IN THE RACING APPEALS TRIBUNAL

CASIE O'NEIL
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION

Date of hearing:	**9 August 2024**
Date of determination:	**19 August 2024**
Appearances:	**Mr G Walters for the Appellant**
	Ms A Summerson-Hingston for the Respondent

ORDERS:

1. **The appeal is allowed in each case.**
2. **The penalties imposed at first instance are set aside in each case.**
3. **In lieu thereof, a disqualification of 5 months is imposed in respect of each offence.**
4. **The periods of disqualification in order [3] are to be served concurrently, and shall commence on 8 May 2024.**
5. **The appeal deposit is to be refunded in each case.**

BACKGROUND

1. By a Notice of Appeal dated 2 May 2024,[1] Casie O'Neil (the Appellant) appeals against two determinations made by the Greyhound Welfare and Integrity Commission (the Respondent) imposing a 12 month disqualification for breaches of rr 159(5)(a) and 159(5)(b) of the *Greyhound Racing Rules* (the Rules). An application for a stay which was filed at the time of the filing of the Notice of Appeal has since been withdrawn.

2. The appeal was heard on 9 August 2024, following which my decision was reserved. The parties provided a Tribunal Book (TB) containing all relevant evidence.

THE FACTS

3. The facts are not in dispute and may be summarised as follows.

4. The Appellant has been a participant in the greyhound racing industry since 2002, and a registered Public Trainer since 2006.[2]

5. On 26 October 2023, the Respondent's inspectors attended the Appellant's premises. The Appellant was not present at the time but one of the inspectors, a Mr Turner, spoke to her in a recorded conversation.[3] An inspection was then carried out in the presence of the Appellant's son, Jacobie, in the course of which inspectors located a lure. The following conversation then took place between Mr Turner and Jacobie:[4]

Q 81 *What can you tell me about that?*
A *I wouldn't have a clue what it is.*

Q 82 *It's obviously a lure.*
A *Yeah*

[1] TB 1.
[2] TB 70.
[3] Transcript commencing at TB 30.
[4] Commencing at Q and A 81 at TB 38.

Q 83 Where'd that come from?
A Hey?

Q 84 Where'd that come from?
A It's been out here for years as well.

Q 85 Okay
A This trailer hardly gets used anymore, so ...

Q 86 Okay. Do you know what that lure's made out of?
A No. Sheep, it looks like. Something.

Q 87 Sheep? So you ...
A I can throw that one out if you want

Q 88 Well – so you'd say that – would you agree that that's a natural, non-synthetic fibre that it's made out of?
A I don't really know much about it.

Q 89 Okay. Do you know the last time it was used?
A Nope. I got – way before I was born, I reckon.

6. The Appellant then arrived at the premises, and was asked about the lure.[5] She told the inspectors that she had used the lure on *"Tuesday"*[6]. She was then asked:[7]

Q 131 Okay, and so you regularly use it. What material is that made out of?
A I wouldn't have a clue.

Q 132 Okay. So we're looking at ...
A It'd be from something from Spotlight though, I dare say.

Q 133 Okay. So we're looking at it and it appears to be non-synthetic.
A What's that mean?

Q 134 It's – It's – It's a natural fibre, it's not man made.
A No. It's a squeaker with material wrapped around it.

Q 135 Yeah. But the material that was wrapped around it is a nature fibre, it's not synthetic.
A Okay.

Q 136 Okay.
A I don't know what that means.

[5] Commencing at Q and A 122, TB 42.
[6] Q and A 130.
[7] Commencing at Q and A 131.

Q 137 So you – so lures need to be synthetic now. They can't be made of any animal products.
A Okay.

Q 138 So, we're seizing that today.
A Okay.

Q 139 --- so that it can be tested. Okay? So, you don't – you're not aware of what the product is around the outside of it?
A No. It's that old. It's been stitched up multiple times.

Q 140 So where did you get it from?
A Well it was Dad's.

Q 141 Yeah?
A I just took over all of his stuff.

Q 142 And you've been using it?
A Yeah.

Q 143 Okay.
A You've got to have something to be rewarded at the top. You going to run up the top of a hill and get nothing other than a pat?

Q 144 Yeah, look, I get it, but you've got to use a non-synthetic – you've got to use a synthetic fibre, you can't use a non-synthetic fibre. You can't use any natural products. It's got to be a manmade product. So ---
A What would that be?

