RACING APPEALS TRIBUNAL NSW

TRIBUNAL MR DB ARMATI

RESERVED DECISION

21 MAY 2019

APPELLANT GREGORY BENNETT

APPEAL AGAINST DECISION OF THE LICENSING COMMITTEE OF HRNSW TO REFUSE TO GRANT AN A GRADE TRAINER AND A GRADE DRIVER'S LICENCE

DECISION:

1. **Appeal dismissed.**
2. **Orders made in respect of appeal deposit**

APPEAL

1. The appellant appeals against the decision of the Licensing Committee of Harness Racing NSW of 2 January 2019 because of its refusal to grant to him an A Grade Trainer and A Grade Driver's licence.

ISSUE

2. Has the appellant proved that he is a fit and proper person to be granted an A Grade Trainer and A Grade Driver's licence?

BACKGROUND

3. This appeal requires a third determination in respect of this appellant.

4. On 6 July 2016 the Tribunal delivered a reserved oral decision in respect of allegations of two breaches of AHRR 187(2) by this appellant and dismissed an appeal in respect of the second charge, he having withdrawn the appeal on breach in relation to the second charge.

5. On 21 March 2017 the Tribunal issued its penalty determinations in respect of those two charges, the effect of which was, in respect of charge 1, the appellant was disqualified for seven years, commencing 25 November 2011; and in respect of the second charge, disqualified for two years, commencing 29 April 2015.

6. In paragraph 10 of its decision of 6 July 2016 the Tribunal set out undisputed facts in respect of those two charges as follows:

> "On 1 August 2011, HRNSW commenced investigations into allegation(s) of corruption concerning a number of its stewards (corruption investigations).
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> On 12 August 2011, the Appellant, who was identified as a person of interest in the corruption investigations, was directed to provide records relating to his mobile telephone.
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> On 3 September 2011, the Appellant was directed to attend the offices of HRNSW.
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> On 7 September 2011, the Appellant attended the offices of HRNSW, and was further directed in writing to deliver up a particular mobile telephone.
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> In November 2011, the Appellant was arrested by the NSW Police in relation to a criminal investigation in relation to corruption in the harness racing industry.

On 7 December 2013, the Appellant was found not guilty in the District Court in relation to the criminal charges.

On 7 February 2014, the Appellant was charged pursuant to Rule 187(2).

On 21 March 2014, the Appellant, through his representative, made a plea of not guilty in relation to the charge under Rule 187(2), issued on 7 February 2014.

On 26 May 2014, the Appellant attended the offices of HRNSW for a Stewards' inquiry, at which he was represented by counsel. The Stewards' Panel was constituted by three members. The Appellant indicated a plea of not guilty to the charge. The Appellant's representative indicated that an application was to be made under Rule 182(h) for the Appellant to be legally represented. The stated purpose of the representation was in part to 'provide assistance to the stewards about any reason [the Appellant] may give for not answering a question'. It was submitted that 'if a question is asked about a matter which is a result of an improper use of Harness Racing New South Wales powers, then [the Appellant] is not obliged to answer that question.' It appeared to be accepted that the Stewards inquiry did not involve a 'right to silence', and that the Appellant would otherwise answer any 'permissible question in compliance with his obligations under the rules". The Appellant's representative also made an application for Mr Reid Sanders, the Chairman, to step aside. The inquiry was adjourned to receive further material from the Appellant in support of that application.

Notwithstanding the adjournment and the basis for it, the Appellant never provided the foreshadowed materials and the Stewards inquiry was listed to resume in April 2015 on the basis, as confirmed in correspondence, that the application had been abandoned.

On 29 April 2015, the Appellant attended the reconvened Stewards' inquiry. The Chairman noted the correspondence between the parties and the fact that the foreshadowed materials had not been forthcoming. The Chairman advised that on the evidence before it, the Stewards Panel rejected the application for the Chairman to recuse himself.

The Appellant, through his counsel, confirmed that he did not admit to any failure to produce an incorrect mobile telephone in response to the HRNSW direction. The Appellant's counsel made submissions about evidence said to have been improperly obtained. The Appellant also indicated through his counsel that he would refuse to answer

questions, on the grounds that he may incriminate himself, on three topics:

> the mobile telephone he produced on 7 September 2011;
> the consequential non-production of the phone that relates to the call charge records previously produced by him; and the reporting to police of the loss of an iPhone, said to have been lost somewhere between 5 and 6 September 2011.

It was said not to be a 'blanket refusal'.

On 8 May 2015, the Appellant was issued with a further charge under Rule 187(2).

On 23 June 2015, the Respondent determined the two charges against the Appellant under Rule 187(2) for conduct in 2011 and in 2015. The Appellant was respectively disqualified for seven years and warned off indefinitely.

On 26 June 2015, the Appellant lodged a Notice of Appeal in respect of the decision of 23 June 2015."

7. As will be seen from that chronology in the decision of 6 July 2016, the subsequent decisions of 6 July 2016 and 21 March 2017 adopted that chronology.

THIS APPLICATION

8. On 24 September 2018 the appellant lodged his application for the A Grade Trainer and A Grade Driver's licence. Correspondence was exchanged in which additional information was requested and given. On 24 November 2018 the appellant's disqualification for the first breach of 187 expired. On 28 November 2018 a show cause notice was issued by the respondent to the appellant in respect of his application. On 4 December 2018 the appellant responded to that show cause notice and provided further submissions. The appellant was then invited to attend an interview and on 20 December 2018 the Licensing Committee interviewed him. On 4 January 2019 the respondent wrote to the appellant notifying him that the Licensing Committee had refused his application. On 8 January 2019 he lodged this subject appeal.

EVIDENCE

9. Two large bundles of material have been provided to the Tribunal. The first bundle comprises 369 pages and contains all of the relevant evidence, submissions, applications and findings dating from 2011. The second bundle comprises 530 pages of policies, rules, legislation and authorities.

10. The key parts of those volumes which have concerned the parties involve the interview of 20 December 2018, the appellant's submissions to the Licensing Committee, which is undated, three character references and, of course, whilst those matters only are referred to, other items of evidence have been addressed and will be dealt with as appropriate.

11. Critically, the appellant has not given evidence on this appeal. His current position is that set out in his undated submission to the Licensing Committee. That, of course, is supplemented by the facts he gave in the interview of 20 December 2018. The appellant relies upon the references as providing supplementary support for his application.

THE STATUTORY, REGULATORY REGIME AND THE APPLICABLE LAW

12. The Tribunal has expressed the law to be applied to applications such as this on numerous occasions in this and the other two codes.

13. In the RAT decision of 15 February 2019 in the matter of Jackson Painting v Harness Racing New South Wales, in an appeal against a refusal by HRNSW to grant a B Grade Driver's licence, the Tribunal, in paragraph 3, drawing from its decision in Scott v HRNSW of 15 July 2015, set out the law and regulatory requirements and case law which is relevant to this matter. Paragraph 3 is set out in full:

> *"The scheme of the legislation that affects this application is to be found firstly in section 11 of the Harness Racing Act, in particular, paragraphs 1 and 2:*
>
> > *11 (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.*
>
> *Consequent upon that provision, the Australian Harness Racing Rules provide, in part 4 under 'Licences' and under the heading 'Grant of Licences and other matters', Rule 90:*

'90.(1) The Controlling Body may by licence regulate any activity connected with the harness racing industry.
(2) ..
(3)
(4) The Controlling Body may grant a licence for such period and upon such terms and conditions as it thinks fit.
(5) An application for a licence may be refused by the Controlling Body without assigning any reason.
(6) A licence may be suspended or cancelled:
(a) by the Controlling Body or the Stewards for breach of a term or condition of the licence, or
(b) by the Controlling Body where the Controlling Body is satisfied that the person holding the licence is not a fit and proper person to be associated with harness racing.
(7) …
(8) …'

To make an application for a licence, an application is completed. Attached to that application is a requirement to complete a code of conduct. In assessing the application, applicants are given, and Harness Racing NSW, in addition to having regard to the statutory test in section 11 and the provisions contained in Rule 90, have regard to a policy statement, effective 10 March 2014, which, to draw only some parts from it, says at 1.3:

'HRNSW may grant a licence for such period and up such terms and conditions as it thinks fit, and may refuse a licence without assigning any reason whatsoever.'

2.8 sets out what is required of an A Grade Driver. 2.19, under the title 'Fit and Proper Person' sets out under headings 'Suitability of Licensees', 'Fitness' and 'Propriety' a range of matters. Under the first, 'Suitability of Licensees' is a mandate for applicants for licences and licensees to meet and continue to meet suitability requirements. It says the 'criteria for a fit and proper person will be applied'. Under the heading 'Fitness', to summarise the key points, it says:

'A person must be fit and able to perform the duties of the relevant licence'.

1. relates to physical fitness; 2, to have stated skills and knowledge; 3, to have mental fitness to make correct decisions in relation to behaviour by demonstrating a continuing moral commitment to good behaviour and good character.

