APPEAL AGAINST REFUSAL TO GRANT CONSUMER CREDIT LICENCE – prohibition orders previously made under the Estate Agents Act 1979 against controller and agents of the Applicant – relevance of findings of untruthfulness and unreliability in previous proceedings – applicant had wrongly traded for approximately 11 months following expiry of previous licence – weight to be attached to previous unblemished trading history of the Applicant and its controller – appeal dismissed

IN THE CONSUMER CREDIT APPEALS TRIBUNAL

BETWEEN:

UNIFIED FINANCIAL PLANNING LIMITED

Appellant

- and -

THE OFFICE OF FAIR TRADING

Respondent

Date of hearing: **5 February 2009 (sitting in public)**

Venue of hearing: **The Employment Tribunals, 4th Floor, City Exchange, 11 Albion Street, Leeds LS1 5ES.**

Tribunal: **Mr. Keith Rowley Q.C. (chairman)**
Ms. Sue Ward
Mr. Alex Dalgleish

Appearances:

For the Appellant: **Mr. Carlo Yhklef, a director of the Appellant**

For the Respondent: **Ms. Ruby Adesuyi of the Office of Fair Trading**

DECISION

1. This is the unanimous decision of the above-mentioned Tribunal ("the Tribunal").

2. The Tribunal has before it an appeal brought by Unified Independent Financial Planning Limited ("the Appellant") against the determination ("the Determination") of Ms. Alison Spicer ("the Adjudicator") acting on behalf of the Office of Fair Trading ("the OFT") that the Appellant's application dated 4 December 2007 ("the December Application") for a licence under the Consumer Credit Act 1974, as amended ("the 1974 Act"), be refused.

3. The Determination was itself undated but was, we understand from a chronology helpfully provided to us by Ms. Ruby Adesuyi who appeared before us on behalf of the OFT, sent to the Appellant on 26 September 2008.

4. The Appellant's Notice of Appeal dated 15 October 2008 was received by the Tribunal on 16 October 2008, and was signed on its behalf by its sole director and the holder of its one issued share, Mr. Carlo Ykhlef. The grounds of appeal were set out in an accompanying undated letter from Mr. Ykhlef.

5. The Determination was based on two grounds, albeit that the Adjudicator said that she had given "relatively little weight" to the first of them. Those grounds were:

   5.1 That the Appellant, and Mr. Ykhlef as an associate of the Appellant for the purposes of the 1974 Act and also a director of the Appellant, had contravened section 7 of the 1974 Act by knowingly or recklessly failing to declare in the December Application

      5.1.1 Ms. Lucy Ann Lloyd as company secretary of the Appellant, and

5.1.2 licences formerly held by Mr. Ykhlef personally and the Appellant itself under the 1974 Act.

5.2 That both Mr. Ykhlef and Ms. Lloyd had:

5.2.1 engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether lawful or not) within the meaning of section 25(2A)(e) of the 1974 Act in their work as estate agents; and/or

5.2.2 contravened an enactment regulating transactions with individuals, namely section 21 of the Estate Agents Act 1979 ("the 1979 Act"), and breached the Estate Agents Undesirable Practices) (No. 2) Order 1991, S.I. 1991 No. 1032 ("the 1991 Order"), which resulted in prohibition orders being made against each of them personally, and also against a company known as Quay Homes Estates Limited ("Quay Homes"), under section 3 of the 1979 Act on 7 September 2007. The orders were upheld following appeals being brought against them by Quay Homes, Mr. Yhklef and Ms. Lloyd to the Secretary of State for Business, Enterprise and Regulatory Reform ("the Secretary of State"), those appeals being dismissed on 13 March 2008.

6. Before us Ms. Adesuyi relied not only on the two grounds upon which the Adjudicator based her decision but, additionally, on the conduct of (i) both Mr. Ykhlef and Ms. Lloyd during the course of the investigation that ultimately led to the making of the prohibition orders under the 1979 Act, (ii) both Mr. Ykhlef and Ms. Lloyd during the hearing before the Appointed Persons of their and Quay Homes' appeals under the 1979 Act and (iii) Mr. Ykhlef alone during the hearing before the Adjudicator in the present proceedings.

7. Although Ms. Lloyd appeared at the hearing before the Adjudicator, it is apparent from the transcript that she contributed very little to those proceedings. She did not attend the hearing before us.

8. Although at one stage the Appellant was represented in these proceedings by solicitors, Carrick Read Solicitors LLP, Mr. Ykhlef told us that the Appellant was unable to afford legal representation before us. The appeal was, therefore, conducted on the Appellant's behalf by Mr. Ykhlef, who also appeared as the Appellant's only witness.

9. On behalf of the OFT Ms. Adesuyi did not call any witnesses, being instead content to rely on the arguments adumbrated in the OFT's undated Statement of Case served in response to the Appellant's Notice of Appeal, as elaborated upon by her in oral submissions, and on her cross-examination of Mr. Ykhlef.

B. Mr. Ykhlef, Ms. Lloyd, Quay Homes and the Appellant

Mr. Ykhlef

10. Mr. Ykhlef was born on 28 August 1961. In his written submissions to the Adjudicator dated 18 August 2008 Mr. Ykhlef stated that he had been active in the field of financial services since 1994. On 24 September 1996 he was granted a licence under the 1974 Act, number 416118, for a period of five years from 26 September 1996 which authorised him to carry on under his own name the business of credit brokerage and debt adjusting and counselling under the 1974 Act. Judging from his application for that licence, it appears that at this stage Mr. Ykhlef was connected with the Allied Dunbar group.

11. Mr. Ykhlef's licence was varied with effect from 21 June 2000 to include also the business of debt collecting, and was further varied with effect from 26 September 1990 to include the additional business name "Unified Independent Financial Planning". The licence was renewed, in this varied form, for a further period of five years with effect from 21 October 2001.

12. In the following year, however, Mr. Ykhlef voluntarily surrendered his licence: the written reason he gave to the OFT for so doing was that he was "changing to limited", i.e., henceforth he was proposing to carry on his business through the medium of a limited company. That limited company was (and is) the Appellant.

The Appellant

13. The Appellant was incorporated on 4 September 2002. On 6 September 2002 Mr. Ykhlef was appointed a director of the Appellant and Mrs. Joanne Lesley Ykhlef was appointed its company secretary. Mrs. Ykhlef resigned as company secretary on 1 July 2006, on which date she was replaced in that office by Ms. Lloyd. We have already mentioned that Mr. Yhklef is the Appellant's sole shareholder. Mr. Yhklef and Ms. Lloyd are its only two employees.

