

IN THE RACING APPEALS TRIBUNAL

CRYSTAL PILLAR
Appellant

v

GREYHOUND RACING AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION

Date of hearing	14 October 2024 Written submissions 28 October 2024; 4 November 2024
Date of determination	18 November 2024
Appearances	The Appellant in person Ms K Mohan for the Respondent

ORDERS

- 1. The determination of the Respondent of 13 August 2024, refusing the Appellant's application for registration on the basis that she is not a fit and proper person, is set aside.**
- 2. The matter is remitted to the Respondent for its further consideration.**
- 3. The Appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice of Appeal dated 29 July 2024¹ Crystal Pillar (the Appellant) appeals against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) refusing her application for registration as a Greyhound Owner/Trainer on the grounds that she is not a fit and proper person to be registered.
2. The parties prepared a Tribunal Book (TB) containing documentary evidence and submissions, and further oral submissions were made by both parties at the hearing. Following the hearing, I received supplementary evidence and submissions from both parties. Part of the supplementary evidence received from the Respondent was a statement of Wade Birch, the Respondent's Chief Operating Officer dated 23 October 2024. Some aspects of that statement appear to be uncontroversial and I have made reference to those matters below. Other aspects appear to predate the events which bear upon this appeal, and are seemingly irrelevant. I have not taken those matters into account.
3. It should be noted that following the provision of that supplementary material, the Respondent queried whether a further oral hearing might be required. Having read the material provided, I expressed the view that I could proceed to determine the matter without the need for any further hearing. Both parties agreed that the matter could proceed on that basis.

THE FACTS

4. In some respects, the facts of this matter are not straightforward. I have been assisted in my understanding of them by Ms Mohan who appeared for the Respondent at the hearing.

¹ Commencing at TB 1.

The Appellant's registration

5. The Appellant was registered as an Owner/Trainer with the Respondent between September 2001 and January 2024.

The injury to the Appellant's greyhound *Tiger Barty*

6. On 25 November 2023, *Tiger Barty* (the greyhound), which was owned by the Appellant, participated in a race at Potts Park. In the course of the race, the greyhound suffered a fracture of the off-side hock.² The Respondent asserts that following the incident, the Appellant left the Potts Park track,³ the inference being that she did so whilst the injury sustained by the greyhound was being investigated. The Appellant denies that this is the case.⁴

The Appellant's Facebook post of 25 November 2023

7. Subsequent to the greyhound sustaining the injury referred to above, the Appellant posted a message on her *Facebook* page in the following terms:⁵

Fuck this, I'm done Sage is finish from the hock track is a fucking mess stewards didn't give a stuff what I had to say

8. It can be inferred that the Appellant's post was directed to what she saw as the condition of the surface of the track at Potts Park, which she blamed for causing the injury to the greyhound.

The correspondence between the parties in November 2023

9. On 27 November 2023, 2 days after the Appellant's post, the Respondent wrote to the Appellant in the following terms:⁶

The Stewards are in receipt of a screenshot of a post published on your Facebook account (Crissy Pillar) on Saturday 25th November 2023 that appears to relate to

² TB 28.

³ TB 28.

⁴ Transcript 9.1

⁵ TB 7.

⁶ TB 6.

an incident involving your greyhound Tiger Barty at the Potts Park meeting conducted that day.

The Stewards intend to conduct a hearing in relation to the contents of the Facebook post on Thursday 30th September 2023 at 3 pm via Microsoft Teams, whereby you are required to attend.

Should you fail to appear, the hearing may be conducted in your absence.

Please do not hesitate to contact me if you require any additional information.

10. On the same day, the Appellant replied to the Respondent stating:⁷

Sorry I'm finish and won't attend im cranky how the maintenance is with Potts Park a lot of dogs are getting hurt and who ever dob me in is a dog to gwic and will find out

11. A short time later, the Appellant again wrote to the Respondent stating:⁸

I'm no longer a participant in greyhound racing and will not be attending.