Then under the heading 'Propriety', it says:

'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'.

It then continues:

'Propriety will be assessed on the basis of general behaviour and conduct but not limited to, in particular' –

Paraphrased:

1. Disciplinary history
2. Dishonesty
3. Behaviour towards officials etc
4. Any conduct or statement likely to impact a 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
6. Evidence of improper behaviour, misconduct, breach to adhere to the HRNSW Code of Conduct, etc.

The application, as has been said, attaches a code of conduct. That code of conduct is a condition of licensing under the provisions in Rule 90(4). Critically, that code of conduct has, in paragraph 2.1, the following:

'The mission of HRNSW is, in part, to "maintain an effective regulatory and governance framework" and a key objective is to "invoke consumer confidence and lift the industry's profile". HRNSW grants the privilege of a Licence to individuals committed to that outcome.'

2.5 refers to the endorsement of the code of conduct as a term and condition of a licence under Rule 90. Then under 3 it talks about 'Violations & Offences'. And at 3.1:

'Licensees shall at all times conduct themselves in accordance with the Australian Harness Racing Rules and HRNSW Policies.'

3.2: Licensees shall not at any time engage in conduct unbecoming to their status which could bring them or harness racing into disrepute.'

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 [No2] [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 on 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.

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.

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.

It is also necessary to have regard to the status of this industry and, indeed, of the three racing codes at the present time. It is fair to say that to suggest that they were under siege would perhaps be an understatement. This industry – harness racing – was subject to what is known as the green light scandal in 2011 involving, it is said, corrupt stewards and licensed people, the effect of which has been the introduction of a number of changes in the regulatory approach in New South Wales, apparent to the Tribunal from the decisions it has been required to give in recent years, and relating to conduct of misbehaviour in relation, relatively to this matter, to such things as prohibited substances, as well as to others relating to conduct generally in the industry.

It is apparent from the submissions made to the Tribunal, it would be apparent to a reader of the Tribunal's decisions in recent years that the Tribunal has taken a very strong view in respect of the necessity to protect the integrity of the industry to provide the level playing field that all those honest people associated with it crave.

The concerns of this industry have recently been mirrored in the thoroughbred industry in relation to prohibited substances, not just in New South Wales. The greyhound industry has been absolutely rocked by recent allegations to do with live baiting and the effect that has had upon that industry has been well documented.

The Tribunal therefore is of the opinion that in assessing applications such as this, in dealing with breaches of the rules, that there is a necessity for the paramountcy of integrity to be assessed at the highest levels. That is not to misstate the Briginshaw test but to merely indicate that integrity is so important to the maintenance of this industry and its viability."

14. The parties have not submitted that a different approach should be adopted and in their written submissions in various ways have encapsulated all of the matters set out in Painting.

15. Having regard to the tests to be applied here, some quotes from the Tribunal decision in the two prior matters relating to this appellant are appropriate.

16. In its decision of 21 March 2017, the Tribunal said the following:

> "14. The paramountcy of the integrity of the industry was relied upon and the case of Sarina, to which the Tribunal will return, was quoted. It was said that the breaches were associated with an investigation into corruption of the utmost significance to the integrity of the industry. Similar cases of Sarina, Vallender and Byrnes were quoted to give a temporal and factual context to the seriousness of the conduct. It was acknowledged that the breaches did not involve actual corruption but reliance was placed on Clements v Queensland Racing Ltd [2010] QCAT 637, where it was said at 58:
>
> > ' … the charge does not relate to corruption but rather the refusal to cooperate in the possible finding of corruption or at worse a perversion of the course of justice by failure to produce records.'"
>
> And:
>
> "48. On the offer to attend a resumed inquiry, the respondent relies upon Clements again where it was said:
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> > 'It would seem that, but for the failure of the Applicant to cooperate with the stewards, charges may have indeed been preferred against the owner trainer and jockey, but that such charges are now not available to the stewards due to the vacuum of information and their inability to inspect the records of the Applicant, to discover what they may disclose. Accepting that they may disclose nothing at all, the matter would be finalised without any unfair presumptions against any party, but without which, proceedings may be simply suspended indefinitely with a cloud over the good character of all involved. This argument with respect to lack of jurisdiction must be dismissed.'"
>
> And:
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> "58. In Sarina v Australian Harness Racing, on a Rule 187(2) decision 15 August 2013 in the RAT, dealing with conduct of a licensed person

associated with the green light scandal, the Tribunal quoted at length the reasoning of the Special Stewards Panel, which was convened to deal with green light scandal matters, and some key words drawn from page 5 of the Sarina decision comprise: unprecedented allegation, struck at the very heart of the industry, the central role of the protective nature of the disciplinary rules, integrity of harness racing is the primary objective of the rules.

59. In Sarina, at page 12, the Tribunal said:

> 'The findings on the key facts – bearing in mind there was no contest – the Tribunal has referred to in some detail. As to the investigation into corruption itself, it was one of the most serious kind and touched upon the key and fundamental points of integrity of the industry. That corruption and the actions of the people involved in it could not be worse. It might be said in a criminal law sense a worse-case scenario cannot be imagined. In a civil disciplinary sense, a worse-case scenario cannot be imagined. As to what he, Mr Sarina, did, he lied to the investigators. As was said in Clements, the case just quoted, he was not charged with corruption, but what he did related to inquiries dealing with corruption. His conduct therefore, as in Clements, had the capacity to thwart the investigation.'
>
> And later:
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> 'The Tribunal specifically rejects the submission that there is no harm by that conduct. The Tribunal specifically rejects the submission that there is no ongoing issue that cooperation could address. The ongoing harm is patent. A person who has taken the privilege of a licence chooses to lie to its regulators. He chooses to lie to a very body hearing a charge about his conduct. To allow that not to be subject to a substantial civil disciplinary penalty would bring into total chaos the integrity of this industry. It would enable anybody, as the submissions for Harness Racing indicated, to thumb their nose at the stewards and the regulatory bodies. It would enable anyone to do what they liked and to say what they liked and get away with it.'
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> And later, at page 15:
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> 'For the reasons of this ongoing conduct and no attempt to ameliorate it, or acknowledge it or admit it, except that admission that is referred to, acknowledging there has been some cooperation by giving bank and phone records, acknowledging however some aspects of hardship and

personal circumstances, but balancing those against what imprimatur should this Tribunal give this appellant in this civil disciplinary proceeding and to what extent should this Tribunal allow a person in this appellant's present position to be associated with the industry. The Tribunal is of the opinion that the integrity of the harness racing industry is paramount. That integrity does not require punishment but protection. That is, protection from those who engage in misconduct. That is, lying to investigators in the circumstances in which it occurred and continues. The Tribunal determines that a finite order is not appropriate on the facts and circumstances. The Tribunal determines that a finite disqualification does not arise and any such order would not reflect the objective gravity of the circumstances of this matter and the necessary message to be sent for the protection of the industry. The Tribunal has determined that a warning off is appropriate. The Tribunal, for like reasons, there being no indication of anything in the short term upon which some consideration might be given to an order for a period, cannot find any fact or circumstance which would justify it in limiting that warning off to a fixed period.'"

And:

> "78. That arises because it is quite clear that the regulator considers that the issues are aged, there is a loss of evidence and witnesses and that any protective purpose has likely diminished. The regulator acknowledges that the future protective purpose would not be served if it is accepted that he is no longer participating in the industry."

And:

> "88. For the same reasons, a finite warning off is no longer appropriate. The Tribunal is strongly of the opinion that the facts and circumstances of this case are such, therefore, that a continuation of the warning off is not required. However, in considering the appropriate penalty within the tests outlined earlier, there must be a message clearly sent of the type outlined earlier. The message to be sent, however, must be given in acknowledgement of the reasons why the appellant declined to answer the questions at the time and has now offered to answer those questions. Accordingly, the gravity or objective seriousness of the conduct at the time at which it occurred can be viewed less seriously than might otherwise have been the case as of April 2015 and much less seriously now by reason of the offer to attend the resumed inquiry."

17. In that same decision, other matters relating to the frustration of the investigators were referred to:

> "21. It was submitted that the particular breaches strike at the very heart of the integrity of the industry by reason that the stewards have been frustrated, misdirected and delayed in an investigation into the most serious corruption allegations in the history of the industry."

18. In addition, in that decision the nexus between conduct and corruption was emphasised:

> "63. Despite the arguments for the appellant, the nexus between the green light corruption issues and licensed persons and stewards, which formed the key basis of the concerns of corruption in that green light scandal, cannot be disregarded."

And:

> "65. His conduct was ongoing, certainly up until the time of his offer to attend a resumed stewards' inquiry after 6 July 2016. His conduct

frustrated the investigation and had a potential impact on integrity of an ongoing nature.

