



Neutral citation number: [2024] UKFTT 547 (GRC)

Case Reference: WA/2024/0002/ALI

First-tier Tribunal  
General Regulatory Chamber  
Welfare of Animals

Heard by CVP

Heard on: 24 May 2024  
Decision given on: 25 June 2024

Before

TRIBUNAL JUDGE WILSON

Between

NIGEL COX

Appellant

and

OLDHAM COUNCIL

Respondent

**Representation:**

For the Appellant: No Representation  
For the Respondent: Ms S Rawat (Solicitor)

**Decision:**

1. The appeal is dismissed.
2. The Respondent's decision made on 30 November 2023 to refuse the Appellant's licence application to sell tropical fish, cold water fish, aquatic frogs, turtles and axolotl as pets at 609 Middleton Road, Chadderton pursuant to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (The 2018 Regulations) is confirmed.

**REASONS**

## **The Respondent's Decision**

3. This appeal concerns the Respondent's decision made on 30 November 2023 to refuse the Appellant's application to sell tropical fish, cold water fish, aquatic frogs, turtles and axolotl as pets at 609 Middleton Road, Chadderton Oldham OL9 98L ("the Premises"). The Appellant's application was made on 12 July 2023.

## **Background**

4. There is a long and involved procedural history. So far as is relevant to this appeal the background is summarised below.
5. The Appellant had previously held a licence to sell animals as pets at the Premises, however, following an inspection it was not renewed. The reasons for the non-renewal were concerns that the Appellant was not capable of meeting the licence conditions and staffing/ management were inadequate. This was primarily because of a lack of effective policies and procedures, lack of qualifications and training/continuous professional development. The Appellant was informed of the Respondent's decision on 1 August 2022. The Appellant did not appeal the non – renewal of this licence.
6. The Appellant again applied for a licence to sell animals as pets on 13 September 2022. Trading Standards Officer Kirsty Crowther carried out an inspection of the Premises to determine if the Appellant could satisfy the licence conditions and relevant statutory guidance. The Respondent was not satisfied that the Appellant was a fit and proper person to carry out the Licensable activity and meet the licensing conditions. The application was refused. The Appellant appealed to the First-Tier Tribunal General Regulatory Chamber. On 11 May 2023 The appeal was dismissed and the respondent's decision was upheld.
7. On 12 July 2023 the Appellant made a further application to sell tropical fish, cold water fish, aquatic frogs, turtles and axolotl as pets at the Premises". On 17 July 2023 Ms Crowther sent an email to the Appellant to advise that she would be undertaking the inspection. Ms Crowther acknowledged that the Appellant had submitted various documentation with his application and directed the Appellant to the various previous feedback he had received from the Respondent. Following a number of requests from the Appellant to first expedite and then delay the inspection, the inspection was conducted on 20 September 2023. As a result of the inspection, the Respondent was not satisfied that the Appellant was a fit and proper person to carry out the licensable activity and meet the licensing conditions accordingly application was refused on 30 November 2023. The Appellant appealed to the First tier Tribunal on 27 December 2023. It is this appeal which is the subject of this decision and reasons.

## The law

8. Section 13 of the Animal Welfare Act 2006 ("the Act") and Regulation 2 and Schedule 1 of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 ("the Regulations") provide that selling animals as pets is a licensable activity.
9. Regulation 3 of the Regulations provides that a local authority is the licensing authority for any licensable activity carried on at a premises in its area.
10. Regulation 4 of the Regulations provides that where a local authority receives an application from an operator for a licence it must:
  - a. appoint one or more suitably qualified inspectors to inspect any premises on which the licensable activity or any part of it is being or is to be carried on, and
  - b. following that inspection, grant a licence to the operator, or renew the operator's licence, in accordance with the application if it is satisfied that –
    - i. the licence conditions will be met,
    - ii. any appropriate fee has been paid in accordance with regulation 13, and
    - iii. the grant or renewal is appropriate having taken into account the report submitted to it in accordance with regulation 10.
11. Regulation 4 also provides that a local authority must attach to each licence the general conditions. The general conditions are set out in Schedule 2. So far as is relevant to this decision Schedule 2 provides as follows:

### **2. – Records**

(1) The licence holder must ensure that at any time all the records that the licence holder is required to keep as a condition of the licence are available for inspection by an inspector in a visible and legible form or, where any such records are stored in electronic form, in a form from which they can readily be produced in a visible and legible form.