Q 145 So, basically, a nylon. Basically, the lures that you buy through the guy at the track, you know, or through a pet shop.
A Off Trent?

Q 146 Yeah. Someone like that.
A Okay.

7. Photographs of the lure are contained in the evidence before me[8] and are self-explanatory.

8. Following its seizure, the lure was examined. Natural fibres were detected.[9]

[8] Commencing at TB 55.
[9] Report of Dr Greta Frankham at TB 66.

DISCIPLINARY ACTION AGAINST THE APPELLANT

9. On 22 April 2024, the Appellant was served with a Notice of Charge and Disciplinary action alleging offences in the following terms:[10]

> ***Charge 1, Rule 159(5)(a), Rules***
>
> *(5) A person who, in the opinion of a Controlling Body or the Stewards:*
>
> *(a) uses or attempts to use in connection with greyhound training or greyhound racing, anything containing animal material whether as bait, quarry, or lure;*
>
> ***Charge 1 – Particulars:***
>
> *That you, a registered Public Trainer, have used in connection with greyhound training, education or preparation to race or racing any part of an animal as a lure to entice or excite a greyhound to pursue it or otherwise, in circumstances where:*
>
> *(a) An item (**"item"**) was found in a trailer at your property situated at xxxx on 26 October 2023;*
> *(b) Morphological examination of the item conducted by the Australian Centre for Wildlife Genomics determined that the item is comprised of natural hair fibres;*
> *(c) You admitted to using the item as a lure for the purposes of training greyhounds.*
>
> ***Charge 2: Rule 159(5)(b), Rules***
>
> *(5) A person who, in the opinion of a Controlling Body or the Stewards:-*
>
> *...*
> *(b) attempts to possess, has possession of, or brings onto any premises, grounds or within*
>
> *the boundaries of any property where greyhounds are, or activities associated with greyhound racing occur or are intended to occur anything containing animal material, for the purpose of being, or which is reasonably likely to be or capable of being, used as bait, quarry or lure;*
>
> ***Charge 2 – Particulars:***
>
> *That you, a registered Public Trainer have possessed at your property situated at xxxx where greyhounds are trained, kept or raced any part of an animal for the purposes of being, or which might reasonably be capable of being, or likely to be, used as a lure to entice or excite or encourage a greyhound to pursue it, in circumstances where:*

[10] Commencing at TB 25.

*(a) An item (“**item**”) was found in a trailer at your property situated at 3 Pimpala Place, Orange on 26 October 2023;*

(b) Morphological examination of the item conducted by the Australian Centre for Wildlife Genomics determined that the item is comprised of natural hair fibres.

10. The Notice proposed the imposition of a 2 year disqualification.[11]

11. At a hearing on 29 April 2024,[12] the Appellant pleaded guilty to both of the offences brought against her.[13] Significantly, when entering those pleas, the Appellant said:[14]

> *I’m guilty of owning it and using it, but I’m not guilty of knowing what it is.*

12. She subsequently reiterated her lack of knowledge that the lure was prohibited.[15]

13. In mitigation, the Appellant relied upon the following matters:

    (i) she has been an industry participant for approximately 20 years;[16]

    (ii) she had “one mark against her name”[17] (an assertion which, in view of the disciplinary history which is before me,[18] is not correct);

    (iii) the lure had never previously been an issue, and had not been seized in the course of previous inspections of her property[19] when it was examined by officers of the Respondent;[20]

    (iv) the lure had belonged to her father, from whom she inherited it 17 months ago,[21] and she was not aware of the circumstances in which he had originally acquired it;[22]

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[11] TB 28.
[12] Commencing at TB 75.
[13] Q and A 13 – 18; TB 76 – 77.
[14] Q and A 19; TB 77
[15] Q and A 21; TB 77.
[16] Q and A 24; TB 78.
[17] Q and A 25; TB 78.
[18] Discussed at [41] below.
[19] Q and A 26; TB 78.
[20] Q and A 30 – 33; TB 78 – 79.
[21] Q and A 34, 39, 94; TB 79; 85.
[22] Q and A 35; TB 79.