The cancellation of the Appellant's registration

12. Acting on the correspondence sent by the Appellant set out in [10] and [11] above, in which she made it clear that she no longer wished to participate in the industry, the Respondent revoked her registration.⁹

The Appellant's correspondence to the Respondent in June 2024

13. On 7 June 2024, the Appellant wrote to Mr Vassallo, the Respondent's Chief Steward, in relation to the circumstances surrounding the injury to the greyhound.¹⁰ Nothing in particular turns on that correspondence and I need not set it out. However on 12 June 2024, in correspondence sent to the Respondent entitled "*Licence Back*", the Appellant stated:¹¹

⁷ TB 24.

⁸ TB 22.

⁹ Statement of Mr Birch at [10].

¹⁰ TB 38.

¹¹ TB 39.

I refer to my recent telephone conversation with a steward.

1. *That my licence was inactive due to it being surrendered but was not notified by anyone at GWIC no phone call or emails to tell me yet I was still receiving messages about nominations and what's going on in the industry.*
2. *That there was to be an inquiry involving me only one email was sent but nothing else after that.*
3. *In order that I may obtain legal advice can you please advise the reason why my licence has become inactive and the purpose of the proposed inquiry.*

14. On 13 June 2024, in correspondence sent to the Respondent entitled *Licence reactivated please*”, the Appellant stated:¹²

Would like to do it the legal way and have another inquiry on my licence due to the fact that I was not properly notified by either a email or phone call saying it was inactive or surrendered.

Basically just took it upon yourself to do it out of spite because of the hatred you have against me which it's wrong. This is the second time now ive been falsely accused by GWIC in an inquiry interview and it's really starting to be a discrimination case and really think it's time for me to go to newspaper papers and tv stations and tell our version how us battlers owner and trainers get treated here in NSW over the Crooks like Lords, Magri, Gatt, Lagogiane etc as they seem to be special and get away with hitting their dogs and drugging them and still nothing happens yet here i am being treated like a criminal please sir could you please reply back to this email this time.

The Respondent's reply to the Appellant of 23 June 2024

15. On 23 June 2024 Mr Lanarch responded to the Appellant on behalf of the Respondent in the following terms:¹³

Dear Crystal,

On behalf of Troy Vassallo, Chief Steward, and (sic) I have been directed to inform you that the disciplinary matter previously concerning you has been dealt with in your absence.

Further, if you wish to re-enter the industry you will need to reapply for a new license.

¹² TB 40.

¹³ TB 44.

The Respondent's determination of 13 August 2024

16. Although it is not clear precisely when, it is apparent from further correspondence¹⁴ that the Appellant submitted a new application for registration to the Respondent.

17. On 13 August 2024 the Respondent wrote to the Appellant in the following terms:¹⁵

Thank you for your application for registration as a greyhound owner trainer.

On 29 July 2024 your application was considered by the Commission's Application Assessment Panel (AAP). The AAP have determined to refuse your application for registration as a Greyhound Owner Trainer under Criteria (sic) 16 of the Fit and Proper Person framework.

The reason for refusing your application for registration as a Greyhound Owner Trainer is:

- *Under the fit and proper person framework **Criteria (sic) 16** – Applicant has a disciplinary history within the greyhound, thoroughbred or harness racing industry.*
 - *Failure to attend a Stewards Enquiry (sic) in respect to an incident at Potts Park on 27/11/2023 whereby a greyhound under the care of the applicant was seriously injured and the applicant failed to fulfil her responsibility under the rules.*

18. Upon receipt of this correspondence, the Appellant replied as follows:

My name is Crystal Pillar

Just receive your email and was wonder why no one phone me up and asked me question about what happen that day at Potts Park just took it upon yourself to reject my application instead.

When my dog Tiger Barty was entered on the 25/11/2023 she suffered a broken hock wasn't happy with the state of the track as other dogs occurred the same injuries and the stewards who were working on the day didn't listen to our concern and let the race meeting go ahead.

Darren Curby who works at Potts Park basically didn't like what I posted on fb and even wrote as a reply stuff shit what happen was an accident and get over yourself I blocked him and he sends everything to the head steward which was a low act.

¹⁴ TB 47.

¹⁵ TB 19.

Troy Vella calls me Monday 27/11/2023 to tell me there is an interview happening got an email from him waiting waiting waiting waiting for a link the 30th came and still no link so I thought must of been cancelled. This. year try to log into etrack only to see my licence invalid so called up GWIC spoke with Troy oh decided to cancelled your licence said that's so wrong never was notified about this and basically said didnt have to.

