RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR DB ARMATI

EX TEMPORE DECISION

FRIDAY 15 FEBRUARY 2019

APPELLANT JACKSON PAINTING

APPEAL AGAINST REFUSAL BY HRNSW TO GRANT A B GRADE DRIVER'S LICENCE

DECISION:

1. **Appeal upheld**
2. **Application granted**
3. **Appeal deposit refunded**

1. Former licensed trainer and driver Mr Jackson Painting applied for a B Grade driver's licence on 15 August 2018. After the usual processes that application was determined on 13 December 2018 by Harness Racing NSW finding him not a fit and proper person in refusing his application. The two principal reasons expressed were "your harness racing offence record, including periods of disqualification for a prohibited substance offence, betting, dishonesty offences and associating with persons connected with the harness racing industry or purposes related to harness racing whilst you were a disqualified person and as a result of the doubtful information you provided to the HRNSW Licensing Committee during an interview on 4 December 2018 as to how your prohibited substance offence occurred."

2. As a result of that determination, on 18 December 2018 the appellant applied to this Tribunal. The issue is one of his fitness and propriety.

3. In the decision of Scott, this Tribunal, 15 July 2015, the Tribunal said the following, and it 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.*
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> *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:*
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> > *"' … 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:*
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> > *'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."*
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> *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."

4. The evidence relevant to this matter has comprised a statement of the appellant of 14 February 2019, 14 references, his oral evidence and, in addition, the Tribunal has transcripts of a stewards' inquiry relating to this

appellant of 25 October 2016 and of Harness Racing Victoria stewards' inquiry of 22 August 2016.

5. Having regard to the tests in Scott, it is noted that there is a variation between that case and this in that this is an application for a B Grade driver's licence, not an A Grade driver's licence. The Tribunal is otherwise satisfied – and it has not been submitted to the contrary – that the law it set out in Scott and the statutory and regulatory tests which he must meet are those as set out in Scott and as are applicable to this appellant as well.

6. The appellant accepts that the onus is upon him to satisfy the Tribunal he is a fit and proper person.

7. The appellant's evidence-in-chief principally comprised his statement. Before turning to that, some of his licensing history can be set out. And it is as follows:

Volunteer stablehand – 2005
B Grade driver – 2007
A Grade driver – 2010
B Grade trainer – 2010
A Grade trainer – 2011.

8. The appellant is 32 years of age and has been employed as a farm hand on his parents' property and as a refrigeration mechanic. Those occupations not surprisingly arise because of disqualifications in this industry, to which the Tribunal will return. He has had a family history and association with this industry virtually all his life. He had been an apprentice cabinetmaker as a young man and completed the apprenticeship. His licensing history has been given.

9. He relies upon his success as a driver, being the first driver in the Riverina district to achieve 100 wins in a season. He has achieved junior driving and senior driving premierships in the Riverina. He has been a representative driver for that region. He has been a trainer with some success.

10. His participation in the industry started to unfold in September 2012. He then admitted the breach of 10 matters relating to Rule 173(1), a prohibition on a driver betting on a race. Those matters generally involved betting on horses which he drove, with bets between $100, $500, $150, $200, $720. He also engaged in betting on various other forms of betting such as four-leg, quaddy, running doubles, parlays and the like.

11. Having admitted those breaches, he was subject to monetary penalties on the matters in which he drove and disqualification of two months for some of the matters and six months for other of the matters – the more

serious matters, generally involving the exotic betting – and that six months and two months were to be served concurrently.

12. His explanation that he advances in respect of that misconduct is ignorance of the prohibition. That ignorance apparently existed notwithstanding that prior to him being licensed as a B Grade driver in 2007, a law prohibiting betting by drivers in those circumstances had been introduced. As he acknowledged when he applied for each of those licences, that he was bound by the rules and the code of conduct which applied to him. And he acknowledged that on each of those occasions.

13. The issue of fitness and propriety requires some assessment of his apparent inability to comprehend a very basic provision relating to the integrity of the industry.