14. As was necessary if it was to take over the financial services business formerly carried by Mr. Ykhlef personally, the Appellant applied for its own licence under the 1974 Act by a written application dated 19 September 2002. In completing that application on the Appellant's behalf, Mr. Ykhlef referred to his own previous licence number 416118 under the 1974 Act, stating at section 12 of the application form that "This is a change to (*sic*) limited company application". A licence was issued to the Appellant on 18 November 2002, number 527415, for a period of five years with effect from 20 November 2002 and limited to the business of credit brokerage.

15. As the Appellant's licence approached the end of its five year term, Mr. Ykhlef applied on its behalf to renew that licence. The renewal form clearly completed by him on the Appellant's behalf stated, on its first page:

> "**What happens if we do not renew our licence ?**
>
> If you do not renew your licence and you continue to carry out licensable activities after the expiry date, you will be committing an

offence. All agreements you enter into after your licence has expired may be unenforceable.

Renewal of applications that are of no effect

Under the Consumer Credit Act 1974, your application may be of no effect if:

…

X your form arrives after the date your licence expires.

If your application is of no effect for any of these reasons, your current licence will lapse and you will need to apply for a new licence. To do this, you will need to complete an application form for a new licence and send the fee for a new application."

16. Given the date on which the Appellant's licence was issued, it was necessary for its renewal application to be received by the OFT no later than 20 November 2002. As completed by Mr. Ykhlef on its behalf, that application ("the November Application") bears the manuscript date "05/11/07". It is, however, date-stamped as having been received by the OFT only on 22 November 2007, two days after the Appellant's licence expired.

17. Mr. Ykhlef has repeatedly contended, including in his evidence before us, that the November Application was submitted by him in good time and that it was the OFT that was dilatory in dealing with it. That is not a matter that we have jurisdiction to determine nor, even if it were, would we have the material before us to enable us so to do. For our purposes, the relevance of the November Application is two-fold.

18. First, because of the date upon which the November Application was treated by the OFT as having been received, it follows that as from midnight on 20 November 2007 the Appellant was no longer authorised to conduct consumer credit business for which a licence was required under the 1974 Act.

19. Secondly, in view of the OFT's contention that the Appellant and Mr. Ykhlef have both committed offences under section 7 of the 1974 Act to which we

referred in paragraph 5.1, we need to say something about certain of the contents of the November Application.

20. The particular passages we have in mind are sections 10 and 16 of the November Application. As completed by Mr. Ykhlef, section 10 specifically disclosed both that he was the Appellant's sole director and that Ms. Lloyd was its company secretary. Conversely section 16 made no reference to licence number 416118 formerly held by Mr. Ykhlef personally.

21. Returning to the chronology, on 26 November 2007 Ms. Bedi of the OFT wrote to Mr. Ykhlef on behalf of the Appellant explaining that because the November Application had been received late by the OFT, it was necessary for the Appellant for apply for a new licence. The letter stated:

> "I must advise you that unlicensed trading is an offence under the Act and any agreements you enter into or arrange while unlicensed may be unenforceable. If you engage in licensable activities and do not already hold a different current consumer credit licence, you should apply for one as soon as possible, as you are no longer licensed under the above licence number [i.e., licence number 527415]."

22. On 4 December 2007 Mr. Ykhlef submitted online an application by the Appellant for a new licence, that being the December Application.

23. In the December Application Mr. Ykhlef:

23.1 identified himself, twice, as being the person who ran the Appellant;

23.2 identified Ms. Lloyd as a person who could influence the running of the Appellant's business;

23.3 made no reference to either the Appellant's expired licence or to the earlier licence that he had held personally.

24. Although the December Application was submitted online, a related signed declaration was also required to be submitted by post to the OFT. That declaration was signed by Mr. Ykhlef on the Appellant's behalf and dated 4 December 2007 by him. It included the following text:

> "**I understand that:**
>
> - It is an offence to knowingly or recklessly give any false or misleading information to the Office of Fair Trading
> - If I give false or misleading information:
>
> - A licence may not be issued
> - Any licence may be revoked at a later date
> - I might be prosecuted."
>
> ….
>
> - I am responsible for all of the information that I have given on this form, including information about other people.
> - It is an offence to carry out any business that needs a licence under the Consumer Credit Act 1974 before a licence is issued."

25. We need at this point to say a little more about the Appellant's business.

26. We have not been provided with any underlying contractual and other documentation relating to the matters to which we refer in paragraphs 27 to 30 below, hence what we say there is based largely on evidence given by Mr. Ykhlef, either before us or the Adjudicator, or in written material produced by him.

27. As we understand the position based on enquiries made by the Adjudicator after the hearing before her (we refer to paragraph 31 of the Determination), both the Appellant and Mr. Ykhlef are registered with the Financial Services

Authority under the Financial Services and Markets Act 2000. We do not have any detailed evidence as to the position prior to 2000, save that we understand that Mr. Ykhlef had previous relationships with, first, the Prudential and, subsequently, Allied Dunbar (as to the latter we refer to paragraph 10 above) which functioned in a similar manner to the relationship between the Appellant and Sesame to which we now turn..

28. Mr. Yhklef told us in evidence that in 2000 he joined what he described in evidence as the "Sesame network". Sesame is a reference to the Sesame group of companies which, in his evidence before the Adjudicator, Mr. Ykhlef described as being the "largest IFA provider in the UK". He told the Adjudicator that "all IFAs work under Sesame, and most mortgage advisors" and that "they do all the compliance issues, all the support and training, anything we need, basically to run our business effectively. They also do the monitoring and the compliance issues. Basically they work under the Financial Services Authority …".

29. In essence, we understand Sesame to be an umbrella organisation under which first Mr. Ykhlef, subsequently the Appellant, and many others were or are able to act as independent financial advisers. Mr. Ykhlef also explained in some detail to the Adjudicator the nature of the training, monitoring and support systems operated by Sesame. He further told her that whilst the Appellant earned commission in respect of business placed by it with insurers, those commission monies would be received by the Appellant from Sesame only after it (Sesame) had deducted its own fees, rather than the Appellant being paid direct by the insurer. Much of this information was repeated and expanded upon, where appropriate, in a letter dated 18 August 2008 written by Mr. Ykhlef to the Adjudicator following the hearing before her but before she made the Determination.

30. In his evidence before us Mr. Yhklef described the relationship between Sesame and the Appellant as being one of agency, though without seeing the underlying contractual documentation it is impossible for us to say whether

that terminology is legally correct, nor is it a point on which anything turns in this appeal.