.....

### **4. – Staffing**

(1) Sufficient numbers of people who are competent for the purpose must be available to provide a level of care that ensures that the welfare needs of all the animals are met.

(2) The licence holder or a designated manager and any staff employed to care for the animals must have competence to identify the normal behaviour of the species for which they are caring and to recognise signs of, and take appropriate measures to mitigate or prevent, pain, suffering, injury, disease or abnormal behaviour.

(3) The licence holder must provide and ensure the implementation of a written training policy for all staff.

#### **5. – Suitable environment**

- (1) All areas, equipment and appliances to which the animals have access must present minimal risks of injury, illness and escape and must be constructed in materials that are robust, safe and durable, in a good state of repair and well maintained.
- (2) Animals must be kept at all times in an environment suitable to their species and condition (including health status and age) with respect to –
  - (a) their behavioural needs,
  - (b) its situation, space, air quality, cleanliness and temperature,
  - (c) the water quality (where relevant),
  - (d) noise levels,
  - (e) light levels,
  - (f) ventilation.
- (3) Staff must ensure that the animals are kept clean and comfortable.
- (4) Where appropriate for the species, a toileting area and opportunities for toileting must be provided.
- (5) Procedures must be in place to ensure accommodation and any equipment within it is cleaned as often as necessary and good hygiene standards are maintained and the accommodation must be capable of being thoroughly cleaned and disinfected.
- (6) The animals must be transported and handled in a manner (including for example in relation to housing, temperature, ventilation and frequency) that protects them from pain, suffering, injury and disease.
- (7) All the animals must be easily accessible to staff and for inspection and there must be sufficient light for the staff to work effectively and observe the animals.
- (8) All resources must be provided in a way (for example as regards. frequency, location and access points) that minimises competitive behaviour or the dominance of individual animals.
- (9) The animals must not be left unattended in any situation or for any period likely to cause them distress.

#### **9. – Protection from pain, suffering, injury and disease**

- (1) Written procedures must –
  - (a) be in place and implemented covering –
    - (i) feeding regimes,
    - (ii) cleaning regimes,
    - (iii) transportation,
    - (iv) the prevention of, and control of the spread of, disease,
    - (v) monitoring and ensuring the health and welfare of all the animals,
    - (vi) the death or escape of an animal (including the storage of carcasses);

(b) be in place covering the care of the animals following the suspension or revocation of the licence or during and following an emergency.

(2) All people responsible for the care of the animals must be made fully aware of these procedures.

.....

(4) All reasonable precautions must be taken to prevent and control the spread among the animals and people of infectious diseases, pathogens and parasites.

.....

(11) Cleaning products must be suitable, safe and effective against pathogens that pose a risk to the animals and must be used, stored and disposed of in accordance with the manufacturer's instructions and used in a way which prevents distress or suffering of the animals.

(12) No person may euthanase an animal except a veterinarian or a person who has been authorised by a veterinarian as competent for such purpose or –

(a) in the case of fish, a person who is competent for such purpose;

(b) in the case of horses, a person who is competent, and who holds a licence or certificate, for such purpose.

(13) All animals must be checked at least once daily and more regularly as necessary to check for any signs of pain, suffering, injury, disease or abnormal behaviour and vulnerable animals must be checked more frequently.

(14) Any signs of pain, suffering, injury, disease or abnormal behaviour must be recorded and the advice and further advice (if necessary) of a veterinarian (or in the case of fish, of an appropriately competent person) must be sought and followed.

12. Regulation 14 provides that the local authority must have regard to such guidance as may be issued by the Secretary of State.

13. The Secretary of State for DEFRA has issued relevant guidance titled “Selling Animals as Pets Licensing: Statutory Guidance for Local Authorities” this includes Part K reptiles and amphibians and Part L Fish:

14. The Appellant has a right of appeal against the Respondent’s decision pursuant to regulation 24 of the 2018 Regulations.