66. There has been no exhibition of remorse by the appellant in respect of his statement to the Tribunal on 17 August 2016. He has not given evidence to this Tribunal of his expressions of remorse. He has not sought to express remorse through his legal advisers. That fact must be taken into account in assessing him for the future as to the true insight that he is able to display as to his conduct and therefore the ability to assess him as not engaging in similar conduct in the future. There is a counterbalancing of the lack of remorse by his offer to attend a resumed stewards' inquiry.

67. The Tribunal accepts that his refusal to cooperate was not a blanket refusal. He did produce documents and things in 2011 and he did attend a stewards' inquiry for that purpose. In April 2015 he did attend the stewards' inquiry and he did indicate a willingness to answer questions, except those which were the subject of the breach and its particulars.

68. On objective seriousness, he has offered to attend a resumed stewards' inquiry."

19. In that same decision certain subjective features were emphasised and they were:

"37. Particular reliance was placed upon the fact he has been a licensed person since 1983 and whilst he has driving offences, they can be disregarded, as would any suspensions for driving-related matters. Reliance is placed upon the fact he has no antecedents for dishonesty or conduct. Reliance is placed upon the fact that it can therefore be concluded that his conduct was aberrant and out of character.

38. A detailed list of his achievements and participation in the industry was given, running over 14 subparagraphs. To summarise them, they involve representations as a junior driver, status as a leading driver, the winning of premierships, substantial record-breaking numbers of wins, numerous major event wins, driving on a national and international basis and, importantly, voluntarily mentoring new drivers. Reliance was also placed upon his high profile in televised interviews."

20. The above quotes are set out to place the evidence and submissions in this case in a context which demonstrates that there has been ongoing consideration of issues relating to this appellant. His application for these licences is not therefore an isolated consideration by the Tribunal. Of

course, those matters just quoted were set out in respect of a penalty determination. This is not a penalty determination. But the remarks of the Tribunal set out the context in which these facts must be examined and in particular they are relevant to the issue of the notice given to the appellant of issues of concern to the Tribunal, and of course to the regulator, and which therefore are matters he was required to give detailed response to in respect of this application and therefore this appeal.

OPENING SUBMISSIONS

21. The matters set out to date provide a context for the decision to be made. The parties in their written submissions identified for the Tribunal the key factors for consideration.

Respondent's written submissions

22. The respondent said:

> "2. The Tribunal should do so on the basis that it is satisfied that the appellant is not a 'fit and proper' person to hold such a licence in all the relevant circumstances. This finding should be arrived at on the basis of consideration of the appellant's previous breaches of sub-rule 187(2) of the Australian Harness Racing Rules in the absence of any material change in circumstances detracting from the seriousness of that conduct and its impact on the integrity of the harness racing industry. The appellant has not discharge(d) his onus of satisfying the Tribunal that he should now be regarded as 'fit and proper'."
>
> And:
>
> "5. On the evidence, applying the relevant principles, the circumstances which warranted those penalties and which have obtained since their imposition are such that the Tribunal should confirm the decision appealed against and dismiss the appeal."

Appellant's written submissions

23. The appellant, having noted in paragraph 1 that the determination was made following the expiration of his periods of disqualification, said:

> "3. Understood in the total context of Mr Bennett's history and this Tribunal's prior holdings, HRNSW's decision to refuse to grant a licence is an improper attempt to:
>
> > (i) re-try Mr Bennett for matters over which this Tribunal has already passed judgment;

(ii) impose a degree of punishment on Mr Bennett in excess of that imposed by this Tribunal in 2017; and

(iii) permanently exclude Mr Bennett from the harness racing industry, contrary to the findings of this Tribunal that Mr Bennett's disqualifying conduct did not warrant an indefinite warning off.

4. Those defects are terminal and warrant this Tribunal setting that decision aside.

5. In its place, this Tribunal should find that Mr Bennett is a fit and proper person and decide to grant him a licence in substitution of the stewards' decision pursuant to section 17A of the Racing Appeals Tribunal Act 1982 (NSW)."

LIMITS ON THE EVIDENCE

24. The respondent does not seek to prove that the appellant engaged in corrupt conduct in the green light scandal.

25. That submission arose because in the evidence bundle there were various statements made in 2011 and 2012 by corrupt steward Bentley relating to conversations and dealings that he said he had with the appellant over time involving the payment of money by the appellant to Bentley, as Bentley requested, on the basis that the stewards would not swab horses driven by the appellant.

26. The respondent submits, however, that those are background matters relevant to establish the serious frustration of the stewards by the appellant in relation to the nature of the matters the stewards wished to investigate.

27. It is submitted that those issues of investigation are unresolved and therefore that fact has prevented the regulator's further investigation into the greatest scandal to have hit the harness racing industry in NSW.

28. The respondent acknowledges that it has not reopened the investigation in to the appellant's conduct, as was referred to in the above quoted decision by this Tribunal. That remains the position because it is the regulator's view that, because of the age of the matters, the loss of witnesses and the fact that the iPhone is not available, further inquiry would be of no benefit. (See quote from paragraph 78 of the decision of 21 March 2017 set out above). There was also the additional fact that when the consideration of reopening was made in 2017, the appellant was then excluded from the industry by reason of his disqualification and warning off.

Of course, these particular impediments have been removed by the expiration of his disqualifications.

29. It is said therefore that the conduct is relevant because the appellant has frustrated the regulator in the past, that frustration has not been cured and that frustration is likely to be repeated in the future.

30. The appellant responds that the regulator has had all the evidence it could possibly use in relation to that telephone.

KEY FACTORS FROM THE APPELLANT'S PAST CONDUCT

THE IPHONE - CHARGE 1

31. The telephone issue was covered by the first charge under 187(2) dealt with by the Tribunal on 6 July 2016 and 21 March 2017. The context here necessitates a repetition of that charge:

> "187(2) (relevantly) a person shall not refuse … to produce … piece of equipment … at an inquiry or investigation."
>
> That breach was particularised as follows:
>
> "that Mr Greg Bennett did on 7 September 2011, give false and misleading evidence to HRNSW, during the course of its investigation into possible corrupt activity by licensed persons and former HRNSW stewards. The relevant evidence alleged to be given by Mr Bennett for the purpose of those particulars was the provision by Mr Bennett to HRNSW of a Samsung mobile telephone in response to a direction from HRNSW dated 7 September 2011 and at that time he advised HRNSW that such telephone was his regular mobile telephone and was related to the mobile telephone number … The evidence was false in that the said mobile telephone was not Mr Bennett's regular mobile telephone, and was not connected to the mobile telephone number …."

32. The Tribunal on appeal imposed a seven-year disqualification commencing 25 November 2011 in respect of that breach.

33. Having regard to the detailed submissions made by the respondent on this appeal, it is necessary to revisit those facts.

34. The green light scandal became public knowledge in August 2011. The appellant activated the Samsung mobile telephone on 17 August 2011, being the day after he had on 12 August 2011 produced to HRNSW his telephone records which related to an iPhone.

35. On 3 September 2011 HRNSW notified the appellant he was to attend HRNSW offices on 7 September 2011.

36. At 7:20.18 am on 7 September 2011 a call was made from the appellant's iPhone to his home phone number for a duration of 85 seconds. At 7:56 am and at 8:08 am on 7 September 2011 the appellant's iPhone was used to make two SMS messages to a New Zealand number. On four prior occasions that phone had been used to make SMS messages to that same number in New Zealand.

37. On 7 September 2011 the appellant attended the office of Harness Racing NSW and was handed a "notice to produce mobile telephone for inspection" in a written document dated Wednesday, 7 September 2001 (sic). Critically, the following words were used in that notice:

> "you were recently required to produce records to HRNSW relating to the mobile telephone used or owned by you for the period 1 March 2011 to 8 August 2011.
>
> HRNSW hereby serves you with Notice that you are required to hand over your mobile telephone to which those records relate immediately."

38. In response to that notice, the appellant handed over a Samsung mobile phone.

39. At 11:57 am on 8 September 2011 the appellant telephoned the NSW Police Assistance Line and that conversation was recorded. The following relevant extracts are noted:

> "GB: … I just dropped into the police station, um, reported my phone lost and they gave me this number.
>
> KC: … So when did you last have your phone?
>
> GB: Um, Tuesday.
>
> ……
>
> GB: Um, probably about 5 o'clock. I think last …
>
> KC: In the afternoon.
>
> GB: Yeah, pm.
>
> …….

KC: … Do you think it's fallen out of your pocket or is it possible someone could may have stolen it.

GB: Yeah, I think it could have possibly slipped out of my car when I was at a service station or something like that, you know, or.

…….

GB: Um, I went up and visited a friend could have in the dark you know what I mean I'm just not 100% sure.

……

GB: One of those iPhones.

KC: Apple, do you know which one?

GB: Yep."

……..

"KC: Optus. What colour was the phone?

GB: Ah, black.

KC: Black.

GB: Grey."

