



**Steve Channing v The States of Guernsey**  
Court of Appeal  
30th September, 2015

**JUDGMENT**  
**48/2015**

**Appeal against a judgment of the Royal Court of 19 February 2015 dismissing a statutory appeal made pursuant to the Sea Fishing Licencing (Bailiwick of Guernsey) Law 2012 in respect of a licence authorising the appellant to fish in Bailiwick waters issued by the Sea Fisheries Section of the Commerce and Employment Department. The appellant disputes the conditions of the licence.**

Approved Text  
30.09.2015

**IN THE COURT OF APPEAL OF GUERNSEY**  
**(Civil Division)**

**Civil Appeal No. 485**

**30 September 2015**

**Before:** **Clare Montgomery QC, President**  
**Robert Logan Martin QC**  
**Deemster David Doyle**

**STEVE CHANNING**

**Appellant**

**-v-**

**THE STATES OF GUERNSEY**

**Respondent**

**Advocate Gordon Dawes for the Appellant**  
**Crown Advocate Jason Hill for the Respondent**

**JUDGMENT**

Leave to appeal was granted by John Russell Finch Esq, Judge of the Royal Court, on 1 April 2015

**LOGAN MARTIN JA**

**THIS IS THE JUDGMENT OF THE COURT**

**Introduction**

1. The appellant is a fisherman based in Jersey. He appeals to this Court against a judgment of

the Judge of the Royal Court (John Russell Finch Esq) dated 19 February 2015. In that judgment, the learned Judge dismissed a statutory appeal instituted by the appellant pursuant to the Sea Fishing Licencing (Bailiwick of Guernsey) Law 2012 (“the 2012 Law”). The statutory appeal by the appellant was in respect of a licence authorising the appellant to fish in Bailiwick waters which had been issued to him by the Sea Fisheries Section of the Commerce and Employment Department of the respondent (“the Department”). The appellant disputes the conditions of the licence which limit him to fishing only for scallops using dredges and only within the 3 to 12 nautical mile (or “nm”) limit of the Bailiwick.

2. The appeal against the judgment of the learned Judge is widely framed and the appellant sets out eleven grounds. The first is that the Judge adopted an excessively narrow basis for his judgment, the second is that the Judge failed to take proper account of the conduct of the respondent and its officers, the third is that the Judge failed to take account of what the respondent and its officers knew, the fourth is that the Judge failed to consider or adjudicate on the respondent’s policy, the fifth is that the Judge failed to adjudicate on the reasonableness of “blanket” conditions, the sixth is that the Judge failed to take into account other errors as to facts and procedures, the seventh is that the Judge failed to take due account of the provisions of Article 1 of Protocol 1 of the European Convention on Human Rights (“ECHR”), the eighth is that the Judge failed to take account of the respondents’ defective decision-making process, the ninth is that the Judge failed to permit affidavit evidence, the tenth is that the Judge failed to adjudicate more widely, and the eleventh is that the Judge failed to adopt the correct principles of Guernsey law. As will be seen, some of these grounds overlap to some extent. As will also be apparent, they relate both to the decision of the Department to issue a licence to the appellant and the terms in which that was done, and to the policies of the Department relating to the issuing of such licences.