31. Mr. Yhklef told us that when he joined Sesame he became a member of the Association of Independent Financial Advisers ("AIFA"). In the course of cross-examination by Ms. Adesuyi we were told by Mr. Yhklef that AIFA places advertising on behalf of members in publications such as the Thomson Directory and Yellow Pages.

32. The Appellant's relationship with Sesame terminated on 27 October 2008. An email from Mr. Pyke at Sesame to Mr. Herman at the OFT dated 7 November 2008 stated that "… we [i.e., Sesame] have not received any regulated complaints about this firm (*sic*) to date". As we understand the position, Sesame terminated the Appellant's contract following the Adjudicator's decision to refuse its (the Appellant's) application for a licence under the 1974 Act. Mr. Ykhlef informed us that there was a network similar to Sesame's, called Premier Risk Services, which is operated by Premier Financial Protection Limited and which, through the Appellant, he wished to join in place of Sesame were this appeal to be allowed.

33. The import of all this is that, as Mr. Ykhlef frankly told us, the Appellant continued to carry on business for which a licence was required under the 1974 Act after its licence lapsed on 20 November 2007. His evidence was that Sesame told him to carry on trading until the outcome of his appeal, that he was not aware that it was a criminal offence for the Appellant to do so without a licence and that, as far as he was concerned, it was permissible for the Appellant to carry on trading whilst its application was still ongoing.

34. We have not heard evidence from anyone from Sesame, hence we need here to express ourselves with care. However we think the most likely explanation is that Sesame was under the misapprehension that the Appellant was appealing against the revocation of an existing licence. On that hypothesis it would undoubtedly have been permissible for the Appellant to continue to trade

pending the determination of an appeal against any such revocation, as expressly provided for by section 32(7) of the 1974 Act. Conversely there is no right on the part of a trader to carry on a business for which a licence is required whilst his or its application for the grant of a licence is being considered by the OFT. Due to the late arrival of the Appellant's renewal application, that is precisely the position the Appellant it was in, and the documentation to which we referred at paragraphs 15, 21 and 24 above made this absolutely plain.

35. It follows that, for a period of almost one year and at the instigation of certainly Mr. Ykhlef and, we consider it correct to infer, Ms. Lloyd also, the Appellant carried on business for which a licence under the 1974 Act was required but without it holding any such licence, contrary to section 39 of the 1974 Act.

Ms. Lloyd

36. We know a little less about Ms. Lloyd than we do about Mr. Ykhlef.

37. She was born on 22 February 1983 and is Mr. Ykhlef's domestic as well as business partner, having borne him two children. We understand, from Mr. Ykhlef's letter dated 18 August 2008 to the Adjudicator, that Ms. Lloyd holds an upper second class degree in business finance awarded by Durham University, having previously attended Bishop Burton College where she received the student of the year award. Clearly Ms. Lloyd has the benefit of an academic background not enjoyed by Mr. Ykhlef, which should go some way towards compensating for her comparative lack of business experience, when judged against Mr. Yhklef's work history.

Quay Homes

38. Quay Homes was incorporated on 21 October 2004 and, at the times material to this appeal, Mr. Ykhlef and Ms. Lloyd were both directors of that company, Mr. Ykhlef being also its company secretary and the holder of its one issued share.

39. Mr. Ykhlef told us in evidence that Quay Homes was set up to produce more income for Ms. Lloyd and himself and that they commenced trading in the estate agency field without any prior training in it. He said that the training provided by Sesame did not cover estate agency and that although Ms. Lloyd had intended to go on a course, she had not done so because of the birth of their first child; instead, he said, she (Ms. Lloyd) had tried to study from home. It will be apparent from the matters to which we refer below that, whatever limited home study may have been undertaken by Ms. Lloyd, it fell well short of what was sufficient was acquaint either of her or Mr. Yhklef with the relevant legislation applicable to the conduct of estate agency business of which they both ought to have been aware.

40. We note from evidence given by Mr. Yhklef during the hearing before the Appointed Persons under the 1979 Act that Quay Homes commenced trading in about April 2005 and that, whilst it was trading, it negotiated the sale of between 16 and 20 properties. We understand from the determination of the adjudicator in the proceedings under the 1979 Act that Quay Homes had ceased trading by summer 2007.

C. The proceedings under the 1979 Act

41. These proceedings concerned the proposed sale in early 2006 through the agency of Quay Homes of a property known as 7, Hilderthorpe Road, Bridlington ("the property"), the freehold of which was owned by Ms. Lloyd, to a Mrs. Woolley and a Mrs. Bousfield (although it appears that the latter played little or not part in the intended transaction), at a price of £85,000. The proposed sale did not proceed because, according to Mrs. Woolley's evidence, at the time she agreed the intended purchase, subject to contract, she had not been informed by either Mr. Yhklef or Ms. Lloyd of the latter's ownership of the property.

42. Given that the property was offered for sale through Quay Homes, the applicable law was perfectly clear, in that:

42.1 Under section 21 of the 1979 Act, disclosure of the nature and extent of Ms. Lloyd's personal interest in (i.e., her freehold ownership of) the property was required to be made to Mrs. Woolley before any negotiations could be entered into with Mrs. Woolley for sale of the property to her and Mrs. Bousfield, and

42.2 Under paragraph 1 of Schedule 1 to the 1991 Order, it was necessary to make disclosure of Ms. Lloyd's personal interest (once again, her freehold ownership of) the property promptly and in writing to Mrs. Woolley.

43. We shall refer in more detail later to the Report of the Appointed Persons dated 22 February 2008 in the proceedings under the 1979 Act. It was on the basis of the recommendations made in that Report that the Secretary of State dismissed the appeals of Mr. Yhklef, Ms. Lloyd and Quay Homes against the prohibition orders made against each of them by the OFT under the 1979 Act. For present purposes it suffices to say that:

43.1 In their oral evidence to the Appointed Persons both Mr. Yhklef and Ms. Lloyd contended that Ms. Lloyd's ownership of the property had been orally disclosed to Mrs. Woolley. However in their Report the Appointed Persons rejected that evidence and found that no oral disclosure of any form had been made to Mrs. Woolley.

43.2 Even on their own case at the hearing before the Appointed Persons, neither Mr. Yhklef nor Ms. Lloyd contended that written disclosure of the latter's ownership was made to Mrs. Woolley, whether promptly or at all.

