



Channing v The States of Guernsey
Royal Court
19th February, 2015

JUDGMENT
09/2015

Appeal against a decision of the Commerce and Employment Department under Section 17 of The Sea Fishing Licensing (Bailiwick of Guernsey) Law, 2012 in relation to conditions imposed on a licence authorising the Appellant to fish in Bailiwick waters.

Approved Text
19th February, 2015

IN THE ROYAL COURT OF GUERNSEY

Between **STEVE CHANNING** **The Appellant**

-v-

THE STATES OF GUERNSEY **The Respondent**

**Appeal under Section 17 of
The Sea Fishing Licensing (Bailiwick of Guernsey) Law, 2012**

Date of hearing: 27th January 2015

Judgment handed down: 19th February, 2015

Before: John Russell Finch Esq., Judge of the Royal Court

Counsel for the Appellant: Advocate G S K Dawes
Counsel for the Respondent: Crown Advocate J Hill

Cases referred to in Judgment:

Matheson v States Housing Authority (1998) 26 GLJ 82;
Walters v States Housing Authority (1997) 24 GLJ 39;
Associated Provincial Picture Houses v Wednesbury Corp [1948] 1 KB 223;
Gokool v Permanent Secretary for the Ministry of Health and Quality of Life [2008] UKPC 54;
Paponette and Others v Attorney-General of Trinidad and Tobago [2012] 1 AC 1;
R (on the application of the Association of British Civilian Internees (Far East Region)) v Secretary of State for Defence [2003] EWCA Civ 473;
R (Bancourt) v Secretary of State for Foreign and Commonwealth Affairs (No. 2) [2009] AC 453;
R v Chief Constable of Sussex Ex parte International Trader's Ferry Ltd [1999] 2 AC 418;
R (on the application of Domb) v Hammersmith LBC and Fulham LBC [2008] EWHC 3777 (Admin);
R v Secretary of State for the Home Department Ex parte Daly [2001] 2 AC 532;
In re W [1971] AC 682.

Statutes and other materials referred to in Judgment:

The Sea Fish Licensing (Guernsey) Ordinance, 2003;
The Sea Fishing Licensing (Bailiwick of Guernsey) Law, 2012, Sections 3, 4 17 and 19;
The European Convention on Human Rights, Protocol 1, Article 1;
Administrative Law, (5th Edition) (Craig) pages 609 – 610;
De Smith's Judicial Review (7th Edition) (Woolf and Others).

JUDGMENT

Introduction

1. This is an appeal by Mr Steve Channing, a Jersey fisherman (“A”) against a decision of the Guernsey Commerce and Employment Department (“R”) in relation to conditions imposed on a licence authorizing ‘A’ to fish in Bailiwick waters dated 31st January, 2013. ‘A’s’ position is set out in the Cause, located at pages 1 - 8 of the joint bundles (all page numbers refer to these bundles unless otherwise mentioned). Originally an English company, Interfish, also appealed against a similar decision, but this has now been withdrawn. The licence only permits ‘A’ to fish for scallops within the 3 – 12 nautical miles zone: not trawling, pair trawling, nor in respect of other fish; and not at all within the 0 - 3 nautical mile limit.
2. From 1998 ‘A’ used his first vessel “Provider” to fish within the 0 - 12 mile limit, including trawling, pair trawling and scalloping. He was duly licensed. In February 2010, ‘A’ purchased a larger vessel, “Prospector”. The new licence was granted under the Sea Fishing Licensing (Bailiwick of Guernsey) Law, 2012 (“the Law”). This came into force on 1st February, 2013, following Resolutions of the States of Deliberation of 6th March, 2012 approving a report dated 13th December, 2011. The Law is set out at pages 27 – 68, the report at pages 177 – 186, ‘A’s’ application documentation at pages 191 – 252 and the licence at pages 415 – 428. Reference can also be made to the chronology provided on behalf of ‘A’ at the hearing. The facts will be examined in more detail later.
3. There were two preliminary procedural hearings in this matter, in which short judgments were delivered. The first (1st July, 2013) on disclosure; the second (30th July, 2013) on evidential matters. This is the substantive appeal. Both parties produced skeleton arguments (A1 – A23 and B1 – B6 respectively) and full oral submissions were heard on 27th January, 2015, after which it was indicated a written judgment would be handed down as timeously as possible, which this now is.