### **Factual background**

3. Until 2003, a British fisherman, which includes a Jersey fisherman, did not require any licence to fish in Guernsey waters. A licensing regime was introduced by the Sea Fish Licencing (Guernsey) Ordinance 2003 (“the 2003 Ordinance”) which purported to regulate fishing within 12 nautical miles of Guernsey. The 2003 Ordinance was subsequently declared to be invalid insofar as it extended beyond the 3 nautical mile limit: see *Jersey Fisherman’s Association v States of Guernsey* [2006-06] GLR 226. The 2003 Ordinance was repealed by the 2012 Law: see s 20; and transitional arrangements were provided: see s 21, in particular subsection (4). The effect of these transitional arrangements was that a fisherman, such as the appellant, who had a licence to fish within the entire 0-12 nm zone by virtue of the 2003 Ordinance, was deemed to hold an equivalent licence under the 2012 Law.
4. The appellant has fished in Guernsey waters for all of his working life. In 1998, he purchased the vessel named “Provider” and used it throughout the 0 to 12 nautical mile zone for trawling, pair trawling, scalloping and other forms of fishing. The appellant was given an unqualified form of licence in accordance with the 2003 Ordinance. The appellant acquired the vessel named “Prospector” in February 2010 and he made the application which is the subject of these proceedings in December 2012.
5. In considering fishing licence applications, the Department had resolved to make use of a “tracking period” for the purpose of assessing the fishing record of any applicant for a licence. This was to ensure that licences were primarily given to those who had a verifiable record of fishing regularly and over a period in Guernsey waters. The Department adopted the period from 15 May 2007 to 15 May 2010. The appellant began fishing with Prospector on 12 May 2010 and he fished during the period of three days until the expiry of the Department’s tracking period only for scallops and only within the 3 to 12 nm limit.
6. The application made by the appellant was provided on a printed form prepared by the Department and which was headed “Application for a Bailiwick Waters Fishing Vessel Licence”. It appears to have been received by the Department on 17 December 2012. Part 1 of the form required details to be provided of the applicant and of the vessel to be used. Part

2 is not relevant in the circumstances of this case. Part 3 stated a list of additional documentation to be submitted with the form, such as in relation to the certification of the vessel in question. Part 3 also required the provision of:

“Evidence (verifiable) to clearly demonstrate fishing activity within Bailiwick waters during the 2007-2010 track record period (Please see notes Page 4).”

These notes included:

- “3. Evidence submitted will need to clearly demonstrate that a vessel has commercially fished within Bailiwick waters during the track record period...
4. VMS Data is available from the Marine Management Organisation (MMO)...”

The Marine Management Organisation is an agency of the United Kingdom government and the initials “VMS” mean “Vessel monitoring system”.

7. Part 4 of the printed form was entitled “Declaration” and was to be completed by an owner or operator. It required an undertaking to comply with any conditions attached to a licence and then stated:

“I/We wish to apply for a Bailiwick Waters Licence... The vessels [sic] Certificate of Registry is enclosed together with any other documentation required under parts 1, 2 and 3, as appropriate and I/We confirm that the information given in the Certificate of Registry and this form is to the best of my/our knowledge, true and correct.”

The form as completed by the appellant was signed by him and dated 13 December 2012.

8. The application was accompanied by a letter written by the appellant and dated 12 December 2012 which it is appropriate to set out in full:

“Dear Sirs,

I am writing to you enclosing my application for a fishing licence for the Prospector. As your fisheries department are aware I put a deposit down on 28th January 2010 and paid the balance on 25th February 2010 after being assured in early January by the Guernsey fisheries department (“Guernsey Fisheries”) that the Prospector would be included in any future licencing [sic] system when it comes into force. One of your prior committees had considered a letter I wrote to them asking their permission to change boats, and for the said new boat, the Prospector, to be included in any future licencing of Guernsey’s territorial water, of which they gave me permission and wished me well.

I am sure you will agree with me that Guernsey Fisheries were well informed of my proposed business venture, which they gave me permission for. I clearly asked for future access for a larger boat and also stated the fishing methods I wanted to do. I started fishing in the Prospector on 12th May 2010 in Guernsey waters, this is within your reference period.

I am happy to provide you with any information you may need in this respect and have put in a copy of my VMS and e-book log books to date, along with a copy of my registration in Jersey and a copy of my Jersey and UK fishing licences.

Thank you for giving me your full support in this matter.

Yours faithfully,  
Steve Channing”

9. The application was granted in terms of a letter addressed by the Deputy Minister to the appellant dated 31 January 2013 (which we shall refer to as “the decision letter”). The material parts of the decision letter state:

“I am pleased to inform you that your application for a licence pursuant to the 2012 Law has been successful. The licence is, pursuant to s 2(1), granted to S Channing for the vessel named *Prospector* (“the Vessel”) subject to the Fishing Licence Schedule and Conditions, attached hereto.”