D. The significance of the prohibition orders under the 1979 Act

44. Although the OFT's Statement of Case made much play of the events that had led to the making of the prohibition orders, that document did not itself directly address the legal status of either the Report of the Appointed Persons or the decision of the Secretary of State to dismiss the appeals of Mr. Ykhlef, Ms. Lloyd and Quay Homes against those orders.

45. However in her letter dated 15 January 2009 to Mr. Swift on behalf of the Tribunal, which was written some weeks after the OFT's Statement of Case had been served, Ms. Adesuyi enclosed copies of the transcript of the judgment of the Divisional Court of the High Court of Justice, Queen's Bench Division, in *Re a Solicitor*, which so far as we are aware is reported only in "The Times" dated 18 March 1996. In her letter Ms. Adesuyi said (*inter alia*) as follows:

> "To support the OFT's submission the estate agency case against the Appellant's company officers Mr. Yhklef and Ms. Lloyd has already been established and thus proven as fact, the OFT wishes to rely on the authority which confirms the ruling that the practice of a tribunal is not to go behind a court ruling …"

46. In *Re a Solicitor* the appellant solicitor, who had pleaded guilty to 15 offences of dishonesty involving fraud upon the legal aid fund and for which convictions he had received a prison sentence of three years but against which he had sought to appeal, attempted to establish in the course of proceedings against him before the Solicitors Disciplinary Tribunal that he had been wrongly convicted. That tribunal refused to adjourn the disciplinary proceedings to enable the solicitor to call evidence for this purpose and he appealed against its decision.

47. The judgment of the Divisional Court was given by the Lord Chief Justice, Lord Taylor of Gosforth. In short, the Court held that public policy required

that, save in exceptional circumstances, a challenge to a criminal conviction should not be entertained by a disciplinary tribunal.

48. In her letter dated 15 January 2009 Ms. Adesuyi contended that, in reliance on *Re a Solicitor*, the Tribunal should not look behind the findings made in the Report of the Appointed Persons in the proceedings under the 1979 Act.

49. As will be apparent from our formulation of the *ratio decidendi* of *Re a Solicitor* at paragraph 47 above, in our view Ms. Adesuyi's proposition which we quoted at paragraph 45 above is too widely stated.

50. First, the Lord Chief Justice's observations were specifically directed towards challenges to *criminal* convictions before *disciplinary* tribunals. The proceedings under the 1979 Act did not result in any criminal convictions, nor is this Tribunal a disciplinary tribunal.

51. Secondly, the submission overlooks the important *caveat* entered by the Lord Chief Justice, that exceptional circumstances may justify a disciplinary tribunal entertaining a challenge to a criminal conviction. Without attempting to offer a comprehensive definition of what might constitute exceptional circumstances for these purposes, the Lord Chief Justice referred to "significant fresh evidence" as an example. It is, however, not suggested by Mr. Ykhlef on behalf of the Appellant, nor are we able to discern in this appeal, any exceptional circumstances of either that or any other type.

52. Thirdly, the Lord Chief Justice drew attention to the anomaly that could arise if a conviction reached by a jury according the burden of proof that is applied in criminal cases, viz., that of beyond reasonable doubt, were generally susceptible of challenge before a tribunal where matters were required to be determined by reference to the civil standard only, namely that of the balance of probabilities.

53. It was for these reasons that, when pre-reading for this appeal, the chairman felt it appropriate to draw the OFT's attention to the possible relevance of the later decision of the Court of Appeal in *Secretary of State for Trade and Industry v. Bairstow*, [2003] EWCA Civ 321, [2004] Ch. 1.

54. In *Bairstow* the Court of Appeal held that in proceedings brought by the then Secretary of State for Trade and Industry under section 8 of the Company Directors Disqualification Act 1986, a former managing director of a company was entitled to challenge findings of grave misconduct and neglect in the performance of his duty that had been made against him in earlier High Court proceedings between him and the company. In so doing, the Court of Appeal reversed the decision of Pumfrey J. at first instance and rejected the argument of the Secretary of State for Trade and Industry that the former managing director was bound by the findings made in those earlier proceedings.

55. Having had her attention drawn to the decision in *Bairstow*, Ms. Adesuyi prepared some additional written submissions that were provided to the Tribunal on 4 February 2009, immediately prior to the hearing.

56. In those submissions Ms. Adesuyi argued that the present context was very different from *Bairstow* because:

    56.1 the overall assessment to be made by the Tribunal was a judgment as to whether the Appellant was fit to engage in an activity for which a licence was required under the 1974 Act, taking into account all relevant matters;

    56.2 the matters that were relevant include (in the language of section 25 of the 1974 Act) "evidence tending to show" that, among other things, the Appellant had contravened an enactment regulating transactions with individuals or engaged in business practices appearing to the OFT to be unfair or improper (etc.);

56.3 the burden of satisfying the Tribunal as to fitness lay with the Appellant as the applicant for a licence;

56.4 under rule 23(3)(a) of the Consumer Credit Appeals Tribunal Rules 2008, S.I. 2008 No. 668, the Tribunal is not bound by the strict rules of evidence in civil trials.

57. We would not disagree with any of those submissions. However their thrust is that the proceedings before and conclusions contained in the Report of the Appointed Persons are matters to which we can and should have regard in disposing of this appeal. They do not of themselves, either individually or collectively, constitute reasons why Mr. Ykhlef should not be permitted to challenge any findings contained in that Report.

58. In her additional submissions Ms. Adesuyi correctly pointed out that *Re a Solicitor* was not referred to in *Bairstow*. We think the reasons why it was not are not hard to deduce, turning in all probability on one or more of the factors to which we referred at paragraphs 50 to 52 above. Conversely we do think that the present situation is significantly closer to *Bairstow* than *Re a Solicitor*. If anything, we consider that the respective statuses of this Tribunal, and of the Appointed Persons and the Secretary of State acting on the former's Report, are comparable to those courts of co-ordinate jurisdiction before whom matters are consecutively brought, as was the position in *Bairstow*, rather than being comparable to the relationship between a criminal court on the one hand and a disciplinary tribunal on the other, as was the position in *Re a Solicitor*.

59. The point is not a straightforward one and, not surprisingly, as a layman with no legal training, Mr. Ykhlef was not able to offer us any assistance on it. As to this we would mention, as the chairman did to Ms. Adesuyi during the course of the hearing, that we consider that where (as here) an appellant is not professionally represented, then the OFT ought to be prepared to assist the Tribunal on issues of legal difficulty by drawing attention to arguments that might properly be advanced on behalf of that appellant but of which, due to

the lack of professional representation, the appellant is unaware or is unable to articulate in the appropriate legal manner. We well understand the important function that the OFT performs as protector of the public interest under the 1974 Act and other legislation. However basic principles of fairness in proceedings of this type require it to take, in our view, a broader and more measured approach in such circumstances.

