

CITATION: *Gretton v Chief Executive Officer, Public Safety Business Agency* [2016] QCAT 162

PARTIES: Andrew Brian Gretton
(Applicant)
v
Chief Executive Officer
Public Safety Business Agency
(Respondent)

APPLICATION NUMBER: CML 194-15

MATTER TYPE: Childrens matters

HEARING DATE: 20 January 2016

HEARD AT: Brisbane

DECISION OF: **Member Gardiner**

DELIVERED ON: 19 February 2016

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The decision of the Chief Executive of 29 June 2015 to cancel a positive notice and blue card and issue a negative notice to Andrew Brian Gretton is set aside.**
- 2. The Chief Executive is to issue a positive notice and blue card to Andrew Brian Gretton.**

CATCHWORDS: CHILDRENS MATTER – BLUE CARD – REVIEW – where applicant seeks a review of the decision to issue a negative notice – where a substantial criminal history exists – where applicant has entered a positive relationship with foster care of severely disabled children – whether exceptional case exists – whether not in the best interests of children to issue a positive notice

Working with Children (Risk Management and Screening) Act 2000 (Qld) ss 5, 6, 221, 226,

354, 360
Queensland Civil and Administrative Tribunal Act 2009 (Qld) ss 24, 66

Commissioner for Children and Young People and Child Guardian v Maher & Anor [2004] QCA 492
Commissioner for Children and Young People and Child Guardian v FGC [2011] QCATA 291
Minister for Immigration and Ethnic Affairs v Gungor [1982] FCA 99
Jackson v Commission for Children and Young People and Child Guardian [2014] QCAT 186
 followed

REPRESENTATIVES:

APPLICANT: Andrew Gretton represented by Carissa Inglis, Foster Care Queensland

RESPONDENT: The Chief Executive Officer represented by Ms Kylie Heath In-house Counsel

REASONS FOR DECISION

- [1] Andrew Gretton had a positive notice and subsequent blue card issued to him on 9 August 2012. After notification of a change to his police information, the Deputy Chief Executive Officer of the Public Safety Business Agency, asked Mr Gretton to provide submissions during a re-assessment of Mr Gretton's eligibility to hold a blue card.
- [2] Mr Gretton provided submissions in support of his continued holding of a blue card, but on 29 June 2015, the Deputy Chief Executive Officer decided to cancel the positive notice and issue a negative notice, also cancelling Mr Gretton's existing blue card.
- [3] Mr Gretton has applied to QCAT to review this decision. QCAT can review a decision to issue a negative notice.¹ The review is conducted on the basis that the welfare and best interests of a child are paramount² and is a fresh hearing of the case with the purpose of producing the correct and preferable decision³ on the evidence before the Tribunal.
- [4] Mr Gretton is in a relationship with Ms Cheryal Higgins and they have been together for about 4 years. Ms Higgins is a Justice of the Peace and a foster carer for over 10 years. She also has care of her youngest son, now 16, who has substantially complex physical and medical issues and

¹ *Working with Children (Risk Management and Screening) Act 2000 (Qld) s 354.*

² *ibid* ss 6, 360.

³ *Queensland Civil and Administrative Tribunal Act 20019 (Qld) ('QCAT Act') s 24.*

disabilities. He is non-verbal and has the intellectual development age of a young child.

