

**IN THE DISTRICT COURT  
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE  
KI TE WHANGANUI-A-TARA**

**CIV-2020-091-436  
[2022] NZDC 9189**

BETWEEN

DAVID GILES BARRETT  
Applicant

AND

COMMISSIONER OF POLICE  
Respondent

Hearing: 1 March 2022

Appearances: Mr Taylor for applicant  
Mr Neild for respondent

Judgment: 31 May 2022

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**RESERVED DECISION OF JUDGE L I HINTON**

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[1] Mr Barrett has appealed the refusal by the New Zealand Police to grant him a renewal of his firearms licence.

[2] The relevant decision of the Police pursuant to s 24(2) of the Arms Act 1983 is contained in a notice of refusal of firearms licence dated 24 July 2020 (the Notice) under which Inspector Tracey Thompson, a commissioned officer of Police, gave notice that she was currently not of the opinion that Mr Barrett was a fit and proper person to be in possession of a firearm. Mr Barrett's application was thus refused, and Inspector Thompson's reasons for that refusal are set out in the Notice.

[3] At the conclusion of the Notice, Inspector Thompson stated:

“The possession and use of arms is a privilege in New Zealand and the integrity of the information Police receive is critical for us to fulfil our functions under the Arms Act 1983”.

[4] The question on this appeal is whether Mr Barrett is a “fit and proper person” to hold a firearms licence, and that final statement of Inspector Thompson in the Notice encapsulates the gist of the issues in this case.

[5] There are various judicial pronouncements on the “fit and proper person” test which routinely and necessarily refer to perhaps obvious factors or criteria, such as public safety issues in various forms, the fact that the holding of a firearms licence is not an automatic right, and so forth.

[6] Both counsel, Mr Taylor for Mr Barrett and Mr Neild for the Police, referred to various cases which summarise the essential legal criteria on which a Court’s decision usually would be founded. One popular explanation referred to is that of Judge Neave:<sup>1</sup> “Exactly what is meant by fit and proper person is not spelt out in the legislation. Such a determination clearly requires consideration of the applicant’s overall character and history to determine that they are the sort of person who should be allowed to be the holder of a firearms licence, and thus entitled to lawful possession of firearms... Clearly, the considerations of promoting safe use and control of firearms must inform any decision on the fitness and propriety of any particular person holding a firearms licence”.

[7] As Judge Spear pithily put it in the *Ries*<sup>2</sup> decision, the question on a firearms licence appeal is whether the Police were correct in the opinion that the appellant is not a fit and proper person of good character who can be trusted to use firearms responsibly.

[8] The hearing on appeal is conducted de novo with the Judge approaching the matter afresh and deciding whether the Judge is satisfied Mr Barrett is a fit and proper person to be in possession of a firearm in terms of s 24(1)(b) of the Act.

[9] Affidavit evidence was filed, and I had the benefit of evidence given in person also by Mr Barrett and Inspector Thompson. I had the benefit too of submissions from counsel for which I thank them.

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<sup>1</sup> *Williams v Police* [2020] NZDC 26476 at [5].

<sup>2</sup> *Ries v New Zealand Police* [2019] NZDC 11626.

## Notice

[10] The Notice listed the following reasons for the refusal which can be summarised as follows:

- a recent demonstration of failure by Mr Barrett to adhere to requirements of the Arms Act 1983, demonstrated by Mr Barrett's conviction on 2 March 2020 for unlawful possession of restricted weapons and failure to inform Police of a change in address in 2016
- failure to demonstrate good character by being honest with Police in the course of applying for the firearms licence. In particular, statements concerning military service and military record were not corroborated by enquiries made by the Police and Mr Barrett has not provided any information that confirms relevant claims made in the application
- an omission to disclose prior substance addiction issues, acknowledging that information had been disclosed on a prior application
- inconsistent estimates of the value of firearms provided to the Police on different occasions
- an additional concern of honesty in relation to an interest in long-range shooting only.

[11] The Notice states that should Mr Barrett apply again to hold a firearms licence in the future, it is recommended that Mr Barrett be completely candid with Police throughout the application process.

[12] I deal below with each of the relevant issues in turn on which the Police refusal decision was ultimately based.

## **Military service and record**

[13] In the course of Mr Barrett's application for his firearms licence he referred to his having been a sniper and forward air controller in the British Army and having served in specified locations. It was acknowledged in the application process that a history of military service to one's country involving deployments to conflicts overseas would be considered factors in support of suitability to possess firearms. Mr Barrett's answers in relation to his military experience responded to this question: Tell me about your experience with firearms.

[14] The Police carried out usual enquiries in relation to Mr Barrett's military experience. Those enquiries revealed that Mr Barrett had had limited time in the RAF and likely did not serve in the British Army where he had claimed experience throughout a stated period of years. On the face of it there was a major discrepancy.

