectively, the matters do not lead to an adverse finding as they did not when considered individually.

63. The last matter is the totality of reputation. It is, of course, that this has led to a serious issue of concern to the industry. This individual, when she has had all of the issues considered, should not simply be kept out of it because of the concern for reputation in which she is not going to lead to that loss of reputation. It is, therefore, that the Tribunal comes to a different conclusion to that which, understandably, the Commissioners came to.

64. The Tribunal is satisfied by the appellant that, projecting to the future, as of today she is a fit and proper person.

65. Accordingly, her appeal is upheld.

66. The matter before the Tribunal is a finding of fitness and propriety. The actual formal issuing of the licence is a matter for the regulator. The Tribunal does not issue licences.

67. It is, therefore, that the appeal being upheld, the Tribunal has to consider the appeal deposit.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

68. Application is made for a refund of the appeal deposit.

69. The application is opposed on the basis that the costs incurred in the preparation and conduct of the appeal outweigh that, and that money should go towards that.

70. However, a discretion is vested in the Tribunal. The Tribunal is of the opinion that there would be no point in the vesting of that discretion if it could not be exercised both ways.

71. The Tribunal is satisfied that the appellant, having taken the appeal and succeeded in it, is entitled to have her deposit refunded.

72. The Tribunal orders the appeal deposit refunded.