- [5] Ms Higgins currently has two other substantially physically and intellectually disabled young people in her foster care. These children are also non-verbal.
- [6] Mr Gretton has a long history of criminal convictions and charges commencing in Queensland in 1987, continuing in South Australia in 1995 and finishing in Queensland again in 2015. Various, the convictions relate to dangerous operating of a motor vehicle, breach of domestic violence orders, drug possession, obstructing police, assault occasioning bodily harm and a number of non-payment of fines for speeding and unlicensed driving.
- [7] The charges relate to further assault occasioning bodily harm, attempted false pretences, attempted demand or obtaining property on a forged document. Many of the charges were either dismissed for want of prosecution, struck out or had a nolle prosequi entered.
- [8] Mr Gretton has found himself in difficulties with the police on a number of occasions in the past. Mr Gretton admits his past conduct has been reprehensible and he did not realise the effect it would have on the people who are now closest to him. However, even with the criminal record he held up until 2012, a positive notice and a blue card were issued to him at that time.
- [9] The review of Mr Gretton's blue card status seems to have occurred after further criminal charges arising in 2014 came to the attention of the Deputy Chief Executive Officer. After considering the post 2012 charges and the criminal history as a whole, the Deputy Chief Executive Officer was of the view that Mr Gretton's conduct raised concerns "*regarding his ability to act in a reasonable and controlled manner, judge appropriate behaviour, exercise self-control, manage his anger and abide by the law*".⁴
- [10] The Deputy Chief Executive Officer submits that this long history indicates that Mr Gretton has difficulty dealing constructively with situations of conflict and he may react in a violent manner. This suggests that Mr Gretton does not have the conflict resolution and anger management skills necessary to work with children where situations of conflict are expected to occur with children or in the presence of children.
- [11] The Deputy Chief Executive Officer submits these skills are particularly important when working in areas of regulated employment and business as they contribute to the creation of a safe and protective environment for children and young people.
- [12] The Deputy Chief Executive Officer is concerned that Mr Gretton has long been involved with the courts and that his behaviour continues to come to

⁴ Reasons para 6, page 11 dot point 4.

the attention of the authorities. These interactions appear to the Deputy Chief Executive Officer to not have acted as a deterrent in respect to Mr Gretton's behaviour.

- [13] Under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) ('*Working with Children Act*'), even though Mr Gretton has a long history of convictions and charges, a positive notice must be issued to him unless the Tribunal considers that the facts of the case give rise to an exceptional case in which it would not be in the best interests of children for a positive notice to be in place. This is because none of the current convictions or charges recorded on Mr Gretton's criminal history are defined as serious or disqualifying offences under the *Working with Children Act*.⁵
- [14] The *Working with Children Act* does not provide a definition for "exceptional case". However guidance has been provided in past matters on how to decide if the facts give rise to an exceptional case. In *Commissioner for Children and Young People and Child Guardian v FGC* the Appeal Tribunal stated that "exceptional case" must be considered in the context of the legislation which contains it, the intent and purpose of that legislation and the interests of the persons whom it is designed to protect.⁶ It said the term is in common use and should be considered without any special meaning or interpretation.⁷
- [15] Further guidance to deciding if there is an exceptional case is provided by the Queensland Court of Appeal in *Commissioner for Children and Young People and Child Guardian v Maher & Anor*⁸ where the Court looked at the risk and protective factors as determined by the evidence in that case.
- [16] Section 226 of the *Working with Children Act* also provides factors this Tribunal must have regard to in deciding if this is an exceptional case bearing in mind the object of the Act is to "*promote and protect rights, interests and wellbeing of children and young people in Queensland*".⁹
- [17] Section 226(2) requires this Tribunal to consider the conviction, when the offence took place, the nature of the offence and its relevance to child related employment, the penalty imposed, and anything else about the commission of the offence that is reasonably relevant to an assessment of the applicant for child related employed.
- [18] Is this an exceptional case in which it would not be in the best interests of children for a positive notice to be in place?
- [19] Mr Gretton spoke about his working history and the impact that has had on his attitude to managing anger and conflict. Mr Gretton said his formative years from aged 18 for about 10 years were spent working as a

⁵ *Working with Children Act* s 22.

⁶ [2011] QCATA 291 at [31].

⁷ *Ibid* at [33].

⁸ [2004] QCA 492.

⁹ *Working with Children Act* s 5.

body guard. He learnt to deal with aggression and conflict with physical control and that conflict resolution method stayed with him after he left that industry and had businesses of his own. He believes this attitude partially explains why he has contact with the criminal system over many years although he did give evidence of the specifics of each incident – particularly the most recent.

