

**DECISION ON AN INTERNAL REVIEW APPLICATION UNDER
SECTION 91 OF THE *GREYHOUND RACING ACT 2017***

Matter for determination	Decision dated 19 December 2023
Applicant	Mr Morgan Fenwick-Benjes
Internal review decision date	4 March 2024
Internal review decision by	Mr Alby Taylor, Chief Commissioner
Internal review decision summary	To confirm the decision of the Commission's Application Assessment Panel made 19 December 2023 and refuse Mr Fenwick-Benjes' application for registration as an Attendant.

REASONS FOR DECISION

1. These are the reasons for decision following an application by Mr Morgan Fenwick-Benjes ("**Applicant**") for internal review under the *Greyhound Racing Act 2017* ("**Act**") of a decision of the Commission on 19 December 2023.
2. The decision of the Commission was made by the Application Assessment Panel ("**Panel**"), which determined to refuse the Applicant's application for registration as a greyhound Attendant.
3. This is a reviewable decision within the meaning of section 91(1) of the Act. As I was not involved in making the reviewable decision, I have dealt with this application.
4. Under section 91(7) of the Act, an internal reviewer is empowered to:
 - Confirm the reviewable decision the subject of the application; or
 - Vary the reviewable decision; or
 - Revoke the reviewable decision.

Background

5. The Applicant first registered as an Attendant in 2015. In 2016 he registered as an Owner/Trainer and Breeder.
6. On 13 December 2019, the Applicant was disqualified for a period of four (4) years in respect of rule breaches relating to prohibited substance and conduct issues.

7. The Applicant's period of disqualification expired on 21 March 2023.
8. On 20 September 2023 the Applicant applied for registration as an Attendant.
9. The registration application form requests information as to whether an applicant has previously been convicted of, or charged with, a criminal offence. The Applicant stated that he had not.
10. In accordance with standard procedure, the Commission requested a National Police Check in respect of the Applicant. The National Police Check revealed that the Applicant had previously been convicted of a number of driving offences.
11. The Applicant's application for registration was referred to the Panel, who met on 26 October 2023 to consider his application.
12. When considering Mr Fenwick-Benjes' application, the Panel had reference to the Commission's '*Fit and Proper Person Framework*' ("**Framework**"), which provides guidance to both applicants and decision makers regarding the Commission's administration of the requirements of Section 47(1) of the Act.
13. On 19 December 2023, the Commission advised the Applicant his application had been rejected on the following grounds:
 - Criteria 12 of the Framework - Applicant has previously been charged or convicted of a criminal offence but did not disclose this in their application.
 - Criteria 16 of the Framework - Applicant has a disciplinary history in the greyhound, thoroughbred or harness racing industry.

The internal review application

14. On 2 February 2024, the Applicant lodged an application for internal review of the decision made on 26 October 2023.
15. The Applicant provided written submissions in support of his application, which I have read and considered.

Decision

16. In reviewing the Applicant's application for registration, I have firstly had reference to Section 47(1) of the Act which dictates that the Commission is:

"...to exercise its registration functions under this Division so as to ensure that any person registered by the Commission is a person who, in the opinion of the Commission, is a fit and proper person to be registered (having regard in particular to the need to protect the public interest as it relates to the greyhound racing industry)."

17. Additionally, I have considered the Commission's Framework. I note Criteria 12 states that where a participant has previously been charged or convicted of an offence but has not disclosed this on their application, the Applicant will be asked for further information and the application may be refused.
18. As previously noted, Mr Fenwick-Benjes did not disclose his previous offences in his Application and the Panel had regard to this failure to disclose these matters in their deliberations on Mr Fenwick-Benjes' application.
19. When queried about this omission, the Applicant explained that as these were 'driving offences', he did not realise that disclosure was required.
20. In his submissions to this review, Mr Fenwick-Benjes explained that his most recent driving offence occurred because he is a diabetic and checked his blood sugar on a mobile phone app while driving. However, the relevant National Police Check states that on 21 August 2023 Mr Fenwick-Benjes was disqualified for three months for driving whilst suspended.
21. The Panel relied upon criteria 12 of the Commission's framework as one of two reasons for refusing the Applicant's registration. On a closer examination of the entries disclosed on the National Police Check it is apparent that all the entries relate to driving offences. The framework used by the Commission to consider an applicant's fitness to be registered refers to a person being charged or convicted of criminal offences.
22. The Panel's consideration of driving matters on the National Police Certificate as a relevant factor in determining the Applicant's fitness is not reflected within the Commission's own framework. This is not to say that if a person had extensive and adverse traffic history that such a history could not be used in determining their fitness to hold a registration in certain circumstances, but rather it would be a matter of considering that traffic history and what weight should be applied to the number and nature of the adverse traffic entries.
23. I am only required to review the appropriateness of the original decision by the Commission. If I was to consider the Applicant's traffic history, I would not consider that this traffic history is such that he should be refused a registration. There are four entries on his traffic history from 2013 and early 2014. They resulted in fines and on two occasions he was disqualified for driving with a prescribed concentration of alcohol within his bloodstream within the mid-range alcohol limit. These were matters dealt with over 10 years ago.
24. The Applicant has one further entry, being a more recent traffic matter, that was dealt with in August 2023. This was an offence of driving whilst suspended for which he was fined and disqualified from driving for a period of 3 months. These are the only entries disclosed on his National Police Certificate. I consider that the traffic matters are not such that they would give rise to a factor which would warrant a refusal of a registration with the Commission.

