

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

RESERVED DECISION

13 OCTOBER 2023

APPELLANT ALLAN IVERS

**RESPONDENT GREYHOUND WELFARE
AND INTEGRITY COMMISSION**

**GRR 86(c), GRR 163(a), GRR 86(o) and GRR
156(f)**

**BREACH DECISION ON GRR 86(c) and
GRR 163(a)**

DECISION:

1. Each breach found established
2. All four charges stood over for penalty determination
3. Directions on penalty determination issued

INTRODUCTION

1. The appellant, Allan Ivers, licensed public trainer and breeder, has appealed against a decision of GWIC (“the respondent”) of 1 March 2023 to impose upon him a period of disqualification of 2 years for four breaches of the rules.
2. The appellant pleaded guilty to a notice of charge and proposed disciplinary action issued on 23 December 2022 in relation to then five charges, one of which was withdrawn.
3. The appellant made submissions on those pleas of guilty to the stewards and their determination issued on 1 March 2023.
4. The appellant then appealed to this Tribunal on the severity of each of those four determinations. That severity appeal was heard on 19 July 2023 and at the end of submissions, leave was granted to the respondent to amend the particulars relating to charges 1, Rule 86(c), and 3, Rule 163(a), and as a result of the effecting of those amendments, the appellant entered pleas of not guilty to those amended charges and the determination of his guilt on those amended charges was, by agreement, to be dealt with on submissions.
5. The Tribunal’s function in this determination is to decide whether the appellant has breached the rules as set out for charges 1 and 3.
6. It is necessary to set out the charges and their particulars in detail. The Tribunal will set out in the subsequent penalty determination the charges and particulars for charges 4 and 5 being for rules 86(o) and 156(f).
7. On 26 July 2023, amended particulars to charges 1 and 3 were preferred against the Appellant. These particulars are:

Charge 1: Rule 86(c)

[of the Greyhound Racing Rules in force 12 November 2018 – 30 April 2022]

A person (including an official) shall be guilty of an offence if the person-

....

(c) corruptly, fraudulently or improperly accepts, or offers to accept, offers or gives any money, share in a bet or other benefit to any other person, including but not limited to a person having duties in relation to the breeding and/or registration of greyhounds or any person having charge of, or access to, a greyhound, in connection with greyhound racing;

Particulars

Mr Allan Ivers, at all material times a Public Trainer and Breeder registered with the Commission, corruptly and improperly offered to accept money from Ms April Mackay to scratch the greyhound 'Battling Mavis' from Race 7 at The Gardens on 5 March 2022 by reason of the following particulars:

- a) On 4 March at approximately 1.42pm Ms. April Mackay and you engaged in text message communications
- b) In the text message exchanges you accepted or offered to accept money from Ms Mackay to scratch Battling Mavis from race 7 at The Gardens. The text messages included the following:

MACKAY: Don't tell Dan that I'm paying you too scratch!!!!!!!!!!!!

IVERS: Ok

MACKAY: I'm being serious

IVERS: All good. I won't say anything

MACKAY: Good

Fuck his doing my head in lately

IVERS: Haha it's a very confusing situation u 2 [emoji]

MACKAY: Bahahah not really.

You can't tell no one I'm giving ya money to scratch

IVERS: Im not telling a sole. Just be scratched due to being sick in the morning
[emoji]

MACKAY: Cause you know how fucking people spread shit! So it's best it stays between us

IVERS: Yes for sure

- c) On 5 March 2022 at 5.01am you scratched the greyhound 'Battling Mavis' from race 7 at the Gardens citing "Sick. Has temperature. Didn't eat meal" as the reason for scratching the greyhound.
- d) Ms April Mackay's father Mr. Jason Mackay had 'Fantastic Raven' engaged in race 7 at the Gardens on 5 March 2022 drawn in an adjacent box to 'Battling Mavis'
- e) Scratching Battling Mavis provided a possible advantage to the competitive chances of Fantastic Raven by increasing the racing room afforded to Fantastic Raven upon box rise.

f) By scratching Battling Mavis you acted corruptly and improperly.