Grounds of Appeal

4. The legislation sets out the statutory grounds in section 17(2) (pages 52 – 53). They are that:
 - (a) the decision was ultra vires or there was some other error of law;
 - (b) the decision was unreasonable;
 - (c) the decision was made in bad faith;
 - (d) there was a lack of proportionality; or
 - (e) there was a material error as to the facts or as to the procedure.

The Royal Court’s powers are set out in Sections 17(4)(a) and (b).

5. ‘A’s’ contentions (paragraph 13 of his cause, page 4) are that the decision was:
 - (a) unreasonable;
 - (b) lacked proportionality;
 - (c) based on a material error as to the facts or as to the procedure; and

(d) (summarized) contrary to ‘A’s’ legitimate expectations.

It is necessary at this juncture to correct the observation made at paragraph 6 of the 30th July, 2013 judgment (page 25,) which was, as read, an over-simplification of the differences between a statutory appeal, such as this, and judicial review. It would have been more appropriate to indicate that the Court is concerned with construing and applying here the relevant grounds under Section 17(2) of the Law. That bears out ‘R’s’ submission (at paragraph 5.1 of the skeleton, page B3) that ‘A’s’ ground of appeal (d), contrary to legitimate expectations, cannot stand as a separate matter, but has to be considered as an aspect of “unreasonableness”.

Applicable Legal Principles

6. ‘A’s’ contentions will be looked at in the order they appear from the Cause. In relation to the first point, that the decision was unreasonable, recourse should be had to what is regarded as a classic exposition of the relevant principles in Guernsey, from the case of Walters v States Housing Authority (1997) 24 GLJ 39, at 46-E (pages 534 – 535):

“It seems to us that there are at any rate five possible views which may be taken on appeal by the Royal Court against an exercise of power by the Housing Authority:-

- (1) That it is the Bailiff’s view that the power was exercised ultra vires, in a way other than Wednesbury unreasonably or irrationally. In such a case the Bailiff would withdraw the matter from the Jurats since, as a matter of vires, that is to say, law, it would fall within his exclusive province. The Court would in consequence allow the appeal.*
- (2) That it is the Bailiff’s view that the decision was Wednesbury unreasonable or irrational. The same procedural consequences would ensue as in (1).*
- (3) That it is not in the Bailiff’s view an ultra vires (including Wednesbury unreasonable) exercise of power, in which case the Bailiff would direct the Jurats that it was for them to determine whether the decision was unreasonable, which, in our view, he should emphasise means something other than that they themselves would have come to a different decision had they been the Authority.*

In the case of In re W. to which I have referred above, Lord Hailsham, LC, said at p.700 between letters D and E:-

“... Not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable. There is a band of decisions within which no Court should seek to replace the individual’s judgment with his own ...”

Mutatis mutandis, it seems to us that this is the approach that the Jurats should be directed to adopt towards the decision of the Authority insofar as they are free to consider such decision. If the Jurats then consider, having weighed up all the evidence, that the decision reached by the Authority was unreasonable, they should so say and the Court would in consequence allow the appeal.

- (4) If, upon such direction by the Bailiff, the Jurats merely consider that they themselves would have come to a different decision but that the Authority’s decision under appeal is not unreasonable, the appeal must be dismissed.*
- (5) If, upon such direction by the Bailiff, the Jurats consider that the Authority’s decision was right, equally the appeal must be dismissed.”*

It is now to be noted that in the present case the Judge sits alone and therefore also performs the functions of the Jurats in appeals such as Walters. A clear example of the application of this test is the slightly later case of Matheson v States Housing Authority (1998) 26 GLJ 82.

7. Following closely the words of Beloff JA, as this Court is bound to do, there are two questions to be considered in this area. The first is the classic “*Wednesbury*” unreasonableness (Associated Provincial Picture Houses v Wednesbury Corp [1948] 1KB 223) i.e., was a decision “*so unreasonable that no reasonable decision-maker could come to it*” and the recent wider reformulation that has emerged over recent years. The latter is broadly set out in “*De Smith’s Judicial Review*” 7th Edition, paragraph 11-003, cited in ‘A’s’ skeleton at paragraph 66 and located at page 587:

“It is whether the power under which the decision-maker acts, a power normally conferring a broad discretion, has been improperly exercised or insufficiently justified. The court therefore engages in the review of ‘*the substance*’ of the decision or ‘*its justification*’.”