## **The Hearing**

### Preliminaries

15. The parties produced an email exchange. Within that exchange the appellant queried the value of Mr Moore's evidence as he was not the person who conducted the inspection and produced the report.
16. In preliminaries, I noted the email exchange. I queried with the respondent's representative the weight I could give to Mr Moore's statement on the basis that he had not conducted the report. The respondent's representative confirmed that Mr Moore was able to confirm whether the report reflected the contents of the councils records as completed by Ms Crowther. The respondent's representative confirmed that Mr Moore would be able to comment upon whether the conclusions drawn within the report were appropriate in light of the recordings of Ms Crowther. The respondent's representative accepted that Mr Moore could not comment in the event that there was a dispute as to whether the recordings of Ms Crowther were an accurate record of the investigation. In other words, Mr Moore would not be able to comment if there was a factual dispute as to the accuracy of the report as recorded by Ms Crowther.
17. I also asked the respondent's representative what weight should be attached to Ms Crowther's report given that she was not at the hearing to have the content of that report tested under cross-examination. Again, the respondent's representative acknowledged this issue. The respondent's representative did not seek an adjournment and could not give an indication of when Ms Crowther might be available. The respondent's representative confirmed that she was content to proceed notwithstanding the issues the tribunal had highlighted.
18. In light of the issues that I had highlighted and given that the Appellant would not be able to cross examine Ms Crowther upon the content of her report I asked the Appellant whether he was content to proceed. The appellant confirmed that he was content to proceed.

#### Witnesses and Submissions

19. I heard oral evidence from the Appellant and Mr Moore I heard oral submissions from the Respondent's representative and the Appellant. The oral evidence and submissions are fully recorded in the record of proceedings and have been considered.
20. In preliminaries I noted that the appellant had not provided a witness statement. I explained to the appellant that I had read his grounds of appeal which included a supporting document setting out the areas of challenge to the respondent's report. I confirmed that I had also read the appellant's reply to the respondent's response which again set out the appellant's position in relation to the elements of the report/decision that were in dispute. The appellant confirmed that he wished these documents to stand in lieu of a witness statement. Having confirmed that these documents were true and accurate the Appellant adopted both documents as

the Appellant's evidence in chief. I then gave the appellant the opportunity to tell the tribunal anything that he thought relevant that had not been included within those documents.

### Documents

21. I took care and time to ensure that all relevant documents were before the Tribunal. I informed the representatives of the documents that were held on the Tribunal file including the 513 page appeal bundle; animal welfare licence from Manchester City Council dated the 13 September, animal activity licence from Wyre Forest District Council issued to the appellant licensing the selling of animals as pets; and the email exchange referred to above.
22. Having done so the parties confirmed that all relevant documents were before the Tribunal. The representatives confirmed that they had received and had the opportunity to review each other's documents.
23. I have considered all the documentary evidence together with the written submissions prepared on behalf of the parties contained within the bundle and the oral submissions made at the hearing. However, I do not rehearse all the documentary evidence in detail but include in this decision and reasons such evidence as was relevant to my decision.

### The Respondent's Case

24. The Respondent's case as set out within the response and oral submissions can be summarised as follows:
  - a. the appellant has produced insufficient evidence to demonstrate the competence of the operator and staff;
  - b. the appellant has produced insufficient evidence to demonstrate adequate procedures and documentation/record-keeping;
  - c. The inspection revealed environmental failures;
  - d. Accordingly, the appellant has failed to demonstrate that he will comply with standard conditions 2, 4, 5 and 9.

### The Appellant's Case

25. The Appellants' case as set out within the grounds of appeal; reply and oral submissions can be summarised as follows:
  - a. The appellant has undertaken a number of academic courses and has been involved in the industry for decades. The Appellant is licenced for similar activities by other local authorities. In addition, staff have been appropriately trained and appropriate evidence of training has been produced. Accordingly, the appellant has demonstrated the competency of both the operator and staff.

- b. The appellant had produced, either before the inspection or shortly thereafter, sufficient evidence to demonstrate adequate procedures and documentation/record-keeping. The respondent's conclusion there had been contraventions in relation to procedures, documentation/record-keeping arose largely from the respondent adopting too onerous an approach, not understanding practices within the industry or not having sufficient understanding of the species concerned. Where the appellant accepted that there were potential deficiencies with procedure or documentation/record keeping these could easily be rectified and would be rectified by the appellant.
- c. The alleged environmental failures were on account of the respondent adopting too onerous approach; not understanding the species concerned or industry practices, were minor and will be rectified or have been rectified.
- d. The appellant should receive the same assistance as other business owners running similar operations. With this assistance the appellant will comply with licence conditions.
- e. Accordingly, the respondent was wrong to conclude that the appellant would not comply with conditions in particular conditions 2, 4,5 and 9.