Charge 3: Rule 163(a)

[of the Greyhound Racing Rules in force 1 May 2022 – current]

An offence is committed if a person (including an official):

(a) in connection with greyhound racing:

- (i) corruptly;
- (ii) fraudulently; or
- (iii) improperly,

accepts or offers to accept, offers or gives any money, share in a bet or other benefit to any person, including but not limited to a person having duties in relation to the breeding and/or the registration of greyhounds or any person having charge of, or access to, a greyhound;

Particulars

Mr Allan Ivers, at all material times a Public Trainer and Breeder registered with the Commission, corruptly and improperly offered to accept money to scratch the greyhound 'Redeem Our Cash' from Race 7 at Wentworth Park on 22 June 2022, by reason of the following particulars:

- a) On 21 June and 22 June 2022 Ms April Mackay and you engaged in text message communications.
- b) In the text message exchanges you accepted, or offered to accept, money from Ms Mackay to scratch Redeem Our Cash from race 7 at Wentworth Park. The messages included following:

IVERS: Haha far from it

MACKAY: It's between us yeah. Anyone asked she hurt herself yeah
Cause dad will ask tomorrow

IVERS: Yep all good

MACKAY: You sure

IVERS: No problems [emoji]

MACKAY: See you tomorrow

IVERS: Okis [emoji] [emoji]

22 June at 5:22pm

MACKAY: Surely ya didn't tell Dan that I'm paying you for scratching

IVERS: No said nothing. He'd only be guessing

MACKAY: Don't tell him nothing

IVERS: I didn't

MACKAY: Good

IVERS: Hopefully u win now [emoji]

MACKAY: You recon I can

IVERS: I think so. Gunna have to run 29.70/29.80

MACKAY: If he don't turn up his gotta go

His trials are insane

c) On 22 June 2022 at 6:07AM you scratched Redeem Our Cash from race 7 at Wentworth Park citing 'Sick. Has temperature. Didn't eat' as the reason for scratching the greyhound.

d) A greyhound 'Impress Shades' trained by Ms April Mackay's father, Jason Mackay, was drawn in the box adjacent to Redeem Our Cash;

e) Scratching Redeem Our Cash provided a possible advantage to the competitive chances of Impress Shades by increasing the racing room afforded to Impress Shades upon box rise;

f) By scratching Redeem Our Cash you have acted corruptly and improperly.

8. For completeness, the Tribunal notes that charges 4 and 5 relate to improper conduct which constitutes misconduct in placing various bets on behalf of a juvenile.

9. The appellant made penalty submissions to the stewards on 20 February 2022 and calls in aid part of those submissions in this determination. In addition, the respondent opened with a submission on 6 September 2023, the appellant's submission is dated 3 October 2023 and the respondent's reply submission is dated 10 October 2023.

INGREDIENTS OF THE CHARGES

Ingredients Not In Issue

Charge 1

10. The appellant admits he is a person.

11. The appellant offered to accept money.

12. The appellant offered to accept money from another person, being April Mackay.

13. The appellant accepts that the conduct was in connection with greyhound racing.

Charge 2

14. The appellant accepts that he is a person.

15. The appellant accepts that he offered to accept money.

16. The appellant accepts that that offer was from another person, namely Miss Mackay.

17. The appellant accepts that this conduct was in connection with greyhound racing.

18. Accordingly, the evidence that goes to establish those matters is not examined.

Elements of The Offence in Issue

19. The Tribunal notes that the particulars in respect of charges 1 and 3 each plead that the appellant acted “corruptly and improperly”.

20. The appellant admits that his conduct was improper. It is not necessary, therefore, to further examine the facts that go to support that determination.

21. The appellant denies that he acted corruptly in respect of both charges.

22. That is the sole issue for determination in this decision. That is, did the appellant’s conduct comprise a corrupt act or acts.

LEGAL PRINCIPLES

23. The respondent, in its opening written submission, says that the term “corrupt” is not defined in the rules, and that is correct. The respondent, therefore, says that it should have its ordinary meaning. That is correct.

24. However, that ordinary meaning must be found in the rule itself, the rules generally, and the combined Act and rules governing the conduct of greyhound racing.