De Smith goes on to mention that the determination of the “*merits*” of the decision (evaluation of fact and policy) and whether the principles of what is termed “*just administrative action*” are matters for different bodies – the former the decision-makers, the latter within the appropriate capacity of the courts. This is explained further at paragraph 11 – 014 (page 711) to the effect that the courts must still recognize both their own constitutional and relative institutional limitations. After referring to “*policy*” decisions, De Smith goes on to say:

“In respect of other decisions, the relative institutional capacity of courts and the legislature, executive and other bodies will be relevant to the extent and degree of judicial intervention.”

And:

“Decisions taken by experts and those best able to calculate risk, indicate some measure of institutional respect.”

The situation is, with respect, well-summarized in Craig’s *Administrative Law*” (5th edition) at pages 609 and 610. At page 609, Professor Craig states:

“It is important at the outset to be clear about the limits of judicial intervention over discretion: it is not for the courts to ‘*substitute their choice*’ as to how the discretion ought to have been exercised for that of the administrative authority.”

And, concluding at page 610:

“While all accept that it is not for the courts to substitute judgment, it is also recognized that there should be some control over the rationality of the decisions made by the administration. The theme that runs throughout this area is the desire to fashion a criterion which will allow judicial control, without thereby leading to substitution of judgment or too great an intrusion on the merits.”

Once these matters are recognized, it is not necessary to proceed further to a minute line by line exegesis of the plethora of (mainly English) cases on both sides of the line. Nothing set out above affects the applicability of Beloff JA’s formulation, or the general relevance of Lord Hailsham LC’s cautionary guidance cited therein.

8. The licensing decision must be proportionate. This is a complex and developing area, particularly in the examples found in the textbooks from English and Commonwealth cases. De Smith (page 749) at 11.075 summarizes the situation, in that the Courts have to evaluate whether manifestly disproportionate “*weight*” has been attached to one or other considerations

relevant to the decision; and whether there has been a disproportionate “*interference*” with the Claimant’s rights or interests. There is necessarily an overlap between proportionality and reasonableness. The intensity of the review differs as “*in public law, context is all*” (Lord Steyn in R v Secretary of State for the Home Department Ex parte Daly [2001] 2 AC 532 at [28]). As De Smith (page 755) puts it, in paragraph 11-086:

“The threshold of intervention is particularly influenced by the respective institutional competence of the decision-maker and the court”.

Where the exercise of administrative discretion is viewed in the context of proportionality then the standard is what De Smith (page 760) at paragraph 11.097 terms “*the default position*” of a Wednesbury formulation requiring the decision-maker to act within the “*range of reasonable responses*”, or even interference when a decision is “*outrageous*” or “*arbitrary*”.

9. The suggestion is made that there is a material error as to the facts or procedure (ground (c) of ‘A’s’ appeal). The relevant reference would appear to be located at paragraph 89 of ‘A’s’ skeleton (page A23), to the effect that “*factual errors*” were made in relation to the need to impose the licensing conditions complained of and “*as to the true nature and effect of the form of pair trawling being proposed*”. In all the circumstances, this aspect of the appeal is touched upon when considering the substantive “*reasonableness*” point (see especially paragraph 19 below).
10. The concept of “legitimate expectations” is not found in section 17 of the Law (see paragraph 5 above). In order to give ‘A’s’ case the fullest consideration it will be considered under the general umbrella of reasonableness. The recent Privy Council decision in Paponette and Others v Attorney General of Trinidad and Tobago [2012] 1 AC 1, is referred to (pages 891 – 909).

Where the legitimate expectation is based upon a promise or representation, the appropriate principles, according to Lord Dyson (paragraph 28 of the judgment, at page 901) are those set out by Lord Hoffman in R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No. 2) [2009] AC 453, para 60:

“It is clear that in a case such as the present, a claim to a legitimate expectation can only be based on a promise which is ‘clear, unambiguous and devoid of relevant qualification’”

This issue therefore needs to be decided on the individual facts of the case. Amongst other things, the correspondence between ‘A’ and Guernsey Sea Fisheries (pages 219 - 220) and the full version of ‘A’s’ letter of 2007 is relevant. A good deal of the documentation needs to be considered, including ‘A’s’ application and supporting items (pages 191 – 252).