## **Evidence and Findings**

### *Earlier Determination and History*

26. The appellant states that the earlier determination of Judge Ford should be ignored and this appeal should be considered on its merits.
27. It is trite law that a party should not be entitled to relitigate issues which have been conclusively determined by an earlier court or tribunal. However, the appeal before this tribunal is in relation to a separate application to that which was before Judge Ford. Albeit I accept, that the application was made shortly after Judge Ford's determination. Nonetheless there is evidence before this tribunal that was not before Judge Ford to include amended processes and procedures. Accordingly, I determine this appeal upon its own merits. Albeit, that past compliance is an indicator of future compliance.
28. I find that when the email exchanges, the report, the decision of Judge Ford and earlier refusals are considered as a whole it is clear that the appellant has received significant assistance, guidance and feedback as to what he is required to do to enable him to comply with licence conditions. Despite this, as set out in my findings below, the appellant has still failed to adequately deal with the alleged contraventions of licence conditions set out within the report. This history weighs against the appellant's claim that he will comply with licence conditions.

### *Treatment of the Report and Witness Evidence of Mr Moore*



29. The author of the inspection report did not attend the hearing to have her evidence tested under cross examination. I must consider this where there is a dispute of fact concerning the observations recorded within the report. In these circumstances the weight that I give to the report may be reduced. Where the dispute relates to the opinions or conclusions of the report I must consider the extent to which the opinion or conclusions is supported by external evidence.
30. The respondent has produced a witness statement from Daniel Moore, a senior officer. As set out above Mr Moore did not conduct the inspection or compile the report. Mr Moore is able to speak to the usual practice of an officer to include keeping detailed and contemporaneous notes and he can describe the processes and procedures of the respondent to include in relation to decision making. I place weight upon Mr Moore's evidence in this regard. However, Mr Moore is unable to speak to the factual accuracy of the report. Accordingly, in this regard, the weight I attach to Mr Moore's report is reduced

#### Grant of Licences by other Local Authorities

31. The appellant has produced animal licences from two local authorities. In particular a licence from Manchester City Council dated 13 September 2023 licensing the sale of animals as pets. The Appellant has been afforded a 2 star rating. The Appellant has also produced a licence from Wyre Forest District Council which came into force on 11 July 2023 licensing the sale of animals as pets. The Appellant has been awarded a 5 star rating. The licence authorises the sale of tropical and marine fish, axolotl and terrapin turtles. The Appellant asserts that other local authorities have considered the appellant's applications, processes, procedures and training requirements and are satisfied that he will comply with licence conditions which is indicative of compliance.
32. I accept that the grant of licences by other local authorities is evidence that those local authorities were satisfied with the appellant's application, inspection of other premises and are satisfied that he will comply with licence conditions. Accordingly, I give the licences some weight as corroborative evidence of the appellant's ability to comply with licence conditions particularly as the licence issued by Wyre Forest District Council is for a very similar activity. However, the appellant has not produced details of his application, the correspondence passing between him and the local authority, the documentation submitted with the relevant applications nor details of the inspection report in respect of those licences. In short the Tribunal does not know the procedural rigour that was applied when processing those applications. Accordingly, the weight that I give to the appellant holding similar licences issued by other local authorities is reduced.