40. On 18 November 2011 the appellant was interviewed by HRNSW investigators. In that interview the appellant made admissions that he had spoken to the steward Bentley but denied any corrupt conduct.

41. In November 2011 the appellant was arrested by NSW police and on 7 December 2013 was found not guilty in the District Court in relation to various criminal charges.

42. On 7 February 2014 the appellant was charged with a breach of Rule 187(2) – the first charge. On 21 March 2014 the appellant made a written plea of not guilty.

43. On 26 May 2014 HRNSW commenced its inquiry into that first charge and it was adjourned. On 29 April 2015 that inquiry resumed. At that resumed inquiry the appellant was represented by counsel and a solicitor. In relation to the first charge, counsel for the appellant said the following:

> "He refuses to answer any questions in relation to the three matters: one, the production of the Samsung phone on 7 September 2011; two, the consequential non-production of the phone that relates to the call charge records previously produced. Three, the reporting to police of the loss of an iPhone, said to have been lost somewhere between 5 and 6 September 2011. They are three matters he refuses to answer questions about. It's not a blanket refusal. …"
>
> And later:
>
> "THE CHAIRMAN: So the refusal is pretty much refusal to answer questions as it relates to this narrow matter?"
>
> COUNSEL: Correct."

44. On 8 May 2015 the second charge relating to the refusal to answer questions was preferred.

45. On 23 June 2015 the stewards issued their reasons for decision in respect of both charges, imposing a disqualification of seven years in respect of the first charge and a warning off in respect of the second charge. Critically, the stewards said:

> "52. It is noted that Mr Bennett has not cured his decision to refuse to give evidence. Mr Bennett can choose to do so at any time, by approaching HRNSW stewards."

46. As set out above, the appellant appealed against those decisions and they were finalised in the Tribunal's determinations of 6 July 2016 and 21 March 2017.

47. In his application the subject of this appeal of 24 September 2018, the appellant made no reference to anything relating to his mobile telephone or his earlier conduct.

48. The appellant made an undated submission on the show cause notice given to him. In that submission he expressed no remorse for his past conduct or made any comment in respect of the facts relating to it, in particular, in respect of the facts relating to his telephone, nor in respect of matters relating to the corruption inquiry.

49. On 20 December 2018 the Licensing Committee interviewed him.

50. The questions by the Licensing Committee relating to the telephone covered the same issue on a number of occasions and the appellant's answers were, not unreasonably, repetitive. Accordingly, they are not all set out. The appellant maintained throughout that interview the same version in

respect of his beliefs about the non-production of the appropriate telephone, that is, the iPhone and not the Samsung.

51. Some relevant quotes:

> "And I walked in and I was a bit late and I just put my phone on the table, but that phone wasn't the one that matched up to the phone records."
>
> And:
>
> "No, we never found it. It never got found ever again."
>
> "THE CHAIRMAN: You reported that to the police, didn't you?
>
> MR BENNETT: I did, yes, sir, yep.
>
> THE CHAIRMAN: Yeah. So you're saying it was lost?
>
> MR BENNETT: Yeah. Well, I couldn't – didn't bring it on that morning or the day, you know, so – as I said, my son – well, he's on the autism spectrum and he does a lot of this and playing with things. But, yeah, it wasn't found, so. And I reported it to the police, so I done the right – at the time there was an investigation going on."
>
> And:
>
> MR BENNETT: I didn't say a word that day, sir.
>
> And:
>
> MR BENNETT: That's correct. But on that day when I come in with the phone, I don't remember saying that this was my phone, I was handed a sheet and had to read it and handed my phone in. But there was no verbal contact. I don't remember any verbal contact, me saying this was my phone 041, you know what I mean? I read the sheet and then handed my phone in and that was it.
>
> And:
>
> MR BENNETT: Yeah, well, I think it was my wife's phone or something, whatever it was, a Samsung, you know what I mean, that I had on me that day, whatever it was. … They just said they wanted my phone and that's the phone I put on the table, and that was it.
>
> And:

THE CHAIRMAN: After you'd been given correspondence on 12 August 2011, five days before, to produce your phone records.

MR BENNETT: Yeah.

THE CHAIRMAN: Is that coincidental or not?

MR BENNETT: Oh, well, it doesn't – I can see where you're coming from. But, as I said, I didn't have that phone on me, it was the only phone I had in my pocket that day and I handed it in, which wasn't the one that matched up to my phone records.

And:

THE CHAIRMAN: You don't have your normal phone with you, and you hand over another phone.

MR BENNETT: Yeah. As I said, I didn't know what was required on that day.

THE CHAIRMAN: And then you went home looking for it.

MR BENNETT: Yep.

THE CHAIRMAN: And couldn't find it.

MR BENNETT: Yeah, the phone wasn't found.

And:

THE CHAIRMAN: So, in relation to your regular mobile phone back then, what happened to it?

MR BENNETT: From what I can recollect, sir – like, it's a long time ago – as I said, I come that day to Harness Racing and I didn't know it was required on that day and didn't have the phone that – when I walked in I had the letter and read the letter, not well enough, obviously, and I didn't have the phone that matched up to the phone records, had another phone and handed in the incorrect phone.

And:

THE CHAIRMAN: At the time that you put that phone on the table, were you aware that that wasn't your phone?

MR BENNETT: Well, I wasn't thinking straight, sir, I probably thought it was my phone. I just put it down. But it -----

And:

MR BENNETT: … I'm not sure whose name the phone was in …

And:

MR ADAMS: So, again, did you know you were putting the wrong phone in at that time?

MR BENNETT: Not really, sir, because I had used that phone and I just put it in …"

Respondent's written submissions

52. The respondent, having summarised the telephone call to the Police Assistance Line, observed that although he reported it missing and last seen on Tuesday, 6 September 2011, the phone was in fact used to make a call to his home telephone number at 7:20.18 am on Wednesday, 7 September 2011. The respondent further noted that the appellant did not make that report that the phone was missing until Thursday, 8 September 2011, the day after he had been issued with a notice to produce. It is also submitted that the appellant now states that he first noticed that his iPhone was missing on the day he attended the HRNSW offices on Wednesday, 7 September 2011, without being specific as to when he realised it was missing and that he went looking for his iPhone when he went home that day.

53. The respondent further notes that in the interview of 18 November 2011 after caution that the appellant did not indicate that he had lost his iPhone, nor did he volunteer that he had provided a Samsung phone instead of his iPhone in response to the notice to produce. It is submitted he simply did not raise it at all but that this was the appropriate time for the appellant to clear the matter up with the respondent. It is submitted he chose not to do so. It is submitted that it remains the case that he has not still clearly explained what took place.

Appellant's written submissions

54. The appellant points out that in the interview of 20 December 2018 he was repeatedly questioned about the circumstances of his phone and maintained a consistent account.

55. It is submitted that he had a poor recollection of fine details of events which occurred over seven years previously and that he had picked up a phone in his house on his way to the interview and he mistook that to be his phone, but it may have been his wife's or his sister's.

56. It is said that he was under a great deal of pressure. It was submitted that he reported his phone missing to the police after it was lost at some point around the production of his wife or sister's phone. It is also pointed out that he was in fact given the same number by the telephone company for the new phone.

57. It is further submitted that there has been no material change in the appellant's position over time.

Respondent's oral submission

58. It is submitted that he has given blatantly implausible explanations for handing over the wrong phone and was given every opportunity to be honest and forthright with the regulator. It is further submitted that the Tribunal must find it difficult to believe that a person would not have known whether they had the correct mobile phone or not, especially when they were different makes and models and of a different colour. The inconsistencies between his account in interview on 20 December 2018 and his report to the Police Assistance Line on 8 September 2011 is highlighted.

59. It is further submitted that his failures raise questions about his conduct. In that regard, if his report to the police about the phone missing about 9 pm on Tuesday night is true, it means the appellant knew he was producing the wrong phone on Wednesday when served with the notice to produce. His explanations in interview on 20 December 2018, it is submitted, still do not explain why he did not advise the stewards he had produced the wrong phone when he realised that.

60. It is submitted that whichever account applies, neither provides the appellant with an excuse for failing to offer a frank explanation to the stewards. Accordingly, his failure to provide a consistent account goes to his own honesty and that the passage of time does not enable an avoidance of that issue. In that regard, his handing over of the Samsung phone is said to be fatal to an assessment of his credit and honesty.

Appellant's oral submissions

61. In relation to the telephone issue, the appellant submits that the seriousness of that matter has gone. That arises because he gave his phone records, there is no issue of his admissions that he had spoken to the steward Bennett as often as twice a week, and that, importantly, there were no discoverable text or SMS messages that might have been damaging should he have produced the correct phone. Therefore, it is submitted that the lack of the production of the correct phone could not then or now hamper any investigation into the appellant's conduct.

62. It is also submitted that he has been punished for that wrongful conduct in relation to the telephone. In addition, it was submitted that in the interview of 20 December 2018 nothing new was said which had not otherwise been considered when the Tribunal determined the penalty on 3 March 2017.