- [20] Mr Gretton says meeting Ms Higgins and her children has changed his life and opened his eyes to a new way of thinking. At first, Mr Gretton says he was resistant to the suggestions of Ms Higgins and his long standing GP that counselling might assist him with anger management. He thought at 50, *“you can’t teach an old dog new tricks”*. He now says he was wrong and that the time spent in counselling with Ms Payne has *“turned his life upside down”*.
- [21] He has developed strategies for dealing with conflict – walking away and understanding it is not his issue to solve and that he does not need to be in complete control of every situation. Mr Gretton accepts that he still has coping mechanisms to develop and says he is prepared to stay in counselling *“as long as it takes”*. Mr Gretton says his relationship with Ms Higgins and her children is too important to him.
- [22] Mr Gretton is remorseful of his actions in the past few years and the effect this has had on the people around him.
- [23] If a positive notice is issued to him, Mr Gretton intends to apply jointly with Ms Higgins to become a foster carer. He understands this will involve further investigation of his suitability for this role. Ms Higgins supports Mr Gretton to make this further application if he is issued with a blue card.
- [24] A number of personal and professional witnesses gave evidence to the Tribunal to support Mr Gretton.
- [25] The first was his partner of 4 years, Ms Cheryal Higgins. Ms Higgins was an impressive, honest witness and weight is given to her evidence. She is a Justice of the Peace, has been a foster carer for severely intellectually and physically disabled children (as well as caring for her own disabled son) for many years and recently, a finalist in an industry award ceremony recognising her contributions to the fostering system at the highest level.
- [26] Ms Higgins speaks very highly of Mr Gretton. She recounted her care after they met before she introduced him to her children and how, it takes a very special man to accept her work and her responsibilities. She says it was 2 years before she was comfortable to introduce Mr Gretton into her household. She describes him as *“awesome”* but having said that, was clearly insightful into Mr Gretton’s character, saying he is a *“work in progress”*. She said she has seen some profound changes in him in the last few years.
- [27] Ms Higgins says in the time they have been together, she has not seen Mr Gretton display any form of domestic violence. Tellingly, she says *“... if I*

thought he was capable of such behaviours he would not be living with us and I would not see him again”.

- [28] Ms Higgins is aware of Mr Gretton’s criminal history but says he is a changed man now. She speaks of Mr Gretton as a good role model for her children, and the sort of father figure that any woman would want for their special needs children.
- [29] Ms Higgins says the loss of Mr Gretton’s blue card had a “*devastating effect*” on herself and the children and that the family has been “*torn apart*” with the children not understanding why their dad isn’t in the house anymore.
- [30] Mr Gretton being issued a positive notice and a blue card was also supported by uncontested evidence from his son, Travis Harding. Mr Harding is also aware of his father’s criminal history and says Mr Gretton is remorseful for what he has done. Mr Harding says he has seen how much of a detrimental effect the separation has had on both his father and the children and he supports Mr Gretton’s aim to become a foster carer if the blue card is returned to him.
- [31] Some impressive professional witnesses back Ms Higgins’ personal view of Mr Gretton. Ms Jennifer Neilson a Child Safety Officer with the Department of Communities, Child Safety and Disability Services gave evidence that she had seen Mr Gretton interacting with the children on 10 -12 occasions for about an hour each time. This had been both in the home and at her office. She said she had never observed anything that gave her cause for concern about Mr Gretton’s level of care for these children.
- [32] Mr Adam Mijatovic is a support worker with Life Without Barriers. His evidence to the Tribunal (also uncontested) is that he has been the support worker for Ms Higgins since April 2015 and during that time, has observed Mr Gretton’s interaction and care of the children placed with Ms Higgins.
- [33] Mr Mijatovic says he observed Mr Gretton to be interested in the children and motivated to provide care until the blue card was suspended. He appeared to have genuine attachments to the children and diligent in providing direct care. He was able to provide advice on the best methods to support the children to a youth staff worker. Youth workers have significant contact in this placement (15 - 40 hours per week) and are required to provide Mr Mijatovic with regular shift reports.
- [34] Mr Mijatovic says neither he nor the youth workers reporting to him have observed or become aware of any standard of care concerns and he is satisfied Mr Gretton has provided care consistent with the standards.
- [35] Ms Robyn Douglass has been a Community Visitor with the Office of the Public Guardian since 2009 and has been visiting the Higgins placement in that capacity since that time. Ms Douglass acknowledges the children

