

Submitter: Sandip Kumar

Date received: 16 March 2020 via email

'I wish to make submissions as requested by you, in respect of the introduction of a 'fit and proper person's' test requirement for directors and senior managers of a mobile trader.

In principle, I welcome the move, and this allows for a greater degree of accountability amongst mobile traders. My concern however is with the wide ranging effect of items 5 and 6 of Table 1, dealing with persons who have formerly been subject to an investigation and/or which resulted in charges being filed. In my view, it is important to limit by way of a time period (e.g a an embargo, suspension or moratorium) a person's ability to be considered fit and proper, for a limited period of time, but allow the person to be considered fit and proper if there is no further investigation, charge or conviction after that.

We have seen in the recent past a number of companies operating without knowing or worse, blatantly ignoring their legal obligations, and this has resulted in all mobile traders being viewed as rogue, irresponsible traders out to make a quick buck at the expense of consumers.

I believe that a distinction must be made to separate these delinquent traders from those who have made genuine, honest mistakes. The former should be prevented from trading, but the latter should be given the opportunity and guidance to ensure that they comply with and observe all regulations pertaining to the industry. Even multi billion dollar corporations make mistakes and breach the law. It cannot be that the key personnel of large corporations be deemed fit and proper but not those from smaller businesses are not.

We believe that principles of natural justice dictate that if a person/company has been charged and have seen out the sentence, they should not be punished for the same acts/omission. If the key personnel has been duly punished for the offences, he or she should not be punished again by being deemed not fit or proper, especially if, in the years following the conviction, his or her record is clear and clean.

In light of this, we humbly submit that there should be a statutory limit to the period considered. For instance, if 3 or 4 or 5 years have passed since the director/manager was charged, that person's past mistakes should not be taken into consideration in the determination of whether he or she is fit and proper.

This would allow for them to learn from past mistakes and build a business that complies with NZ laws.

Your sincerely
Sandip Kumar'