[15] There was reference in relevant correspondence received by the Police which supported the Police view. It was agreed with Mr Taylor and Mr Neild that the Police evidence was that information was sought from a Police source that did not confirm the details or the information that Mr Barrett had put forward about service in the British Army and at various places during the particular period. There were suppression orders made in relation to those relevant Police inquiries.

[16] Mr Barrett's affidavit in support of this appeal was reasonably brief in relation to this issue and included:

[92] I do not understand why my military service is relevant to a consideration as to whether I was a fit and proper person to possess a firearms licence.

[93] I feel that I do not have to "prove" anything in regards to my military service and shouldn't have to.

[94] I confirm the truth of my statements I made to the Police in my application forms for a new firearms licence.

[17] Mr Barrett accepted in cross examination by Mr Neild that Police enquiries suggested he had a short stint with the RAF and no time with the British Army. He stated that he had spent a brief period with the RAF and the remainder of his service with the British Army. He noted that a portion of his service was confidential which

he said explained the redaction of details of service from an earlier affidavit. He was not comfortable having information in that previous affidavit that could not be backed up: “I know it sounds like some sort of fantastical world of whatever, but it is what it is”.

[18] Mr Barrett allowed nevertheless that he had provided “quite a lot of evidence” to the Immigration Department in relation to his military experience. He said that he was however unable to provide that information to the Court in what was a very public setting. So that his thesis appeared at that point to be that the requisite information was available, but it has not been convenient, or there has not been a convenient (non-public) forum in which to disclose it.

[19] However, the question of his military experience was nevertheless a “fairly minor thing” which could “have been resolved years ago, that’s always been a sticking point”. Mr Barrett referred, in this regard, to a request for a meeting with Police which was declined by the Police. He was willing, he said, to have provided requisite evidence in such a one-on-one situation.

[20] Inspector Thompson in her evidence referred to her initial notice of consideration for refusal of firearms licence in which she formally gave notice that she was considering refusal of Mr Barrett’s application. She referred to advice to Mr Barrett’s counsel that her concerns included:

- Mr Barrett’s statement he had never suffered from substance abuse, notwithstanding indications he had been addicted to prescription medicine in the past.
- Mr Barrett’s claims of service with the British Army throughout a stated period of years in particular capacities, noting that British military records do not reflect this and indicate that he only spent a short period of time in the RAF regiment.

[21] There was subsequently no material provided with the response to this particular notice that would support the claims to resolve the discrepancies Inspector

Thompson had identified. There was no offer made on behalf of Mr Barrett to show any documents at any meeting, although there was an offer for a meeting. I accepted the Inspector's evidence on this and her evidence that she would have agreed to a meeting one-on-one had there been any indication then that further explanatory information would have been provided.

[22] Mr Taylor's written submissions on this noted that the nature or otherwise of Mr Barrett's time spent in the RAF, and the extent, nature and form of activities undertaken should not reasonably be seen as relevant for an assessment as to whether or not a person is a fit and proper person to hold a firearms licence, especially given the time indicated being some years ago. This echoed Mr Taylor's response in his letter dated 11 May 2020 to Inspector Thompson on the Inspector's concern around Mr Barrett's British Army experience.

[23] It was submitted by Mr Taylor that this matter be given little or no weight in the assessment of Mr Barrett's being a fit and proper person for present purposes.

[24] The theme was repeated in oral submissions. Mr Taylor questioned why this information was critical to an application for a firearms licence. He suggested that the Police had not produced sufficient evidence to say that Mr Barrett had not been serving in the military. Moreover, Mr Taylor appeared to be of the view that the Police had not asked for the further information and had declined a meeting.

### **Substance abuse issue**

[25] The application process involved Mr Barrett's answering the question whether he (or any household member or regular visitor) currently has or has had in the past any substance abuse issue.

[26] Mr Barrett answered "No" to this question. That answer was incorrect at least because Mr Barrett had had a previous issue.

[27] In his supporting affidavit Mr Barrett notes that he had previously provided details in relation to an earlier firearms application and that that historic record of the

Police had been advised to him by a Police arms officer. Mr Barrett advises that some years earlier (2012) he had become addicted to certain medications. He had sought help, involving self-admission into a residential programme at a private hospital which he attended from time to time. He was eventually offered paid employment by the private hospital. He worked in prisons as a volunteer. When he finally stopped volunteering in this field after many years, he had sponsored over a dozen professional people from various professions he named.

[28] Mr Barrett noted that he had agreed to supply further information to the Police but hit a stumbling block with the private hospital having been shut down entirely so that he was unable to get the references. He had subsequently obtained a medical note from his GP which he had handed in at the Porirua station.