placed with Ms Higgins are extremely high needs. Her uncontested evidence is that she has observed the standard of care provided to the children in this placement to be of a high level. She has observed Mr Gretton to have a consistent and caring attitude to the children and always willing to assist Ms Higgins.

- [36] Ms Douglass further says she has observed that Mr Gretton has conducted himself at all times in a positive and respectful manner towards Ms Higgins, the children, other support workers and herself during her visits. Ms Douglass has also observed the children responding to Mr Gretton in a very positive manner, smiling and watching him as he walks around.
- [37] Doctor Angela Bowman has been Mr Gretton's GP for the last 4 years. Although unavailable for the hearing, she provided a letter dated 5 January 2016. Dr Bowman says during that time she has witnessed Mr Gretton in his care of children, particularly Ms Higgins' son. She has always observed Mr Gretton to be calm, appropriate and affectionate. He appears to have a strong bond with the children and they also appear comfortable in his presence.
- [38] Dr Bowman says she has never witnessed any situation in which Mr Gretton has had anger control issues and she has only seen him polite and personable. Dr Bowman says Mr Gretton has always been open and honest regarding his physical and mental health and she is aware that he requested a referral to a psychologist from another doctor in the practice.
- [39] Dr Bowman has not seen any behaviours to cause her concern about Mr Gretton and sees no reason why his blue card should not be re-instated. Dr Bowman does not say she is aware of Mr Gretton's criminal record.
- [40] Ms Lisa Payne is Mr Gretton's psychologist. She says Mr Gretton has now attended 4 self-initiated sessions with her since December 2015 to develop better emotional management and coping strategies to deal with conflict, to reduce incidents of expressing built up negative emotions, in particular frustration (anger) and disappointment.
- [41] Ms Payne says she has now had four sessions with Mr Gretton. In this time Mr Gretton has considered his personal coping mechanisms and beliefs. He has been developing different strategies – walking away, self reflection, releasing, not owning the problem and debriefing.
- [42] Ms Payne anticipates Mr Gretton needing three more sessions to complete his counselling. She says he has shown insight and remorse about his previous actions and that overall, his engagement with her and the counselling process has been positive, collaborative, open and reflective.
- [43] Mr Gretton identifies the protective factors are as follows:

- If his blue card is reinstated he will then lodge a joint application alongside Ms Higgins to be considered a foster care. Mr Gretton will be assessed in accordance with section 135 of the *Child Protection Act 1999* and Sections 22-26 of the *Child Protection Regulation 2011*, including that he is able to meet the Statement of Standards; is able to help in appropriate ways towards achieving plans for the child's protection; does not pose a risk to the child's safety; and is able and willing to protect a child from harm.
- If Mr Gretton and Ms Higgen's joint application to become foster carers is approved, Mr Gretton will be subject to a mandatory renewal process after 12 months and then every two years from then. The renewal process reviews a carers ongoing suitability to provide care to children and young people in line with legislative requirements of the *Child Protection Act*;
- As an approved foster carer Mr Gretton will be monitored by professionals in the child protection field regarding his day to day care of children and young people. Professionals monitoring this care will include The Community Visitor through the Office of the Public Guardian, support carers through Life Without Barriers, and a Child Safety Officer.