(v) she had never been told she could not have it in her possession;[23]

(vi) she had no reason to think that it was prohibited;[24]

(vii) she used the lure once every five weeks;[25]

(viii) she did not consider that it was properly described as a lure, because it could not be attached to anything.[26]

14. At the conclusion of the hearing, a disqualification of 12 months was imposed in respect of each charge. Those periods of disqualification were ordered to be served concurrently, commencing on 8 May 2024.[27] Those penalties were subsequently confirmed by the Respondent in writing.[28]

THE RELEVANT PROVISIONS OF THE RULES

15. The charges brought against the Appellant are contrary to rr 159(5)(a) and (b) of the Rules which are in the following terms:

> *5) A person who, in the opinion of a Controlling Body or the Stewards:*
>
> *(a) uses or attempts to use in connection with greyhound training or greyhound racing, anything containing animal material whether as bait, quarry, or lure; or*
>
> *(b) attempts to possess, has possession of, or brings onto any premises, grounds or within the boundaries of any property where greyhounds are, or activities associated with greyhound racing occur or are intended to occur anything containing animal material, for the purpose of being, or which is reasonably likely to be or capable of being, used as bait, quarry or lure;*
>
> ...
>
> *must be disqualified and, if applicable, in addition fined a sum of money not exceeding the amount specified in a relevant Act or the Rules, unless there is a finding that a special circumstance exists at the time of the offence, in which case a penalty less than the minimum penalty stated in this subrule may be imposed. "Special circumstances" is to have the meaning provided for in subrule (4) of this rule.*

[23] Q and A 34; TB 79.
[24] Q and A 39; TB 79.
[25] Q and A 45; TB 80.
[26] Q and A 55 – 61; TB 81.
[27] A and A 99; TB 85 – 86.
[28] TB 88 – 93.

[Note: for rule 159(5) "animal material" means any processed and/or tanned and/or cured skin or hide of an animal and does not include anything that contains animal bone, blood, faeces, urine or flesh.]

16. Rule 159(4) provides as follows:

> *(4) For the purposes of subrule (3):*
>
> *(a) the onus of establishing special circumstances is on the person seeking to rely on the special circumstance/s*
> *(b) the circumstances that may constitute "special circumstances" must exist and have effect at the time of the relevant offending:*
> *(c) the special circumstances that may exist at the time of the offence include that:*
>
> > *(i) the offender had impaired mental functioning causally related to the relevant offending;*
> > *(ii) the offender had a particular illness or disability causally related to the relevant offending;*
> > *(iii) the offender was under duress that is causally related to the relevant offending;*
> > *(iv) the offender was coerced with that coercion causally related to the relevant offending; or*
> > *(v) there was, in the interests of justice and in relation to the offending, the presence of one or more other objective circumstances considered to constitute "special circumstances".*
>
> *(d) a person's contribution to the greyhound racing industry or any code of racing can never constitute "special circumstances"; and*
> *(e) the impact of a disqualification on a person's livelihood or business interests can never constitute "special circumstances".*

17. At this point it is necessary to make a number of observations about r 159(5), and the positions of the parties in relation to it.

18. First, as explained by Ms Summerson-Hingston during the course of the hearing, the purpose of the rule is to guard against animal cruelty. In the present case, the expert evidence establishes that fibres of the lure which were examined were "natural in origin".

19. Secondly, disqualification is mandatory in the case of a breach of r 159(a) or (b) of the Rules, absent a finding of special circumstances.

20. Thirdly, in the present case Ms Summerson-Hingston conceded that it would be open to me to find that special circumstances were made out on the basis of a variety of factors. [29]

21. Fourthly, notwithstanding that concession, the Respondent's position in terms of penalty is that, even if a finding of special circumstances is made, a period of disqualification should nevertheless be imposed and that such period, if not the same as that imposed at first instance, must be greater than that which has been served by the Appellant to date, which is approximately 3½ months.[30]

22. Fifthly, whilst agitating for a finding of special circumstances, Mr Walters who appeared on behalf of the Appellant, effectively conceded that some period of disqualification was warranted, but submitted that the period served to date, coupled with a fine, was an appropriate penalty.[31]

23. Finally, to the extent that r 159(4) prescribes what constitutes special circumstances, it does so in inclusive, and not exhaustive, terms. Moreover, whilst r 159(4)(d) and (e) make provision for factors which can never constitute special circumstances, that does ***not*** mean that they cannot be regarded as *mitigating factors,* to be taken into account when assessing penalty. That is an important distinction, the existence of which was specifically accepted by Ms Summerson-Hingston.[32]

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

24. In addition to the matters upon which the Appellant relied upon in the hearing before the Stewards,[33] her statement is before me.[34] The Appellant was not cross-

