



**NCN: [2023] UKFTT 00445 (GRC)**  
**Appeal number: WA/2022/0032**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
ANIMAL WELFARE**

**Nigel Cox**

**Appellant**

**- and -**

**Oldham Council**

**Respondent**

**TRIBUNAL: JUDGE FORD**

**Sitting by CVP on 11 May 2023**

**The Appellant was in person  
The Respondent was represented by Ms Rawat solicitor**

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## DECISION

1. The appeal is dismissed. The Respondent's decision is confirmed.
2. This appeal is against a decision of Oldham Council dated 23 November 2022 to refuse the appellant's application for a licence to sell Tropical fish, coldwater fish, aquatic frogs and turtles/terrapins to members of the public under the trading name "Fishworld".
3. The appellant has run various pet shop businesses since the early 1980s. When he applied for the licence in question he was running two businesses from the same premises, an aquatic wholesale supplies business from the first floor of the building and "Fishworld" from the ground floor.
4. In 2019 Fishworld had been granted a one star licence by the Council. The proprietor, Mr Nigel Cox applied in time for a renewal of that licence. Following an inspection by J Garforth, Trading standards officer, that application was refused and the appellant's licence expired. There was no appeal against that refusal. The Appellant made a fresh licence application on 5 September 2022.
5. He was advised that he had used the incorrect application form and he then supplied the correct form. On 29 September 2022, Fishworld was inspected by Ms. K Crowther, Principal trading standards officer. She is an individual suitably qualified for conducting a licensing inspection under the Animal Welfare Act 2006.
6. In a letter dated 23 November 2022 the appellant was informed that his application for a licence to sell animals as pets had been refused under the Animal Welfare (licensing of activities involving animals) regulations 2018.
7. The reasons for the refusal of the application were set out in summary as:-
  - (1) failure to demonstrate the competence of the operator and staff as outlined in the various training and CPD requirements
  - (2) inadequate procedures, documentation and record keeping
  - (3) an aborted fish sale whilst the operator was without a licence which was said to link to inadequate training and the meeting of licence conditions
  - (4) welfare breaches relating to goldfish in the cellar
8. Ms Crowther prepared a detailed report following her inspection which was made available to the appellant. Without repeating all of the detail in that report, Ms Crowther noted that the appellant had been pointed to relevant guidance to assist him in making his licence application, and he had been provided with the reasons for concerns about his operation expressed by Mr Garforth in his earlier inspection report. But he was informed that significant concerns remained following her inspection.

9. One of the concerns was the inadequacies in the evidence provided of staff training undertaken and of CPD (continuous practice development) in order to demonstrate that staff were trained and competent covering the matters in the licence conditions. Whilst it was acknowledged there had been an attempt to produce written procedures which would have addressed some of these matters, the information recorded was found to be inaccurate or incomplete in most instances.

10. There was no training policy in place. There were no annual appraisals in place. Whilst an attempt had been made to demonstrate some continuous practice development under a document titled “appraisals”, in some instances the notes were insufficiently detailed to determine what specific training was delivered, the records were not signed by the employees but only by the Appellant, they named only the appellant and the two full-time members of staff (missing out a number of staff and volunteers) and in relation to handling, the procedure on which staff had been trained had not been recorded. The net effect was that the procedure was incomplete and out of date in relation to handling practices to be used by staff members.

11. Concern was expressed in relation to axolotl which were kept in a well-lit tank. The appellant provided the inspector with a care sheet suggesting that low-level lighting was suitable for the species. While Ms Crowther is not an expert on axolotls she questioned why the lighting in the tank was at odds with the level of lighting specified in the care sheet provided to her by the Appellant. The records did not specify any care requirements for the species apart from the feed material to be used for them. This care sheet in question was one that was given to customers to guide them on the care of axolotls they had bought. It was not designed for staff in a pet shop to use and Ms Crowther was concerned that it was being used for a purpose for which it was not intended.

12. Although Ms. Crowther recorded that an attempt had been made to produce some procedures for staff and volunteers to follow in caring for the animals/fish, she considered the records to be insufficiently detailed and in some cases inaccurate and incomplete with some contradictory information. She gave the example of the cleaning procedures that referred to filter beds being cleaned every year. On discussion with the appellant, he was advised that they should state monthly. He does not dispute that this is the correct interval for checks to be conducted. But there was no written record of staff being trained to apply the correct procedures and the written procedures supplied to Ms Crowther were incorrect in the guidance they contained.