[44] Mr Gretton submits in relation to these protective factors:

- If he becomes a foster carer, the monitoring and support that will be in place around any child and young person placed with Mr Gretton will be of a high standard.
- Children will not be exposed to the types of offending behaviour that Mr Gretton has engaged in in the past. During a two year period Mr Gretton was monitored in respect to the standards relating to Ms Neilson, there has never been any concerns raised in relation to the ability of Mr Gretton to comply with these standards as a household member by the Child Safety Officer, the social worker or the Community Visitor.
- Youth Workers on an almost daily basis assist with the care needs of the children and young people placed Ms Higgins. All Youth Workers hold current blue cards and are mandatory reporters to the Department of Communities, Child Safety and Disability Services if they witness anything of concern.
- Mr Gretton's partner, Ms Higgens, is a protective factor. Ms Higgens is a highly regarded carer, evidenced through her recent nomination for a State Excellence award and a Justice of Peace. Ms Higgens gave evidence of her protective nature towards the children placed in her care. She has been a carer for 11 years and has long term commitments to the children placed in her care which she deems her priority.

- Mr Gretton has engaged a professional counsellor to work on conflict resolution and anger management issues.
- Mr Gretton and Ms Higgins regard Mr Gretton's engagement, self-reflection and increasing insight into how his offending behaviour has affected himself and others as a protective factor. Consistent examples were provided by witnesses as to how Mr Gretton has applied knowledge he has gained into his life.
- Ms Payne gave evidence that she will develop a plan with Mr Gretton prior to discharging him from her service that will include things such as; coping strategies, support structures and engagement in social situations to keep busy. Ms Payne has been able to identify 'high risk triggers' for Mr Gretton which Mr Gretton accepts, these being; situations he feels he needs to control, work situations and when someone is placing a child at risk of harm. The Plan developed by Ms Payne and Mr Gretton will address high risk triggers.

[45] Mr Gretton identifies the risk factors as follows:

- Mr Gretton's history of offending behaviour - although there is a significant period of time between offences, his behaviours have been consistent in that they have lacked good judgement and ability to resolve conflict in a constructive manner.
- Concerns that were raised during the hearing as to Mr Gretton's motivation in attending counselling sessions - perhaps the motivation was linked only to his desire to have his blue card reinstated.
- A blue card is transferrable to Mr Gretton working with all children and young people, not just those subject to child protection orders where he will be monitored in relation to his care of them.

[46] Mr Gretton's submissions in regard to the risk factors are as follows:

- Mr Gretton gave evidence that in the past he had often spoken/acted before he thought. This risk factor is now mitigated through the work he has undertaken in counselling, Ms Higgins' support and his increased insight.
- Even if some of Mr Gretton's initial motivation in attending counselling sessions was his desire to have his blue card reinstated, evidence heard indicates that Mr Gretton is in fact demonstrating commitment, engagement, insight and self-reflection during his sessions which have been beneficial to him in understanding how his offending behaviours have impacted on himself and other.

- Concerning transferability, Mr Gretton has no history at all in relation to violent or offending behaviour against any child or young person.
- When cross examined, Mr Gretton explained how he would respond in situations where he was being challenged by a young person, an example was given of a 15 year old boy who was giving him 'cheek'. Mr Gretton said he would walk away, and if he could not walk away, he would remain calm and keep talking.
- Mr Gretton was firm in his view that he would never respond in a negative way to children and young people.
- There is no evidence in Mr Gretton's criminal history or child protection history that would state otherwise.

[47] Finally, Mr Gretton submitted an exceptional case does not exist because:

- Although Mr Gretton has had periods of his life where he has engaged in offending behaviours, he has demonstrated insight into these periods of his life and triggers for offending behaviour, one of these being employment factors.
- During a period of over 15 years of non-offending behaviour between the ages of 32 - 48, Mr Gretton was self-employed. This is a significant period of non-offending behaviour and demonstrates Mr Gretton's ability to live a day to day life whereby he resolves conflict in a way that does not bring him to the attention of the criminal justice system.
- Mr Gretton has sought counselling to understand his triggers and work on alternative ways of resolving conflict, He was able to provide examples of how he has applied this knowledge and learnings in his day to day life.
- None of Mr Gretton's offending behaviour has directly or non-directly involved children or young people.
- Mr Gretton has pleaded guilty to the charge of dangerous driving, The penalty imposed on Mr Gretton for this offence was the minimum sentence was handed down.
- Mr Gretton pleaded guilty to the charge of breaching a Domestic Violence order. His evidence is that this breach involved him breaking the lock of a door in a shared marital home to gain access to registration papers for his truck.
- Mr Gretton gave evidence that the family order stated that both parties could live in the residence and that there had been a pattern of behaviour from both parties that involved changing locks and the Police then being called to gain access to the property.