[29] Transcript 3.30 – 3.46.
[30] Transcript 4.1 – 4.20.
[31] Transcript 8.16 – 8.23.
[32] Transcript 9.26 – 9.28.
[33] Set out at [13] above.
[34] TB 94 – 96.

examined on its contents, which are accordingly unchallenged and which include the following:

(i) the lure was located in a tool box of a trailer located in the yard of the premises;[35]

(ii) the Appellant accepts responsibility for the breaches of r 159(5);[36]

(iii) the lure was owned by her late father, and has been in existence for approximately 20 years;[37]

(iv) the lure was at the Appellant's premises, and was inspected on at least three prior occasions by officers of the Respondent;[38]

(v) the Appellant held the (obviously mistaken) belief that the lure was made of synthetic materials, a belief which, in the Appellant's mind, was confirmed by the absence of any comment on the part of the Respondent's officers on the prior occasions on which the lure was inspected;[39]

(vi) at the time of the offending, she had 6 registered greyhounds, from which she was making a small profit, which was supplemented by income from part-time employment;[40]

(vii) at the time of the imposition of the disqualification, the Appellant was considering commencing to train greyhounds on a full time basis;[41]

(viii) she has suffered a significant emotional reaction as a consequence of the proceedings brought against her, part of which has been brought about due to being restricted in socialising with friends, the majority of whom are industry participants;[42] and

[35] At [8]; TB 94.
[36] At [9]; TB 95.
[37] At [8] and [9]; TB 94 – 95.
[38] At [10]; TB 95.
[39] At [11], TB 95.
[40] At [12] – [14]; TB 95.
[41] At [12]; TB 95.
[42] At [15]; TB 95 – 96.

(ix) she is remorseful, and recognises the potential damage to the reputation of the industry consequent upon her offending.[43]

25. Mr Walters, who appeared for the Appellant, relied upon all of these factors and further submitted that the Appellant:

(i) fully co-operated with the Respondent in its investigation;[44]
(ii) pleaded guilty at the first available opportunity;[45]
(iii) has a good disciplinary history;[46]
(iv) acquired the lure in circumstances where she was entirely unaware of the fact that it was prohibited;[47]
(v) has already served a substantial penalty.[48]

26. Mr Walters submitted that taking into account all of the relevant factors, the offending was at the lowest end of the scale.[49] He also submitted that specific deterrence was not a relevant issue in determining penalty,[50] and that the Respondent's publication of the penalty imposed had addressed considerations of general deterrence.[51]

27. Mr Walters' ultimate submission was that the period of disqualification served to date, coupled with a fine, was an appropriate penalty.[52]

Submissions of the Respondent

28. The submissions of the Respondent may be summarised as follows:

[43] At [17]; TB 96.
[44] Submissions at [5](a)(i); TB 16.
[45] Submissions at [5](a)(ii) and (iii); TB 16.
[46] Submissions at [5](b); TB 16.
[47] Transcript 5.40 and following.
[48] Transcript 8.16 and following.
[49] Submissions at [5](d); TB 16; Transcript 6.4 and following.
[50] Submissions at [8]; TB 17.
[51] Submissions at [9]; TB 17.
[52] Transcript at 8.16 – 8.40.

(i) the imposition of a period of disqualification was necessary;[53]

(ii) the breaches were serious;[54]

(iii) whilst the Appellant's pleas of guilty, and her co-operation, were to be acknowledged, that did not alter the fact that a disqualification was required;[55]

(iv) it was accepted that the Appellant had a generally good history of participation in the industry, and that this was a factor relevant to the determination of penalty;[56]

(v) whilst the breach fell at the lower end of the scale, general deterrence remained a relevant consideration;[57]

(vi) there was no evidence to establish that the lure had come to the attention of the Respondent's inspectors before the date on which it was seized[58] and, in any event, that was irrelevant;[59]

(vii) although the Appellant inherited the lure and did not purchase it, her admission that she regularly used it was relevant[60] and there was, in any event, an obligation upon all participants to ensure that they complied with the relevant rules.[61]

29. Ms Summerson-Hingston also referred me to a number of decisions made in cases of this kind, to which I have made reference below.