60. We have observed at paragraph 59 above that the legal issue raised is one of some difficulty. In the present case there are significant practical difficulties too, because neither side attended before us with the requisite evidence to enable us to undertake a detailed reconsideration of the findings made in the Report of the Appointed Persons, had we thought fit so to do. Although we have been presented with a considerable amount of documentary evidence and also heard evidence on the point from Mr. Ykhlef, conversely neither Mrs. Michelle Dunn of the Trading Standards Office ("TSO") of the East Riding of Yorkshire Council nor Ms. Lloyd, both of whom were witnesses at the hearing before the Appointed Persons, gave evidence before us.

61. Our view, which largely reflects the modified submissions advanced by Ms. Adesuyi to which we referred in paragraph 56 above, is that we should pay careful regard to the Report of the Appointed Persons but without our being constrained to accept as binding on us every finding of fact made by them in their Report. For completeness we should add that Ms. Adesuyi did not address any separate arguments to us based on either the principle of *res judicata* or possible abuse of process by Mr. Yhklef on behalf of the Appellant seeking to reargue matters already considered in the Report of the Appointed Persons.

E. Mr. Ykhlef's evidence

62. The importance of this appeal to Mr. Ykhlef was transparent from the manner in which he gave evidence before us: at one point, early in his evidence, he broke down and it was necessary for us briefly to adjourn in order to give him

the opportunity to compose himself. He emphasised its importance by informing us that he had to support two children at university and two small children who were at home, and that whilst since his contract with Sesame had been terminated he had applied for jobs, he could not work without a licence under the 1974 Act. He began his evidence to us by saying "I am not a criminal" and began his closing submissions in similar vein, saying "I am an honest guy".

63. Mr. Ykhlef placed particular emphasis on the fact that either he, or a company controlled by him (i.e., the Appellant), had held a licence under the 1974 Act since 1996 without any complaints having been made against him in respect of his or its activities as a licence holder. He told us that he accepted that he had made a mistake by not informing Mrs. Woolley in writing of the nature of Ms. Lloyd's interest in the property, but was adamant that this information had been orally communicated to her, and he contended that paragraph 41 of the Report of the Appointed Persons was wrong in finding otherwise. Mr. Ykhlef considered that he had paid the penalty for his transgression by being made the subject of a prohibition order under the 1979 Act and submitted that it was wrong to link that transgression with his and the Appellant's unblemished record under the 1974 Act.

64. When cross-examined by Ms. Adesuyi, Mr. Ykhlef maintained his stance that Mrs. Woolley was aware of Ms. Lloyd's ownership of the property despite his attention being drawn to a number of inconsistencies between that evidence and various letters that had been produced by him and Ms. Lloyd. We refer to some of the more significant of these at paragraphs 69 to 74 below. In response, Mr. Yhklef insisted that there would have been no point in seeking to conceal the fact of Ms. Lloyd's ownership because it would be bound to have emerged during the conveyancing process (as, on Mrs. Woolley's version of events, it did).

65. Ms. Adesuyi also cross-examined Mr. Yhklef about a statement made by him to the Adjudicator, which was to the effect that all of the Appellant's business

came from recommendations from existing clients and that it (the Appellant) did not advertise. The basis for that cross-examination was that a print out from the website Yell.com showed the Appellant's name and contact details appeared on that website, and the premise underlying the cross-examination was that Mr. Yhklef's evidence to the Adjudicator on this point was untruthful, since the Appellant must have paid for its name and details to appear on the website. However Mr. Yhklef explained that this was a service provided free by AIFA and, despite Ms. Adesuyi's best efforts to the contrary, we were not persuaded that Mr. Yhklef was not telling us the truth on this topic. We found that part of Ms. Adesuyi's cross-examination to be somewhat unhelpful in a case which raised other significant and more complex issues.

F. Our assessment of Mr. Ykhlef and Ms. Lloyd

66. The Appointed Persons' opinion of Mr. Ykhlef and Ms. Lloyd was unequivocal: they took the view that Mr. Ykhlef was "very untrustworthy and unreliable" (paragraph 31 of their Report), that both he and Ms. Lloyd "changed their story (*sic*) several times over the course of these proceedings, and in particular their evidence in front of us" (paragraph 45 of their Report), that they "deliberately sought to misrepresent the facts during the course of the OFT investigation, and that they likewise sought to misrepresent the facts during the hearing of this appeal" (paragraph 46 of their Report). In conclusion, the Appointed Persons said that "[w]e do not regard them as truthful witnesses" (paragraph 49 of their Report).

67. Clearly, in arriving at the view they did the Appointed Persons had a number of advantages over the members of this Tribunal. First, the events relating to the proposed sale of the property to Mrs. Woolley were the subject of far more detailed investigation and argument over the course of a two days hearing than was sought to be undertaken before us. Secondly, the Appointed Persons heard evidence from Mrs. Dunn of the TSO as to a number of key conversations that she had with both Mr. Ykhlef and Ms. Lloyd, which evidence undoubtedly assisted the Appointed Persons in reaching the

conclusions they did. Thirdly, the Appointed Persons had the benefit of hearing evidence from Ms. Lloyd and hence had the opportunity to assess her credibility.

68. Even allowing for the much more limited nature of the evidence concerning Mr. Yhklef's and Ms. Lloyd's dealings with Mrs. Woolley that was before us, which was largely documentary in nature, we can see substantial grounds for the Appointed Persons forming the adverse conclusions that they did as to Mr. Yhklef's and Ms. Lloyd's *bona fides*, and would give the following examples.

69. First, Mrs. Dunn's note of her conversation with Mr. Ykhlef and Ms. Lloyd on 9 May 2006 records (amongst other things) the following

> "Ms. Lloyd said that she thought that an agent only had to disclose an interest when they were interested in buying a client's property. I explained that disclosure also applied if they were selling a property."

70. The same point was also recorded in the second paragraph of the first page of Mrs. Dunn's letter dated 16 May 2008 to Ms. Lloyd, in which letter (*inter alia*) Mrs. Dunn recited the discussion she had had with Mr. Yhklef and Ms. Lloyd on 9 May 2006.

71. It strains credulity to suggest that Mrs. Dunn fabricated the conversation which she recorded in the material parts of her note and her letter. However if true, these passages would suggest that, contrary to the assertions made by her at the hearing before the Appointed Persons, Ms. Lloyd would not have disclosed her ownership of the property to Mrs. Woolley, or indeed the fact that she (Ms. Lloyd) had any interest of whatsoever nature in the property, because she (Ms. Lloyd) would not have regarded herself as being under any legal obligation so to do.