OBSERVATIONS REGARDING THE FACTS

19. It is appropriate at this point to make a number of observations about the facts as I have outlined them.

20. First, in its letter of 13 August 2024 advising the Appellant that her application for registration had been refused, the Respondent stated that the basis of such refusal was the Appellant's "disciplinary history". That history was particularised as a "failure to attend a Stewards Enquiry (sic) in respect to an incident at Potts Park on 27/11/2023 whereby a greyhound under the care of the applicant was seriously injured and the applicant failed to fulfil her responsibility under the rules".

21. As I have previously noted, the Respondent had been informed that the inquiry which was to be held on 30 November related to the Facebook post, **not** the injury to the greyhound. At the hearing, Ms Mohan expressly conceded that the particulars which were given to the Appellant by the Respondent as to the basis of the decision to refuse her application were not accurate:¹⁶

TRIBUNAL: Okay, so that's the first full one. Now, if we then go to page 19 of the Appeal Book, that's the letter from the Commission informing Ms Pillar that the application had been refused.

MS MOHAN: Yes. Yes, Your Honour.

TRIBUNAL: And under the first dot point, the basis of that refusal was that she wasn't a fit and proper person because she failed to attend a stewards' inquiry in relation to an incident at Potts Park on 27 November when her greyhound was injured. See that?

¹⁶ Transcript 4.21 – 5.40.

MS MOHAN: Yes. Yes, Your Honour.

TRIBUNAL: So is that inquiry something different to the Facebook post? Because that inquiry refers to an incident in relation to which a greyhound was injured, whereas the earlier letter refers to an inquiry about a Facebook post.

MS MOHAN: Yes. Yes, Your Honour. **The Commission understands that there was an inconsistency through the correspondence that was sent to Ms Pillar in November** -----

TRIBUNAL: Right.

MS MOHAN: ----- **in relation to the inquiry and the registration refusal letter that was sent in August this year.**

TRIBUNAL: Right.

MS MOHAN: Just to clarify the facts of that incident, it was in relation to an injured greyhound. However, the letter that went out in November specified only the Facebook post that went out. However, it was also in relation to an injury that took place for a greyhound under Miss Pillar's care. So we have attached some further evidence, which can be found in pages 26 to 28 of the Appeal Book.

TRIBUNAL: All right, just let me go to that. So 26 is the serious injury form?

MS MOHAN: Yes, Your Honour.

TRIBUNAL: Right.

MS MOHAN: That's on page 28 of the series which has the trainer comments on the bottom.

TRIBUNAL: Yes.

MS MOHAN: So, the comments left were: "The trainer had left the track and was unable to be contacted." So, due to a systemic issue on the e-Trac, the Commission's system, there has been some inconsistencies in the notes that were taken down by the members of the Commission. So this was one of the information that we could find.

And the greyhound that had the serious injury was Tiger Barty, which was racing at Potts Park that day, on 25 November.

TRIBUNAL: Right.

MS MOHAN: And the appellant, Ms Pillar, posted the Facebook post that was found on page 7 following that race at Potts Park. **And the letter that followed on 27 November, which is found on page 6, was in relation to both the serious injury and the Facebook post.**

TRIBUNAL: It doesn't state that.

MS MOHAN: Yes. **Unfortunately, that is an inconsistency that the Commission would like to take responsibility for** (emphasis added in each case).

22. In my view, what the Appellant was told extended substantially beyond a mere inconsistency.

23. Secondly, and notwithstanding that the Respondent's determination was based (at least in part) upon an asserted failure on the part of the Appellant to attend the inquiry on 30 November 2023, the simple fact is that no such inquiry ever took place. In this regard, the following further exchange during the course of the hearing is important:¹⁷

TRIBUNAL: So, can I ask you this then? There was – sorry, if I go back – I'm sorry to keep jumping around, but I just found this a bit confusing. When was the inquiry held?

MS MOHAN: **It was supposed to be held on 30 November 2023.**

TRIBUNAL: Yes.