The decision letter continued with a series of numbered paragraphs, the most relevant of which stated:

- “3. The application was accompanied by documentation that amounted to the vessel registration, MMO or equivalent licence and evidence of fishing by the Vessel in Bailiwick waters during the period the 15th May 2007 to the 15th May 2010...”
- “7. Pursuant to s 3(1)(a) of the 2012 Law, the Department has a duty, in deciding whether or not to grant a licence, to take into account the record of the applicant in fishing in Bailiwick fishery limits, whether during the Track Record Period or otherwise.
8. The Department has considered all of the following evidence in establishing the Vessel’s track record –
  - a) Log Book Data sent with the application, which data are indicative of fishing during the Track Record Period; and
  - b) Vessel Monitoring System Data sent with the application, confirming the Vessel’s presence during the Track Record Period in Bailiwick limits.
9. The Department has considered all this evidence, taken as a whole, amounts to appropriate evidence and establishes that the fishing effort constitutes an appropriate track record of fishing within Bailiwick limits...
10. Taken as a whole, the evidence set out above demonstrates that the Vessel –
  - a) Only fished for scallops... by dredging in Bailiwick limits during the Track Record Period; and
  - b) Fished in the Bailiwick 3-12 nm limits. There is no historical track record demonstrated by the evidence of fishing in the 0-3 nm limit of Guernsey, Alderney and Sark.”

Paragraph 13 of the decision letter referred to the Department having also considered the 2003 Ordinance “in making its decision whether to grant a licence”. The decision letter then set out the “Decision”:

- “14. As a result of all of the above, the Department has decided to grant a... Licence pursuant to s 2 of the 2012 Law which authorises fishing –
  - a) Only in the 3-12 nm limits of Bailiwick waters;
  - b) Only for scallops... using dredges...”

The decision letter thereafter set out various consequential matters and it was accompanied by the licence together with its conditions. It is not necessary to narrate these.

10. At the same time as he had submitted his application in respect of the vessel *Prospector*, the appellant had also made an application for a fishing licence in respect of the his previous vessel, *Provider*. No copy of this application, nor of any documents accompanying it, have been provided to the Court and it is not apparent that the existence of the application in respect of *Provider* was ever brought to the attention of the Judge. At the hearing before us, Advocate Dawes for the appellant submitted copies of a series of emails between officers of the Department and the appellant dated from 3 to 9 January 2013, that is to say within the period between the appellant submitting his application for a licence in respect of the vessel *Prospector* and the issuing of that licence by the Department. In one of those emails which

was addressed to the appellant and dated 3 January 2012, Mr Christopher Morris, a Senior Sea Fisheries Officer, referred to the applications which had been made by the appellant for both Provider and Prospector, and acknowledged that as the appellant no longer owned Provider, that application could be processed only as a so-called “pipeline case”, which was a procedure adopted by the Department to preserve the entitlement to a licence into the future where an applicant intended to acquire a new vessel of equivalent size. Mr Morris then continued:

“In your case as you now own Prospector, we have only processed this application. It is not possible to apply for be issued with [sic] a licence for your current vessel as well as an entitlement for your previous vessel, you can simply only receive one or the other and not both.”

The appellant responded in an email dated 4 January 2012 which included the following:

“The Provider, I owned this vessel in the licensing period and have a large track record of fishing in Guernsey waters throughout the period. The criteria is met and I am entitled to a licence...”

The email exchange continued and the appellant accepted ultimately that he was entitled to a licence for only one vessel and he did not insist on the determination of the application in respect of Provider.

11. The Department produced a Policy Document entitled "Bailiwick of Guernsey Fishing Vessel Licensing" dated 11 December 2012. Although this document was dated prior to the receipt and determination of the application for a licence by the appellant for the vessel Prospector, the policy document was not apparently published or promulgated in the public domain until some time after that application was determined. The policy document contained references to the procedure for determining applications, including references to the tracking period. It also set out an “Applications Processing Policy” which included the statement that “The Department has extensive access to VMS data, sighting reports and boarding and inspections reports to assist” in the verification of historical fishing records.