Respondent's further oral submission

63. It is submitted that the Tribunal cannot determine what happened with the subject phone.

64. Because of the totality of his conduct in giving the wrong phone, there must be concerns he would do it again if such an issue arose. It is said that his conduct at the interview gives a clear insight into how he will conduct himself in the future should this licence be granted. That arises because he did not properly cooperate with the authorities during an application for a licence.

65. It is submitted that the differences in the various versions remain unexplained and that he is seeking to advance two innocent explanations. While the Tribunal does not have to decide which is correct, it goes to the fact that the appellant is not able to establish the truth of either version. It is said that on various occasions at interview he has had opportunity to correct the position.

66. It is emphasised that he has not been frank and that he has not told the regulator at any time he produced the wrong phone. Accordingly, he has no insight into his conduct and its impact upon the regulator and only expresses remorse about his conduct when prompted.

67. Accordingly, he has not learnt his lessons and cannot be assessed as an honest person on this application. It is, however, emphasised that the Tribunal does not have to decide he was dishonest, only that his assertions cannot be accepted.

68. It is pointed out that in the interview of 29 April 2015 he was cautioned about the seriousness of the telephone issue.

69. It is submitted that the phone calls made and texts early on 7 September 2011 were not random, for example, by someone who had found the phone, and, in any event, they remain unexplained. In any event, soon after that he had not told the investigators it was lost.

70. It is submitted that the interview of 20 December 2018 establishes that he knew he gave the wrong phone in 2011 and had told the Licensing Committee he was not aware of that when he had handed it over in 2011.

71. Therefore, it is further submitted that the Tribunal can have no faith in him or what happened to the phone.

72. In relation to the production of the Samsung phone, the coincidences of the timings in relation to it raise by inference matters of concern.

73. In summary, it is said that the appellant has been inconsistent in his explanations and therefore cannot be trusted.

Appellant in oral reply

74. Emphasis was placed upon the stress that the appellant was under on 7 September 2011, but that the fact he was able to give an explanation on 20 December 2018, some seven years later, and that that explanation was not inherently unbelievable.

75. In relation to any inconsistencies or adverse inferences to be drawn from the Police Assistance Line call, it was submitted that the appellant was merely responding to the operators' suggestions about the phone falling out of the car or falling out of his pocket and the like.

76. It was therefore submitted that it was open to conclude that his conduct was inadvertent when he gave the wrong phone.

77. It was also submitted that at no time did the appellant seek to blame his child who has a disability.

Respondent's further oral reply

78. It was pointed out that in 2011 the appellant's autistic child was then only two years of age and that it was difficult to accept that that child was therefore making the telephone and text calls on 7 September 2011. In any event, it is pointed out that these issues were not told to the investigators.

REFUSAL TO ANSWER QUESTIONS - CHARGE 2

79. On 8 May 2015 the appellant was charged with the second breach of the rules under 187(2). It is to be remembered that on 7 February 2014 the first charge had been preferred against him and an inquiry took place on 29 April 2015 in respect of that, and as set out above, the appellant refused to answer questions on legal advice.

80. The 8 May 2015 charge under 187(2), relevantly, was that at a stewards' inquiry on 29 April 2015 he refused to answer questions subject to that inquiry.

81. On 23 June 2015 the stewards warned him off. There was then the appeal to the Tribunal and its findings of 6 July 2016 and its imposition on 21 March 2017 of a penalty of two years' disqualification to commence 29 April 2015.

82. The appellant was subject to an interview on 20 December 2018 by the Licensing Committee in respect of these matters.

83. At that interview, when asked what occurred for him to be charged, he said the following:

> "Well, regarding the phone, obviously I got charged. Mr Sanders asked me to answer questions about the phone and I had – well, I was legally represented that day and they advised me not to answer questions about the phone. So I was sort of in between a rock and a hard place, like. So, that's – and then I got two years for not answering questions about my phone. So it sort of put me in between a rock and a hard place."
>
> And later:
>
> "THE CHAIRMAN: … you still had the opportunity to answer questions if you wanted to?
>
> MR BENNETT: Well, I didn't really understand that but I felt a bit bad because I sort of like in here you've got to give an answer to a question, you know what I mean. If you sit there and don't give an answer, well, you're going to get into trouble, you know. So I just – but, as I said, it had been through court and my solicitor advised me not to answer questions. So, as I said, I felt like I was between a rock and a hard place and that's – you know, I suppose that's why you've got solicitor advice at the time …"

84. He was then asked about his attendance at that inquiry and he said the following:

> "Well, as I said, I had a solicitor involved. Like, even on that day – even on that day the solicitor advised me not to come in, you know, and I said, 'I don't think that's the right thing to do.' I come in on that day. He advised me not to come in because he said – he said there was nothing in writing, or something, for me to be there. But in goodwill I still come in that day, you know."
>
> And later:
>
> " … I come in against probably my solicitor's advice because I just felt that was the right thing to do."

85. At various other times he gave not dissimilar evidence to the effect that he was relying upon legal advice. It is noted that in relation to his submissions in support of this application and in response to the notice to show cause on it that he said nothing about this charge or his failures in respect of it.

Respondent's written submission

86. It was pointed out that the appellant gave no new facts in relation to this failure nor any explanation in respect of it.

Appellant's written submission

87. The appellant pointed out that in the penalty determination of 21 March 2017, the Tribunal accepted that the appellant had acted on legal advice and that the legal issues were significant and complex, involving a number of principles. It was therefore determined that his refusal in those circumstances reduced the seriousness of the breach. It was also submitted that the Tribunal determined that an indefinite penalty would be inappropriate. The Tribunal also dealt with the fact that a warning off was not appropriate when there was to be no resumption of the stewards' 2011 inquiry. Therefore, it was said that at that time his conduct was ameliorated and any indefinite remedy now would be inappropriate.

88. It was also submitted that the appellant had been consistent in his answers at interview on 20 December 2018 in respect of his reasons for committing the second breach. It was also submitted that those same submissions had been accepted by the Tribunal in its penalty decision.

89. It was also pointed out that the Tribunal's decision of 21 March 2017 did not find the conduct to be so egregious as to warrant his indefinite exclusion from the industry.

90. Therefore, it is submitted that this determination to refuse to license him is but a disguised attempt to institute the penalty which this Tribunal has already declined to impose. It is submitted that he has paid the penalty for his wrongful conduct and should not be barred from participating in the industry by reason of it.

Oral submissions

91. Neither party advanced any further arguments in oral submissions on this issue.

A FURTHER BREACH?

92. In oral submissions in reply the respondent raised for the first time in the case non-compliance with Rule 259.

93. The parts relevant to disqualified persons:

> "259(1) A disqualified person … cannot do any of the following –
>
> > (a) associate or communicate with persons connected with the harness racing industry for purposes relating to that industry.
>
> (4) If during a period of disqualification the Stewards form the opinion that the circumstances relating to the disqualified person have materially changed, they may remove one or more of the prohibitions set out in sub rule (1) either permanently or for a time.
>
> (5) The power conferred by sub rule (4) does not empower the Stewards to remove the prohibition on an activity which can only lawfully be carried on under licence.
>
> (7) A disqualified person who fails to comply with this Rule is guilty of an offence and is liable to a penalty."

94. The Tribunal also notes that a breach of Rule 259 would activate Rule 259A, which states:

> "259A In addition to any penalty imposed pursuant to Rule 259(7) the original period of disqualification shall unless otherwise ordered by the Stewards automatically recommence in full."

95. The relevant facts are that the appellant's disqualification ended on 25 November 2018. On 24 September 2018 he lodged the subject application and it was accompanied by references from Chris Robinson, dated 2 October 2018 and Jack Primmer, dated 19 October 2018.

96. Question 15 on page 3 of the application form asked the question:

> "15. Are the stables to be shared with any other trainer? If so, please provide name(s) of other trainer(s)."

In response to that question the appellant stated "Jack Primmer".

97. In a supplementary reference of 23 April 2019, Chris Robinson stated:

> "I have been licensed by HRNSW for more than 30 years and have also been licensed as a trainer with Racing New South Wales for around 20 years…"

98. There is no direct evidence from records of HRNSW that either Mr Primmer or Mr Robinson are licensed persons. However, the totality of the evidence set out above clearly demonstrates that they are "persons connected with the harness racing industry for purposes relating to that industry" as provided for in Rule 259(1)(a).

99. The appellant has not been charged with a breach of Rule 259. The Licensing Committee made no reference to it. No application was made to reopen evidence in relation to the matter. The matter was first raised in addresses.

Respondent's oral submission

100. That this conduct was unacceptable and the appellant should have waited until after his disqualification expired before making his application with such supporting material.