MS MOHAN: **But it was never held because although we gave Ms Pillar an opportunity to participate in the inquiry, she refused to attend and announced – and stated voluntarily to the Commission that she's no longer a participant. So we had to cancel the inquiry at that time.**

TRIBUNAL: **But the problem – isn't there a problem then? Because if you go back to the letter at page 19, the basis of the finding that Ms Pillar was not a fit and proper person because she failed to attend inquiry, there was no inquiry.**

MS MOHAN: **Um, so, I will just re-clarify that. Your Honour, there was an inquiry that was meant to take place on 30 November 2023.**

TRIBUNAL: Yes.

MS MOHAN: **And the letter that was sent out to Ms Pillar on 27 November indicated that she would be required to attend that inquiry, and on 27 November when she was in fact sent that letter – so if you look at page 21, there is the email from the Chief Steward, Mr Troy Vassallo, to Ms Pillar.**

TRIBUNAL: Yes.

MS MOHAN: **Which states that there will be an inquiry in relation to the matter on the 30th and that she will be sent a Teams link to attend the hearing.**

TRIBUNAL: Yes.

¹⁷ Transcript 5.43 – 8.41.

MS MOHAN: And if we look at page 22 of the Tribunal Book, Ms Pillar responds to the link that was sent for the hearing -----

TRIBUNAL: Yes.

MS MOHAN: ----- by Mr Matthew Larnach on the 27th. Ms Pillar responds saying, "I'm no longer a participant in greyhounds and will not be attending."

TRIBUNAL: Yes.

MS MOHAN: And on page 24, this was another email that was sent out on the same date, 27 November 2023 -----

TRIBUNAL: Yes.

MS MOHAN: ----- this responds to Mr Vassallo's email that was sent on the 27th. She says, "Sorry, I'm finished from racing and won't attend."

TRIBUNAL: Yes.

MS MOHAN: "I'm cranky how the maintenance is with Potts Park. A lot of dogs are getting hurt. And whoever dobbed me in is a" – mind my language – "dog to GWIC and we'll find out. And furthermore, if you keep harassing me, we'll be getting a lawyer involved."

TRIBUNAL: Yes. So the appellant didn't attend, and when she didn't attend, your indication to me is that no hearing took place?

MS MOHAN: Yes. It had to be decided in her absence. Rather, the hearing was cancelled. But like I said, the systemic updates on the Commission's technical technology was sort of missing or had some grey areas, so we are unsure of what exactly took place. But looking at the correspondence that was sent later on in June in relation to Ms Pillar's inquiries, which can be found between pages 36 and 50 -----

TRIBUNAL: Just let me get that. Just let me get that.

MS MOHAN: Yep.

TRIBUNAL: Yes, I see, yeah, 36 to 50, yes, I see that.

MS MOHAN: So if we look at page 44 -----

TRIBUNAL: "Application for registration", yes.

MS MOHAN: Yep. So page 44, we have an email from Matthew Larnach to Ms Pillar -----

TRIBUNAL: Yes.

MS MOHAN: ----- which says, "The disciplinary matter previously concerning yourself has been dealt with in your absence and if you wish to re-enter the industry you will need to reapply for a new licence."

As Ms Pillar's -----

TRIBUNAL: Just stopping you there. Is that a correct statement?

MS MOHAN: From, like, I don't believe there was a hearing that took place because Ms Pillar never attended, so the hearing was cancelled and it wasn't dealt with in her absence because we never had a chance to deal with the issue.

TRIBUNAL: She was told right from the outset when the letter of 27 November went out, which is on page 6, that if she didn't attend, the matter would be dealt with in her absence.

MS MOHAN: Yes. But I don't believe the matter was dealt with at that point because Ms Pillar's licence was expiring in January 2025 -----

TRIBUNAL: Right.

MS MOHAN: ----- and she didn't attend the inquiry and said that she wishes to surrender her licence. So I believe the Commission found it sort of, I guess, inappropriate to run an inquiry into someone who has surrendered their licence. So the process was halted at that stage.

TRIBUNAL: Mmm.