72. We would also note, in passing that these documents would also indicate, at the very lowest, a very serious lack of familiarity on the part of Ms. Lloyd with the relevant legislation.

73. Secondly, in Ms. Lloyd's letter dated 10 May 2007 to Mrs. Dunn she (Ms. Lloyd) stated:

> "Although I did not make Mrs. Woolley aware that I was the owner of the property in writing, I did make her aware that a connected person within the company had a personal interest at the beginning, when she was viewing the property, before she made the offer."

74. Thirdly, we would refer to the following passages in the letters dated 22 October and 18 December 2007 from Mr. Yhklef and Ms. Lloyd submitted by them in connection with their (then pending) appeals to the Secretary of State against the prohibition orders:

> "Amanda [i.e. Mrs. Woolley] was verbally told that an associate of Carlo's [i.e., Mr. Yhklef] had an interest in the property, and there was no time to put this in writing because she was with Carlo discussing other properties, then they drove straight to 7 Hilderthorpe Road."
>
> (letter of 22 October 2007)

> "He [Mr. Yhklef] didn't feel it was necessary to also put in writing that an associate had a personal interest in the property as Amanda was told verbally and was fully aware as (*sic*) had made comments about it …"
>
> (letter of 22 October 2007)

> "Amanda was shown the plans the very first time she viewed the property … Amanda asked Carlo why the plans we're (*sic*) addressed to himself the very first time she saw the plans, when she viewed the property for the first time. Carlo replied to Amanda, by again telling her that he had them drawn up on behalf of his business associate. This again was informing Amanda that a personal interest existed."
>
> (letter of 22 October 2007)

> "Mrs. Woolley was verbally made aware that we had an interest in the property, but it was not discussed as to what extent the personal interest was, nor was it put in writing."
>
> (letter of 18 December 2007)

> "As previously explained in our correspondence, Mrs. Woolley had been made aware that a personal interest existed, but it was not stipulated that Lucy Lloyd owned the property."
>
> (letter of 18 December 2007)

> "It is correct that the nature of Lucy Lloyd's personal interest was never disclosed to Mrs. Woolley."
>
> (letter of 18 December 2007)

> "We have never denied the that (*sic*) we did not put in writing that a personal interest existed, or to what extent. We did disclose the personal interest in this case verbally."

75. Those statements are to be viewed in the light of the evidence given orally by Mr. Yhklef and Ms. Lloyd at the hearing before the Appointed Persons, and by Mr. Yhklef both orally and in the form of a written witness statement dated 14 January 2009 to this Tribunal, that Mrs. Woolley was orally informed that Ms. Lloyd owned the property.

76. As to this inconsistency, it seems to us that only two explanations are possible. The first is that, as the Appointed Persons concluded, evidence given by Mr. Yhklef and Ms. Lloyd is not to be believed. The second, more charitably, is that Mr. Yhklef and Ms. Lloyd subsequently convinced themselves that they did inform Mrs. Woolley of Ms. Lloyd's ownership of the property, whereas their earlier written accounts of their dealings with her show that this was not correct. For our part, on the more limited evidence before us, on balance we do not feel able to express ourselves in the strong terms used by the Appointed Persons to which we have referred at paragraph 66 above. Based on the

evidence he gave to us, we are inclined to think that Mr. Yhklef may well now believe that Mrs. Woolley was orally informed that Ms. Lloyd owned the property. However even on the latter, more charitable, version of events, serious questions would arise as to the fitness of Mr. Yhklef and Ms. Lloyd under the 1974 Act.

G. Alleged offence under section 7 of the 1974 Act

77. In the OFT's Statement of Case Ms. Adesuyi boldly asserted that it was not disputed that the Appellant and Mr Ykhlef had contravened section 7 of the Act in failing to declare in the December Application (i) Ms Lloyd as company secretary of the Appellant and (ii) the former licences under the 1974 Act previously held by Mr Ykhlef and the Appellant respectively.

78. Ms. Adesuyi felt constrained to accept during the course of the hearing before us that this submission was in error. The relevant offence under section 7 of the 1974 Act requires it to be proved that the person concerned has either knowingly or recklessly given to the OFT information that is false or misleading in a material particular. Whilst the omissions from the December Application upon which Ms. Adesuyi relies are not in dispute, Mr. Yhklef's, and hence the Appellant's, state of mind, viz., whether these omissions were deliberate or reckless, most certainly are.

79. It appears to us that, in this respect, Ms. Adesuyi fell into the same error as did the Adjudicator at paragraphs 24 and 25 of the Determination, in which she said as follows:

> "24. The evidence shows that the December application form was completed online and that a declaration was signed on 4 December 2007 by Mr. Yhklef and was stamped as received by the OFT the following day. I accept that Ms. Lloyd was included as company secretary on the application form, and accordingly I have no reason to believe that Mr. Yhklef was seeking to mislead the OFT in omitting her details from the December application form. The more likely explanation is that he completed the December application form without

> proper attention to detail which resulted in his failure to include Ms. Lloyd's details.
>
> 25. … given that Mr. Yhklef had already submitted the November application form including details of Ms. Lucy Ann Lloyd, I find that he [Mr. Yhklef] acted recklessly in not checking the December form and ensuing that the same information was submitted. Again, in the absence of any plausible explanation, I consider that Mr. Yhklef failed to give proper consideration to the required information and in so doing was reckless."

80. Unfortunately, those passages display a clear failure on the part of the Adjudicator to understand what, in our opinion, is meant by use of the adverb "recklessly" in section 7 of the 1974 Act. For this purposes it is necessary only to refer to the classic statement of the law in this area to be found in the speech of Lord Herschell in *Derry v. Peek* (1889) 14 App. Cas. 337 at 374:

> "First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief."

81. Whilst that case was decided more than a century ago and involved a different area of the law, it remains good law today. We also think it inconceivable that, in expressing itself as it did in section 7 of the 1974 Act, Parliament was both unaware of the decision and did not intend to use the term "recklessly" in the long-recognised sense in which it was there defined by Lord Herschell.

82. Using the Adjudicator's own expressions, neither a finding of a lack of "proper attention to detail" nor a finding of a failure "to give proper consideration to the required information" of itself constitutes a finding of

recklessness with the *Derry v. Peek* definition. What is required is that the maker of the statement, or (in section 7 terms, the provider of the information) does not care whether the statement made by him or her is true or false. No such finding of fact was made by the Adjudicator.