#### Lack of Assistance

33. During his cross-examination of Mr Moore and in oral submissions the appellant questioned the level of assistance that he had received from the local authority. The appellant described the process as “having one shot” in the form of application to ensure that everything was in order. The tribunal asked Mr Moore whether other businesses of similar size to the appellant’s undertaking similar activities would be provided with advice and assistance. Under cross examination Mr Moore asserted that in the appellant’s case further advice and assistance would add little as detailed reports had been given on two occasions as to the issues that the appellant needed to rectify in order to obtain a licence and these issues has also been considered by Judge Ford in her determination.
34. Although not couched in these terms the appellant’s case in this regard is essentially that if he were afforded appropriate advice and assistance he would be able to comply with licence conditions. I do not agree. The appellant has made applications for a licence on at least two separate occasions. On each occasion there has been an inspection. On each occasion, following inspection, the appellant has been provided with a detailed written report. The reports were further considered by Judge Ford in her determination. When the current report is considered alongside the history of the appeal it is clear that the appellant has been given a significant amount of advice and guidance as to what is required to comply with licence conditions. I do not accept the appellant’s assertion that further advice and guidance should be provided by the local authority which will in turn enable the appellant to comply. The appellant should know from the report and earlier refusals and reports what is required.

#### The Appellant’s Approach

35. I find that the Appellant’s approach to alleged contraventions of licence conditions is to seek to minimise the alleged breach; to ignore the requirements for record keeping where he considers these unnecessary and ignore the need for evidencing the efficacy of procedures for the welfare of animals where he feels that his experience in the industry negate the need for external evidence. By way of example only:
- a. Within the appellant’s written submissions, he indicates that he feels that the concerns raised by the Respondent are either picky or tedious.
  - b. In relation to stock-take the appellant describes a procedure by which a stock-take could be undertaken and yet does not undertake a stock-take because the figures can be provided should they ever be required. In addition, the appellant fails to keep any record of the detail of training delivered to staff because he knows what he has told his staff.
  - c. The appellant asserts that axolotl do not need hiding places in addition to the grass trimmed shelf. There is no basis for this claim other than the appellant’s assertion. The appellant could have sought to bring forward reference materials from reputable sources to support this assertion. The Appellant does not but rather he invites the respondent and the tribunal to rely upon his assertion based upon his length of involvement in the industry.

36. The appellant's approach to regulation, described above, is indicative that he will not comply with licence conditions in the future.

Consideration of the Alleged Contravention of Licence Conditions

37. The legal test requires the tribunal to consider whether the appellant will comply with licence conditions. The tribunal has considered a selection of the alleged contraventions of licence conditions below.

Conditions 2 & 4 – Operator/Staff Training and Competence

38. The Respondent asserts that the Appellant cannot satisfy standard conditions 2 and 4 (Paragraphs 2 & 4 of Schedule 2 to the Regulations) . The Respondent asserts that staff knowledge and training has not been properly evidenced because:

- a. There is no evidence that staff have completed the OFQUAL level 2 qualification upon which the Appellant claims that they have been enrolled. In addition, the Respondent asserts that there was no documented training policy.
- b. The appellant's knowledge of the training policy in relation to the welfare of axolotl, terrapins and aquatic frogs was inadequate in that he assumed that the materials contained information that they did not.
- c. There is no evidence regarding training for the handling of terrapins and aquatic frogs. Similarly, there was no evidence of training and knowledge regarding animal behaviour which may affect welfare for terrapins aquatic frogs and axolotl.
- d. The appellant's business relied used OATA care sheets but the Appellant was unable to demonstrate that he understood and implemented the needs outlined in the care sheets.

39. The Appellant asserts that:

- a. At the time of inspection there were only two members of staff both of whom were very experienced.
- b. Written and signed training records were produced.
- c. Staff training was evident and the guidelines do not specify the quantity of training that is required.
- d. Staff members are enrolled upon OFQUAL level 2 and are engaged in the course at present.

- e. Training procedures in relation to the handling of terrapins and aquatic frogs were clarified and sent the same day as were relevant training procedures in relation to knowledge regarding animal behaviour of terrapins aquatic frogs and axolotl.
- f. The appellant disputes that there was a reliance on OATA sheets. The appellant states that the sheets detail long-term care and accordingly are not relevant in relation to retail premises where care will be short term until the animal is sold.

40. In oral evidence the appellant:

- a. confirmed that his staff had been enrolled in the OFQUAL level 2 course in January of this year;
- b. directed the tribunal to the training records of staff [page 459 onwards of the hearing bundle]. The appellant asserted that when the relevant documents were considered together with his expertise, which was drawn upon to deliver oral training to staff, this was sufficient evidence of training and competency. At the hearing I asked the appellant why he did not keep a record of training. I gave the appellant the example of keeping a written text or summary of what he had told the staff which he could produce to the Respondent. The appellant stated that he had not seen the need for that.