14. He had then applied, following the end of those disqualifications, to be an A Grade trainer and driver. He was given the privilege on the basis, it is said, that he satisfied the investigative officers and the decision-makers that he would not reoffend.

15. Then, in November 2013, he received a disqualification of two years and three months for a TCO2 presentation, a matter which he admitted and which troubles the regulator today about the circumstances in which that occurred and the explanation given by the appellant both in 2013 in the course of that inquiry, 2016 in relation to that further series of matters and in respect of his interview for this subject application.

16. In essence, the regulators do not believe him. His explanation has been that the feeds for two horses were mixed up and that that led to the excessive reading of TCO2. Without examining that matter in great detail, it is that he says the mix-up occurred because he placed a handful – or as he described it today, it was a generous handful – of bicarb in feed. That was assessed in the course of the regulator's consideration of the matter on each occasion as comprising probably 50 grams.

17. Whilst the evidence is not here, it has not been disputed on those various questionings of him that there was evidence of the stewards to the effect that that would not produce the reading it did and it was apparently the evidence of Dr Wainscott, regulatory vet, that that conduct would not have produced the reading that it did.

18. It is, therefore, that in respect of the first reason for the rejection of his application the stewards and the regulators remain unsatisfied with the explanation he has given. The science in respect of TCO2 has not moved on since that time.

19. The appellant then in February 2016 made a further application for an A Grade driver and an A Grade trainer's licence. He was subject to a show cause and it was determined that that application would not be granted.

20. In October 2016, whilst he was therefore unlicensed and disqualified, he was investigated in respect of complaints received to the effect that he was associating with persons licensed in the industry. He admitted those matters. It involved a somewhat difficult to resolve set of facts.

21. In essence, what had happened was that he was required to dispose of his horses as a result of disqualification and in respect of one of those horses he had provided assistance to licensed persons in having those horses transferred and advised in respect of the performance of those horses'. There was then an issue whether his evidence in his statement today to the effect that that horse was unwell and as a matter of welfare he was assisting the new trainer is true. His evidence today did not assist him because he changed it under cross-examination.

22. At the end of the day, however, it being said that he had made a mistake in respect of his evidence today, he was quite clear on the fact that the sequence of events was such that he had been training the horse, he was disqualified, the horse was transferred to another trainer and the horse became unwell. Therefore, as a matter of welfare, he assisted. It was put to him that a Ms Bartley, who had appeared in that inquiry in 2016 with him, had told the stewards (transcript page 107) as follows:

> "Like the horse, when Jack trained him, he got really sick and nearly died. Like, if he's really sick, so why wouldn't you be interested? We literally brought him back from the dead and got him back to the races and winning races."

23. This is not a retrial in respect of his conduct in 2016. It is a question of the Tribunal assessing what it has on the facts of that matter and determining whether he has been untruthful, either to the stewards in the initial inquiry, or when subsequently questioned in respect of it in relation to licence applications, and in his evidence today. It would be important to recognise his words in his statement in evidence here:

> "I felt obligated to help them and had a duty of care for the wellbeing of the horse. I did not at any time consider my actions to be associating with licensed persons."

24. An analysis of all of those facts would require a trial within a trial. The Tribunal is not prepared to undertake that exercise. The nature of the material being put to it, both in the range of cross-examination and in the submissions, does not convince the Tribunal it has to do so. The Tribunal will return to how it assesses that evidence.

25. Coupled with that particular breach of associating, he was dealt with and penalised for failing to produce his mobile phone. That was another matter upon which it is felt in the decision to refuse this application by the regulator that, as they said in their decision, he had not satisfied them of the adequacy of his answers.

26. The rules require a person, when required – and as he pointed out to the stewards, he was unlicensed – when questioning him about producing the phone he continually said it was lost. It was not lost. On some eight or nine occasions he told the inquiry steward that it was, knowing full well it was in his motorcar. He is challenged about his explanation that he has been untruthful in saying that the reason why he gave those answers was because he did not want to have to drive back to Coleambally, a seven-hour drive, without a mobile phone – a somewhat strange point – and he also wanted it for work.