25. The respondent submits that the ordinary meaning for corrupt is “having or showing a willingness to act dishonestly in return for money or personal gain”.

26. The respondent has made no submission on the meaning of the word corrupt in these proceedings.

27. Absent any further submission from the parties, the Tribunal is prepared to proceed on a determination on the basis of the interpretation of corrupt advanced by the respondent. That is a sufficient definition of corrupt identified in the facts and circumstances of this case. The definition advanced can also be further understood by considering that corrupt as such can mean engaging in dishonest practices or illegal practices for money or gain. That broader consideration does not essentially expand upon the definition advanced by the respondent and apparently accepted by the appellant.

28. In passing, the Tribunal notes, it not being in issue, that the respondent advanced that the meaning of improper is “acting not in accordance with accepted standards”. The respondent made no contrary submission and the Tribunal is satisfied from that submission and its prior determinations in this and the other two codes that that is an appropriate meaning of “improper” in the subject rules.

29. The appellant advances that this is said to be a case of race-fixing, which has the utmost danger to the industry, and that that, if found, would be a serious finding which itself could amount to corruption.

30. The appellant sets out a submission touching upon the Briginshaw standard in relation to an allegation of such serious conduct and said it has the colour of a criminal conduct about it. Therefore, there is a requirement for an actual persuasion of mind having regard to the gravity of the facts to be provided. Case law is called in aid to state that in some civil cases that standard may be as high as in a criminal case. The respondent replies that this is not a criminal case and the standard is not that applicable to the criminal law.

31. The Tribunal is satisfied that a serious allegation is made and that the level of comfortable satisfaction which it must find is governed by the gravity of that allegation. However, the Tribunal is not satisfied that it should extend that comfortable satisfaction to that applicable to the criminal law. It is not appropriate to set out a precise level of finding needed, only that it must be one of comfortable satisfaction having regard to the gravity of the conduct alleged, and the Tribunal will proceed on that basis.

EVIDENCE

32. The matter having proceeded on the basis at the hearing of pleas of guilty, the evidence admitted has been necessarily brief and no fresh evidence was adduced after the amended particulars and change of plea took place.

33. The evidence has comprised the redacted brief of evidence from the respondent.

34. The key parts of that evidence are matters relating to an interim disciplinary hearing in October 2022, interview with the appellant of 6 September 2022, interview with the appellant of 10 October 2022, transcript of the interim disciplinary hearing of 13 October 2022, particulars of the appellant's TAB account, the subject Facebook messages referred to in the particulars, interview between the named juvenile, Miss Mackay, of 29 September 2022, interviews of various other people whose evidence is not material, appellant's betting records, appellant's registration and disciplinary history, appellant's penalty submissions of 20 February 2022 to the stewards, including five character references and other correspondence, the stewards' decision.

35. An additional piece of evidence is the vet report of Dr Yore, undated, stating that Battling mavis was arthritic on 1.3.22 and 21.2.23 and this could justify scratching.

36. The evidence thus before the Tribunal goes beyond that upon which the parties made their oral and written submissions.

37. The key part of the additional evidence upon which neither party made submissions relates to conduct between the appellant and the juvenile Miss Mackay. That evidence establishes that on anything up to 50 occasions Miss Mackay sent explicit videos of a sexual nature to the appellant and in exchange for those favours the appellant waived certain of her betting debts. The appellant has not denied that conduct.

38. The appellant has put character in evidence and that material goes to the weight to be given to his character evidence as he puts it forward on the basis of a denial of breach of the rules. He also puts it forward in relation to any matters of subsequent penalty determination.

39. The Tribunal will summarise the submissions later as to the appellant's submission that there was nothing in it for him and that it was all a joke. That evidence could be construed to show that in fact there was a benefit to flow to the appellant from his improper conduct, which could amount to corruption, because it was open to him, although there is no evidence he subsequently did so in respect of this subject conduct, to have asked for a favour.

40. The Tribunal makes it very clear to the parties that in determining whether the conduct is corrupt it puts that sexually explicit video material out of its mind.