[29] In cross-examination by Mr Neild, Mr Barrett accepted that in 2015 he had not actually disclosed the substance abuse issue to the Police, but the Police had discovered it independently. Specifically questioned by Mr Neild in relation to his answer in 2019, Mr Barrett advised that: “I think it would be entirely reasonable to assume that between 2015 and making that application in 2019 after again numerous points to the Police about it after discussing it with them on the phone and repeated visits to Wellington Police Station that the Police should have learned everything there is to learn about it”.

[30] Mr Barrett proposed that the issue had similarities with breaking a leg and the healing of a broken leg which was forgotten about and one moves on with one’s life. It was in the past and dealt with.

[31] Mr Barrett accepted that the one certificate provided earlier to the Police dated 13 June 2018 did not refer to addiction issues or his time at the private hospital. This certificate, provided in response to Police concerns, did not address substance abuse issues – Mr Barrett was asked why he could not simply have asked his doctor to provide some background about addiction history and Mr Barrett answered that he believed this had been done, although he could be completely wrong.

[32] Mr Barrett's position following a discursive commentary on addiction and his personal experience, plus his view on the categories of others who suffer addiction issues, was that: "there is a point you have to draw in your life and you say well the Police are informed about this, they know this has been a problem in the past, and that's the end of the matter".

[33] Nevertheless, Mr Barrett agreed that during the period 2015 – 2019 the Police were seeking more information and he was making enquiries with a private hospital. He accepted that he had not been able to satisfy Police on the information sought at the time of the 2019 application.

[34] No further or satisfactory information seems to have been provided. There is one earlier medical advice letter which is inadequate for present purposes and may have been inadequate earlier. Certainly, the further letter which was produced at the hearing on 1 March was itself not sufficient on its face, having regard to Mr Barrett's evidence, and in any event, there was no acceptance by the Police the letter had ever been received by the Police, and there were no relevant enclosures (referred to in the letter) that were produced.

[35] To elaborate briefly, those enclosures not produced concerned the private hospital (referred to by Mr Barrett in his evidence) and Mr Barrett's treatment there and a specialist report.

[36] Moreover, given the evidence, on no view could the mere late production of this letter substitute for the lack of evidence the Police had been legitimately seeking and not received. In this regard, it is again material that the issue had been flagged by Inspector Thompson and the opportunities for clarification given.

[37] Inspector Thompson confirmed in relation to her interactions with Mr Barrett's counsel that no further information had been offered in relation to the substance misuse issue. The Inspector was clear in relation to these issues under cross-examination by Mr Taylor.



## **Relationship issues/referees**

[38] The Police process in relation to firearms applications involves interviews by a Licensing Vetting Officer of referees nominated by the applicant.

[39] A concern for the Police was the apparent inconsistency, in relation to Mr Barrett's "relationship history", of some information provided. In addition, the Licensing Vetting Officer who interviewed Mr Barrett's referees recorded that she had found one referee "superficial about knowledge about the applicant's past, and very reluctant to discuss or disclose any past information about him, in particular concerning his past relationships or firearms matters".

[40] Mr Barrett took exception to questions from Mr Neild about the apparent lack of knowledge of his referees concerning previous relationships. He regarded it as a "preposterous" position. He questioned what this had to do with being a fit and proper person. He noted that referees were not under any obligation to speak to the Police.

## **Recent Arms Act conviction**

[41] Mr Barrett had been charged in 2017 with unlawful possession of certain firearms. He had applied for the requisite "E" endorsement, but this had been delayed (including because of his failure to provide supporting information). Mr Barrett pleaded guilty to the charge and on 6 August 2020 was convicted and fined \$500.

[42] This assumed less prominence for the Police in relation to the present proceeding. Certainly, the fact of the conviction is not a positive, as was not positive Mr Barrett's failure to advise a change in address, but it was not, in the circumstances, a substantial negative. It was for me nevertheless relevant to be taken into account in the mix of relevant information.

## **Discussion**

[43] Quite obviously, the firearms licensing function undertaken by the Police is critically important and involves the taking by the Police of thorough and careful steps and the making of careful judgements in the interest of the public. The umbrella

considerations of “public safety” and, in the interests of the public “promoting safe use and control of firearms,” and crucially whether an applicant can be trusted to use firearms responsibly, self-evidently are significant.

[44] So that the Police have a deliberate process of application and review that seeks to elicit relevant information that can be considered. Naturally, in some cases information provided would sensibly need to be checked or verified sometimes by professional opinions. A cautious and conservative but not timid approach is warranted.

[45] Here what is in focus is the application process itself, primarily the integrity of information provided. It seems axiomatic that candid and honest answers in relation to the application process are of the gist of the process. Those answers should be sound and complete.

[46] Indeed, any not accurate answer should raise alarm bells and likely prejudice an application. An applicant who was not careful and candid in relation to an application process should not usually be entitled to succeed. Such an applicant might well be demonstrating they are not, for one thing, susceptible to ongoing compliance with legal requirements. Such an applicant is *prima facie* a risky proposition for any licensing purposes, especially and obviously firearms licensing purposes.