27. However, when he was questioned and gave those numerous lies, he had said in the transcript, page 10: “Yeah, but I want my phone when I leave here.” “You can have your phone when you leave.” Later: “It will be forensically examined. So you can go and grab your phone out of the car.” His comment: “So when I leave here? Because I need it for work.” Answer: “When it is finished being forensically downloaded we will hand it back to you.” Appellant: “So it’s not being confiscated?”

28. That is consistent with the evidence he has given here, namely, that he led the stewards on that merry chase during that inquiry because he thought the phone was going to be confiscated. And that is what he said happened and he satisfies the Tribunal with that explanation in respect of that conduct. Again, the Tribunal is not retrying his conduct in respect of a matter about which he was previously penalised.

29. The other matter of concern, which has never been the subject of a breach allegation, is elevated levels of cobalt in 2013, prior to it having the threshold fixed in the rules, and the levels produced were 550, 410 and 350. The threshold, when introduced, was 200, now 100.

30. Because of the recent decision of Hughes and a number of cases with which the Tribunal is presently dealing with the science of cobalt, the Tribunal is not prepared to form an adverse conclusion in respect of those levels or in respect of an explanation he gave or did not give. The regulator, in this application, was troubled by the fact that he did not give an explanation for those levels of cobalt which satisfied them. The reason for that was he said he had used the product Hemoplex, together with some other legitimate products, in accordance with manufacturers’ recommendations and within the rules, that is, as to the time of administration, and that that is his explanation.

31. Because the alternative inference is that he used the method of doping so prominent in 2013 and that is what led to the levels. There is no evidence to establish that. Because of the changing science in cobalt, the Tribunal does not come to an adverse conclusion in respect of a failure to provide a more adequate explanation in respect of that matter. In any event, it has not been the subject of an inquiry in which any proper determination could possibly be made of an adverse nature, particularly having regard to a fitness and propriety test, other than a breach of the rule test, which is not here.

32. The statutory provision in section 11 of the Harness Racing Act, coupled with the provisions of clause 90 of the Harness Racing Rules, adopting codes of conduct and other tests, set out a range of matters which an applicant for a licence must address. The appellant in his statement set out answers to all of the statutory and regulatory and regulation-type tests by expressing his opinion, which has not been the subject of challenge, as to his fitness for the type of licence which he seeks, namely, a driver. And it might at this stage be noted that he does not seek a trainer's licence, about which he has come undone in regulatory matters in addition to his unlicensed conduct-related matters in the past.

33. And the Tribunal did not note – and now just for completeness notes – that his application which is now before this Tribunal and which was dealt with by the stewards was made soon after his periods of disqualification expired. And those periods of disqualification arose in respect of his TCO2 breach which was then, as a period of disqualification, recommenced as a result of his breaches by associating with licensed persons when disqualified and for which in addition a further period of 12 months' disqualification had been imposed upon him.

34. In essence, he deals with matters on the basis that he is – and they shall only be referred to because they are not in issue – physically fit, he has the requisite skills and knowledge, he is mentally fit, no criminal convictions and none of the matters, with one exception of attitude towards officials, which requires any further analysis. And that attitude to the officials matter, just to close it, was that dealing with the stewards in relation to the telephone, and the Tribunal has made its determination on that.

35. He now says, yet again, he understands the code of conduct. And in support of his application he continues in his statement by again reiterating his interest in harness racing, a passion for the industry from a lifetime perspective. His experience in driving from about the age of 20 at numerous venues, and he sets them all out, and there are many; they do not need to be referred to. He emphasises the fact that in relation to his driving, he has never been disqualified. He also refers to the number of trainers for whom he drove and the fact that there are many out there

waiting to re-engage him, and the Tribunal will return to that. And again the Tribunal notes its earlier reference to his success as a driver.

36. He also relies upon voluntary work and the referees have supported him in respect of that. He has been a mentor to a few people in the industry and a person who assists others in the industry. He does not have any matters of dishonesty or improper behaviour. As a driver, he was able to operate within the rules of racing and his record, which is in evidence, does not contain matters other than those consistently being brought against a drivers, but not of a grave nature. He also goes on to say he has not been in debt or bankrupt, he is of sufficient financial means, no criminal history and no other evidence of improper behaviour other than that which has been analysed.