### **The applicable legislation**

12. There are two aspects of the provisions of the 2012 Law which are relevant to the matters raised by the appellant. Subject to exceptions which are not material, section 1 prohibits “fishing for any sea fish within Bailiwick fishery limits by British fishing boats” unless authorised by a licence granted by the Department. The expression “British fishing boat” includes a fishing boat registered in Jersey: see the definitions provided in s 19(1). The succeeding sections set out the general provisions as to licences and the matters and information to be taken into account:

- “2(1) A licence shall be granted to the owner or charterer in respect of a named vessel and may authorise fishing generally or may confer limited authority by reference to, in particular -
  - (a) the area within which fishing is authorised,
  - (b) the periods, times or particular voyages during which fishing is authorised,
  - (c) the descriptions and quantities of fish which may be taken, or
  - (d) the method of sea fishing.
- (2) A licence may authorise fishing unconditionally or subject to such conditions as may appear to the Department to be necessary or expedient for the regulation of sea fishing ...
- 3(1) In deciding whether or not to grant a licence the Department shall take into account any relevant factor, including (without limitation) -

- (a) the record of the applicant in fishing in Bailiwick fishery limits, whether during any particular period or otherwise,
- (b) whether the vessel in respect of which the application is made is registered -
  - (i) in the Bailiwick,
  - (ii) in Jersey...

By reference to the definition of the expression “Bailiwick fishery limits” in s 19(1), the regime provided by the 2012 Law extends to the 12 nautical mile limit adjacent to Guernsey, Alderney and Sark.

13. The right of appeal which arises following a decision to grant a licence is provided by s 17 which states insofar as relevant:

- “17(1) A person aggrieved by a decision of the Department -
- (a) to refuse an application by him for a licence,
  - (b) to vary, suspend or revoke his licence, or
  - (c) to impose, vary or rescind any condition in respect of his licence, may appeal to the Royal Court against the decision.
- (2) The grounds of an appeal under this section 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.
- (3) ...
- (5) On an appeal under this section the Royal Court may -
- (a) set the decision of the Department aside and, if the Royal Court considers it appropriate to do so, remit the matter to the Department with such directions as the Royal Court thinks fit, or
  - (b) confirm the decision, in whole or in part.
- (6) ...”

### **The scope of the statutory appeal**

14. Two issues arise having regard to these legislative provisions as to the scope of the statutory appeal and it is convenient to address these at the outset. The first is to consider to what extent the Court is confined to particular grounds of appeal by reason of the fact that the procedure is one of a statutory appeal regulated by s 17. The second is to consider the effect of the grounds for such an appeal which are provided by s 17(2).
15. In relation to the first of these issues, the right of appeal provided by s 17(1) of the 2012 Law is a right to appeal against decisions of the Department to refuse a licence, to vary, suspend or revoke a licence, and to impose, vary or rescind any condition in respect of a licence. Each of these types of decision which may be appealed against in terms of s 17 is a form of decision made in respect of a particular licence. They do not extend to distinct or antecedent matters such as decisions made by the Department as to the policies which are to be applied in the process of considering applications for licences. Were a policy of the Department to be challenged, that would on the face of it require to be done by way of a customary public law challenge, such as an application for judicial review, but because the case which was before the Judge was an appeal pursuant to s 17, he was in our judgment limited to deciding whether the licence issued to the appellant and its conditions were justified. This means that the learned Judge was correct where he said at paragraph 19 of his judgment that the appellant “has to take the policy as it is and the appeal is concerned with the appropriateness of the conditions in [the appellant’s] licence.”
16. Before us and before the learned Judge, Advocate Dawes sought to rely on the decision in *Ward v The States Housing Authority*, Court of Appeal, unreported, 28 November 1989,

which was an appeal against a decision made under the Housing (Control of Occupation) (Guernsey) Law 1982 as authority for the proposition that in a statutory appeal such as the present the court should investigate why a policy, which is relied upon in relation to a particular decision, was made. Without requiring to determine this definitively for the purposes of this appeal in the context of the appeal regime provided by the 2012 Law, we are not persuaded by Advocate Dawes' submission. We adhere to the position stated by Beloff JA in *Matheson v States Housing Authority*, Court of Appeal, unreported, 24 July 1998, which is that:

“... it is a well established principle of public law, applicable to Guernsey, that a public authority... can have a policy as long as two conditions are satisfied. The first is that the policy conforms with the law; a policy cannot modify, extend, still less contradict such law. The second is that those who apply the policy are prepared to listen to reasons why it should not be applied in a particular case and in consequence, in appropriate circumstances, to make exceptions to it...”