13. There was concern that the appellant was relying on third-party information without consideration as to its suitability, completeness or reliability. The example given by Ms Crowther referred to the clawed frog care sheets. Those care sheets referred to feeder fish being used. If this practice were followed, it would amount to a breach of the animal welfare regulations. The appellant made it clear that no live feeder fish were used, but that left the inspector concerned once again that staff were being provided with care sheets that included incorrect information. Although there were no clawed frogs present at the time of the inspection, Ms Crowther remained concerned that incorrect information had been recorded in the care documents.

14. Ms Crowther was concerned about over reliance on third-party information without consideration of its suitability across the health and safety documents submitted with the application. Information was recorded in the documents that was inaccurate, for example, there were references to there being work instructions for all operations but the appellant confirmed that these did not exist. There was reference to trips and falls relating to the Ray pool and model boat pool, neither of which was present in the business.

15. Documents were included without context on topics such as an OATA course topic overview, a PDF document on Fish TB, and a document about aquarium risks.

16. The H&S risk assessment referred to PAT testing being carried out by the appellant on 30/5/22. But the appellant confirmed that this had not yet been done. The inspector was concerned about the reliability of the information recorded in the documents provided.

17. Another omission was in relation to the recording of water quality checks. This was an issue raised in the earlier inspection in 2022 conducted by Mr Garforth and the situation had not been rectified.

18. At the time of Ms Crowther's inspection, the business was without a licence. This was because the previous licence had expired and the Appellant did not appeal against the earlier refusal of his application for a licence following the inspection by Mr Garforth.

19. While Ms Crowther's inspection was taking place, she observed a member of staff on the point of ringing up a sale of fish, an activity for which the business was not licenced at that time. When the appellant observed what was happening, he immediately challenged the member of staff and stopped the sale. But the concern remained that steps had not been taken to ensure that staff were aware that no such sales could take place unless and until a licence for that activity was secured by the business. The appellant appeared exasperated with the member of staff and referred to the member of staff concerned as being relatively new, inexperienced, young, and making a mistake. He said that the member of staff had not been working there for long. But he had been working there since his training in June 2022. Ms Crowther formed the view that given that the member of staff had started working in the business full-time from June 22 onwards, he should have had sufficient training by the time of the inspection in late September, to ensure that such mistakes did not occur.

20. During the inspection Ms Crowther asked to see the electric supply which was located in the basement of the building. When she and the appellant entered the basement, there was no light, and the basement was in total darkness. When the light was turned on, she observed a tank with fish in it. When she asked the appellant about these fish, it was apparent that he did not know that they were there. He said that his assistant manager "Dawn" was responsible for putting them there and for caring for them. The appellant said that the fish did not belong to Fishworld but to the related business operating from the first floor section of the same building.

21. Ms Crowther was concerned for the welfare of these fish given that they seemed to be kept for much of the time in conditions of complete darkness without regard for their normal light cycles.
22. Ms Crowther was concerned that the appellant was not taking such steps as were reasonable in all the circumstances to ensure that the needs of the fish for which he was responsible were being met and to the extent required by good practice. She was left in the position of not knowing the period during which the fish had been left without light. She was concerned that as the operator of the business Fishworld and of the upstairs business in the same premises, the appellant had no knowledge of the fish even being there and whether their needs were being met.
23. Ms Crowther was concerned that important records were not being maintained in any comprehensive way (for example treatment administered to fish for fungal issues).
24. The inspection report sets out in considerable detail the general conditions and specific conditions that were met and that were the subject of concern.
25. Included in the appeal bundle is an email dated 13 September 2022 from Ms Crowther to the appellant in which she sets out in considerable detail (with relevant hyperlinks), the requirements to be met by the business in order to secure the licence sought. This document which can be found at page 124 of the stitched bundle includes considerable detail to assist the appellant in meeting the requirements. The email ends with a reminder that given the refusal of the appellant's previous licence application, he is not permitted to operate in the intervening period until inspected and until a licence is granted and issued. He is reminded that it is a criminal offence under the Animal Welfare Act 2006 to carry on the licensable activity without the required licence in place. This email was sent just over 2 weeks before the inspection took place.