- There were cross Domestic Violence orders made at the same time and expiring together. There were no allegations of physical violence from either party in their applications and no children or young people were involved
- It can now be confirmed that all seven witnesses and Mr Gretton's G.P who provided a report are aware of Mr Gretton's criminal history.

[48] At the hearing, the Chief Executive's representative submitted that the risk factors outweighed the protective factors such that a positive notice should not be issued as it would not be in the best interests of children. The risk factors were submitted as follows:

- i. The Applicant's criminal history includes five convicted offences and the offences were committed on various dates between 1987 and 2014.
- ii. The police briefs in relation to the offences of concern provide the following outline of the circumstances of the offending. His most recent offending, committed in 2012 and 2014, being as follows:

Breach of order – respondent present in court

- *On 14 May 2012 the Applicant pleaded guilty in the Gatton Magistrates Court to the charge of 'breach of order – respondent present in court'. He was fined \$400. No conviction was recorded.*
- *A temporary protection order was issued on 6 March 2012 with the Applicant listed as the respondent and the complainant as the aggrieved. It contained the mandatory condition of good behaviour. The Applicant and complainant were separated at the time of the incident and were undergoing property settlement proceedings which included the property where the incident occurred.*
- *On the morning of 15 March 2012, police attended a residence and spoke to the complainant about a disturbance. She informed police that the Applicant had broken the door of her bedroom, most likely by kicking it in; that she had left the residence locked and secured that morning and upon returning home she saw the damage caused; that the Applicant no longer resided at the residence but would sporadically return to stay according to his wishes; that they would no longer sleep in the same room and she had occupied the master bedroom of the residence; that this room contained no property belonging to the applicant and he had no reason to enter the room; and she locks this room to secure her personal items. Police observed that the master bedroom door was split and broken surrounding the door handle.*
- *On 17 March 2012, police spoke to the Applicant in relation to the incident. The Applicant advised police that he had caused the damage to the door by forcing it open; that he had done so to search for documentation of his that he believed was inside; that*

he did not consider it wrong to break the door as the property was owned by him; and that he was forced to break the door as the complainant had locked the door, preventing him from being able to access the room.

Dangerous operation of a vehicle

- *On 9 October 2014 the Applicant pleaded guilty in the Holland Park Magistrates Court to the charge of 'dangerous operation of a vehicle'. He was fined \$400. No conviction was recorded. His driver's licence was disqualified for a period of six months.*
- *On the afternoon of 17 June 2014, the Applicant was preparing to drive home and had possession of a set of truck keys that his boss had told him to hold onto. The complainants attended the address at the same time and asked the Applicant to give them the truck keys. The Applicant refused to give them the keys and tried to ring his boss but was unable to reach him. He got into his vehicle and upon seeing this, the complainants walked towards a set of gates and started to close them.*
- *The gates were approximately six feet high and were constructed of chicken wire and steel bars. The Applicant started the engine of his vehicle and drove out of the address at speed. He hit the gates, which in turn hit the complainants who were holding the gates on the other side.*
- *The complainants were thrown a short distance from the gates and the Applicant drove away. Both complainants suffered minor injuries and were transported to hospital as a result of the incident.*
- *Police attended and took statements from the complainants and a witness. The owner of the business, who employed the Applicant, also attended and provided police with the Applicant's details.*
- *The Applicant attended a police station and participated in a record of interview. During the interview, he told police that he had not seen the two complainants before driving through the gates and did not know they were on the other side of the gates; that he had tried to ring his boss without success; that his mobile then went flat and he did not know how to use the office phone; that he thought the complainants may use violence against him; that he did not want to give the keys to the complainants as his boss had told him not to; and that he thought the complainants had thrown the gates at his vehicle.*
- *A witness, who had parked his truck near the incident, told police that the complainants had not thrown the gates at the Applicant and he had driven out of the address at speed.*

[49] Although the offences are not serious or disqualifying offences, the legislation intends that all offences be taken into account and transferability of the blue card across all areas of employment and

business regulated by the Act is of significant concern given Mr Gretton's criminal history.