37. He also refers to the impact upon him personally. That is, of course, an inevitable consequence of his wrongdoing. In some circumstances, it would be difficult to see that that carries any weight at all and it is difficult to see how, having regard to those breaches, there can be any compassion for it. However, the importance of it in respect of an application such as this is that having had that devastating impact upon him of his conduct, notwithstanding that he did not learn his lessons soon enough and kept offending, that he now advances himself as a person who will not want to subject himself to similar types of losses of the privileges that flow from a person who is licensed or, alternatively, the consequences of a person who is disqualified. As he said, the impact of all of this has been mentally hard, physically difficult for him. It has created financial hardship. That implies, therefore, it has taught him a lesson he has got to behave himself.

38. He also wants to return to the social network, which it is obvious that harness racing provides, both for him as an individual but also his capacity to associate with his family members who are licensed persons and other friends who are licensed persons. Those matters are understandable but the relevance is they provide a reinforcement in his evidence that he has learned his lesson and will not reoffend. And again, that is relevant to the fact that his conduct has to be assessed based upon what has happened in the past but looking to the future.

39. In relation to his assistance to others – and these are also supported by his referees – he has assisted the Coleambally Football Netball Club in various capacities that need not be analysed in any greater detail. He was involved in a charity bike ride to raise money for people who are unwell. And he is well spoken of by those who have known him. Those are the matters he advances in support of his application. It is important to touch upon the referees. There are 14 of them. It is necessary to have regard to each of their statements in brief summary form.

40. The Tribunal notes that a reference by a person who is licensed in this industry and in the industry in which the applicant seeks the imprimatur of the Tribunal is to be given much greater weight than those from people outside the industry. The reason for that is this: that the integrity and welfare of the industry depends upon the attitude of its participants to the other participants or those seeking to join it. If people who have the privilege of a licence are prepared to embrace a person, so much greater is the impact of that reference, because if they were to give support to people for whom they did not have confidence, it would impact upon the integrity of the industry, which would no doubt have a substantial impact upon their own livelihood and benefits from being in the industry themselves.

41. Gary Punch, 25 January 2019. He describes him as a person of talent in both training and driving, with appropriate skills and has no trouble giving him a drive. Mr Punch is the President of the Leeton Harness Racing Club and other organisations.

42. Next is by Jorge Teixeira. Undated. Known him for 10 years. He has trained and driven for him. He is an honest character, very down to earth, no hesitation in having him train and drive in the future. He has learned from his experience and he has a lot of potential.

42. The next is by Terry Coelli. Undated. Himself been involved in the industry as an owner, breeder and trainer for 50 years and is currently a licensed trainer. He has known him as a junior driver who was a selfless, caring and helpful person and mature at the time he assessed him. He has driven horses for him and describes him as professional and with horse management skills. He is a person who has taken time to come and assist Mr Coelli with his own horses. And he assesses the appellant as a person who has horse welfare first and foremost and always presented his horses very well. He is fully aware of his indiscretions but says his skills and his character should not be lost. His helpfulness, selfless nature and caring attitude are in his favour.

43. The next is by John Rees, again undated. He has known him for some seven years and the appellant was involved in purchasing, training and obtaining a horse for him in circumstances where the appellant went far beyond that which would otherwise be required of a person engaging in those activities. He refers to the devastating impact upon the appellant with his periods of disqualification and he says he should be given an opportunity to fulfil his dreams as an extremely talented horseman.

44. The next is by Tim Doherty, 17 January 2019. He has known him for 25 years and says he is a person of good character and strong work ethic and he is a fit and proper person who has learnt because of his time away from the industry and will be a positive contributor.

45. The next is by Bill Trembath, undated, who has himself been a licensed trainer and driver for 40 years. He recommends him as a person to be given a second chance. He assesses him as reliable, goes out of his way to help people and is capable harness racing driver.