## **REASONS**

### *A: Background to Appeal*

26. In his Notice of appeal the Appellant states that,

“since the new very lengthy and complex regulations have been implemented around 2018, the Council's guidance State (SIC) they are to help shops to meet the standards, see attached applying for a new pet shop licence-requirements for a pet shop licence.

The first inspection this year (2022) was conducted by Mr Garforth who came and spent several hours with me at Fishworld. He went away to review the findings. In the meantime I address the issues he raised such as a swelled wooden floor causing a trip hazard, fixed the same day, and insufficient fire extinguishers, sorted within 3 days when the new ones arrived etc. he called in again a few weeks later and took pictures without saying anything. I was waiting for him to check the improvements I had made and tell me what else I

needed to do, if anything, as is the normal routine with over 100 pet shop licences I have had in the past 40 years, at various shops I have had, and still have.

I never had any communication, then 3 months later I was devastated to receive a refusal notice and a lengthy report, some 60 pages plus. I was never offered any help or assistance. I spoke to Mr Crabtree the Director of licensing, and it was decided that the best way forward was to reapply, obviously that this cost another £321.

I went over the report I had received from Mr Garforth, many of the points I did not agree with and many had been sorted but he never came back to see, and I rectified the necessary items. This was contained in the information I submitted for the recent application/inspection”.

27. Turning to Ms Crowther’s inspection on 29 September, the appellant responded to the points made in the notice of decision dated 25 November as follows,

*(1) The appellant stated that he has a small aquatic shop with 2 full-time and 2 part-time staff. He said he had implemented regular meetings to train staff in various areas such as lighting, heating, setting up a new aquarium etc., to complement and go over their existing knowledge. He said he provided evidence of this in the paperwork and Ms Crowther had commented on the topics he intended to cover with staff in future sessions. He said that a comment was made about the lack of a signature which was on the hard pop copies but not on the templates that he emailed at the start of the process. He said he could have produced them if asked and that this demonstrates a lack of communication after the inspection. In relation to the axolotl, he asserted that they are not salamanders and that no tank size or stocking levels are included in the guidelines. Care sheets refer to tanks of 100 L (this should be 110 L). He does not deny that the tanks were under one hundred litres in size but said that “we are only keeping young ones about 6-8 cm for a relatively short time while being sold. They are weightless in water and don’t rely on walking, they tend to swim or paddle even though they have 4 arms/legs. The tank light they were in was not too bright, it was a 3000 K warm white light, with planned coverage. This range of the spectrum is not seen so well by aquatic creatures as the water filters out the lower red end of the spectrum. They like cool water which never reaches high or low extremes in the shop”.*

*(2) Since the previous inspection I have introduced 3 day per page diaries, one for sales, one for debts, one for daily activities, such as treatments of fish health notes. Since I wasn’t trading livestock, I cannot keep all of the records. I also keep records of extensive water testing on the PC. Other records and procedures are attached as sent with the application in September. Again, I need to be told what is expected if this is not adequate. The information about feeding feeder fish to clawed frogs is from an American care sheet, so I have now replaced it with one from OATA. PAT testing has now been done, again that was criticized because it was done “in house” which is acceptable, as I have the equipment and a competent person.*

(3) *A new member of staff almost sold a fish on the inspection day. I don't think that's relevant to holding a pet licence. It never happened and what's the point of training staff if the staff are supposed to know everything from day one?*

(4) *Six 7cm goldfish were discovered in a large well aerated and filtered 300 L palmtop in the basement, when the electric consumer unit was inspected. This was not part of the Fishworld shop which the licence was pertaining to. Just because the lights were not on, it was blown up out of all proportion. They were not always kept in the dark. Fish live in deep water without light penetration, green algae thick water in pond, muddy waters where light does not penetrate. I could just as easily jump to conclusions and say they keep refusing my licence just to gain extra money for reapplication fees". The appellant goes on to say that the comments and paperwork was unnecessarily detailed and intense. He has two other similar aquatic stores in different areas. He said he holds licences at the stores with the same or less information and procedures etc., one has a 5 star rating in Worcestershire.*

*B: The Law*

28. The Appellant's application was for a licence to sell Tropical fish, coldwater fish, aquatic frogs and turtles/terrapins to members of the public under the trading name "Fishworld". It was considered under the Animal welfare (licensing of activities involving animals) (England) regulations 2018.