11. ‘A’ also claims that the decision breaches his rights under Article 1, Protocol 1 of the European Convention on Human Rights: “*Every person is entitled to the peaceful enjoyment of his possessions and may not be deprived of them except in the public interest and in accordance with law.*” A licence is included in the definition of “*possessions*”. Any interference with this (qualified) right by a public authority must be lawful and strike a fair balance between the public interests and the rights of the person. A careful balancing exercise, rooted in the concepts of reasonableness and proportionality, needs to be carried out. De Smith (pages 879 - 880) at paragraph 13-098 sums this up by saying: “*The requirement that there should be a fair balance essentially requires that the individual should not be excessively prejudiced by the pursuit of the general interest.*” Footnote 274 includes the observation that – “*There is no requirement that the State should choose the course of action which involves the least possible impairment of the property owner’s rights*”. The ECHR aspect is therefore very much akin to the earlier parts of the appeal grounds and can be considered in tandem with them.

The Relevant Facts

12. As indicated, it is helpful to refer to ‘A’s’ chronology as a guide. ‘A’ has been used to fishing in Bailiwick waters for many years. In 1998 he bought the Provider and used it throughout the 0 - 12 mile zone for trawling, pair trawling and scalloping, etc. Under the Fish Licensing (Guernsey) Ordinance, 2003, ‘A’ was given a full licence for Provider. After protracted litigation this eventually was effective only in respect of the 0 – 3 mile zone. In March 2007 ‘A’ wished to replace Provider with a larger vessel. There was correspondence with Mr Sendall of Guernsey Sea Fisheries, already referred to, and which will be referred to again. ‘A’ purchased his new vessel, Prospector, in February, 2010. The licensing background has been mentioned at paragraph 2 above. In considering fishing licence applications, ‘R’ made use of a “*tracking period*” for which the fishing record of any applicant could be assessed. The period selected by ‘R’ was 15th May 2007 – 2010. ‘A’ became aware of this around November 2011. He made his application in December, 2012 and the decision appealed against (in relation to conditions) is dated 31st January, 2013.
13. It should be noted that the record of an Applicant in fishing in Bailiwick waters is one of the factors ‘R’ “*shall take into account*” when resolving a licence application (section 3(1)(a) of the Law). ‘A’s’ first day of fishing with Prospector was 12th May, 2010. The tracking period accordingly covered only a few days, 2 – 3, of ‘A’s’ activities with Prospector, but many years with Provider. ‘A’ could only provide evidence of some 3 days scalloping in the 3 – 12 mile zone with Prospector. His 15 or so years with Provider were not taken into account. It should also be noted that on 1st October 2012, ‘R’ produced consultation papers on scallop dredging and pair-trawling. ‘A’s’ responses are at pages 171 and 174 respectively.

Observations on the Facts

14. Part C of ‘R’s’ decision letter (pages 416 – 417) deals with evidence of fishing within Bailiwick waters. It refers to the data (log and monitoring system) ‘A’ enclosed with his application and considers that the evidence demonstrates ‘A’ only fished for scallops in the tracking period and only within the 3 – 12 mile, not the 0 – 3 mile limit (see especially pages 226 – 236 for the data provided). In his covering letter of 12th December, 2012, ‘A’ stated: “*I started fishing in the Prospector on 12th May 2010 in Guernsey waters, this is in your reference period*”. It is then helpful to look at the application form itself (pages 195 – 200). At page 199, there is the heading “Additional Documentation”. Sentences 3 and 4 read (and this relates to documentation that “must be attached to the application”):

- “3. Evidence (verifiable) to clearly demonstrate fishing activity within Bailiwick waters during the 2007-2010 track record period (please see notes page 4).
4. If this vessel has subsequently been sold you may still be eligible to hold an entitlement equivalent to the MMO (or equivalent) licence held during that period.”

(MMO is the Marine Management Organization; see the e-mail at page 217).