CONSIDERATION

30. Consistent with the positions advanced by both parties, it would be open to find that special circumstances have been made out. In that event, given the terms of the rule, a period of disqualification would not be *mandatory*. However, the Respondent argues that a disqualification is nevertheless appropriate, and the

[53] Submissions at [36]; TB 17.
[54] Submissions at [39]; TB 13.
[55] Submissions at [22]; TB 21; Transcript 9.32 and following.
[56] Submissions at [24] – [26]; TB 22.
[57] Submissions at [27] – [31]. TB 22.
[58] Submissions at [34]; TB 23.
[59] Submissions at [35]; TB 23.
[60] Submissions at [37]; TB 23 – 24.
[61] Transcript 10.12 and following.

Appellant does not contest that. The issue between the parties is the period of disqualification. It follows that any issue of special circumstances is rendered somewhat academic.

31. At a prima facie level, any breach of r 159(5) must be regarded as objectively serious. In assessing penalty, the underlying purpose of the rule must be recognised. Consistent with that, it is necessary to impose a penalty which takes into account the need to protect the integrity of, and the maintenance of public confidence in, the greyhound racing industry.

32. However, even when proper allowance is made for all of those factors, I am of the view that the Appellant's offending is at the lower end of the scale of objective seriousness for a number of reasons.

33. To begin with, and whilst offending of this kind does not require proof of knowledge on the part of the offender, a lack of knowledge can amount to a factor in mitigation. In that regard, the circumstances of the Appellant's acquisition of the lure are important. The evidence establishes she inherited it from her late father on the occasion of his death. On the unchallenged evidence before me, the Appellant's father had purchased it some 20 years ago. In that regard, Mr Turner's comment to the Appellant that *"lures need to be synthetic now"* may indicate that at the time it was originally acquired by the Appellant's father, the lure was not prohibited. If that is the case, it provides some further context in which the Appellant's possession of it falls to be considered.

34. It follows that in terms of the charge directed towards her possession of the lure, the Appellant's case is to be distinguished from those in which an item of that kind might be acquired or purchased by an industry participant in full knowledge of the fact that it is prohibited. In coming into possession of the lure on the death of her father, the Appellant was not, in any direct sense, knowingly complicit in the facilitation or promotion of animal cruelty. That is significant, given that the prevention of such cruelty is the fundamental rationale underlying the rule

pursuant to which the charges were laid. All of those observations are consistent with the fact that, when the allegation was first put to her, the Appellant's immediate response to Mr Turner was that she didn't *"have a clue"* as to the material from which it was made, but thought it likely that it was made out of *"something from Spotlight"*. Such instantaneous responses are entirely inconsistent with the Appellant having any knowledge that the lure contained natural fibres.

35. Further, in terms of the charge directed towards her use of the lure, the evidence before me is that the frequency of such use was approximately every five weeks. Whilst such use might be regarded as regular, it is not particularly frequent.

36. It is, of course, the case that industry participants have a responsibility to ensure that they conduct their activities according to the rules. On the Appellant's own admission, she did not meet that responsibility. Moreover, the fact (if it be the fact) that the lure was not seized following previous examinations by officers of the Respondent does not provide the Appellant with any form of defence. At the same time however, it is relevant that there was no attempt on the part of the Appellant to hide the lure, nor does there appear to have been overt characteristics of the lure which might have indicated, at least to the Appellant, that it was prohibited. All of those factors support the Appellant's case that she was entirely unaware that she was committing any offence. For the reasons I have already expressed, that does not provide her with a defence, but it distinguishes the circumstances of the Appellant's case from one in which there is a knowing, deliberate and contumelious breach of the provision.

37. That said, general deterrence remains an important consideration on the question of penalty. Guarding against, and indeed preventing, animal cruelty, remains fundamental to the integrity of the greyhound racing industry. It is therefore necessary that any penalty sends a clear message to all industry participants that offences which relate to such cruelty will be dealt with by the imposition of significant penalties. Whilst each case must necessarily be determined

according to its own facts, industry participants should clearly understand that, commensurate with the terms of the rule itself, and its underlying rationale, offending of this nature will almost inevitably result in the imposition of a significant period of disqualification.

38. The present case is no different. However, I have come to the view that the period of disqualification should be less than that imposed at first instance. Quite apart from my assessment of the objective seriousness of the offending, such a conclusion is fortified by the Appellant's subjective case. I have reached such conclusion mindful of the fact that a subjective case, no matter how strong, cannot be permitted to result in the imposition of a penalty which does not reflect the objective seriousness of the offending. Nevertheless, there are subjective factors which the Appellant is entitled to have taken into account.