29. Under the procedural guidance issued to local authorities dated October 2018, consideration must be given to the inspector's report and any comments or conduct made by the applicant when a licensing authority is deciding whether or not to approve a new licence application.

30. The licensing authority must refuse to grant a licence if it thinks that the applicant is not capable of meeting their licence conditions or thinks that granting a licence might negatively affect the welfare, health or safety of the animals involved in the activity.

31. A licence may be refused if the accommodation, staffing or management are inadequate for the animals' well-being or for the activity or establishment to be run properly.

32. The relevant guidance documents for the activity explains in detail the requirements and conditions that must be met, and every applicant is advised to have regard to these documents. An applicant can also be refused a licence if they have been disqualified from holding a licence under schedule 8 of the regulations.

33. The licensing authority is not obliged to accede to all requests for re-inspections. The guidance states that if the case made by the business is not substantiated or insufficient evidence is provided, the local authority can refuse to undertake a re-inspection on that basis. It must explain why the request is being refused at that stage.

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34. This is an appeal under Regulation 24 of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. Under that section;-

“24.—(1) Any operator who is aggrieved by a decision by a local authority—

(a) to refuse to grant or renew a licence, or

(b) to revoke or vary a licence,

may appeal to the First-tier Tribunal.

(2) The period within which an operator may bring such an appeal is 28 days beginning with the day following the date of the decision.

(3) The First-tier Tribunal may on application and until the appeal is determined or withdrawn—

(a) in the case of a decision to refuse to renew a licence, permit a licence holder to continue to carry on a licensable activity or any part of it subject to the licence conditions, or

(b) suspend a revocation or variation under regulation 15.

(4) On appeal, the First-tier Tribunal may overturn or confirm the local authority’s decision, with or without modification”.

*C: Evidence*

35. The appeal was heard by way of CVP. There were some connection issues but these were resolved to everyone’s satisfaction and the hearing proceeded to conclusion. I ensured that everyone had copies of the relevant papers before starting the hearing including ensuring that the appellant had a copy of the full inspection report. He confirmed that he had received it in full and had read it prior to the hearing.

36. I heard evidence from the appellant and from Ms Crowther before hearing submissions and reserving my decision. Part way through the hearing the respondent’s representative referred to a supplementary bundle that had been sent to the Tribunal a couple of days before the hearing but not uploaded onto Teams. As it had not been uploaded, I had not seen this bundle and was not aware of it’s being sent. Having been sent this bundle and having had the opportunity to read through it, I expressed the view that the relevance of it was questionable. The respondent’s position was that given the allegation made by the appellant that he was being unfairly targeted and that the respondent’s practices were not in line with those of other councils, the respondent had decided to file further evidence on this issue. The appellant had already been late in filing his evidence and consequently there had been delay in this matter coming to hearing. But I did not consider the material included in the supplementary bundle relevant to the matters I had to determine in this appeal and having indicated this to



the respondent, the respondent's representative told me that they accepted the indication.

37. Ms Crowther told me that the documents she had seen referred to the appellant, to Dawn, the assistant manager and to Jack in terms of training, but there was no reference to other members of staff in the business. There are several other part-time members of staff including volunteers and young people working after school.

38. Her concerns about the axolotls included concerns about the directions given to staff about feeding. The directions cover the type of food to be given but not the quantity. The care sheet provided to her by the Appellant referenced feeding them live fish although that is not advocated in the UK. She said the care sheet was not from a reputable source.

39. The appellant asked why questions were being raised in relation to axolotls when he had not applied for a licence for axolotls. But he did not explain why he was keeping axolotls on the premises if he neither had a licence for them, nor was he applying for a licence for them.

40. Ms Crowther said that the 110 L tank requirement was a requirement regardless of the size or age of the stock. This was accepted by the appellant, and he did not dispute that the tank he was keeping them in was too small.