On page 4, note 7 states that the licence or entitlement will be given to the owner, based on the historical track record of the vessel shown on any existing MMO licence. Nevertheless, on a plain reading, what is said in item 4 on vessels being sold is the governing factor.

15. Considerable attention was devoted to an examination of the correspondence at pages 219 – 220 from March – April 2007. It transpired at the hearing that, for some reason, the version of ‘A’s’ letter omitted material sentences, and the true copy produced by ‘R’ is placed after the skeleton. The differences are shown below, but before that it is helpful to consider that these items formed the keystone of ‘A’s’ submissions on “legitimate expectations”. In the full, correct version of ‘A’s’ letter he asks if it is possible to change his current (i.e. 2007) permit for a larger vessel. The omissions are specified in ‘R’s’ skeleton at paragraph 5.3. In

summary, there would be some delay due to modifying the vessel “*to meet Jersey licensing conditions*” and, more significantly: “*I would be prepared not to scallop in your 3 mile limit*”. The missing words are therefore hardly insignificant and it is surprising that the full version of the letter was not produced until ‘R’ placed it before the Court.

16. Mr Sendall, a Sea Fisheries Officer, responded by indicating that the matter had been considered by his Director. The letter states that if ‘A’ increases the size of his vessel he will “*still be eligible for a Guernsey fishing vessel licence*”. Further on, he says that if ‘A’ obtains a transferable DEFRA licence for this vessel “*you will still be eligible to qualify for a new Guernsey fishing licence ...*” on the basis of reciprocal arrangements. The temptation to construe letters of this nature as if they were taxing statutes or contracts of insurance must be avoided in this matter. A common-sense approach is called for. Eligibility is different to entitlement: a person may be eligible to be appointed Master of the Rolls, but that does not mean they necessarily will be; many films may be eligible for an Academy Award, etc. Before a licence can be issued there has to be an application. The legal situation will be examined further (following on from paragraph 10 above) later on.
17. On page 246 there is a letter from C Morris of Guernsey Sea Fisheries, dated 5th February, 2013, to his colleague in Jersey (see also page 244). This letter does not square with the terms of the application form, already referred to. The main problem is that the reference to the “previous vessel” and any entitlement is not the same as shown at page 199 and cited above in paragraph 14. The same contradiction appears at page 244, dated 8th February, 2013. Nevertheless when one considers Sea Fisheries Policy Document, issued by Commerce and Employment, at page 184, item VEP 7 concludes with the words (after referring to the tracking period):

“It will be up to fishermen to evidence that they have an established track record of fishing within that period.”

More clear-thinking by Sea Fisheries staff here would have been welcome, nevertheless the decision dates from 31st January, 2013, and it is that which is under examination.

18. At page 416C, the section in the decision letter refers to “Verifiable Fishing Evidence of Fishing within Bailiwick Waters”. It refers to the duty to take into account ‘A’s’ record in fishing in Bailiwick waters, “whether during the Track Record period or otherwise”. This refers to Section 3(1)(a) of the Law. At paragraph 8, the letter sets out the “evidence” put forward by ‘A’ in establishing his track record (referred to at paragraph 14 above). The terms of this decision letter were criticized on behalf of ‘A’, but this is not a meritorious complaint. It covers the relevant points and is comprehensible. There are appropriate references to the governing legislation and a sufficient explanation of the decision. The other factual matters or errors that were discussed, do not call for separate mention, although everything relevant has been taken into account in that area.

Application of the Legal Principles to the Facts

19. There was some discussion about ‘R’s’ policy. ‘A’ attacked it on a broad front, although the two earlier previous decisions restricted as far as was fair, the scope of ‘A’s’ efforts so that this appeal could be kept within reasonable and appropriate bounds. This is, as ‘R’ submitted, a statutory appeal, not a judicial review. Hence, ‘A’ has to take the policy as it is and the appeal is concerned with the appropriateness of the conditions in ‘A’s’ licence. The scrutiny of these conditions rests first of all on Beloff JA’s formula in Walters (paragraph 6 above). Reasonableness has been referred to at paragraphs 6 and 7 above. ‘A’s’ skeleton argument at paragraph 37 (pages A8 – A9) concludes:

“Nevertheless Mr Channing reasonably expected his fishing history with Provider to be taken into account when the application was considered by the Respondent.”