Whilst the first of those considerations might permit this Court to consider whether the policy document of the Department dated 11 December 2012 contained any statement which contradicted a provision in the 2012 Law, in particular section 3(1)(a), no such direct contradiction was brought to our attention. This means that we regard it as appropriate for the purposes of this statutory appeal under section 17 to proceed upon the basis that the Department was entitled to have such a policy, and to consider whether, and if so how, it was taken into account in the making of the decision appealed against.

17. The second issue concerns the grounds upon which an appeal made pursuant to s 17 can succeed. The grounds of appeal set out in subsection (2) are a decision which is ultra vires or which contains an error of law (paragraph (a) of subsection (2)), a decision which is unreasonable (paragraph (b)), a decision which is made in bad faith (paragraph (c)), a decision in which there is a lack of proportionality (paragraph (d)), and a decision where there has been a material error as to the facts or as to the procedure (paragraph (e)). It is obvious that at least some of these grounds are the equivalents of the well-recognised grounds upon which judicial review may succeed and which are derived from the decision of the House of Lords in *Associated Provincial Picture Houses v Wednesbury Corporation* [1947] 1 KB 223. It need hardly be said that these judicial review grounds have been the subject of repeated judicial consideration since and, for the purpose of identifying which of the grounds in subsection (2) of s 17 are the equivalent of the grounds for judicial review, the best exposition is perhaps the passage in the speech of Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, at pp 410-411. Having regard to that passage, it is reasonable to identify a similarity between the accepted grounds for judicial review and the grounds stated in paragraphs (a), (b), (c) and (e) of s 17(2).
18. The ground referred to in s 17(2)(d) applies where there has been a “lack of proportionality”. That raises the question of whether that ground goes beyond what is the customary “Wednesbury unreasonableness” of judicial review. This was addressed by the Judge at paragraphs 8 and 21 of his judgment where he referred to passages in the judgment of Dyson LJ in *R (on the application of the Association of British Civilian Internees (Far East Region)) v Secretary of State for Defence* [2003] QB 1397 at paragraphs [33] and [34]. The Judge concluded by stating “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.” For the reasons explained below, our decision does not turn upon any distinction between reasonableness and proportionality but we do find some support for the Judge’s view that in the context of this particular appeal the two concepts may be regarded as equivalent, whilst emphasising, as he did, that he was considering them in the context of this particular case. Nevertheless, the concept of “proportionality” is stated separately from the concept of “unreasonableness” in section 17(2) and the legislature must be taken to have intended some distinction between the two. It will be for an appropriate case in the future to determine whether that distinction can be demonstrated in particular circumstances.

## The grounds of appeal

19. Although Advocate Dawes had set out support for the eleven grounds of appeal in the Appellant’s Case, he focused before the Court on what he described as his “central complaint”. This was that the Department had failed to take account of the full fishing record of the appellant before, during and after the tracking period. This was a failure to comply with the duty provided by section 3(1)(a) of the 2012 Law. The adoption by the Department of the tracking period was not by itself unlawful but the Department should have taken into account the full fishing history of the appellant not just the period of three days which was applicable to the fishing history of Prospector. The Department was aware of the appellant’s full fishing history because it held records for both of the vessels used by the appellant and because it had at the same time his application for a licence in respect of Provider.
20. The substance of the reply on behalf of the respondent was twofold. First, the duty imposed by section 3(1) applied only to the decision to grant or refuse an application for a licence. The decision whether to impose conditions, and if so what they should provide, was a discrete decision to which section 3(1) did not apply. This meant that the decision to grant a licence and the decision whether to impose conditions required a two-stage approach. The Department had no obligation to take into account an applicant’s full fishing record when deciding what conditions to impose. The Department had granted the appellant’s application for a fishing licence and had complied with section 3(1) in that regard. It did not have to take into account the appellant’s full fishing record in deciding to impose the conditions which it did. Secondly, the Department had no duty to inform itself from its own records on an applicant’s fishing record and it was up to the applicant to bring his full fishing record to its attention by submitting appropriate information along with his application. If an applicant did not do so, as it was said the appellant had not done in the case of his application in respect of Prospector, the Department could not be criticised if it did not take into account information which might have been provided but was not.
21. In considering these contentions, we begin by looking at the legislation. S 2(1) provides for the granting of a licence to an individual owner or charterer in respect of a named vessel. Thus the making of an application for a licence which relates to a named individual and to a specified vessel is to be expected. S 3(1) has two limbs. Paragraph (a) refers to the fishing record of the applicant and paragraph (b) refers to details of the vessel. The Department is under a duty to take into account each of these as a relevant factor in determining an application for a licence. But the fishing history of the applicant is not confined to his fishing history with the vessel specified. The Department will fail in its duty under s 3(1)(a) if it does not take into account an applicant’s fishing history beyond that with the vessel specified. This will be the case whether an applicant’s fishing history is to be looked at in general (as paragraph (a) of s 3(1) requires) or is looked at by reference to a defined period such as the tracking period adopted by the Department.
22. The duty imposed by s 3(1) is engaged “In deciding whether or not to grant a licence”. What is a “licence” for the purposes of the 2012 Act is described initially in s 2. Subsection (2) of s 2 states that “A licence may authorise fishing unconditionally or subject to such conditions as may appear to the Department to be necessary or expedient...”. Taken by themselves, these words imply a single administrative act in which the granting of a licence with or without conditions is a single exercise. Subsection (2) also includes the phrase “a licence may contain conditions” and that is consistent with a licence and its conditions being a single entity. Subsection (3) refers to “The conditions subject to which a licence may be granted...” and this is consistent with a licence being granted only along with any conditions to which it is to be subject.
23. There are other consistent indications within the 2012 Law to the effect that a licence and its conditions are elements in a single authorisation or consent. Section 1(1) prohibits fishing “unless authorised by a licence granted by the” Department and the regime thereby created