41. Ms Crowther was concerned that frozen blocks of bloodworms were being crushed and put straight into the tank with the fish, which was inappropriate. No instructions had been provided for staff in relation to the preparation of the bloodworms. Attempts at setting up procedures within the documentation had not been cross-referenced. There were inconsistencies and gaps in the information included in the documents with regard to the sources of the fish, whether new arrivals or older stock and they were being put in the same tank running the risk of cross infection. In relation to feeding the fish, she found instructions as to the duration of feeding but insufficient detail as to the method of feeding. Dried food was being fed to the fish that was not stored in the original containers. She found that cold water fish pellets were being kept in a container marked "Koi pellets".

42. Ms Crowther came across a document in the papers provided to her that appeared to be a safeguarding of vulnerable people document from Boots. But she acknowledged that she had not actually pointed this out to the Appellant thereby giving him the opportunity to remove this document.

43. There was a concern that procedures and instructions were being delivered verbally to staff rather than recorded in writing for reference and training. The instructions were not fully documented and therefore the staff could not be shown to a fully understood the key activities. She acknowledged that there was an attempt to address some of the matters raised in Mr Garforth's inspection, but she was concerned that not enough had been done to meet valid and genuine concerns regarding the welfare of the animals/fish in the appellant's care.

44. In relation to the aborted sale by Jack, Ms Crowther accepted that the appellant was exasperated when he observed Jack moving to ring up that sale, but she questioned why it was possible for the situation to get that far. She said that it led her to question the level of supervision and training of that member of staff. The fish had been bagged up ready for sale. The Appellant said he had made it clear to staff that no such sales should be taking place. She said that if this were true then she questioned the competence and ability of that member of staff to follow instructions. She said there was no licence in place to sell those fish and so it should not have been an issue. The appellant's explanation that Jack had not been working in the business for long, was not accepted because he had been working there since June. She was told that he had been trained in June.

45. When the appellant put it to her that the fish observed in the basement did not belong to Fishworld and therefore were irrelevant, Ms Crowther did not accept this. I noted that the appellant had not produced any evidence to establish that the fish were owned by the business he operates from the first floor of the same premises. Nor did he call Dawn as a witness to establish that she was solely responsible for the fish being there. Ms Crowther was concerned that the natural light cycles of the fish were not being met because when they went into the basement the lights were turned off, rather than not working. She recalled the appellant turning the lights on, and it was then that she saw the fish in the tank. The appellant rejected any criticism of fish being kept in unsuitable light conditions on the basis he sets out in his notice of appeal. But Ms Crowther pointed out that goldfish are not river fish, they are fancy fish, and the appellant's explanation was not a good one. She referred to the statutory guidance, condition 5, stipulating that fish must be maintained on an appropriate photoperiod day and night.

46. She accepted in cross-examination that the appellant told her the guidance sheet was for customer use in the long term and not for the shop. But she said that the care sheet she was given was the only one available and there was nothing else to indicate any dissemination of knowledge of the care the axolotls needed while they were in the shop. She accepted that there were no specific statutory guidelines for the care of axolotls.

47. The appellant challenged Ms Crowther as to why she had not given him the opportunity to address any of her concerns as identified and highlighted in her inspection before refusing his licence application. She responded that it was not her job as an inspector to do this. But she also referred to her lengthy email sent out before the inspection that included various hyperlinks referring the appellant to the statutory guidance in asking him to review and read the general and specific conditions and her expectations regarding the monitoring of the health and welfare of animals in his shop. She had in fact given him advice and assistance prior to her inspection. The appellant complained that the procedures set out were very prescriptive and detailed and that he had been given no help in achieving them.

48. Ms Crowther was concerned that even when species specific requirements were set out in the guidance supplied to the appellant, they were not met, for example as to the distribution of fish food during feeding. The appellant had recorded the duration

but nothing else. She was challenged as to the number of pet shop licences the respondent had issued in the Oldham area. The appellant put it to her that there were lots of shops in the Oldham area operating without a licence. But she had looked into the three examples he had given, and one business had a licence, one had ceased trading and the third had applied for a licence and that application was still pending.