And paragraph 38 reads:

“In the event, the Respondent failed to take any of his fishing history with Provider into account in determining the licence application. Mr Channing’s 15 years of fishing in Provider were disregarded and a very limited licence issued based on 3 days fishing with Prospector.”

‘R’ submitted that they could not be expected to be clairvoyant. The decision was based on the application put forward. ‘A’ restricted the information he put forward, despite the terms of Section 3(1)(a) of the Law and what was set out in the body of the application form. ‘R’s’ decision then applied the policy, using the information supplied by ‘A’ and cannot be faulted. You do not rule yourself out by changing the vessel. ‘A’ was able to rely on the entirety of his record in his application. In summary, ‘A’s’ licence was issued on the basis of the information provided by him, and it is, to use Crown Advocate Hill’s trenchant phrase “*too bad*” if he now regrets it. In support of this, ‘R’ referred to ‘A’s’ response to the licensing decision (at page 247), which does not bear any relationship to the appeal as it is now argued. What followed has been *ex post facto*.

20. Reference has already been made, in paragraph 7 above, to the limitations on a court’s power to intervene. In policy decisions such as the present case, there is a lower intensity of review (see e.g. R v Chief Constable of Sussex Ex parte International Trader’s Ferry Ltd [1999] 2AC 418). The overall test is simple: “*Whether the decision in question was one which a reasonable authority could reach*”, or “*a decision ... within the range of reasonable responses which a reasonable decision-maker might have made in the circumstances*” (Gokool v Permanent Secretary for the Ministry of Health and Quality of Life [2008] UKPC 54 at [18]). The information provided by ‘A’ to ‘R’ accompanying his application was such that the conditions granted were a reasonable and rational response. The application form supplied relevant assistance to ‘A’ and, on the facts, ‘R’ acted properly.
21. As mentioned in paragraph 8 above, reasonableness and proportionality overlap, and do so noticeably in the present case, as Dyson LJ put it in R (on the application of the Association of British Civilian Internees (Far East Region)) v Secretary of State For Defence [2003] EWCA Civ. 473 at [34]:

“The Wednesbury test is moving closer to proportionality, and in some cases it is not possible to see any daylight between the two tests ...”

Earlier, at [33] Dyson LJ had said:

“It is true that the result that follows will often be the same whether the test that is applied is proportionality or Wednesbury unreasonableness. This is particularly so in a case in the field of social and economic policy.”

It is difficult in this appeal to find that proportionality, which in the broad sense seems to mean achieving a fair balance, adds anything to the question of reasonableness; whichever concept is deployed the result is the same here.

22. The concept of “legitimate expectations” has been touched on in paragraphs 10 and 16 above. The view reached was that “eligibility” is different from “entitlement”. The definition was given in paragraph 10. There are numerous reported English cases on the topic of legitimate expectations, but each case depends on its own facts, so that e.g. in R (on the application of Domb) v Hammersmith LBC and Fulham LBC [2008] EWHC 3777 (Admin) a council minute of “*Noted and adopted*” in relation to a manifesto promise did not give rise to a legitimate expectation. There are, of course, cases on either side of the line. In addition, the representation must have been made by a person with actual or ostensible authority to make it. This was a decision for the Department to take.

23. Paragraph 11 above sought to deal with the ECHR point, and it was concluded that, in the circumstances, it did not add much to the already central questions of proportionality and reasonableness. Article 1 of the Protocol to the Convention is subject to the right of a State to enforce such laws as it deems necessary to control the use of property in the general interest. This interest is broadly defined. De Smith (at 13-097) indicates that three types of rights are protected under Article 1: non-interference with peaceful enjoyment, deprivation of possessions and subjecting possessions to control. It is stated that: “*The importance of the distinction is that the ECHR requires a stronger State justification for deprivations than for control or interferences*”. For the reasons already given, the present set of circumstances does not call Article 1 into play. Similarly the argument regarding a material error as to facts or procedure is, as ‘R’ submitted, part of the general question of ‘reasonableness’ and seems to have been added as something of a makeweight.
24. Section 21 of the Law relates to “Savings and Transitional Provisions” and some reference was made to it in oral argument, although not specifically pleaded in ‘A’s’ cause. It is not relevant as ‘A’ did not have a licence immediately before the commencement of the Law (Section 21(4)). His licence under the Sea Fish Licensing (Guernsey) Ordinance, 2003 had expired in 2012.