Appellant's oral submission

101. The appellant submitted that this issue had nothing to do with the integrity of the appellant.

102. It was submitted that the matters must be looked at in context. The appellant was an applicant for a licence and needed to seek referees and that this was a common activity.

103. It was emphasised that the Licensing Committee was not concerned by it and no breach of the rule has been proffered.

Conclusion

104. The Tribunal notes the time at which this issue was raised, but that no other evidence was led in respect of it, and the appellant did not give an explanation of his understanding of the existence of the rule or its application or any understanding of possible wrongdoing and a plausible reason for it.

105. The appellant here is a person with a long licensing history prior to his disqualifications and one who, because of the status of his previous licence, must have been taken to have known the rules.

106. These facts demonstrate that there was not an understanding of the application of this rule. These facts do not demonstrate, as there is no evidence in respect of it, a deliberate flouting of that rule. The facts go to the appellant's ability and knowledge. The facts do not go to the appellant's dishonesty per se.

FURTHER CONSIDERATION ON THE GREEN LIGHT SCANDAL

107. This issue must be put in context. The green light scandal, as it became known, related to the most serious corruption issues to involve the harness racing industry in NSW. It involved licensed persons acting in concert with stewards to breach the rules and act corruptly and, indeed, criminally.

108. Licensed persons have obligations under the rules and within the purview of their licence in relation to cooperation and assistance with the regulator.

109. The circumstances that applied in 2011 were that the regulator had information about corrupt and criminal conduct generally and that it concerned this appellant.

110. The Tribunal set out above paragraph 63 of its decision of 21 March 2017. In summary, it dealt with the "nexus between the green light corruption issues and licensed persons and stewards".

111. The whole of paragraph 63 was read to the appellant in his interview of 20 December 2018. That quote, and others, provided the context for the Licensing Committee questions of the appellant on the green light scandal and corruption generally.

112. The Licensing Committee read to the appellant paragraph 65 of that same decision, which related to;

> "his conduct frustrated the investigation and had a potential impact on integrity of an ongoing nature."

113. In response to that reading, the appellant said at the interview:

> "Yeah, they are, sir. Sort of not really my style, to be honest. I've always thought I present myself pretty well to the stewards and had respect for them, but I think the people, the legal people, that I had doing it for me, the way they handled things mightn't have come across that well, by the sound of it – to the judge, by the sound of it."
>
> And later:
>
> "THE CHAIRMAN: But you were involved in the investigation, it was connected to corruption."
>
> And later:

"THE CHAIRMAN: ----- frustrated the investigation and the inquiries of the stewards to get to the bottom of that matter or to thoroughly investigate whether or not you were or were not involved in that matter. …"

114. With those introductory remarks and responses, the stewards took the appellant in his interview to those issues in the following terms:

"THE CHAIRMAN: So what information can you offer the stewards – and you're not being investigated today – but what information can you offer in relation to, shall we label it, the green light investigation, the payment of monies to stewards to not drug test horses, essentially?

MR BENNETT: Well, me and my dad were accused of being involved and we went – I had to go to court and all the charges – all the allegations were dropped and then I had to come back to Harness Racing, which was a great, you know, relief obviously for the family and all that. And then I had to come back to Harness Racing over the matter with the phone with Mr Sanders and, you know, as I said, I got warned off and given two years that day. But just from what you say -----

THE CHAIRMAN: I'm asking you now -----

MR BENNETT: Yeah.

THE CHAIRMAN: ----- what information can you put forward now in relation to the green light investigation?

MR BENNETT: In what way, sir? Like, what – what -----

THE CHAIRMAN: What knowledge do you have of the green light investigation?

MR BENNETT: I've – no knowledge, sir. I've – as I said, I was – the allegations were at me, but I can't give you any more information about that.

THE CHAIRMAN: So you personally have no knowledge of stewards receiving money to -----

MR BENNETT: No, sir.

THE CHAIRMAN: ----- not drug test horses?

MR BENNETT: No, sir.

THE CHAIRMAN: Nothing at all?

MR BENNETT: No, sir.

THE CHAIRMAN: If that was the case that you didn't have any knowledge of that matter at all, why didn't you tell the stewards that from the beginning?

MR BENNETT: Well, I think I did, sir. I think I said I wasn't involved.

THE CHAIRMAN: All right. Who did you say that to?

MR BENNETT: Ah, I think Mr Cable.

THE CHAIRMAN: All right. When was that?

MR BENNETT: Oh, it might have been before my court hearing -----

And later:

"MR BENNETT: … They wanted me to talk and tell them things and I said I couldn't – didn't – and ended up didn't tell them …"

And later:

"MR BENNETT: … Mr Sanders rang me and I just said, 'I've got nothing, I can't tell you anything.'"

115. The appellant was asked questions in respect of the impact of the scandal as follows:

"THE CHAIRMAN: And obviously sorry for the effect that it's had upon you and your family. What about the other participants in the industry that have also suffered as a result of -----

MR BENNETT: Yeah, of course, sir. It's a snowball effect, yeah, I understand that the other people in the industry have suffered and, yeah, I understand that, for sure, yeah. It's not just me, it's the whole industry and there's owners, breeders, a lot of people invest money into the sport."

Respondent's written submissions

116. It was submitted that the appellant gave no explanation to the Licensing Committee for his conduct or in respect of the investigation. The gravity of the green light scandal to the industry was repeated.

117. It was emphasised that the appellant had to be prompted on the 20 December 2018 interview to address the issue and essentially did not.

Appellant's written submissions

118. The appellant submitted that the answers given by him in the interview on 20 December 2018 were expressions of remorse.

119. It was further submitted that the questions that were put to him equated to a reopening of an investigation.

120. It was also submitted that it was necessary to take into account the assessment that the referees had given in respect of him on this green light scandal issue.

Respondent's oral submission

121. It was submitted that the appellant has not cured his failures and did not come clean with the opportunity to do so in his submissions, with his application or at interview. It was therefore submitted that his conduct remains unexplained and that this is relevant to a consideration of his future conduct.

Applicant's oral submission

122. Any lack of candour in the appellant was overcome by the referees and the totality of the evidence.

123. It was submitted that the appellant generally had nothing to add to assist in respect of the green light scandal.

124. It was submitted that the appellant understands the harm that has been caused to the harness racing industry.

REMORSE

125. In addition to the quotations from the interview that touched upon the previous subject of the green light scandal generally, the appellant has had opportunities to express remorse.

126. The submissions that he made in support of his application and the original references were silent on this issue.

127. In the interview on 20 December 2018 he said the following in response to a suggestion that there had been a lack of remorse:

"Well, yeah – oh, not really, sir. I think I'm a compassionate sort of person, to be honest. I don't think I'm – you know, I think I'm pretty compassionate, got a heart and I understand, you know, the hurt that the industry went through with the green light thing sort of thing. But the way it's come across there from the judge and my solicitors, it doesn't – it's painting me in bad light. But I don't think I'm that sort of person, to be honest, I'm telling you here today, you know what I mean? I think I've got a good heart and I don't think I'm that sort of person, to be honest. But obviously I should have wrote in a bit the impact it's had on the industry, the green light scandal, and -----"

And later:

"No, only what I said, sir, like, you know, I think I'm a decent person and if I've done something, you know, like haven't complied with that, I am remorseful about that and it won't happen again, I can -----"

And later:

"Yeah. Yeah. I'd just like to apologise."

REFEREES

128. As set out earlier, the applicant provided to the Licensing Committee references by Mr Primmer and Mr Robinson. With this appeal he lodged references again by Mr Robinson as well as by his employer, Mr Lavender and by a Mr John Baker.

129. The appellant in the written submissions summarised those references as follows and the Tribunal adopts that summary.

130. Mr Chris Robinson has been licensed by HRNSW for more than 30 years and by Racing NSW for around 20 years and has known the appellant for 35 years. He said he would not speak in the appellant's favour unless he believed that he was genuinely sorry and deeply regretted his breaches of the rules. He says the appellant is aware of the damage to the industry caused by his disqualifying conduct and can be trusted not to commit further breaches of the rules or engage in any misconduct whatsoever.

131. Mr John Baker says he has an extensive history in the industry including 40 years as an owner, 18 years as a director and six years as Chairman of the NSW Harness Racing Club, service as a board member of Harness Racing NSW, Harness Racing Australia and the Inter Dominion Harness Racing Council. Throughout that time he has observed the appellant to have high respect within the industry, be of professional excellence and reputation for professionalism and integrity. He says he is aware of the matters for which the appellant was disqualified. He is also

aware that the appellant has deep regret for the damage he caused to the industry and he believes he has learnt a lesson and should be granted a licence.

132. Mr Mark Lavender, as his employer, says he is aware of the appellant's disqualifying conduct and the penalties imposed upon him. He says he has employed him during his period of disqualification and he is extremely honest, including his handling of money, and that he can be trusted to return to the industry and again become a respected trainer and driver.