49. In his evidence the Appellant made it clear that he felt aggrieved that he had not received assistance from the Respondent in securing the licence, had not been helped to remedy any concerns, the efforts he had made had not been acknowledged and the application had been refused without giving him the opportunity to address any remaining concerns. He believed that the Respondent had already made up its mind before the inspection to refuse his application. He complained of procedures being overly complicated and instructions too detailed and said that other Councils were behaving differently.

### Findings

50. When the 2018 Regulations came into force, they represented a significant change in the way in which Animal welfare was regulated in England. The Appellant has run his pet shop businesses for some 40 years and has found it difficult to accept that he must now meet a new, complex and detailed framework of requirements for different aspects of his business including staff training, procedures and competences.

51. The same regulations apply to all pet shop businesses in England and the Appellant is not being singled out for harsh treatment. There was a transition period after the Regulations were first introduced when Councils gave business proprietors a lot of assistance and indeed the Appellant was alerted to the need for improvements in the way that he was running his pet shop business prior to the next inspection in 2022, by the one star rating he was given in 2019.

52. The licence came up for renewal in 2022 and the initial inspection carried out by Mr Garforth resulted in refusal of his renewal application. The licence then expired before he made his next application which was consequently not treated as a renewal but as a fresh application. There was nothing untoward about this. The Appellant had the opportunity to rectify the issues identified by Mr Garforth in his inspection report. Unfortunately, when Ms Crowther inspected on 29 September 2022, significant concerns remained. The Appellant expected her to tell him exactly what needed to be done and then to return and see what he had done to meet her concerns before issuing him with a licence. This represents a fundamental misunderstanding of the way the system now works.

53. If a licence for a pet shop is refused following an inspection the Local authority as the licensing authority, is not obliged to do a second check to see if the concerns expressed have been addressed before making the decision on the licence application. The Local authority is not obliged to carry out a re-inspection even if one is requested and paid for. There was no such request in this case.

54. Turning to the concerns of Ms Crowther I find the following matters have been proven on the balance of probability,

- a) failure to demonstrate the competence of the operator and staff as outlined in the various training and CPD requirements. The Appellant failed to demonstrate that he had put in place adequate training, adequate operating instructions and procedures and adequate checks to ensure that the welfare requirements of animals/fish/axolotl in his care and in the care of members of staff and volunteers in the business were being met. Ms Crowther recorded genuine valid concerns in her report on such matters as the instructions given to staff and volunteers as to feeding, the maintenance of appropriate lighting for axolotls and for fish in the basement of the premises, feed being kept in an incorrectly labelled container, frozen block of mealworms being crushed and added directly into fish tanks, axolotls being kept in a tank that was too small, inadequate instructions for staff as to the way in which animals and fish in the care of Fishworld should be fed, and the use of care sheets stipulating the feeding of live fish. The Appellant's response has been that he delivered training verbally to staff on all necessary aspects of care and the training he had given was not all recorded. Care sheets that were considered inappropriate were not meant for staff members but were given to customers for after care of the animals and fish they had purchased. This does not make the situation any better as there was still a failure to demonstrate that Fishworld was caring adequately for the animals and fish in their care. The Appellant acknowledged that some of the documents supplied to Ms Crowther included incorrect information such as the feeding of live fish to clawed frogs which would amount to a criminal offence. Ms Crowther was rightly concerned that the documentation provided to her by the Appellant included unreliable, misleading and incorrect information
- b) inadequate procedures, documentation and record keeping. In addition to the concerns expressed by Ms Crowther relating to her own inspection, she found that concerns expressed by Mr Garforth in his inspection report only a few months earlier, had not been addressed (the recording of water quality checks)
- c) an aborted fish sale whilst the operator was without a licence which was said to link to inadequate training and the meeting of licence conditions. The Appellant argues that the sale did not go through and therefore this should not have been a ground for refusal. He also argues that he was not seeking a licence to sell axolotls and therefore Ms Crowther should not have been inspecting them.
  - i) in relation to the aborted sale, I accept as valid. the concern of Ms Crowther that the Appellant had not taken steps in terms of staff training, instruction and supervision, to ensure that no staff member (in particular a full time member of staff) could sell fish to a customer when there was no licence in place to do so. Jack was not a particularly new member of staff. He had been working in the business full time for three months by the time of the inspection. The Appellant had trained him in June 2022. There were

apparently no written instructions to staff at the till or anywhere else directing them not to sell fish to customers