SUBMISSIONS

41. The Tribunal again repeats that the submissions which are now to be considered go to the issue of whether the appellant's conduct was corrupt, he not having denied that his conduct was improper.

Respondent's Written Submission of 6 September 2023

42. Having set out the charges and particulars and the background to the matter, the appellant submitted that the text message exchange that it relied upon demonstrated the following: the appellant accepted or offered to accept money for the scratching related to charge 1 and that at that time a greyhound trained by Miss Mackay's father was drawn in the adjacent box and the appellant stated he was going to provide a false or misleading reason when scratching his dog. And that he subsequently scratched the dog. It is therefore submitted that Miss Mackay's father's dog was potentially advantaged by the scratching of the appellant's dog.

43. It is therefore said that there is a clear and unambiguous set of words in which there was an offer to pay money to the appellant the day before the scratching and that the scratching was to take place because of that offer to pay money in conjunction with an agreement to state a false reason for the scratching, namely that the greyhound was sick.

44. In respect of charge 3, it is submitted that Miss Mackay asked the appellant to scratch his greyhound and offered to pay the appellant for him to do so and that he would give a false or misleading reason for that scratching and he subsequently scratched the greyhound, which provided a potential advantage to a greyhound trained by Miss Mackay's father.

45. It is therefore submitted that their conduct was engaging in conduct that potentially affected the result of the relevant races. This was said to be against the heart of integrity of greyhound racing and that any conduct that potentially affects the outcome of a race can be considered corrupt.

46. It is further submitted that the appellant gave reasons for scratching in each case that he knew to be false and that that was done in conjunction with his offer to accept money to do so and therefore he had a potential benefit given to Miss Mackay's father's greyhounds. It was said he attempted to be surreptitious and keep this plan a secret.

47. In support of that latter argument, extracts from the various quoted text messages above are called in aid. For example: "Don't tell Dan that I'm paying

you to scratch”; “I won’t say anything”; “Anyone asked she hurt herself”; “Surely ya didn’t tell Dan that I’m paying you for scratching”.

48. Accordingly, it is again submitted that planning to scratch a greyhound to give an advantage to another runner in an adjacent box is corrupt. This is more so when the scratching actually is taking place by an appellant motivated by money or the offer of money.

49. It is said that the text messages cannot be interpreted in any other way than that they provide evidence of a plan devised and in fact carried out by the scratching.

Appellant’s Written Submission of 3 October 2023

50. Having set out the applicable law and the elements of the offences which have been summarised above, the appellant’s submission turned to matters of argument and raised four reasons why the conduct was not corrupt.

51. The first complaint is that the particulars are bad at law.

52. That is said to arise because the corruption alleged – the scratching of the dogs – is not the conduct complained of – being the offer to accept money.

53. It is said that the subject rule requires that the respondent establish that the offer to accept be corrupt. However, it is said that the particulars go to the actual scratching of the dog, not the offer to accept money to do so.

54. It is further said that the respondent has not alleged that the offer to accept money was corrupt, therefore the particulars are bad.

55. The second argument is that the respondent has not established that the appellant accepted money for the scratching of the greyhounds.

56. The respondent did not contest that submission in its closing submission.

57. It is said there is simply no evidence of the appellant accepting money to scratch the greyhounds.

58. The Tribunal pauses in its summary of the submissions at this point to state that it agrees with that second submission of the appellant and that it finds that there is no evidence that the appellant accepted money to scratch the greyhounds and that is not further analysed.

59. The appellant’s third point is that the respondent has failed to establish there was any advantage to the appellant’s dogs as particularised.

60. The Tribunal notes that particular (e) in both charges states “provided a possible advantage to the competitive chances of (named greyhound) by increasing the racing room afforded to that named greyhound upon the box rise”.

61. It is said that there is no evidence to support that particular, namely, any possible advantage by either of the scratchings or advantaged more than any other runners may have been. It is said that the respondent has not adduced any cogent evidence in support of such a finding.

62. Surprisingly, however, the written submission sets out part of the evidence given on 13 October 2022 as follows:

“MR BIRCH: Again, we’ve got a dog of yours drawn in a box next to the dog of Jason Mackay’s where I think any person involved in greyhound racing would say that that would be an advantage if that dog was scratched.

