

MEDIA RELEASE

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ASIC Confirms No Dishonesty or Fraud in case against Mawhinney

In today's final hearing in the Federal Court the Australian Securities and Investments Commission surprisingly admitted it "hasn't alleged conscious dishonesty, and never has" against Mr Mawhinney.

The deplorable admission conflicts with ASIC's ex parte application to the Federal Court of Australia in August 2020 where it was alleged Mr Mawhinney had established three Ponzi schemes, had potentially committed fraud, was potentially facing criminal charges, and was a flight risk.

ASIC obtained wide-ranging freezing orders analogous to those imposed on fraudsters, yet in submissions today ASIC contradictorily admitted it "never has" alleged dishonesty by Mr Mawhinney. The inconsistency is deeply problematic for there to be any justification for the orders ASIC sought.

It could be said that ASIC's case is capable of being described as malicious prosecution. Despite key elements being missing such as theft, fraud, or charges of any kind, and ASIC's own admission that Mr Mawhinney operated honestly, ASIC continued to press the Federal Court for the life ban of Mr Mawhinney.

ASIC's realisation and admission confirms the bipolar and contradictory nature of its case against Mayfair 101 and Mr Mawhinney. On the one hand it seeks life bans, on the other it admits no dishonesty, fraud or misappropriation. It is astounding that a Government department has attempted to prosecute a case on this basis given the standard expected of public authorities, their staff and representatives.

ASIC's action has ruined the lives of hundreds of Mayfair 101's investors who invested over \$210 million, for many it being their life savings. Those investors qualified to invest based on existing laws and chose to invest based on their own due diligence. Not one investor had filed a written complaint prior to ASIC's intervention in March 2020. All investor interest and redemptions were up to date at the time.

ASIC pointed to an individual who had placed funds with the Group but did not provide a completed application. That individual was the last ever person Mayfair 101 received funds from before the injunctions were imposed in August 2020, limiting the Group's ability to register any further mortgages. It was the only individual out of over 650 investors whose application was pending finalisation. The individual is recognised as a creditor of the company.

A consistent theme in ASIC's case has been those investors who ASIC considered to be "unsophisticated" investors despite all investors complying with existing investor qualification requirements.

Mayfair 101 was entitled to rely on the existing wholesale investors laws. Personal advice was never provided to investors and no investors were induced into subscribing. Investors who qualified did so based on existing laws.

ASIC's case evidently shows the regulator has issues with the existing laws. This provides no valid basis for the regulator to prosecute a company or individual where legislative requirements were complied with.

Mr Mawhinney's counsel sought to have the case dismissed with costs. Justice Anderson has reserved his decision.

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MEDIA ENQUIRIES

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