MS MOHAN: And when Ms Pillar reapplied in June this year, it wasn't like the matter had evaporated, but it was still there. It was just that it was Ms Pillar's choice to surrender her licence at that stage. And when she came back, it was always going to be an issue concerning her fitness and propriety to hold the licence due to her failure to attend an inquiry in relation to a serious matter such as posting on Facebook and also failing to take care of her responsibilities in relation to the greyhound.

TRIBUNAL: Well, I don't know what the failure to take into account the responsibilities that the participant were because there was no determination of them. All I know is that there was an injury to her dog.

MS MOHAN: Your Honour -----

TRIBUNAL: And from the correspondence, Ms Pillar's position in relation to that is that it appears to me that there was no responsibility on her part, it was the state of the track which may have contributed to an injury sustained by the dog. And then you've got this additional complicating factor of a Facebook post which initially forms part of the inquiry but then doesn't appear to. It's all a bit unsatisfactory, isn't it?

MS MOHAN: Yes, Your Honour, I agree. However, the fulfilling of the responsibility was more about staying with the greyhound during the veterinary inspection and taking it to the vet following the injury, which Ms Pillar failed to do (emphasis added in each case).

24. Thirdly, it is evident that Mr Lanarch's advice to the Appellant in his correspondence of 23 June 2023, namely that "the disciplinary matter previously concerning [her] had been dealt with in [her] absence", was also incorrect. Leaving aside that the particular "disciplinary matter" to which Mr Lanarch was referring was not specified, the "matter" had not been dealt with at all, be it in the Appellant's absence or otherwise. As previously stated, no inquiry ever took place.

25. At the conclusion of the hearing, the following exchange took place between myself and Ms Mohan:¹⁸

TRIBUNAL: Ms Mohan, there are some shortcomings in this process, aren't there?

MS MOHAN: Yes, Your Honour, I would agree. As unfortunate as that is, there were. Yes.

TRIBUNAL: I'm not being critical of anybody, but the process appears to have had a number of difficulties along the way, which necessarily impact quite significantly, when you're dealing with a situation where somebody is said not to be a fit and proper person.

MS MOHAN: Yes. Yes, Your Honour (emphasis added).

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

26. The Appellant appeared on her own behalf at the hearing. In summary, she submitted that:

- (i) her advice to the Respondent that she no longer wished to be an industry participant was said out of frustration;¹⁹
- (ii) she now wanted her licence back and would be better behaved in the future.²⁰

Submissions of the Respondent

27. The essence of the submissions of the Respondent can be summarised as follows:

- (i) the Respondent was entitled to act on the Appellant's expressed intentions that she no longer wished to participate in the industry by revoking her registration;²¹

¹⁸ Transcript 14.14 – 14.25.

¹⁹ Transcript 9.16.

²⁰ Transcript 11.14 – 11.16.

²¹ Submissions at [11].

- (ii) the Appellant's subsequent application was refused on the basis that there was an outstanding disciplinary matter which remains unresolved;²²
- (iii) the fact that no disciplinary action has yet been taken against the Appellant, be it on the basis of the Facebook post or the failure to attend the hearing, does not lead to the conclusion that she is a fit and proper person to be registered as a participant;²³
- (iv) two matters against the Appellant remain unresolved;²⁴
- (v) attendance at hearings is important, and a failure to do so constitutes a serious matter;²⁵
- (vi) the matters outstanding against the Appellant supported the proposition that she was not a fit and proper person to be registered, and that the Respondent's decision was correct.²⁶

CONSIDERATION

28. Whilst I would tend to accept the proposition that the Respondent was entitled to act on the Appellant's unequivocal indication that she no longer wished to be a participant and revoke her registration, that is largely extraneous to the issue I have to determine. The issue for me revolves around the Respondent's determination that the Appellant not a fit and proper person to be registered. For the reasons that follow, I am satisfied that such determination should be set aside.

29. First, as I have set out, there were numerous shortcomings the process leading to the determination. At a level of generality, such shortcomings operate to create a set of circumstances which are entirely unsatisfactory, and in my view procedurally unfair. As I have pointed out, the Appellant was misled on more than one occasion about the basis of the determination. I do not for a moment suggest

²² Submissions at [12].

²³ Submissions at [16].

²⁴ Submissions at [19].

²⁵ Submissions at [22].