...

MR BIRCH: So, are you saying it’s not an advantage to have an empty box to your outside?

MR IVERS: Ah, it can be at times, and sometimes it isn’t. ...”

63. The final issue raised under the points of argument is that the evidence is said to fall short of the standard required to establish corruption or race fixing.

64. It is said that the evidence falls short of being able to establish so serious a finding and advances seven reasons why that is so.

65. The first reason advanced is that the particularised text messages are vague.

66. It is said that the messages do not refer to when the agreement was reached, the race, the greyhound, or even the amount of money to be paid.

67. The second point raised is an absence of evidence of the appellant receiving any benefit from the scratching. That is, there is no evidence of what the amount of money was, no evidence of money changing hands, the appellant never requesting any money, no evidence of Miss Mackay’s father being advantaged, no evidence of the appellant betting, and if the race was fixed as alleged, it is submitted one would have expected the appellant and Miss Mackay to have been betting on the race before the scratchings occurred.

68. The Tribunal notes that there was no reply to this second submission by the respondent in its closing submission.

69. The third issue raises credibility of the appellant on the issue of his breaching the rules or not.

70. He said he has no record of any prior offending of this nature and relies upon his positive references.

71. The fourth point raised is that there is no commercial sense for the appellant to have engaged in any corrupt conduct.

72. A number of points are made in support of that submission.

73. The submissions are the limited prize money of \$7,600 and \$6,610 respectively, the fact the appellant did not bet on either of the races, and the explanation given by the appellant in his interview of 10 October 2022.

74. In that interview, the appellant emphasised that he would not have scratched the dog for “a lousy couple of hundred” and that he would have backed the dogs. He emphasised that it is not in his interests “when you’re racing for two or three thousand dollars a win to scratch for a lousy couple of hundred dollars”. He emphasised that the payment history of Miss Mackay was such that he would be lucky to get anything from her. He said she would not be able to come up with that money.

75. The appellant in that interview also emphasised the fact that he has been otherwise asked by her to scratch dogs and he has not done so.

76. The fifth point adopts that last made submission that the appellant did not always scratch dogs when requested to do so by Miss Mackay, and evidence is given to support that fact from his interviews, and as the respondent has not replied in its closing submission to this point, the Tribunal notes at this stage that it accepts the correctness of that submission and the evidence to support it.

77. Lastly, and at some length, the sixth point made is that the greyhounds were scratched for legitimate reasons.

78. In this submission, the appellant’s general process for scratching dogs was set out, and in particular, that he gives them until the morning of the race to improve if they have not been well or injured.

79. In respect of charge 1, he says the subject greyhound had been an issue for him and that she was sick on the morning of the race. That is said to be consistent with the scratching.

80. In respect of charge 3, the appellant stated in the past he was joking with her over it and never having scratched a dog in return for money or anything else, that this greyhound in fact had not been well after a previous race and he waited to see if she would improve, he spoke to the owners and a decision was made to spell the greyhound. He said the greyhound was not injured but she was not within herself and was not a hundred percent and he decided to scratch it for those reasons.

81. That is said to show that there were issues with injuries to both greyhounds and the appellant was cautious in his approach to scratching.

82. The seventh and last reason again calls in aid the appellant's good character and credibility and summarises each of the five references which are called in aid.

83. The Tribunal takes this opportunity to summarise the five references as they are particularised by the appellant in the submission, and therefore relied upon to the extent set out in the submission.

84. Ashley Dwyer, formerly a president or chairman or director of various racing organisations, says he is forthright, trustworthy, honest and willing to assist.

85. Mr Hays Bailey says he is an excellent trainer with tremendous care for his dogs and a pillar of the industry and one who treats and cares for his dogs as best in class.

86. Mr Matthew Brown, a kennel supervisor, says that they have trust in him as a person and a trainer

87. Mr Damian Harris, owner, breeder and bookmaker, says the appellant takes his responsibilities as a licensed person seriously and would co-operate in any processes.