- ii) in relation to the axolotls, I question why the Appellant was keeping axolotls on the premises and selling them from those premises if he did not hold, and nor was he applying for, a licence to sell axolotls. It is no answer to the welfare concerns about the care of those axolotls, that he did not have a licence for them and was not seeking one. Why were they there and why were they being offered for sale? If Fishworld held axolotls out for sale, then Fishworld was responsible for caring for them. I find that the size of the tank in which the axolotls were being kept was too small. I am not satisfied that the lighting being used in the axolotl tank was too bright as Ms Crowther did not claim to have any expertise on the species and there was no objective evidence to establish what type and level of light would be appropriate for the axolotls.
- d) The Appellant argues that the goldfish found to be in a tank in the cellar did not belong to Fishworld but to the aquatic supply business that he runs from the first floor of the same premises and he says that he did not know that they were there although he stated that the Assistant manager Dawn was responsible for putting them there and for their care and that this was why he knew nothing about them being there. I do not accept this explanation because Dawn was not called to give evidence. Even if the Appellant was being truthful about the goldfish in the cellar, why did he not know they were there? He was unable to tell Ms Crowther for how long they had been kept in darkness without light. I find that to keep goldfish in darkness for uncertain and unrecorded periods of time is damaging to their welfare as it ignores their need for day and night photoperiods. The Appellant did not know for how long the fish had been kept in darkness. His argument that the fish did not belong to Fishworld is a spurious one because he has not produced any records of ownership and the person, he said was responsible for caring for them was the assistant manager of Fishworld. I do not accept on the evidence that the fish belonged to the first floor aquatic supply business. Even if they did, the Appellant is the proprietor of both businesses and the care given to fish by his business run from the first floor of the same premises is relevant to the issue of whether he is a fit and proper person to hold a licence to supply pet fish to the public. The Appellant said in his grounds of appeal that “*Just because the lights were not on, it was blown up out of all proportion. They were not always kept in the dark. Fish live in deep water without light penetration, green algae thick water in pond, muddy waters where light does not penetrate.*” In her evidence Ms Crowther stated, and I accept her evidence, that this information does not apply to goldfish. Goldfish do not live in rivers as their natural habitat but are “fancy fish”. I accept that the information given by the Appellant in his grounds of appeal relates to river fish and has no relevance to the care of goldfish. As at the date of hearing the Appellant was still not in a position to tell me, with supporting evidence, for how long the fish had been kept in the dark. To simply say that the fish were not always kept in the dark shows a lack of regard for their welfare needs

55. The Appellant feels aggrieved that he was not given the opportunity to remedy any concerns before the licence was refused. On the contrary, the inspection report of Mr Garforth and the subsequent refusal as well as the detailed email from Ms Crowther two weeks before the inspection in September 2022 gave him ample opportunity to put things in order before her inspection. While I accept that since the 2018 regulations the requirements for those seeking a licence to run various businesses involving animals including pet shops, have become more onerous, the new requirements must be met. The seriousness of the welfare concerns in this case were such that in my view the Respondent had little option but to refuse to issue the licence sought. This does not mean that the Appellant cannot in future run such a business as “Fishworld”, but if he wishes to do so then he must undertake a wholesale review of his practices including caring for the animals/fish, giving adequate training and instructions to his staff and volunteers and setting up transparent systems for the recording of relevant information such ongoing training and such as water quality monitoring and species specific and country specific care for them while they are on his premises. It will be necessary for him to apply again for a new licence and if he does then I would urge him to review the detailed requirements under Schedule 2 and Schedule 3 (General and specific conditions) and the concerns expressed in the 2019 documentation, as well as the documentation relating to Mr Garforth’s inspection, the email from Ms Crowther sent in advance of her inspection, setting out the requirements to be met in order to secure a licence as well as the specific concerns raised by her in her report.

#### Conclusion

37. The Respondent’s decision of 23 November 2022 to refuse the Appellant’s licence application for his business ‘Fishworld’ is confirmed. The appeal is dismissed

**Tribunal Judge Ford**

**DATE: 25/05/2023**

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