83. Very sensibly, Ms. Adesuyi did not spend any time on this point during her cross-examination of Mr. Yhklef. Whatever one's views of Mr. Yhklef's *bona fides* as regards his dealings with Mrs. Woolley, it seems to us clear that the omissions from the December Application were most probably attributable to ineptitude on his part, especially given that he had previously identified Ms. Lloyd as the Appellant's company secretary in the November Application. As *Derry v. Peek* makes clear, though, this state of mind does not contain the mental element necessary to support a finding of conclusion. We therefore find as a fact that the evidence does not tend to show the commission of an offence for the purposes of section 25 of the 1974 Act, let alone the actual commission of such an offence by the Appellant, Mr. Yhklef or Ms. Lloyd or any one of them as is alleged by the OFT.

H. Previous good character of the Appellant, Mr. Ykhlef and Ms. Lloyd

84. In support of his submission that he is an "honest guy", Mr. Yhklef emphasised to us the absence of any complaints made against him, Ms. Lloyd or any companies connected to them prior to that made by Mrs. Woolley.

85. In response, whilst Ms. Adesuyi accepted that there was no evidence of any other complaints, she nevertheless submitted that the absence of such evidence was not proof that the Appellant carried on its activities in accordance with its legal obligations.

86. The foundation for that submission was the judgment of Etherton J. in *The Office of Fair Trading v The Officers Club* [2005] EWHC 1080 (Ch). That case concerned an application by the OFT for an order, under the Enterprise Act 2002 and applicable subordinate legislation, to restrain the defendants, a

retail clothing chain, from publishing advertisements which the OFT claimed were misleading. One of the matters relied on by way of defence was the absence of complaints from consumers about the advertisements in question.

87. Ms. Adesuyi relies on the point made by the learned judge at paragraphs 152 and 153 of his judgment:

> "152. As I have previously said, TOC [the first defendant], for its part, relies, on this part of the case, on the evidence that no consumers have ever made any direct complaints to TOC about the "70% off" strategy. TOC also relies on the evidence that only some 9 consumers have ever made any complaints to TSDs about the strategy.
>
> 153. Those matters do not assist TOC. It is of the very nature of a misleading or deceptive advertisement that the consumer is left unaware of the true facts. Further, many consumers, even though aware of the deception, and even though aggrieved, may not have the time, ability, personality or inclination to write a formal letter of complaint or even make an oral complaint, whether to TOC itself or, if aware of or directed to it, the local TSD."

88. It seems to us that that there is a risk here of the OFT wanting both to have its cake and eat it. If there were evidence before us of other complaints, then we have no doubt that these would have featured prominently in Ms. Adesuyi's submissions and would have been relied on by the OFT. There being none, we do not think it can be right to say that the Appellant nevertheless cannot rely on the absence of complaints to support its case. We think that Etherton J. was doing no more than emphasise the need for circumspection in evaluating the relevance of a party's trading history. We heed his observations in this regard, but do feel it appropriate to attach considerable weight to the extended period during which Mr. Yhklef himself and, subsequently, the Appellant successively held licences under the 1974 Act without there being any evidence before us of any complaints being made to an appropriate body by any of their customers.

I. Conclusions

89. Against the above background, we now turn to our conclusions.

90. The Appellant's fitness is to be determined by us by reference to the criteria set out in section 25 of the 1974 Act, as amended by section 29 of the Consumer Credit Act 2006. So far as material, section 25 of the 1974 Act in its amended form provides as follows:

> "(1) If an applicant for a standard licence—
>
> (a) makes an application within section 24A(1)(a) in relation to a type of business, and
>
> (b) satisfies the OFT that he is a fit person to carry on that type of business with no limitation,
>
> he shall be entitled to be issued with a standard licence covering the carrying on of that type of business with no limitation.
>
> (1AA) If such an applicant—
>
> (a) makes an application within subsection (1)(b) of section 24A in relation to a type of business, and
>
> (b) satisfies the OFT that he is a fit person to carry on that type of business so far as it falls within the description or descriptions of business set out in his application in accordance with subsection (2) of that section,
>
> he shall be entitled to be issued with a standard licence covering the carrying on of that type of business so far as it falls within the description or descriptions in question.
>
> (1AC) In this section 'description of business' means, in relation to a type of business, a description of business specified in a general notice under section 24A(5)(a).
>
> (2) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—

(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;

(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;

(c) practices and procedures that the applicant proposes to implement in connection with any such business;

(d) evidence of the kind mentioned in subsection (2A).

(2A) That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—

(a) committed any offence involving fraud or other dishonesty or violence;

(b) contravened any provision made by or under—

(i) this Act;

(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;

(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)."

91. It is not in dispute that Mr. Yhklef and Ms. Lloyd are both agents of the Appellant for the purposes of section 25(2A), by virtue of their being its

director and company secretary respectively, in addition to Mr. Yhklef being also its controller as a result of his owning the Appellant's one issued share (we refer to section 189(1) of the 1974 Act). It follows that their conduct as regards their dealings with Mrs. Woolley falls to be taken into account in determining the Appellant's fitness under section 25 of the 1974 Act.

92. Ms. Adesuyi has reminded us that, as appears above, under section 25(1) of the 1974 Act the onus is on the Appellant to satisfy the OFT, and consequently on appeal the Tribunal, that it is fit to hold a consumer credit licence, and also that the grant of a licence is privilege, not a right, which should be granted only to those who, on proper evidence, are shown to be fit persons: see *per* Sheen J. in *North Wales Motor Auctions Ltd v Secretary of State for Trade* [1981] C.C.L.R. 1.

93. Ms. Adesuyi also reminded us that the potential financial and other consequences for an applicant, its officers, employees and shareholders, in the event of the refusal of a licence, should carry little or no weight. Either an applicant is a fit person to hold a licence or it is not; an applicant's fitness cannot depend on the results which will flow from a grant or refusal: *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin).

94. Bearing these principles in mind, we have reached the clear conclusion that this appeal should be dismissed, for the following reasons.

95. First, for the reasons we explained at paragraph 91 above we reject Mr. Ykhlef's contention on behalf of the Appellant that the matters giving rise to prohibition orders made against him, Ms. Lloyd and Quay Homes are not relevant to the question whether the Appellant should be granted a licence under the 1974 Act. The Appellant is the *alter ego* of, primarily, Mr. Ykhlef and, to a lesser extent, Ms. Lloyd. Plainly their conduct in relation to another business in which they had dealings with members of the public are capable of shedding light on their fitness or otherwise under the 1974 Act.