88. Miss Dana Burns, the appellant's partner, says he is a person who never says a bad word about anyone and rarely ever gets himself into trouble and is a quiet achiever who keeps his head down.

89. The submission closes by emphasising the vagueness of the text messages, the fact the scratchings made no commercial sense, there is total absence of evidence of betting or seeking to receive payment.

90. It is said that reliance is placed upon the fact the appellant accepts the messages were improper and he was opportunistically seeking to appease Miss Mackay and never sought payment for the scratchings.

91. Therefore, it is submitted that so serious a finding as corrupt conduct cannot be made.

Respondent's Submissions in Reply of 10 October 2023

92. The appellant says that the proof level here is not as high as a criminal case.

93. In respect of the suggestion that the particulars are bad at law, the respondent submits that that is not correct.

94. It is said the particulars must be read in their entirety and that when done so, the conduct is corrupt and improper.

95. There is no dispute that the evidence only goes to an offer to accept money.

96. It is emphasised that it is an accepted industry understanding that a greyhound drawn with an empty box beside it may receive an advantage from that empty box. Reliance is placed upon the appellant's own admission of that fact, set out above.

97. It is also noted that the particulars do not allege that the greyhounds were advantaged, only that there was a possible advantage.

98. It is said that the text messages read contextually are quite clear.

99. In relation to charge 1, it is noted that the text exchange was 29 hours prior to the race and there was an agreement for them to remain silent about their conduct and that the scratching would be because the greyhound was sick.

100. It is noted in fact the scratching that took place 15 hours later and it was stated the greyhound was sick.

101. It is therefore said that the texts show a communication between the appellant and Miss Mackay in which she seeks the appellant scratch the greyhound and offering to pay him to do so and he does scratch it.

102. In respect of charge 3, it is noted that the race field would have been drawn 24 hours before the first race of the meeting but that it is an unknown time when the text exchange took place. It is therefore noted the appellant in fact did scratch the dog at 6 am, citing a reason being that the greyhound was sick.

103. It is then noted that after that scratching, the exchange took place about the appellant not telling other people, and he agrees he did not.

104. It is therefore said that the text messages establish an interaction where there is an agreement to scratch and there was in fact a scratching and it was all done with secrecy.

105. It is said that in relation to the submission about no commercial sense for the appellant to engage in conduct, it is said that that is not material to the charges. In any event, the prize money, set out above, is called in aid.

106. In relation to the legitimacy of the scratching, it is said that a contextual understanding of the text clearly establishes the request to scratch, the offer of money and the actual scratching. This, it was submitted, was not simply the appellant going along with Miss Mackay's plans.

107. In respect of whether the greyhounds were in fact sick or injured, it is noted that no veterinary evidence was called in aid and accordingly the Tribunal should reject the appellant's evidence on this point.

108. In any event, it is said even if there was a legitimate reason to scratch the greyhounds, he nevertheless engaged with Miss Mackay in communications and held himself out as scratching the greyhounds for a potential benefit and offering to accept her money to do so.

109. Therefore, it is said that the only open finding is the appellant has acted corruptly.

110. It is said that the character references only go to issues of penalty.

111. In relation to no material advancing in betting, the respondent calls in aid the evidence before the Tribunal, which is that the appellant placed a \$100 multi-bet on the race the subject of charge 1 which required Mr Jason Mackay's greyhound to finish first.

Appellant's Penalty Submissions of 20 February 2022

112. Whilst essentially going to issues of penalty, these submissions nevertheless touched upon conduct, some of which has already been referred to, but where necessary is set out again.

113. It is said that the appellant opportunistically agreed with Miss Mackay, with whom he had offered to accept sexual favours in exchange for debt waivers to gain favour with her by agreeing to scratch the dogs even though there was no intention to accept money to do so and that the dogs were to be and were in fact scratched for health reasons.

114. Detail was set out of all of the evidence that goes to the health reasons supporting the scratchings. That evidence is lengthy and not repeated but establishes there were health issues with the greyhounds.

115. It was also emphasised, as set out in detail above, of the lack of commercial sense in engaging in corrupt conduct and that he did not always scratch dogs at her request.