41. Mr Moore's oral evidence was that the appellant had produced inadequate evidence of processes and procedures. In addition, in part, the evidence of process and procedures relied upon by the Appellant had been provided after the date of the inspection and accordingly should be disregarded by the tribunal. Mr Moore referred to the notice of refusal dated 30 November 2023 . In particular paragraph 3 which provides that the day after the inspection the Appellant provided amended documentation which the appellant believed addressed the points raised at the inspection.

42. I find that the fact that procedures and processes were provided following the inspection but prior to the decision does not mean that they should be disregarded by the respondent or for that matter by the tribunal. The assessment required under the regulations is forward-looking. That is whether the appellant will comply with the conditions. In that regard evidence that the appellant has rectified concerns of the Respondent such that he will comply with conditions in the future is relevant to the tribunal's determination and I have considered the material submitted by the Appellant to the Tribunal after the date of the inspection.

43. There is no documentary evidence before me to suggest that the appellant's staff have completed OFQUAL level 2. There is no evidence before me to indicate that OFQUAL level 2 would provide the relevant expertise in the animals for which

they will be responsible. There is no indication of the modules that they have undertaken to date, results achieved or indeed their engagement with the course.

44. I find that the evidence of a training policy provided by the appellant is inadequate. At page 451 the staff training record simply provides a description for example fish behaviour (disruptive) the date is completed and a signature marked on the document. There is no evidence of what the training comprised, the expertise of the trainer or the resources upon which the trainer has drawn upon to deliver the training. The staff members have signed the operators procedures but there is no indication other than the signature that they have read and understood procedures, whether those procedures have been explained to them in detail personally by a person with appropriate expertise and whether the staff have been given an opportunity to ask questions. There is no indication of the training materials that are used to train staff.
45. The evidence in the bundle would indicate that the staff members are providing care to the animals at the premises. In light of my findings in relation to the qualifications of the staff and the deficiencies in the training records I find that the appellant has failed to demonstrate that he will comply with paragraph 4 of Schedule 2 (general conditions) that sufficient numbers of people who are competent must be available to provide a level of care that ensures that the welfare needs of all the animals are met. In addition, for the reasons set out above I find that the evidence that the appellant has produced of a training policy is inadequate.
46. For all of the reasons set out above, I find that the Appellant has failed to demonstrate compliance with conditions 2 and 4 of the standard conditions. For the avoidance of doubt, I repeat that the issues considered above are merely a sample of the contraventions alleged by the Respondent.

Condition 9 – Procedures and Documentation

47. The Respondent asserts that the losses book was an academic diary which ran until 31 July 2023. The inspection was carried out on 11 September 2023. The respondent asserts that the appellant was not aware the book was no longer being used nor whether there was a procedure for recording losses in lieu of this book. The appellant asserts that the business uses a diary to record losses and that he could only obtain a half year diary at the point in the calendar year that the diary was obtained. In addition, the appellant asserts that stock losses were minimal. The appellant asserts that the front of the unused area of the diary was used and the date written in manually. The implication being that the losses record was up to date. In oral evidence the appellant accepted that he had not produced the losses book. In oral evidence the appellant asserted that the book was available and recorded the relevant losses. The weight that I attached to the report of Kirsty Crowther in respect of the losses record is reduced because she was not at the hearing to have her evidence/the report tested under cross examination. However, that said Daniel Moore has provided evidence to confirm that the report

corresponds with the records of the council and I accept that as an investigating officer she would have made contemporary and contemporaneous notes at the time of the investigation. Accordingly, I do place some weight upon the report. In contrast, the appellant has known of the respondent's concerns in respect of the losses book for some significant period. Notwithstanding this the appellant has not produced the losses book in evidence. This can be contrasted with the appellant's approach to other areas such as his policies and procedures where he has amended the same and produce the same to both the respondent and the tribunal. Against this background, I find that the absence of the losses book where it can be reasonably expected without reasonable explanation for its absence undermines the appellant's assertions that losses were appropriately recorded in a losses book. Accordingly, on the evidence before me, I find that the appellant has failed to demonstrate that he adequately records losses. I find that the appellant's failure to demonstrate that he adequately records losses is significant as any regulator can legitimately expect to see these figures as these records are potentially relevant to the welfare of animals in the care of the operator.