39. The Appellant pleaded guilty to both offences, and, as previously noted, I am satisfied that she is genuinely remorseful. It is clear from the whole of the evidence that personal deterrence has no role to play in determining penalty.

40. It might also be fairly said that the Appellant did not simply co-operate with the investigation in a cursory or superficial way. She was completely candid in her answers to questions put to her, made full admissions to the offending, and disclosed the entirety of the background to the existence of the lure. I accept the weight which can be afforded to a participant's co-operation with an investigation is necessarily limited. That stems from the fundamental fact that industry participants have an obligation to act in that way. However, recognising that co-operation may be afforded at different levels, the Appellant's general approach to the investigation is deserving of at least some consideration.

41. I have also taken into account the Appellant's unchallenged evidence of the psychological sequelae which has arisen from the circumstances surrounding the offending and the investigation, from the effects of which the Appellant continues to suffer. I acknowledge that sequelae of that kind are not uncommon where

disciplinary proceedings have been brought, and that there is no evidence in the present case of any causal connection between the Appellant's offending and her psychological state. However, the effect of the psychological consequences on the Appellant must be viewed in the context of a person who has not previously come under notice for serious offending of this kind. In that regard, the Appellant's history[62] records that over a period of almost 22 years as an industry participant, she has committed six (6) breaches of the rules, two (2) of which were dealt with by way of reprimand (from which the inference can be drawn that the breaches were minor), and four (4) of which were dealt with by the imposition of fines. That history generally supports a conclusion that in the Appellant's case, serious offending of the present kind is properly viewed as an aberration.

42. I was referred by Ms Summerson-Hingston to a number of previous decisions, including those of *Robert and Natina Howard,*[63] *Winter,*[64] *Cowlilng,*[65] *McDonald,*[66] *Dooley,*[67] *Noy,*[68] *Schadow,*[69] and *Speed*.[70] I was also referred to the decision in *R v Chadwick*.[71] By reference to these decisions, the written submissions of the Respondent[72] highlighted that, in a number of them, special circumstances were found on the basis of factors which, under the present rule, are excluded from consideration. In light of the concession made at the hearing that it was open to find special circumstances, the majority of these determinations are rendered of limited assistance.

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[62] TB 71.
[63] Determinations of the Respondent on 19 December 2019 commencing at TB 97.
[64] A determination of the Respondent on 12 February 202 commencing at TB 103;
[65] A determination of the Respondent on 30 July 2021 commencing at TB 107.
[66] A determination of the Respondent on 5 December 2022 commencing at TB 110.
[67] A determination of the Civil and Administrative Tribunal of Victoria on 1 October 2019 commencing at TB 127.
[68] A determination of the Civil and Administrative Tribunal of Victoria on 11 November 2019 commencing at TB 148.
[69] A determination of the South Australian Racing Appeals Tribunal on 16 October 2020 commencing at TB 159.
[70] A determination of the Respondent dated 14 October 2021 commencing at TB 173.
[71] (1984) 13 A Crim R 355.
[72] Submissions at [18] – [34]; TB 11 – 13.

43. I do note that the matters of *Howard* resulted in the imposition of periods of suspension substantially less than the period of *disqualification* imposed on the Appellant in the present case. Those penalties were imposed for breaches of the predecessor to r 159(5) and, given that it was a decision of the Respondent, the reasons for the determination are less detailed than would otherwise be the case. However, it is noteworthy that at least in some respects, the subjective circumstances of the participants in those cases were not dissimilar to those of the Appellant.

44. In my view, taking into account all of the factors to which I have referred, a penalty of 5 months disqualification is appropriate in each case. That is a substantial penalty and is one which, in my view, strikes an appropriate balance between the objective seriousness of the offending, which I consider to be low, and the subjective case of the Appellant, which I consider to be strong. Bearing in mind principles of totality, the disqualification periods should be ordered to be served concurrently. There is no reason why the total period of disqualification should not be backdated to commence on 8 May 2024.

ORDERS

45. For the reasons given, I make the following orders:

1. The appeal is allowed in each case.
2. The penalties imposed at first instance are set aside in each case.
3. In lieu thereof, a disqualification of 5 months is imposed in respect of each of the offences.
4. The periods of disqualification in order [3] are to be served concurrently, and shall commence on 8 May 2024.
5. The appeal deposit is to be refunded in each case.

THE HONOURABLE G J BELLEW SC

19 August 2024