133. In that written submission, it is said that those references comprehensively address the criticisms that relate to his interview on the awareness of the impact of his disqualifying conduct on the industry and that they provide a very strong evidentiary basis for the Tribunal to be assured that he is a fit and proper person to be granted a licence.

Respondent's written submissions

134. The respondent emphasises that on the issue of remorse the appellant only expresses it when prompted and seeks to blame his lawyers for his breaches in relation to questions. It is submitted he has not been forthcoming and honest.

135. It is submitted that the impact of the conduct relating to him and the green light scandal generally had to be drawn from him and had not otherwise been addressed by him.

Appellant's written submissions

136. It is submitted that the interview cured any apparent lack of remorse or understanding in the appellant. It is said that he must now be considered in the context that a further investigation into his conduct would not be pursued. Therefore, it was summarised that his remorse satisfies any outstanding issues.

137. It was also suggested that the way in which the appellant chose to use words and express his remorse may be different to the way other people may have done it, but those are the ways in which he appropriately expressed himself.

Respondent's oral submissions

138. It was submitted that none of the referees actually grappled with the actual conduct of the appellant with any precision.

139. An example is given with the referee Mr Baker who refers to the appellant's regret for the green light scandal, but that the respondent denied any knowledge of it. For example, with Mr Robinson not making further comment on further breaches. For example, with Mr Lavender, there was no expression that he was sorry for what had occurred.

Appellant's oral submissions

140. It was submitted that the referees were industry people of longstanding and each unequivocally referred to the remorse and insight that the appellant had expressed.

141. It was also submitted that the appellant had demonstrated an understanding of the impact on the industry and therefore his remorse is genuine.

SUBMISSIONS ON OTHER ISSUES

Respondent's written submission

142. It was submitted that a licence under this racing resume is a privilege. It was further submitted that a failure to comply with the rules and regulations is a demonstration of an inability to understand that privilege.

143. It was submitted that this inquiry involves consideration whether the circumstances in which the conduct occurred give rise to a reasonable inference that there is likely to be a repetition of the conduct.

144. The respondent further contended that the appellant's racing record, including his period of disqualification for false information to stewards and refusal to answer questions at an inquiry, indicate that he is still not a fit and proper person to perform the duties of an A Grade Trainer and A Grade Driver.

145. It was also pointed out that pursuant to section 11(1) of the Act the Tribunal, in the place of 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 history)."

146. It was then pointed out that the penalties of 21 March 2017 involved serious contraventions of a regulatory regime established to maintain the integrity of the industry. It is also submitted that the breaches occurred in

the context of an inquiry in relation to a scandal that severely damaged the reputation of the industry.

147. Next it was submitted that the regulator needs to have faith that the licensed industry participants will be forthcoming and honest in their dealings with the regulator, particularly in relation to serious investigations involving corruption. It was submitted that sins of omission should not be committed. It was submitted that the appellant's integrity has been called into question in relation to that most serious and damaging scandal and it was a critical moment for the industry.

148. Therefore, the appellant, as an applicant to be a licensed participant in the industry, needed to demonstrate his fitness to hold that licence by cooperating honestly with the regulator and that he had not demonstrated that he had done so. It was therefore submitted that he could not be looked at as being fit and proper in the future or that he would act differently.

Respondent's oral submissions

149. It was emphasised that the appellant's conduct remains unresolved and has frustrated the regulator in a serious investigation. That is, the regulator could not take its investigations further. It was submitted that the regulator had been prevented in a practical sense from reopening its investigation because of the conduct of the appellant.

150. It was submitted that he has demonstrated that he will frustrate the regulator in the future again.

151. It was acknowledged that there is a necessity to distinguish penalty issues from a fit and propriety test. In that regard it was said that the appellant needs to prove he is fit and proper and there is a heavy onus on this application by a now unlicensed person who had previously had the privilege of a licence but had been disqualified.

152. It was said that it is necessary to look at all of the facts and not cherry pick.

153. It was submitted there can be no assumption that the appellant is a fit and proper person.

154. It was submitted that it was necessary to find that there had been a material change by the appellant's remorse, reflection and of proffering a guaranteed change in him to overcome his previous history.

155. It was then submitted that he had not so demonstrated that he had learnt his lessons and that he will be honest and not false in the future.

156. It was emphasised that the Tribunal is not invited to make a finding that he has been dishonest.

157. The need for the Tribunal to act to protect the industry was emphasised.

158. That the conduct was most serious must be considered, but not such that there can be, therefore, any conclusion of the equivalent of a permanent disqualification. That will not arise as this will not involve the removal of a privilege but the non-conferral of a privilege.

159. Next it was submitted it would be premature to grant the application until the appellant has demonstrated that the lessons have been learnt.

160. It was then said that the appellant did not give evidence and some of the matters therefore remained unexplained, especially as he has said nothing to assist himself.

Appellant's written submissions

161. The appellant submitted, drawing from Painting (supra), that the Tribunal will not engage in a retrial of the circumstances of his conduct for which he has already been penalised. That is, this is not a retrial of disqualifying conduct.

162. It was submitted that the respondent's Licensing Committee had attempted to revisit the circumstances surrounding his disqualifying conduct.

163. The need to place weight upon the referees in determining the issue of fitness and propriety was important, as the Tribunal also said in Painting. That is, the issue of the giving of an imprimatur.

164. The fact that the referees were industry participants must warrant that they be given greater weight.

165. The range of matters with which the Licensing Committee and the Tribunal has to be satisfied have been lessened. For example, there is no suggestion he is not physically fit, nor that he lacks the skills and knowledge required to participate in the industry.

166. It was therefore submitted that the only ongoing issue is his continuing moral commitment to good behaviour and good character.

167. The only matters going to that propriety were his previously disqualifying conduct and his answers given during the interview. It is said that when read as a whole the appellant meets the requisite test.

168. It was conceded that his previous breach of the rules fell into the high range of objective seriousness and that appropriate penalties, severe penalties, were imposed upon him as a result of which he suffered professionally, emotionally and financially.

169. It would not be proper for the Tribunal to use a disguised penalty which would be equivalent to re-punishing him for his failures determined in 2017. There should not be a transformation of powers to penalise as against consideration of the duties to grant licences.

170. It is submitted that there is no evidence available which would enable a barring of him from participating in the industry for any longer.

171. It is said that the totality of his evidence provides a very strong basis to be assured that he is a fit and proper person to be granted a licence.

Appellant's oral submissions

172. Again it was emphasised that this hearing does not involve a retrial of past issues.

173. It is submitted that the respondent was inviting speculation that the appellant was engaging in corrupt conduct.

174. Finally, it was submitted that there must be a focus on the likelihood of whether the appellant will repeat any of his past conduct.

175. It was submitted that the focus must be upon the appellant now, and that he genuinely has nothing that he can assist the regulator with in relation to its past concerns.

SUBJECTIVES

176. A number of matters of a subjective nature have already been considered but some others require noting.

177. The appellant is a 52-year-old man involved in the harness racing industry for most of his adult life in a 29-year career. That career involved significant success and for around 10 years he was the leading driver in NSW.

178. He has no prior matters other than the two subject Rule 187 breaches.

179. His professional excellence and representation of the industry and mentoring of young people is referred to.

180. In respect of his experience, at the time of his 20 December 2018 interview the Chairman at interview noted that he had had some 15,753 drives for 2564 wins and that as a trainer he had had 45 starts for three wins.

181. It was noted in that interview that he had a young family to support.

182. As the appellant said to the Licensing Committee on 20 December 2018:

> " … hopefully now the industry is back on its feet and, um, you know, I'd like to be part of it."
>
> And later:
>
> "Um, well, I think they'd believe, if they really know me, that he deserves a second chance. He's put a lot of – done a lot of good things for the sport, um, and hopefully I can, you know, regain – the people that did doubt me regain their confidence and, yeah, given a second chance, you know. But, um, as I said, if anyone was ever – a young fellow needs advice, I'd be only too happy, and I was like that before, I'd give them advice about driving and all that."

DETERMINATION

183. The key issues distilled from the earlier details set out on the statutory, regulatory regime and applicable law for this application are as follows.

184. The applicant must himself demonstrate that he has established his right to the two licences he seeks. The onus is upon him. There can be no assumption that he is a fit and proper person.

185. He has to demonstrate he is a fit and proper person by reason of his honesty, knowledge and ability such that this Tribunal can give him its imprimatur with regard to its duty to provide protection for the integrity of the industry.

186. He has to demonstrate he will be reliable in the future because there can be no assumption wrong conduct in the past will not recur. He has to demonstrate he has the moral integrity and rectitude of character to have the two subject licences. He has to demonstrate that his past misconduct in this vocation will not recur.

187. In assessing whether he has met those tests the significance of the green light scandal and associated corruption of the harness racing industry raise matters of grave seriousness requiring an assessment of the facts

here in the light of that scandal and the appellant's conduct to the extent it might be associated with that scandal, if any.