96. Even taking the most favourable view of the events that led to the making of the prohibition orders, Mr. Ykhlef's and Ms. Lloyd's conduct showed an alarming and inexcusable lack of familiarity with the relevant legislation governing the conduct of estate agency business. Customers who deal with estate agents are entitled to do so on the footing that those agents know and will comply with their legal obligations. Mr. Yhklef's and Ms. Lloyd's clear failings in this regard constitute a relevant matter either under the opening general words of section 25(2) of the 1974 Act or, as Ms. Adesuyi submitted, within the terms section 25(2A) (e) of that Act, given the admitted breaches by Mr. Yhklef, Ms. Lloyd and Quay Homes of the 1991 Order in their dealings with Mrs. Woolley. It is, moreover, a matter to which we feel constrained to attach significant weight.

97. Secondly, we agree with the Appointed Persons (paragraph 45 of their Report) that, putting the matter at its lowest, Mr. Ykhlef's and Ms. Lloyd's conduct during the TSO investigation and in the subsequent proceedings under the 1979 Act displayed a persistent and unacceptable refusal properly to recognise that they acted wrongly, until a very late stage in those proceedings. Indeed and as Ms. Adesuyi submitted, at the hearing before the Adjudicator Mr. Yhklef still insisted (transcript page 6, bundle page 163, at lines 17-19) that he had "… done nothing wrong, and it was a miscarriage of justice". That is not the conduct to be expected of a licence holder under the 1974 Act and reflects significantly upon the manner in which the licensee may be expected to behave towards consumers.

98. Thirdly, we are very concerned that, despite the very clear language of the documents to which we referred at paragraphs 15, 21 and 24 above warning against their so doing, Mr. Ykhlef and Ms. Lloyd caused the Appellant to continue to carry on its business of credit brokerage following the expiry on 20 November 2007 of the Appellant's original licence under the 1974 Act whilst its (the Appellant's) application for a new licence was under consideration. It was unfortunate that, for whatever reason, the Appellant's application to renew its original licence was not dealt with by the OFT before

its expiry. As we have said, though, the reasons for that are something that we cannot resolve. It does mean, however, that Mr. Ykhlef and Ms. Lloyd either knew or ought to have known that between 20 November 2007 (the date the original licence expired) and 27 October 2008 (the date on which the Appellant's contract with Sesame terminated) the Appellant was trading without a licence. That is, in our view, a serious matter that counts heavily against the Appellant.

99. Fourthly, although our own view of Mr. Ykhlef, based on rather more limited exposure to him than the Appointed Persons, is less unfavourable than that of the Appointed Persons, conversely we do not feel able to disregard their views as to his, and also Ms. Lloyd's truthfulness. We feel constrained to take into account that an experienced panel appointed under the 1979 Act reached the emphatic conclusions that it did about Mr. Ykhlef's and Ms. Lloyd's personalities and conduct. This is not, as the OFT has tended to argue, determinative against the Appellant, but it is a factor counting strongly against it.

100. Moreover, it is impossible to avoid the conclusion that Mr. Yhklef and Ms. Lloyd did indeed change their evidence, in very important respects, as matters proceeded under the 1979 Act: we refer to paragraphs 69 to 74 above. As we said at paragraph 76 above, even viewing the matter from the most favourable perspective on behalf of the Appellant, this serious unreliability in Mr. Yhklef's and Ms. Lloyd's accounts of their dealings with Mrs. Woolley necessarily counts against the Appellant.

101. Fifthly, we found much of Mr. Ykhlef's evidence to be confused, lacking focus and rather rambling in nature. Even allowing for the strong emotions he felt (and displayed) about these proceedings, we were left with the clear impression that there was a serious risk that his approach to business would not reach the requisite standard expected of a licensee under the 1974 Act. We think the errors that he made in completing the December Application, and indeed also the November Application (which made no reference the

licence previously held by him personally) and, more importantly, his belief that it was permissible for the Appellant to continue to trade pending the outcome of its application for a licence are *indicia* of this approach.

102. These, then, are the factors which, collectively, lead us to the very clear conclusion that this appeal should be dismissed. We understand the considerable hardship and disappointment that this will cause to Mr. Ykhlef, but we think the result is unavoidable.

103. We should also make clear that, in reaching this conclusion and contrary to Ms. Adesuyi's submissions, we have taken into account and given credit for Mr. Ykhlef's unblemished record as the holder since 1996 of a licence (either personally or through the Appellant) under the 1974 Act.

104. Conversely and for reason which will be apparent from our observations at paragraphs 77 to 83 above, and save only in the limited respect identified by us in paragraph 101 above, we have not taken into account the matters relied on by the OFT which we referred at paragraph 5.1 above.

105. In reaching our decision we have also not taken into account the other arguments relied on by the OFT to which we referred at paragraph 6 (ii) and (iii) above. Given the substantial matters that have led us to our conclusion, it is not necessary for us to address those more peripheral issues.

106. We should also mention two other points.

107. First, in its notice of appeal the Appellant complains about delay on the part of the OFT in bringing these proceedings, which were not commenced until after the proceedings under the 1979 Act were finally disposed of on 13 March 2008.

108. The Appointed Persons dealt, at paragraphs 20 and 21 of their Report, with a complaint made by Mr. Yhklef, Ms. Lloyd and Quay Homes about delay on

the part of the OFT in bringing proceedings under the 1979 Act and there is nothing we can usefully add to what is there said on that topic.

109. As regards the present proceedings, Ms. Adesuyi explained to us that a decision had been taken by the OFT to leave matters in abeyance under the 1974 Act until the proceedings under the 1979 Act had been resolved. We cannot say there was anything unreasonable or improper in that decision, nor has there been any delay on the part of the OFT since the conclusion of the proceedings under the 1979 Act. We might also point out that if, as sometimes happens, proceedings had been brought concurrently under both Acts, there can be little doubt as to the conclusions that the Appointed Persons would have reached in relation to the Appellant's fitness under the 1974 Act.

110. Secondly, Mr. Yhklef alleged racial discrimination on the part of the OFT. We see no basis whatsoever for that allegation and declined to hear submissions on it at the hearing, as it had no bearing on the function we are required to perform.

J. Costs

111. Ms. Adesuyi did not suggest that, were we to dismiss this appeal, that we should make an order for costs in favour of the OFT against the Appellant. We therefore say no more on this subject.

K. Result

112. We therefore dismiss this appeal and make no order as to costs.

KEITH ROWLEY QC
CHAIRMAN

CCA/2008/0007