[50] Other risk factors include:

- a) Past non-compliance with treatment of his diabetes resulting in his stress levels being out of control;
- b) Notwithstanding the presence of Ms Higgins and her children, as well as his adult children in Mr Gretton's life, he has nonetheless continued to offend, with the most recent offending being in 2012 and 2014. The 2014 offence, the '*dangerous operation of a vehicle*', being of particular concern. While the presence of these people in Mr Gretton's life may indeed be a protective factor, it has not been sufficiently protective to deter him from committing further offences.
- c) Despite a lengthy gap of non-offending, Mr Gretton re-offended in 2012 and in 2014. The 2014 offence resulted in injuries to the complainants such that they had to be taken to hospital.
- d) The demonstrable remorse and insight is recent and coincides with the filing of the application for review and insufficient time has passed for Mr Gretton to prove he has sufficient anger and impulse control so that should he find himself in situation of conflict involving children, or to which children are exposed, he will behave appropriately.
- e) There are inconsistencies in Mr Gretton's versions of events regarding some of the offences provided to police and to blue card services.
- f) Mr Gretton cites his goal to be a joint foster carer as a protective factor given that it is regulated by the Department. Mr Gretton places emphasis on the monitoring he will receive should his application be successful.
- g) The Chief Executive submits that the supervision provided by the Department would be irregular and likely consisting of short, sporadic visits over the course of the foster care placement. Mr Gretton's care of the children would be largely unsupervised by the Department on a day-to-day basis.
- h) Despite the regulated nature of foster care, the risks to children cannot be wholly ameliorated by Departmental supervision.
- i) The transferable nature of the blue card would allow Mr Gretton to work with children in all areas of child-regulated employment, and would not be limited to the joint foster care of Ms Higgins's children, or to the care of children and young people as governed by the *Child Protection Act 1999*.

[51] The Chief Executive finally submits that eligibility for a blue card cannot be confined to one area alone and a positive notice and blue card is fully transferable and unconditional. The broader issues regarding transferability and the unconditional nature of a blue card cannot be disregarded.

- [52] The granting of a blue card will allow Mr Gretton unsupervised and unfettered access to children and young people in a range of regulated activities including homestay, family day care and to act as a foster carer to multiple vulnerable children.
- [53] Organisations and the wider community rely on and place their trust in the screening process conducted by Blue Card Services, with the knowledge that a person who has been issued a blue card is eligible to work in all areas of regulated child-related employment. The Tribunal must consider the Applicant's eligibility to work in any child-related employment or conduct a child-related business regulated by the Act, irrespective of whether the Applicant intends to engage in such activities.
- [54] Finally, the Chief Executive submits that Mr Gretton has not sufficiently demonstrated he acknowledges and understands the serious nature of his offending, and that, despite much time to reflect, he fully understands the triggers that lead to his offending and that he has addressed those triggers sufficiently to avoid a re-occurrence of similar offending.
- [55] This is particularly relevant given the recent offending occurred following a lengthy gap in his criminal history. It is also concerning as to why he has only recently attended counselling and anger management, and whether sufficient time has passed for him to have developed appropriate conflict resolution and anger management strategies so as to reduce the risk of re-offending.
- [56] While the Chief Executive notes material provides evidence as to Mr Gretton's positive interactions with his partner's child and foster children, all of whom are special needs children, the broader issues in the matter concern not only interactions with Mr Gretton's partner's foster children.
- [57] It is submitted by the Deputy Chief Executive Officer that this remains an exceptional case and his original decision of should be confirmed.