would be difficult to understand if such a licence did not include the conditions under which the fishing permitted was to be regulated. Separately, s 17(1) and (2) provide an identical right of appeal on identical grounds against the refusal of an application for a licence and against the imposition of conditions.

24. Crown Advocate Hill did not provide any authority in support of his proposition that the decision to grant a licence and the decision to impose conditions were separate decision-making exercises, nor in particular that they should be subject to different considerations. The Court is not aware of where such a distinction has been recognised in any equivalent statutory regime in which a licence, consent or permission may be granted subject to conditions, whether within the Bailiwick or elsewhere. Crown Advocate Hill submitted that it arose in this case as a matter of statutory interpretation and we have no hesitation in rejecting that. From the passages just cited from the 2012 Law, we regard it as clear that the decision of the Department to grant a licence and any conditions to which it is to be subject is a single one and is regulated by the duty imposed by s 3(1). This means that in deciding to grant the appellant's application for a fishing licence in respect of the vessel Prospector, and in determining the conditions to which the licence should be subject, the Department had a duty pursuant to section 3(1)(a) to take into account "the record of the applicant in fishing in Bailiwick fishery limits whether during any particular period or otherwise."
25. Further, we would observe that no notice was given by the Department of the possibility of separate decision making on differing criteria. It would be contrary to principles of good administration and elementary fairness for the Department to embark on this form of split decision making without notice to the persons likely to be affected by it. There was also no evidence that separate decisions were in fact made in this case. We have already indicated that we consider the submissions of the Crown Advocate to lack legal merit. They also lack any credible foundation in fact.
26. In our judgment, it is clear that the Department did not comply with its statutory duty in the determination of the application made by the appellant in respect of the vessel Prospector. That the Department was aware of the duty is demonstrated by what was said in paragraph 7 of the decision letter. The Department had adopted the tracking period as a method of identifying applicants who had a sufficient record of fishing in Guernsey waters but in the case of the appellant they did not take account of the fact that the use of the tracking period produced an artificial result when applied to the fishing by the appellant with the vessel Prospector. It is undoubtedly the case that the Department and its officers should have looked beyond what was revealed by the record for Prospector during the tracking period and considered what further fishing history for the appellant should be taken into account. As we have already said, it is the fishing history of an applicant which is relevant for the purposes of s 3(1)(a), not the fishing history of a particular vessel. That the Department did not look beyond the fishing record for Prospector is demonstrated in paragraphs 8 and 10 of the decision letter and the Department determined the application upon that basis. That is sufficient to demonstrate that the Department failed to comply with the duty imposed by s 3(1)(a) and that the statutory appeal by the appellant should succeed.
27. There is nevertheless substance in the other complaints made by the appellant in the way in which his application was dealt with and which demonstrate a failure to take into account the appellant's entire fishing record. The Department had before it at the same time the appellant's application in respect of the vessel Provider which presumably included the appellant's fishing record with that vessel during the tracking period. The Department was aware of the connection between the fishing activities of the appellant with both Provider and Prospector and Mr Morris had received the email from the appellant dated 4 January 2012 referred to above in the context of the appellant's application in respect of Prospector where the appellant had referred to his "large track record of fishing in Guernsey waters throughout the period". There has been no explanation for the respondent as to why this clear statement which was made in the course of the processing of the application which is the subject of the present statutory appeal was ignored. The Department also had the appellant's letter dated 12 December 2012 which accompanied his application and which likewise informed the