Conclusions

25. This was an attack mounted on behalf of ‘A’ on a wide front. In considering the impressively-detailed submissions made by his Advocate, it seems that nothing whatever ‘R’ had done in the course of this matter was worthy even of faint praise. A more narrowly-focussed review would have had greater impact. The case would have been longer were it not for the two earlier decisions, which cut down ‘A’s’ attempts to root through a mass of material that added nothing to the relatively simple issue before this Court. This type of appeal is not a process akin to hunting for truffles.
26. The nub of ‘A’s’ case is to be found in paragraphs ii), iii) and iv) of the Particulars of Grounds of Appeal (pages 4 – 5):
- “ii) In any event and in light of representations made to the Plaintiff (correctly) that his change of vessel would not alter his eventual licence entitlement, the Department should have taken account of the Plaintiff’s entire record during the material period and not just that associated with Prospector.
 - iii) The Department failed, wrongly, to take into account the Plaintiff’s fishing record with Provider.
 - iv) In circumstances where, as here, the retrospective declaration of a more or less arbitrary tracking record caused injustice to an applicant, the Department should have taken into account the entire fishing record of the applicant, not just a restricted period and/or not just a single vessel.”

But, as has been pointed out, the application form (especially item 4 at page 199) is unambiguous in seeking just this information. And, when ‘A’ responded (at page 247) none of the concerns aired in this appeal then appeared in the manner now put forward.

27. ‘R’s’ case was not helped by the communications seen on pages 244 and 246. Unlike the application form they lacked clarity. They do not affect the decision however. The decision regarding ‘A’ should have been minuted, and in appropriate detail; the failure to do this has made the task of all those involved in this matter more difficult. It should not require a dictum from the Royal Court to ensure this should be done, and it is hardly an onerous requirement.
28. As this is a statutory appeal not a judicial review, the Court is concerned with the conditions, not an impeachment of the policy itself. Nothing advanced in support of the appeal shows

that the statutory criteria were in some way misapplied. The decision, which related to the policy, was based upon the information supplied by ‘A’ himself. Any other points raised on ‘A’s’ behalf and not specifically mentioned have been considered in coming to this decision.

Result

29. The result is that the appeal fails and is dismissed.

Costs

30. These should normally follow the event. The parties may wish to put in written submissions should this not be conceded, within seven days of the final handing-down of this decision. The other two judgments will be included in this figure.

J R Finch
Judge of the Royal Court

Appendix - Skeleton Arguments

- (i) ‘A’s’ skeleton argument extended over 23 closely-printed pages; ‘R’s’ was 5 less packed pages. ‘R’ started by referring, correctly, to what such a document should be, i.e., concise and brief. ‘A’s’ was, with respect, neither;
- (ii) There have been various judicial pronouncements on this topic in the English courts which can be profitably adopted in Guernsey. One good example is Tombstone Ltd v Raja and Another [2008] EWCA Civ 1444, where Mummery LJ, on behalf of the Court of Appeal stated:

“124. *The length of Tombstone’s skeleton did not assist the court. In fact it tended to detract from Tombstone’s case, which was accurately and far more succinctly stated by Mr Onslow in his written and oral responses to it. His team adopted the technique of briefly stating the points taken by Tombstone and then concisely commenting on them.*”

And:

“126. *We remind practitioners that skeleton arguments should not be prepared as verbatim scripts to be read out in public or as footnoted theses to be read in private. Good skeleton arguments are tools with practical uses: an agenda for the hearing, a summary of the main points, propositions and arguments to be developed orally, a useful way of noting citations and references, a convenient place for making cross-references, a time-saving means of avoiding unnecessary dictation to the court and laborious and pointless note-taking by the court.*”;

- (iii) It is, as Mummery LJ also observed, “*sensible to set reasonable limits*” as to the length of skeleton arguments, and it is hoped that this is done in future. The present case is only one of a number of examples of this tendency to prolixity, which can only detract from the effectiveness of oral submissions, however elegantly delivered.