46. The next is by Philip Maguire, undated. He has been involved in the industry all his life and held licences, both an A Grade trainer and driver. He has known the appellant for 25 years and was employed by the family. He says he is easy to get along with and reliable and has a broad knowledge regarding training, always very professional and hard-working and has a genuine love for the animal.

47. The next is by Colin Thomas, undated. Known him for many years. Capable person and reliable; always coming out to help for driving in trials, and he should be given another chance.

48. The next is by David Kennedy, 4 February 2019. He is the appellant's uncle. The Tribunal pauses to note that this and subsequent references by related people must, of course, be given less weight but are not to be disregarded. He has been associated with the industry for many years and he says that the appellant became a successful and accomplished driver who knows he has made bad decisions. Particularly it is the impact it has had upon him in relation to family functions. He says because of the time he spent on the sidelines, that has been very hard on him and he will not make those same mistakes again. He says the appellant is a very talented driver.

49. The next is by Carl Chirgwin, who writes under Coleambally Football Netball Club, to which reference has been made, 11 February 2019. He sets out the volunteer work and assistance to the club that the appellant has given going well beyond that which any normal club person would be required to give and has been noted for his enthusiasm and positive influence.

50. The next is by Simon Fuller, 12 February 2019. Known him for many years, employed him on a part-time basis in his air-conditioning business. He says he is reliable, honest, able to be left alone and able to establish a good rapport with customers. He says he is trustworthy, honest and very likeable and a community man and he has learned from his past mistakes.

51. The next is by Catherine DeMamiel, 13 February 2019. She makes reference to the charity bike ride, to the circumstances in which the appellant voluntarily became involved and went over and above what might have been required of him by assisting all of those and in particular those who were suffering from the particular disability which led to the instigation of that charity bike ride.

52. The next is by his parents, which is 13 February 2019. They are very concerned for him because of the impact, which will not be read onto the record, of the disqualifications upon him and the impact that social media matters relating to his conduct have had upon him. They refer to his passion about the industry and the fact that he has been brought up in that industry and a disappointment to him and his family in how he has missed out on it, and a belief that he has served his punishment.

53. The next is by Matthew Painting, whose relationship is not described, of 4 February 2019. Obviously known him all his life. And he himself is a breeder, owner and trainer. He says that the appellant always presented himself well, is a committed person with the horse's best interests in mind, with a natural gift.

54. The Tribunal has regard to those, both individually and collectively.

55. The further matters which have come out in evidence over and above those to which reference has been made are the question whether he has matured or not. There is some suggestion he might have been assessed in relation to his earlier conduct on the basis that he was a young person. The Tribunal, as it often does, expresses the fact that a person who was then aged 25 cannot play that card from the deck. At 25 they are well beyond 18, at which a person is treated, for all purposes, as an adult, although some fail to display the adequacy of that and misbehave. But here, at age 25, he is an experienced person, associated with the industry all his life, brought up by people who know it full well. He cannot rely upon a lack of maturity as giving any comfort that that occasioned his behaviour in the past and he is now a mature person for which that type of conduct will not be repeated. That is not given any weight.

56. Emphasis is placed on the fact that he seeks a driver's licence, as has been set out. He has no serious matters relating to that. And that there are people, as referred to in the 14 references read out, 10 of whom who have indicated a willingness to him to give him drives should he become relicensed. They are therefore licensed people and again they are prepared to embrace him and, for the reasons earlier expressed, that is a matter that must be given weight.

57. It is also noted that it is not an issue for the respondent that the appellant has the capacity and the ability to drive and to exercise the licence if he meets the fitness and propriety test.

58. Those then are the matters upon which this case turns.

59. The issue is: has the appellant therefore satisfied the Tribunal that his past indiscretions are indeed behind him, that they are not so grave that they of themselves should prevent him from coming back into the industry? Bearing in mind that there are two matters of concern to the regulator and

it is an issue whether the appellant can satisfy the Tribunal that those matters have been overcome and, indeed, any other matters about which the Tribunal may have concerns.