116. Emphasis was placed on the fact that the appellant did not institute the offer. It is also submitted that the level playing field and integrity was not compromised, where the dogs were scratched for health reasons, anyway.

Oral Submissions on 19 July 2023

117. Again acknowledging that this hearing was on penalty submissions, some matters were advanced on behalf of the parties which go to the issues of corruption.

Respondent's Oral Submissions on 19 July 2023

118. It was submitted that the scratchings took place because of illness, not injury.

119. It was said that there were consequences on the race, as particularised, in that Mr Jason McKay's dog was advantaged, which is a very important factor in greyhound racing, where there is an empty box adjacent to a starter.

120. It is said, therefore, that there were consequences of the conduct and of the scratching by advantage to Mr Jason Mackay and also to Miss April Mackay. It is noted in passing that in respect of the first matter, the greyhound of Mr Jason Mackay did win.

Appellant's Oral Submissions at the Hearing on 19 July 2023

121. Emphasis was placed on the fact that the appellant did not bet on the races (noted to be subsequently an incorrect submission based upon the facts) and there was otherwise no financial advantage to him.

122. It was submitted there was no race fixing but only improper conduct in offering to accept money to scratch, but there was a legitimate scratching.

123. Accordingly, it was submitted there was no real advantage to the appellant in engaging in any conduct such as that set out in the text.

124. It was submitted that there was no unusual betting activity and no commercial sense in the suggestion pleaded against him. Emphasis was

placed on the fact the dogs were scratched for health reasons and there was no commercial sense in engaging in wrongful conduct.

125. It was emphasised that there was no allegation of race fixing prior to the amended particulars.

126. It was said that an empty box is an inevitable consequence of a scratching and it does not raise a red flag nor necessarily advantage any other dog in the race.

DETERMINATION

127. The Tribunal does not find that the particulars are bad at law.

128. The Tribunal is satisfied that it is necessary to read the particulars as a whole and not to focus upon isolated words or individual particulars.

129. The Tribunal is particularly persuaded by the fact that the particulars are drawn by stewards, perhaps assisted by lawyers, but that it is in the context of greyhound racing and greyhound racing rules and not a criminal court that the particulars must be assessed.

130. The Tribunal has previously found that, not being a court of law, the necessity for precise particularisation does not arise.

131. The particulars are sufficiently clear and cogent for them to be understood.

132. Accordingly, in each of the charges, particular (f) must be read in the context of the particulars as a whole and not solely isolated to the necessary focus advanced by the respondent, that the only aspect of corruption that is to be found is the actual scratching.

133. The Tribunal is satisfied that when read as a whole, there is a nexus between the text messages where the offer to accept was made and the subsequent scratching.

134. The focus is upon whether the corrupt conduct was the offer to accept and the Tribunal is satisfied that it was, and the particulars are not to be read to limit the focus upon the actual scratching.

135. The evidence unequivocally establishes that Mr Jason Mackay's dogs were possibly advantaged.

136. The admission of the appellant is that "it can be at times" an advantage to have an empty box to your outside, coupled with the totality of the evidence that that is in fact a possible outcome.

137. That arises because before the stewards, who are not bound by the rules of evidence, and before the Tribunal where it can inform itself as it thinks fit, that the submissions of the respondent that that is a possible outcome are sufficient to establish that as a fact. It does not require some other witness to be called along to state that same fact. The comments of the stewards to that effect, coupled with the obvious fact that it is a possible outcome, is sufficient.

138. The Tribunal does not find that the text messages are vague. They are clear and unambiguous and are consistent with conduct in which both Miss Mackay and the appellant engaged on prior occasions, for example, other occasions in which she asked him to scratch and he refused to do so, and other occasions where he agreed to accept money from her or to waive debts of her.

139. There was ongoing contact and conduct between the appellant and Miss Mackay consistent with that which is said by the respondent to be established by the text messages.

140. The appellant does not have to have been shown to have received any benefit from the scratching. It is the totality of his conduct which must be the focus. The appellant does not himself have to receive an advantage for conduct to have been corrupt.

