

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

Matter for determination	Decision dated 23 June 2020 by Dr Michelle Ledger, Chief Veterinary Officer, under Rule 127(11) of the Greyhound Racing Rules as preserved by the <i>Greyhound Racing Act 2017</i> to refuse to grant an approval for the greyhound 'Queen Audrey' to breed a fourth litter
Internal review decision date	13 October 2020
Internal review decision by	Mr Alan Brown AM, Chief Commissioner Mr Peter Collins, Commissioner
Internal review decision summary	Vary the decision of 23 June 2020 and instead approve of Queen Audrey having a fourth litter provided there is a fresh veterinary certification as to fitness which is less than 120 days old from the certification date to the service date

REASONS FOR DECISION

1. These are the reasons following an application by Ms Carole Eaton ('Ms Eaton') for internal review under the *Greyhound Racing Act 2017* ('Act') of a decision of the Chief Veterinary Officer of the Greyhound Welfare & Integrity Commission ('Commission') to refuse to grant an approval for the greyhound 'Queen Audrey' to breed a fourth litter.
2. The Commission has accepted that this is a reviewable decision within the meaning of section 91(1) of the Act. As persons who were not substantially involved in making the reviewable decision, we have been directed by the Commission to deal with this application.
3. 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

4. Around 30 May 2020, Ms Eaton lodged with the Commission an application form titled 'Application to breed female over eight years of age &/or breed over three litters' in respect of Queen Audrey.
5. Ms Eaton is the registered owner of Queen Audrey. The application form stated that Queen Audrey was whelped on 4 September 2013. Hence, Queen Audrey was aged six years and eight months when the application was lodged. The application form included information about Queen Audrey's previous litters.

6. The application form also included a 'Breeding health and fitness certificate' which is required to be completed and signed by a registered veterinary practitioner. In the certificate, Dr John Newell declared that he conducted a general physical examination of Queen Audrey, that all indicators were 'good' and that the greyhound was "In sound & fit condition".

The decision under review

On 23 June 2020 Dr Michelle Ledger, Chief Veterinary Officer ('decision-maker') informed Ms Eaton that the application was declined after taking into account the fact that the greyhound has had three previous caesarean sections. The letter expressed the opinion that further surgical insemination and delivery, and the potential risks of this breeding, outweigh the benefits.

Relevant legislation and rules

7. Rule 127(10) to (12) of the Greyhound Racing Rules is as follows:

- (10) The owner of a breeding female, or the person with authority to breed that female, shall not cause her to be mated if that breeding female is over eight (8) years of age without prior veterinary certification of appropriate health and fitness, and the approval of the Controlling Body in writing. The approval granted by the Controlling Body under this sub-rule will be to allow one (1) service/insemination only, irrespective of the result of said service/insemination. The veterinary certification must be obtained within 120 days prior to the date of the service.
- (11) A breeding female cannot be used for breeding more than three (3) litters without prior veterinary certification of appropriate health and fitness for further litters, and the approval of the Controlling Body in writing. The approval granted by the Controlling Body under this sub-rule will be to allow one (1) additional service/insemination only, irrespective of the result of said service/insemination. The veterinary certification must be obtained within 120 days prior to the date of the additional service.
- (12) The owner of a breeding female, or the person with authority to breed that female, shall not cause her to whelp more than two (2) litters in any 18 month period.

8. As Queen Audrey was aged six years and eight months when the application was lodged and has had three litters, Ms Eaton's application was for an approval under Rule 127(11).

The internal review application

9. On 6 July 2020, Ms Eaton lodged an application for internal review of the decision-maker's decision. The application consisted of the application form, a supporting letter from Ms Eaton and a supporting letter from Dr Peter Yore, a registered veterinary practitioner dated 30 June 2020.
10. These documents were considered during the internal review process. Also considered was the information in the application before the decision-maker and the Racing Appeals Tribunal's decision of 1 October 2020 in relation to the greyhound 'All Quality' which, like Queen Audrey, was refused an application to have an additional litter. All Quality was aged 10 on that date and had seven previous litters, of which one was by Caesarean section.

11. In its decision, the Tribunal took the approach that Rules 127(10), (11) and (12) contain a regulatory policy which is “here for the welfare of the greyhound. This policy is not here for the benefit of the breeder as such because the rules are written for the benefit of the greyhound and its welfare ... Of course, this is an industry which relies upon breeding and licensed breeders are an essential ingredient to it and their rights and obligations must be respected” (see paragraph 32 of [www.gwic.nsw.gov.au/ data/assets/pdf file/0004/326533/GR-Fogarty decision 1.10.20.pdf](http://www.gwic.nsw.gov.au/data/assets/pdf_file/0004/326533/GR-Fogarty_decision_1.10.20.pdf)).
12. In interpreting Rule 127(11), the Tribunal stated that an application for approval must be accompanied by a veterinary certification as to the health and fitness of the greyhound for a further litter and that such certification must be dated within 120 days of the intended additional service of the greyhound.
13. Having satisfied itself that these requirements were met, the Tribunal said that “the test boils down to the question of whether the discretion to give approval should be exercised”. It balanced the weight to be given to the policy determination in Rule 127(11), the age and condition of the greyhound, the professional opinion of veterinary experts, and the position taken by the Commission’s decision-maker.
14. In weighing the expert views, the Tribunal gave greater weight to the opinion of a veterinary practitioner that had examined the greyhound than to the opinion of a veterinary practitioner that had not.
15. Also the Tribunal gave significant weight to the credentials of the examining veterinarian, in these terms:
 40. ... Dr Newell, with all his experience, has assessed the greyhound as being fit for purpose. If Dr Newell did not have the experience in respect of greyhounds generally and this greyhound in particular, and the benefit of having assessed it as to be fit for breeding by reason of examination, this application would not be granted.
 41. Balancing those matters against the policy determinations, the appellant satisfies the Tribunal that it should exercise its discretion to issue the approval that is required

Findings

16. The Tribunal’s decision is directly relevant to the consideration of the internal review application in respect of Queen Audrey.
17. Dr Newell and Dr Yore are highly experienced in greyhound veterinary treatment and are well-regarded in the industry. Dr Newell was employed by Greyhound Racing NSW for many years and – like Dr Yore – has over 40 years of professional experience, including significant involvement in the veterinary care of greyhounds. Accordingly, their professional opinion is to be accorded considerable weight.
18. Moreover, they had the benefit of examining Queen Audrey for the purpose of forming a professional opinion as to whether the greyhound is suitable for breeding a fourth litter. Both concluded that the greyhound was fit to do so.

19. The principles established by the Tribunal lead to the conclusion that approval should be given for Queen Audrey to have a fourth litter provided there is a fresh certification as to fitness which is less than 120 days old between the certification date and the service date.

Decision

20. We find that in making a determination in this matter we must assess the weight to be given to the contrasting veterinary opinions. We find that Dr Yore having examined Queen Audrey had the benefit of assessing the greyhound for general fitness and health. The Commission's veterinarian did not have the benefit of an examination. For this reason, and in the absence of a clearly defined policy position, we prefer the opinion of Dr Yore.
21. Under section 91(7)(b) of the Act, we vary the original decision by determining to grant approval for Queen Audrey to have a fourth litter provided there is a fresh veterinary certification as to fitness which is no more than 120 days between the certification date and the service date.
22. We order that any such veterinary certification must be provided by a registered veterinary practitioner by 10 November 2020 to enable Queen Audrey to breed after which time, if no veterinary certification is provided, a fresh application must be made and that application will be assessed on its merits independent of our decision.

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