60. Some key points. Firstly, that the misconduct in the past in relation to presentation matters was as a trainer. In relation to his association matters and in relation to his telephone breach, those matters do not arise. His betting, of course, was whilst he was a driver, and the Tribunal is satisfied that that conduct will not be repeated, when isolated from the others, by reason of the fact that he is now aware that that is not permissible and, indeed, he did not reoffend in respect of those in the short period of time after which it occurred and whilst he had been relicensed.

61. Do any of the past indiscretions of themselves, when considered in isolation, indicate that they are of such gravity that he cannot meet a fitness and propriety test looking to the future? Taken individually – and they have been only superficially assessed for the reasons expressed – the Tribunal does not come to that conclusion. The appellant satisfies the Tribunal that when those matters are looked at in isolation, he establishes that they will not recur and he is fit and proper.

62. But what when they are taken together? Can this Tribunal give him the imprimatur to the community at large and, more importantly, to the industry itself that a person with so many past breaches, with periods of disqualification, with breaches when he was in fact a disqualified person, it can have that level of satisfaction that he must establish?

63. The comfort in respect of that does not turn upon the appellant's own evidence. Appellants generally are quite able to do statements and give oral evidence indicating that they are now a reformed person and should be entrusted. That is often difficult to accept when they have been given those chances in the past and have continued to breach.

64. The comfort can be found is in respect of the nature of the referees who have spoken for him and the breadth of knowledge and experience that they have. To some extent, it might be said that many of the attributes to which they made reference were those that he had when he was offending, but the strong theme advanced by many of the referees to corroborate him is that he has learnt his lesson.

65. There is comfort from, firstly, the passage of time, limited as it is. But, secondly, the fact that it has had – that is, his past conduct – a salutary effect upon him such that he can satisfy, as he has satisfied others, that the lesson has been learnt.

66. If the lesson has been properly learnt, is it that when the three matters are put together – three lots of breaches – that he overcomes those? When considered as one combined fact, the appellant overcomes that test.

67. The next matter is, as has so troubled the regulator, about what they described as the doubtful information he continues to give. In that regard, the matter is more troubling. The appellant has continued to advance the same theories in respect of his miscreant behaviour in the past and potentially miscreant behaviour in respect of cobalt and in respect of the telephone, in respect of his associations and the like, and maintained a not great change in respect of those matters.

68. The interview of 4 December 2018, upon which reliance was made, must now be read in the light of the further evidence that has been given. In particular, the explanations that he now advances in some cases but not in others. The trouble for the Tribunal in respect of those matters is that it would require a retrial in respect of each matter to enable the Tribunal to come to a conclusion that, when they are considered individually, the explanations he has given must be rejected out of hand. To reject out of hand is required because that is necessary to bring up the fitness and propriety test on the honesty side of the matter.

69. It might be noted at this stage by way of interposition that in respect of the three limbs identified in Hughes v Vale of honesty, knowledge and ability, that aspects of his knowledge now have not been pushed as issues about which he should fail and his ability, as was just said a moment ago – ability to be a driver – is not in issue. Therefore, this first test of concern of the regulator turns on honesty.

70. The Tribunal is not able to form an adverse opinion in respect of each of those matters individually that he does not have the requisite degrees of honesty in respect of them.

71. However, there can be cumulative effects when matters such as these are all taken into account that mean, when they are all considered together, those doubts have not been overcome. Whilst the Tribunal says it is troubling, at the end of the day, coupled with the fact that the community is prepared to speak for him, coupled with the salutary lesson that he has learnt, that the issues of doubtful explanations, if in fact they are correct, is not one which would cause him to fail in respect of the honesty test.

72. Having regard to those matters – they are the ones that have troubled the regulator – the Tribunal is satisfied that nothing further has arisen as a result of the evidence given in this case that brings up other matters for consideration which have not otherwise been analysed as interrelated to the concerns to the regulator.

73. The Tribunal is satisfied that the appellant has established that he should have the imprimatur of this Tribunal as a person with the requisite degrees of honesty, knowledge and ability to be a driver at a B Grade driver level.

74. The Tribunal finds he is a fit and proper person to be a B Grade driver.

75. The appeal is upheld.

76. The application is granted.

77. The Tribunal orders the appeal deposit refunded.