²⁶ Submissions at [27].

that this was deliberate. However, it has unsurprisingly had the effect of leaving the Appellant in a somewhat confused position.

30. Secondly, at a more specific level, the Respondent's determination is based upon two entirely false propositions. To begin with, and contrary to the Respondent's submissions, the determination was not made on the basis of an outstanding disciplinary matter which remains unresolved. What the Appellant was told, in specific terms, was that the decision was based upon a "*disciplinary history*" which was said to be constituted by her failure to attend an inquiry on 27 November 2023 into an injury to the greyhound. It is now clear that no such inquiry was ever held. Further, the Appellant had never been asked to attend any inquiry in relation to any injury suffered by the greyhound. The only inquiry that the Appellant had been asked to attend was one in relation to the Facebook post, which apparently formed no part of the Respondent's determination. It follows that the basis of the Respondent's determination was fundamentally flawed, to the point where it lends itself to a conclusion that should be regarded as unreasonable.²⁷

31. Thirdly, further confusion was created by the terms of Mr Lanarch's correspondence, in which he told the Appellant that the "*disciplinary matter*" (whatever it was) had been determined in her absence. That was fundamentally incorrect. As I have observed, no determination was ever made, because no hearing ever took place.

32. Fourthly, whether a failure on the part of a participant to attend an inquiry which was never held, and where that failure has never been the subject of a charge, constitutes a "*disciplinary history*" sufficient to ground a determination that the participant in question is not a fit and proper person is doubtful to say the least. The fact is that the Appellant has not been the subject of any disciplinary action at all. In those circumstances, she arguably has no disciplinary history.

²⁷ See generally *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223.

33. Finally, the Respondent's submissions assert that "*the matters outstanding against the Appellant support the proposition that she was not a fit and proper person to be registered, and that the Respondent's decision was correct*". I am unable to accept that proposition for two reasons.
34. The first, is that as I have pointed out, "*matters outstanding*" were **not** the stated basis for the Respondent's determination. The stated basis of the determination was the Appellant's failure to attend an inquiry which was never held.
35. The second, is that there is, in my view, a serious question as to whether "*matters outstanding*" – or in other words, untested allegations which have never been the subject of a charge, a hearing, or a determination – are capable of providing a proper basis for a finding that someone is not a fit and proper person to be registered. In any event, strictly speaking there are no "*matters outstanding*" against the Appellant at all. She has never been charged with any offence arising out of these events.
36. Bearing in mind these conclusions, the question arises as to what (if any) orders should be made beyond an order setting aside the Respondent's determination. In some previous cases of this kind, and after an assessment of the evidence, I have expressed the view that the participant is a fit and proper person. The Respondent has then acted upon that view by effecting the person's registration. In the present case that may not be appropriate, given that there appear to be allegations against the Appellant which have never been the subject of any charge, and thus any determination. The outcome of those matters, if they are ever pursued, could have the capacity to bear upon the question of whether the Appellant is a fit and proper person.
37. Section 17A of the *Racing Appeals Tribunal Act 1983* sets out my powers in the following terms:

17A Determination of appeals relating to greyhound racing or harness racing

(1) *The Tribunal may do any of the following in respect of an appeal under section 15A or 15B—*

- (a) dismiss the appeal,*
- (b) confirm the decision appealed against or vary the decision by substituting any decision that could have been made by the steward, club, the Greyhound Welfare and Integrity Commission, Greyhound Racing New South Wales or HRNSW (as the case requires),*
- (c) make such other order in relation to the disposal of the appeal as the Tribunal thinks fit.*

(2) *The decision of the Tribunal is final and is taken to be a decision of the person or body whose decision is the subject of the appeal.*

38. In my view, the appropriate order to be made in the present case, pursuant to s 17B(1)(c), is simply that the determination of the Respondent be set aside. It will be up to the parties to determine how the matter is to proceed from this point.

39. Given that the Appellant has successfully challenged the Respondent's determination, the appeal deposit should be refunded.

ORDERS

40. I make the following orders:

1. The determination of the Respondent of 13 August 2024, refusing the Appellant's application for registration on the basis that she is not a fit and proper person, is set aside.
2. The matter is remitted to the Respondent for its further consideration.
3. The Appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

18 November 2024