48. The respondent asserts that the register of animals was inadequate. Stock numbers were not known and accordingly mortality rates in a 24 hour period could not be calculated. The appellant's position is that, whilst it is difficult to count fish numbers (small and highly mobile), it is possible to stock-take as stock is recorded with incoming invoices and losses are also recorded. As such is simply a matter of arithmetic to provide stock numbers. The tribunal asked why this was not carried out and recorded. The appellant stated that it could be done in the future. There are instances throughout the bundle where the appellant states that he considers that the regulatory regime as applied by the respondent to be disproportionate to small business owners, he considers regulatory points taken by the respondent either to be unnecessary or to be picky. I find that the appellant's approach is indicative that where he considers the regulatory requirements to be unnecessary or disproportionate to his business he will ignore such requirements. Accordingly, on this basis I place little weight upon the appellant's assertion that stock-take will be conducted in the future. I find that this is significant because stock take is part of the process through which mortality rates can be calculated which again is important to the regulation of animal welfare.
49. The respondent notes the Appellant's procedures for cleaning rocks and decor with 25 mL of Domestos within 10 L of warm water. The respondent asserts that there is no evidence of the efficacy of this dilution rate. The appellant has responded stating that he doesn't "see the problem". Domestos does not have any detrimental additives, has been used in the trade for years, the dilution rate is known to the appellant has been proven to work and "there doesn't need to be a book written on it. More pedantic behaviour by the investigating officer". Contrary to what is said by the appellant it is for the appellant to demonstrate his processes and procedures are not harmful to the welfare of the animals. Whilst I accept that the concentration is very low when considered against the dilution rate, it is for the appellant to demonstrate that his processes and procedures will maintain the welfare of the

animals. The appellant's approach that he has been in the trade for many years and so the regulator must take his word that this process and procedure is acceptable is insufficient. The appellant must either demonstrate these practices and procedures are recognised by the industry or alternatively adopt processes that are so recognised. Against this background the appellant has failed to demonstrate that he has appropriate procedures in place for cleaning items which form part of the animal's environment.

50. The Respondent asserts that in relation to terrapins the information was a general summary of their feeding needs rather than specific details of their feeding regime. In addition, the feeding procedure for axolotl aquatic frog referred to frozen bloodworm. The OATTA recommended larger items such as prawns, mussels and cockles supplemented by specialist prepared pellets. Accordingly, the inspector was not satisfied that the axolotl was receiving a balanced diet. The appellant's response to terrapins is that "staff are credited with a certain amount of common sense. The procedures determine what the turtles eat and staff will feed accordingly". I find that the procedure is deficient. In respect of terrapins, whilst the procedures identified diet they do not include any information as to the frequency or quantity of feeding. I do not accept appellant's assertion that this could simply be determined by staff applying their common sense, specialist expertise is required. In respect of axolotl the appellant acknowledges that larger animals are fed larger food items. The appellant states that they do not have larger animals often but acknowledges that he will amend the procedures and processes document to include a feeding regime. The appellant stated that he considered this to be a minor detail. I find that the process and procedures in relation to terrapins and axolotl are deficient. I do not agree with the appellant that these elements are minor detail. The type of food, frequency of feeding and quantity of feeding in relation to animals is at the core of their welfare.
51. For all of the reasons set out above, I find that the Appellant has failed to demonstrate compliance with condition 9 of the standard conditions. For the avoidance of doubt, I repeat that the issues considered above are merely a sample of the contraventions alleged by the Respondent.

#### Condition 5 – Suitable Environment

52. The respondent has produced statutory guidance titled "selling animals as pets licensing: statutory guidance for local authorities". The guidance provides, amongst other things, "where applicable a minimum of two hides or sheltered areas must be provided and located in different areas of the thermal gradient)". Species requiring UV lighting must have appropriate UVB emitting lamps manufactured for use with reptiles and amphibians. Upon installation of a new lamp a UV metre must be used to ensure adequate and appropriate UVB levels are provided at a level that the animal is located. Animals must have access to areas of shade so they can escape from the light if desired. In addition, whilst in relation to ambient and basking

temperatures the guidance states “licence holders and staff must have access to relevant credible reference material for normal environmental parameters “.