Department of circumstances relating to the change of vessel from Provider to Prospector. The Court is concerned that these undisputed matters of fact should simply have been ignored by officers of the Department when they ought to have been aware that they were relevant to the appellant's entire fishing record for the purposes of s 3(1)(a). As an aside, they also make it difficult to understand Crown Advocate Hill's submission that the Department should not be expected to carry out investigations in order to identify possible information which has not been revealed by an applicant. The appellant had clearly brought to the attention of officers that he had a substantial fishing history which he wished to be taken into account and, on the face of it, the officers ignored that. The Court is satisfied that the Department failed to comply with the statutory duty imposed by section 3(1)(a) in its determination of the application by the appellant for a fishing licence.

28. In light of this, we do not feel it to be necessary to deal in any detail with the other grounds of appeal. Advocate Dawes accepted that his complaints regarding legitimate expectation and of a failure to have regard to the appellant's convention rights provided by Article 1 of Protocol 1 of the ECHR did not add any additional considerations in the circumstances of this case. Likewise, the other complaints about the errors and procedures in the decision-making process of the Department are effectively subsumed into the decision which we have already made. The complaint that the judge should have permitted affidavit evidence does not now arise given that we have identified adequate evidence upon which to draw the necessary conclusions. As to the challenge to the Department's policy document, we have already referred to this and do not find it necessary to say anything further other than to observe that the apparent existence of the policy document at the time that the decision was made did not appear to affect that decision.
29. We are therefore satisfied that the decision by the Department to grant the licence as it did, with the conditions limiting the extent and form of fishing permitted to the appellant by reference to paragraph 14 of the decision letter, ought to be set aside. In our judgment, the decision was subject to an error of law in terms of paragraph (a) of section 17(2) because the Department failed to comply with its statutory duty, and the decision was also made on a material error of fact in terms of paragraph (e) because the Department failed to take into account the matters of fact that it ought to have taken into account as to the full fishing record of the appellant.
30. That is sufficient to determine this appeal. S 17(5) permits the Royal Court, and thus this Court in an appeal, to set aside the decision in question and to remit the matter to the Department with such directions as are seen to be fit. That is what we shall do and we shall direct the Department and its officers to re-determine the application for a fishing licence made by the appellant in respect of the vessel Prospector, taking fully into account the record of the appellant in fishing in Bailiwick fishery limits for whatever species and using whatever fishing methods, and to have regard to that record whether during the tracking period adopted by the Department or otherwise, whether with the vessel Prospector, the vessel Provider, or with any other vessel, and whether within all parts of the 0-12 nm limit of Bailiwick waters, all in accordance with the statutory duty imposed upon the Department by s 3(1)(a) of the 2012 Law. Whilst we do not consider that the Royal Court or this Court would have the power to give any further direction, we do suggest that the Department may wish to reconsider the contents of the printed application form which was used in this case. The fact that it does not invite an applicant to specify the extent of the licence which he seeks, and thus to suggest what conditions might be imposed, gives rise in our judgment to uncertainty as to what an applicant ought to be providing in supporting information. The fact that the form also does not bring to the attention of an applicant, at least not in clear terms, that he may rely upon his fishing record with any vessel that he has used and, if appropriate, beyond the tracking period, is also an aspect giving rise to uncertainty based upon the printed form. These are drafting matters but we draw them to the attention of the Department.
31. This appeal and the statutory appeal which was made to the Royal Court are allowed.