[47] On its own the “relationship issue” may not be hugely significant. After all, as Mr Barrett exuberantly pointed out, there may be good and private reasons for personal questions to be referred on to Mr Barrett for clarification. Nevertheless, the vetting officer was evidently uncomfortable, and that extended to legitimate enquiry made about firearms. It was not ideal for Inspector Thompson to have that particular report from the vetting officer. There was justification, in my view, for Inspector Thompson’s concern.

[48] For me, the report was relevant and not optimal, on its own not fatal, but certainly raising concerns given other issues.

[49] It is similar, in my view, in relation to the Arms Act conviction. Whilst on its own this should not, in the circumstances, have been fatal for Mr Barrett's application, it is of relevance in the mix of considerations. As I understood it, Mr Barrett could have done more more efficiently and responsibly in relation to the relevant application.

[50] But the other two main issues are in a different category. To my mind, these topics or questions both cry out for candid and accurate responses that are not slightly misleading. Without that, it is my view the Police would be justified in having considerable concern. Inspector Thompson's advice at the end of the Notice that "the integrity of the information Police receive is crucial" is correct.

[51] The advice proffered by Mr Barrett in relation to experience with firearms was material. A lengthy history of service to which he referred could be creditable and relevant in relation to his application. That, one assumes, is why the particular answer was given. Of course, it is natural the Police would not take at face value but would take steps to verify information of the nature provided by Mr Barrett.

[52] I accept that the Police checks reveal the inconsistency to which Inspector Thompson referred. I accept that this inconsistency raised a serious and legitimate concern for the Police. The Police were faced with information from an applicant which, on the face of it, was incorrect and required explanation. The Police at that point could not turn a blind eye, and certainly could not grant the application.

[53] It seems to me that the steps taken by Inspector Thompson were appropriate and reasonable – ample notice of the Inspector's concerns was given as was an opportunity to provide more information. More was required from Mr Barrett because the Inspector had inconsistent advice on a very material matter.

[54] I did not find Mr Barrett's explanations on this satisfactory. I did not accept, for example, that supporting information could not, as was suggested, have been provided by Mr Barrett to the Police or indeed later to the Court as part of the present process.

[55] The substance abuse issue is in the same category. Perhaps more seriously, this very circumstance was a repeat of previous 2015 advice given by Mr Barrett. On that occasion it seems the issue had been unearthed by Police enquiries or information available to the Police independently.

[56] So that this issue required explanation also. To put it simply – Mr Barrett did not answer the question correctly and because of that, and previous history in relation to this matter and the application process, the Police needed more information. And no information was forthcoming. A letter produced at the hearing was, as referred to, inadequate and incomplete. The Police evidence was it had not ever been received by the Police in any event.

[57] Mr Neild noted that given the activities undertaken by Mr Barrett at the private hospital (in particular the work that he had done) and other good works at the prison as a voluntary worker, and other mentoring advice he had given to a range of persons, more evidence could have been provided to the Police. Mr Neild expressed concern in relation to Mr Barrett's self-portrait in relation to addiction recovery and his description of addiction as a broken leg.

[58] What the Police were left with was an incorrect answer given to a critically important question and no satisfactory further information being made available following requests or opportunities for that information to be given to the Police. The Police were in no position, in my view, to approve a firearms licence in the face of a possible substance abuse issue, which self-evidently raised safety concerns. I could not accept Mr Barrett's refrain that the substance abuse issue was in the past and dealt with. There was, for me, a significant question mark in relation to this issue.

[59] Moreover, Mr Barrett appeared to me not to appreciate the seriousness of the process or the issues. At one point, Mr Barrett said in his evidence that the "bottom line with a firearms licence is it's a hobby, it is an interest, it is viewed by myself and everybody else I know that owns firearms as being a hobby and an interest. It's not a job interview. You are not providing evidence to get national security clearance, you are trying to get a firearms licence so you can go outside and you can hang out with your friends and do some hunting".

[60] That was a concerning view of the significance of a firearms licence and the seriousness of the attendant application process.

[61] Mr Neild's submission on that aspect was that Mr Barrett appeared to regard himself entitled to a firearms licence. That might literally be too aggressive a view but there is no doubt Mr Barrett has not taken the process seriously enough. I agree with Mr Taylor who frankly advised me at the conclusion of his submissions that Mr Barrett has learned lessons, will not want to repeat the exercise, and will be more careful in the future.

[62] There were obvious public safety issues here in my view. I concluded that Mr Barrett is not a fit and proper person to hold a firearms licence.

[63] The result is that Mr Barrett's appeal is dismissed.

L I Hinton  
District Court Judge