188. His evidence has been set out.

189. He has not given evidence himself to this Tribunal on this appeal. He did not do so on his appeal relating to the breaches. TheTribunal has not been able to assess him as an individual based upon oral evidence.

190. He has not expressed to the Tribunal matters which address many of the concerns set out below.

191. He must overcome the earlier findings which demonstrated a refusal to fully cooperate with the regulator. He partially cooperated.

192. In its penalty decision, summarised in paragraph 16 above, the Tribunal referred to the significance of the corruption issues to the integrity of the industry, concerns about the cloud hanging over the good character of all involved, that key and fundamental points about integrity of the industry were unanswered and that certain participants had thumbed their noses at the stewards and the regulatory bodies. Accordingly the need for protection of the industry from those who engaged or were associated with the misconduct was enlivened. It must again be emphasised that there is no allegation that this appellant was corrupt.

193. It must be accepted, as it was in the penalty decision, that the appellant did cooperate with the stewards by offering to attend a resumed inquiry. However the stewards were unable to investigate any nexus with corruption because they had been frustrated, misdirected and delayed in the earlier investigation.

194. The appellant's conduct had earlier been assessed as ongoing with no exhibition of remorse.

195. By reason of the Tribunal's earlier consideration of him, this application and the evidence to determine it are not isolated considerations. The appellant is aware of the Tribunals' knowledge of and involvement with him.

196. He has to overcome submissions that there has been an absence of material change in his circumstances from the previous breaches. That means he has to remove any concerns that his frustration of the regulator in the past, which may not be cured, is likely to lead to frustration of the regulator in the future. That particularly so in the light of the serious frustration of the stewards which was caused by the appellant's earlier conduct.

197. That does not mean he is to be retried for his earlier conduct or the subject of further punishment nor that his conduct must lead to his permanent exclusion from the industry. Those matters are a new reflection of the high onus which he carries in these proceedings and which he must meet.

The iPhone Issue

198. The appellant's failure to address issues about the iPhone in his submissions to the Licensing Committee were addressed by his interview with the committee on 20 December 2018.

199. He sought to advance an explanation in that interview. He did so repeatedly as was set out earlier.

200. The Tribunal does not accept that the seven-year gap between his failure to produce the correct phone and his interview of 20 December 2018 provides a plausible explanation for the failures which are demonstrated on the evidence.

201. The Tribunal does not accept that seven years ago any misconduct or misstatement or error made by him was explicable by pressure or stress then upon him. He has given no evidence to establish such a fact.

202. The Tribunal finds that the explanation he has given in the interview of 20 December 2018 is unsatisfactory, blatantly implausible, untruthful and inconsistent.

203. Any suggestion that he did not know that he was handing across the wrong phone is rejected totally. The two phones were of a different make, different size and different colour. It was not his phone as it was either his wife's or his sisters. Therefore he could not have been handing over his phone to which the notice related and to which the earlier records, which he produced, related.

204. Therefore he has failed to give a frank explanation and this goes to his honesty and credit. It is acknowledged that the respondent does not submit he is a dishonest person. However honesty in a fitness and propriety test goes to his honesty to execute his licences truly, without malice affection or partiality.

205. It is accepted that the importance of the iPhone to any inquiry the stewards may wish to make is lessened by the fact that they had the telephone calls and there were no relevant texts or SMSs. However there was no ability to further examine that by reason of the frustration of the

stewards. That is ongoing and demonstrates an issue that is relevant to an assessment of his future behaviour.

206. The different versions that have been given remain unexplained even now. Suffice it to say his explanations were not inadvertent.

207. Therefore it cannot be determined that he has established that he has learned his lesson.

208. In the absence of any explanation directly to the Tribunal about these matters the Tribunal remains concerned about his conduct and projects that in its assessment of him as to the future.

Refusal to Answer questions

209. The Tribunal accepts that the appellant has given consistent answers in his interview to the effect that he refused to answer questions in 2011 based upon legal advice. He was penalised for that conduct. It is a closed issue factually. This is particularly so as in the penalty decision his conduct was not found to be so egregious as to warrant his exclusion from the industry

210. On this factual issue the appellant has overcome the onus that is upon him. Looking to the future this issue is closed in his favour.

Rule 259

211. As set out in paragraph 106 above, his failure to comply with this rule does not go to his honesty but to his ability and knowledge.

212. This failure has not been cured by any evidence or satisfactory explanation.

The Green Light Scandal

213. In the interview of 20 December 2018 the Licensing Committee attempted to draw from the appellant some form of explanation of his involvement and/or knowledge. He expressed ignorance and denied any involvement. He repeated that in 2011 he had advised that to the then Chief Steward Mr Cable and the Integrity Manager Mr Sanders.

214. He maintained in that interview that he was "innocent" of any involvement in the scandal.

215. Accordingly his involvement if any in that scandal has not been explored. Essentially it remains unexplained. His explanations in that

interview do not cure the concerns of the regulator by reason of any conclusion that he "came clean".

216. His understanding of the harm caused to the industry was expressed but was faint.

217. The evidence must be assessed on the basis there is no reopening of the inquiry of 2011, and nor did the Licensing Committee attempt to do so as it did not explore specific matters that might have been within knowledge and against which he could have expressed involvement or non involvement and the like.

218. That evidence, particularly without an explanation to this Tribunal by the appellant, leaves a deep sense of unease about the appellant and how he might conduct himself in the future.

Remorse

219. It is accepted that he has expressed remorse for his past conduct and this is a closed issue.

Referees

220. It is accepted that the references by industry people of long-standing have demonstrated a sufficient knowledge of this appellant's involvement in his wrong conduct.

221. It is accepted that the referees sufficiently addressed that wrong conduct. It is accepted that he previously was in high regard in the industry and that industry representatives will have him back. The remorse he expressed to them is accepted.

222. The references are factors in his favour on the fitness and propriety test.

THE FINDING

223. The Tribunal determines that the appellant has not sufficiently grasped the issue of his integrity, honesty, credibility, knowledge and ability by the evidence adduced on his behalf.

224. There are deep concerns for the possibility of repetition of the conduct despite the assurances advanced in the interview.

225. The seriousness of the green light scandal and the necessity to adequately address it in this application cannot be ignored.

226. The totality of the issues of concern demonstrate the seriousness of factors upon which the appellant must demonstrate to the Tribunal that he has been forthcoming and honest, that any misconduct has been resolved and that any future investigations will not be frustrated.

227. These matters are relevant to how he could have the imprimatur of this Tribunal to be held out to the industry and the public as a fit and proper person.

228. The remorse he has expressed and the referees support for him must be considered in assessing whether he has demonstrated material change.

229. The Tribunal does not retry him because of past conduct but assesses that conduct and the current evidence in respect of it to look to the future.

230. Some concerns have been lessened.

231. It is important to emphasise that the Tribunal is not moved to speculate that the appellant was corrupt.

232. The subjective factors which have been set out are in his favour.

233. The Tribunal again revisits it's oft stated concerns that it has not been able to assess him from his own evidence to the extent that he has been unable to clearly demonstrate to the Tribunal that he has learnt the lessons from his past conduct, that he understands fully the seriousness of the issues, that he has really understood the gravity of the green light scandal issues and the necessity for a thorough investigation of it by a regulator in a highly regulated licensed industry.

234. It is emphasised that there is no rule or binding precedent that compels an applicant to give evidence. Each case must turn on its own facts and circumstances. it is not necessarily fatal for an applicant to not give evidence.

235. The appellant fails to demonstrate to the Tribunal that he should have its imprimatur when it looks to the future.

236. The Tribunal notes again the legislative tests that fall upon the regulator and set out in paragraph 13 above, particularly having regard to the need to protect the public interest as it relates to the harness racing industry. It is necessary, as the code of conduct says that the appellant must demonstrate that he has invoked confidence about no future harm to the reputation of the industry from any conduct in which he might engage.

237. There is the key factor that this appellant by his application sought A grade licences which licenses are of the highest category and which must therefore require of the appellant a clear and unambiguous demonstration of his fitness and propriety.

238. The appellant fails to demonstrate that he is a person of honesty, knowledge and ability as set out in the tests set out earlier.

239. The appellant has not demonstrated to the satisfaction of the Tribunal that he is a fit and proper person to be held out to the regulator, the industry and the public as a person able to have A class licences.

240. The Tribunal declines to grant the application for an A grade trainer and A grade driver's license.

ORDER

241.The appeal against the decision of the Licensing Committee is dismissed.

APPEAL DEPOSIT

242. The appeal having been dismissed the Tribunal would in the ordinary course order that the appeal deposit be forfeited.

243. However the appellant has not had an opportunity to make a submission seeking a refund of the appeal deposit. He is entitled to do so.

244. Unless the appellant makes an application for refund in whole or in part of the appeal deposit within seven days of receiving a written copy of this decision then the Tribunal shall, without further order, direct that the appeal deposit be forfeited.
