

MEDIA RELEASE

22 DECEMBER 2022 – MELBOURNE, AUSTRALIA

ASIC Ordered to Pay Half James Mawhinney’s Legal Costs on an Indemnity Basis

The Full Court of the Federal Court of Australia has ordered the Australian Securities and Investments Commission to pay James Mawhinney fifty percent of his costs on an indemnity basis for bringing a case which denied him procedural fairness, resulting in a 20-year financial product ban being overturned.

In September this year the Full Court upheld Mr Mawhinney’s appeal against fundraising injunctions imposed last year by Justice Anderson of the Federal Court. In doing so the court remitted the case to a new Federal Court judge to be re-heard in circumstances the Full Court considered to be “very exceptional”.

The Honourable Chief Justice Allsop delivered judgment today on behalf of Justice O’Byrne and Justice Cheeseman, with the Chief Justice stating “[t]he price of having the proceedings remitted for a full re-pleading and the running of a new case should be that Mr Mawhinney, within reason, be held harmless and made whole from the consequences of the first failed attempt by ASIC.”

The decision is expected to cost Australian taxpayers over a million dollars in costs incurred by Mr Mawhinney to defend ASIC’s case which the Full Court found was “a fundamental denial of procedural fairness to Mr Mawhinney”.

Referring to Full Court’s decision to remit the case, the Chief Justice stated “the circumstances here are not ordinary. They are exceptional, most exceptional.” He described Mr Mawhinney’s primary ground of appeal as a “powerful and determinative procedural fairness issue”.

Mr Mawhinney said the costs order is a win for Mayfair 101’s noteholders who have had their funds frozen for nearly three years.

“I am pleased the Full Court has recognised the significant costs burden that has been incurred by ASIC’s actions. This win brings us another step closer to holding ASIC accountable for the damage caused by their mistaken campaign against Mayfair 101.”

Mayfair 101 and Mr Mawhinney have applied to the High Court to have both Federal Court proceedings initiated by ASIC in 2020 dismissed with costs.

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MEDIA ENQUIRIES

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