53. The respondent asserts that there was no adequate hide for the axolotl. The appellant states “that’s rubbish”. “Axolotl do not need holes and caves to hide. I built a tank with an overhang and without a light above the tank. That was more than adequate as a hiding/shelter place. Whilst the inspector was there I placed a large piece of black piping in the tank and the axolotl would not go near it. I took it out a week later.”. The appellant goes on to state that in relation to the terrapins he uses a new UV bulb and basking lamp and the turtles are only in stock for a few months of the year and manufacturers recommend changing the bulbs after six months use as they deteriorate.
54. On the evidence before me I find that the guidance recommends hides for amphibians which will include axolotl. If axolotl are a special case where hides are not required it is for the appellant to produce reference material from reputable sources to support this. Mere assertion is insufficient.
55. In addition, guidance requires that UV levels are appropriate at the level that the animal is located and that hides are required. The appellant states that turtles don’t require hides as they have shells for protection. However, if that is indeed the case then, again, it is for the appellant to provide appropriate reference material from reputable sources which he has not. In addition, the Appellant accepted that he did not have a UV meter.
56. The guidance requires that systems must be in place to allow assessment of a range of temperatures over a 24-hour period. The guidance states that this can be done using a maximum/minimum thermometer. There is no evidence to suggest that the appellant has any capability to record maximum and minimum temperatures over a 24 hour period. The appellant accepts that axolotl were kept at room temperature so they may become too hot in the summer but if this happens they will be kept in the cold room. However, the appellant has provided no evidence to suggest how room temperature would be monitored throughout the day and the appellant accepted that on the day of inspection the room temperature was at 23° which is over the recommended temperature range for axolotl and yet the axolotl had not been moved to the cold room.
57. The respondent asserts that the netting present for the pond tanks to prevent fish jumping from the tank was not in use at the time of inspection. The respondent asserts that when the appellant was asked about the nets the appellant stated he did not know why they were not in place and proceeded to cover the tanks. The appellant in his reply to the response states that the tanks are covered when the shop is closed and rolled back when the shop is open. In the daytime if the fish would jump out the staff would see it and would put the fish back. Under cross examination the appellant again confirmed that netting would be unrolled in the daytime but covered at night time. The appellant was asked what would happen if



a fish should jump out . The appellant stated that this would be seen and would be a rare event. The appellant was asked how long a fish would remain out of the water once it jumped out of the tank. The appellant stated that this would be seen immediately and the fish would be replaced. The appellant, when pressed confirmed that the fish would be replaced within minutes. I find that the appellant's practice of removing coverings in the day is such that there is the potential for fish to jump from the tank such that it cannot be said that the areas to which the animals have access present a minimal risk of escape.

58. For all of the reasons set out above, I find that the Appellant has failed to demonstrate compliance with condition 5 of the standard conditions. For the avoidance of doubt, I repeat that the above is merely a sample of the contraventions alleged by the Respondent.

### **Application of the Law to my Findings**

59. On the basis of my findings above the Appellant has failed to demonstrate that he will meet licence conditions as per Regulation 4. I accept that the appellant has been issued similar licences by other local authorities. I accept that this weighs in favour of the appellant's assertion that he will comply with licence conditions. However, for the reasons set out above, the weight that I afford to the issue of these licences as corroborative evidence of the appellant's ability to comply with conditions is reduced. For the reasons set out above, I have found against the appellant's assertion that the local authority should provide further advice and assistance which would enable him to comply with licence conditions. I have found that the appellant has been given significant advice and guidance across two reports and a decision and reasons of the Tribunal. Despite this significant advice and assistance, the appellant is still unable to demonstrate that his operation complies with conditions 2, 4, 5 and 9. In addition, I have found that the appellant's approach to regulation is indicative that he will not comply with regulations in the future. For these reasons I find, on the balance of probabilities, that the Appellant has failed to demonstrate that he will meet licence conditions as per Regulation 4 of the Regulations and for all these reasons the appeal is dismissed.

Signed



Judge Wilson

Date: 25 June 2024

Judge of the First-tier Tribunal

Promulgated on: 25 June 2024