25. Additionally, the explanation given by the Applicant as to why he did not provide information about his traffic history is explicable in the circumstances. He was not required to provide details of traffic matters, only criminal matters.
26. The Panel also had regard to Mr Fenwick-Benjes' disciplinary history within the greyhound racing industry. It is this history that is the most troubling.
27. The Applicant has a history of significant rule breaches in the industry. These include:
- 8 March 2017; disqualified for twelve (12) months in respect of a breach of R83(2)(a)¹
 - 12 October 2017; disqualified for ten (10) months in respect of two (2) breaches of R83(2)(a)
 - 13 December 2019; disqualified for four (4) years in respect of a breach of R83(2)(a); suspended for one (1) month in respect of a breach of R79A(7)²; issued formal warnings in respect of ten (10) breaches of R84(2).³
28. The Applicant's disciplinary history reveals serious and repeated breaches of the Greyhound Racing Rules relating to prohibited substances.
29. I note that in the 2019 matter, which was investigated by the Commission, a permanently banned prohibited substance (being amphetamine) was detected in a greyhound that the Applicant presented for racing. In a subsequent inspection of the Applicant's kennels, other permanently banned prohibited substances were found, as well as a range of substances which were unlabelled and which would, if detected in a greyhound presented for racing, constitute prohibited substances.
30. What is most concerning to me about this matter is that these breaches not only involved permanently banned prohibited substances but occurred after Mr Fenwick-Benjes had been disqualified for rule breaches relating to prohibited substances on two previous occasions. This indicates a disregard for the Rules.
31. In the Racing Appeals Tribunal decision relating to the 2019 matter, the President of the Tribunal said:

"30. The Tribunal expresses that it has rarely had to deal with such a poor record where a trainer, effectively on three, but, it is assessed, on two occasions, within a short space of time of being licensed has been the subject of orders putting him out

¹ Note: R83(2)(a) refers to the Greyhound Racing Rules in place at that time. The equivalent provision in the current Rules is R141(1)(a).

² Note: R79A(7) refers to the Greyhound Racing Rules in place at that time. The equivalent provision in the current Rules is R139.

³ Note: R84(2) refers to the Greyhound Racing Rules in place at that time. The equivalent provision in the current Rules is R148.

of the industry and then within a matter of weeks, it might be said, of getting the privilege of a licence back, commits a further serious prohibited substance offence and, indeed, in respect of two of the now four presentations they have been permanently banned prohibited substances, being the subject amphetamine and a prior cocaine. It is to be accepted that in respect of the first of those matters, the cocaine, there were matters of exculpation and they were husbandry failure matters and failing strictly to comply with what was required of a licensed person.

31. He has had little opportunity, too, because of his offending, to demonstrate that he has learnt the lessons from his previous breaches. It might be said he has not, because he is back again. Any assessment of an appropriate objective seriousness of his conduct on this occasion cannot be lost in respect of that short licensing period and those number of prior matters in such a short period of time.”

32. In his submissions to this review, Mr Fenwick-Benjes did not express any remorse in relation to his previous disciplinary history. Rather, he provided contact details of a person who could “shed more light” on the 2019 matter. As that matter was subjected to an extensive inquiry by the Commission and a subsequent Racing Appeals Tribunal hearing at that time, I have determined not to contact this person, nor is it appropriate that the Commission embark on this course on behalf of the Applicant.
33. The repeated offending for serious permanently banned prohibited substance matters is such that I consider the Applicant unfit to be registered. The Applicant seeks registration as an Attendant. The Commission’s registration scheme provides for an Attendant to be permitted to handle greyhounds at race meetings or trials.
34. The Applicant states in his submissions that he wishes to assist his elderly mother who is a registered greyhound Breeder. His mother does not have a registration that permits her to race or trial greyhounds. Mr Fenwick-Benjes explained that as his mother is a senior citizen, he would like to be able to assist in the care of greyhounds on the property.
35. Mr Fenwick-Benjes’ desire to support his elderly mother is commendable. However, his history in the industry raises very serious concerns about his fitness to be registered as a participant in the greyhound racing industry. It is a requirement under the Greyhound Racing Rules that a disqualified person must reapply for registration if they wish to be considered for re-entry to the greyhound industry. This is unlike a suspension where once the period of suspension expires the person automatically becomes eligible to continue in the industry as a registered person.
36. A disqualification is a penalty that requires an application for registration to return to the industry. This registration application undergoes the same process that all new application processes must undergo. A person’s fitness is then assessed against all the same criteria as outlined in the Commission’s registration framework. If the regulators of the industry considered that a person who completes their disqualification period should automatically be

re-registered, then they would not have enacted a specific rule that expressly requires the opposite. In my view a person's disciplinary history in a racing code, especially in the greyhound industry for matters such as this, is highly relevant and should be carefully considered in every case of a person seeking re-registration after a disqualification.

37. The serious and repeated nature of Mr Fenwick-Benjes' rule breaches necessitates close consideration of this criterion. It is these occurrences in the Applicant's past that have persuaded me that he is not a fit and proper person to be registered at this time.

38. For these reasons, I have determined to confirm the decision of the Panel, albeit not for entirely the same reasons, and refuse the Applicant's application for registration.

Brenton (Alby) Taylor, MPPA, Dip Law (LPAB), GDLP, GCAM, GAICD
Chief Commissioner

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