Discussion

- [58] It is clear that meeting Ms Higgins and her children has been a life changing event for Mr Gretton. Ms Higgins has been a positive influence on him and Mr Gretton has been prepared to confront many of his own attitudes and to change them to support and foster his relationship with Ms Higgins.
- [59] Mr Gretton clearly cares very deeply for Ms Higgins and in return, she is secure and comfortable in her relationship with him. Ms Higgins speaks very highly of Mr Gretton's attributes but is sensible and insightful enough to recognise his weaknesses and the areas that still require his work.
- [60] The Tribunal was impressed with Ms Higgins' evidence and her insightful candour and places weight on her view of the changes in Mr Gretton since she has known him.

- [61] Mr Gretton has a history of conflict resolution by the use of violence or aggressive behaviour. However these activities seem to relate to periods when he has been employed – first as a body guard and then as a truck driver in a volatile family business. He learnt to resolve conflict with aggression as a young body guard and reacted the same way when employed by others and during times he felt threatened.
- [62] It seems that for a long time this was his “go-to” method of conflict resolution. Another example of this are the domestic violence orders.
- [63] The Tribunal cannot now, in relation to the convictions, accept a different version of events that goes to the facts concerning the commission of an offence, including the elements and the sentence imposed.¹⁰
- [64] This offending is balanced by the long period of self-employment when he was able to stay out of the criminal system – that is he had an incentive to stay “clean” – his livelihood.
- [65] He now has another incentive to change his ways. Above all else, he values his relationship with Ms Higgins and her children. This was very clear in his evidence and is reciprocated by the evidence of Ms Higgins – an impressive witness.
- [66] However, against this, the most recent criminal transgressions were committed while he has known Ms Higgins, although in the early part of their relationship.
- [67] This review is conducted on the basis that the welfare and best interests of a child are paramount. It is finely balanced when the risk and protective factors are weighted up.
- [68] I do not accept the submission that any external supervision of Mr Gretton would be irregular and likely consisting of short, sporadic visits over the course of the foster care placement. Youth workers are consistently daily in Ms Higgins’s home. Child Safety Officers are routinely involved. The Community Visitor also attends. All of these visitors have reporting responsibilities if any concerns are observed.
- [69] In the end, what finally tips the balance towards re-instating Mr Gretton’s positive notice and his blue card is the clear value, above all else, he places on his relationship with Ms Higgins and her children and the confidence I place in Ms Higgins, having observed her giving evidence and answering my and other’s questions. Mr Gretton has a lot to be thankful for in his association with Ms Higgins and I believe he understands this.
- [70] With these incentives, I am satisfied that on balance, there is sufficient evidence before me to accept that Mr Gretton is now insightful enough to withstand all of the possible stressors of an unrestricted positive notice and to continue to develop coping strategies. I am also satisfied that his

¹⁰ *Minister for Immigration and Ethnic Affairs v Gungor* [1982] FCA 99; *Jackson v Commission for Children and Young People and Child Guardian* [2014] QCAT 186.

relationship with Ms Higgins and her children is so important to him as to keep him focused on the conflict resolution strategies he is now practicing and developing in his counselling sessions.

- [71] I also place confidence in Ms Higgins abilities and common sense as a protective factor. As I have said above – Ms Higgins was an impressive witness. I accept that she will not allow her relationship with Mr Gretton to cause any harm to the children in her care. I accept that Mr Gretton would leave the household before the children did. Mr Gretton also understands this reality.
- [72] I am satisfied that Mr Gretton's personal development and the protective factors in issuing him with an unrestricted positive notice outweigh the risk factors and the correct and preferable decision is that an exceptional case does not exist, such that a positive notice should be issued.
- [73] The decision of the Chief Executive of 29 June 2015 to cancel a positive notice and blue card and issue a negative notice to Andrew Brian Gretton is set aside.
- [74] The Chief Executive is to issue a positive notice and blue card to Andrew Brian Gretton.