141. Therefore, the fact that the amount of money in question and the fact that money did not change hands in circumstances where neither of them engaged in betting on the race does not mean that when read as a whole the text messages and the conduct engaged in do not amount to that which was intended and it was not a joke.

142. The Tribunal does not find that the appellant has established by the character evidence he has called that he is not a person who would engage in corrupt conduct or, indeed, that he would not have done that which is alleged against him. In any event, he cannot hide behind the plain, unambiguous and obvious meaning of the text messages.

143. The Tribunal accepts that in certain circumstances, evidence of good character can mean that allegations made against a person are not sustained. This is not such a case.

144. The character references are not of such a strength, when taken in isolation or together, which would indicate that the appellant would not engage in corrupt conduct.

145. The arrangement did not have to make commercial sense. The appellant otherwise establishes on the face of it there would be no commercial sense

in engaging in the conduct, but that is not which he is shown to have engaged in by reason of the text messages as a whole.

146. The fact that he would not have engaged in it for, as he said, a lousy couple of hundred when other money was involved, and whether she was able to pay him money or not, do not go to the issue of that which the text messages plainly and unambiguously state that he was engaging to do.

147. The fact that the appellant did not always scratch dogs at Miss Mackay's request is an accepted fact, but it also goes to show the ongoing nature of the conduct in which they engaged in relation to scratching of greyhounds. That is, the subject two text messages were not isolated occasions on which this conduct was engaged in. In this case, it went that much further in that he did act in accordance with the agreement engaged in in the text messages

148. The issue of the reason for scratching needs examination.

149. Charge 1 text says "scratched due to being sick in the morning". The scratching report says "Sick. Has temperature. Didn't eat meal". Dr Yore's report says arthritic. He told the stewards on 13.10.22 that "I must have thought she was crook earlier in the week for me to say that sort of thing and for to be scratched." The greyhound subsequently to the scratching raced and broke down because of injury.

150. There is no evidence of sick, temperature or not eating on day of scratching.

151. Charge 3 text says Ms Mackay stated "anyone ask she hurt herself". The appellant replied "yep all good". The scratching report was the same. He told the stewards on 13.10.22 that she was not 100% before this race and was not happy and was to go for a spell and did so. He said she was not injured. The appellant emphasised that if the greyhound is not 100% he would scratch.

152. There is no evidence of sick, temperature or not eating on day of scratching. There is no evidence of injury.

153. The reasons advanced on the scratching notices were not legitimate.

154. Charge 1 the greyhound was not sick as he stated and had told Ms Mackay would be the reason for the scratching. His subsequent reasoning to the stewards is not accepted as truthful.

155. Charge 3 the greyhound was not injured as he said he would report and the evidence of it being sick in the terms he set out is totally lacking.

156. The Tribunal notes that it considers the issue whether the greyhounds were sick or injured cannot be found in favour of the appellant and goes to the gravamen of the actual corrupt conduct contained in the text messages.

157. The Tribunal is particularly persuaded, in examining whether conduct was corrupt, that it does not matter whether the person engaging in that conduct thought it would be corrupt, but whether, viewed objectively, it was.

158. The subjective intentions of the person are not to be disregarded because they can be relevant to whether, objectively viewed, the conduct was corrupt. But here that is not the case in favour of the appellant.

159. Simply put, the Tribunal does not accept the appellant's after-stated view that the conduct in which he engaged was a joke.

160. The evidence is assessed with the required level of comfortable satisfaction set out above.

161. The Tribunal therefore determines that reading the text messages in the context of their past engagements and in the context of what actually took place, that it was, as stated, not a joke, and regardless of whether there was commercial sense or not, his false reasons for the scratchings and what did or did not subsequently occur, that the text messages plainly show the actions of the appellant were corrupt.

162. The appellant stated he was willing to act dishonestly in return for an offer for money and he did so.

163. That is corrupt conduct.

164. Each of the necessary ingredients of both charges are established.,

DETERMINATION

165. The Tribunal finds that the appellant has breached the rules as set out in charges 1 and 2.

DIRECTIONS

166. This appeal must now be listed for penalty submissions in respect of charges 1, 3, 4 and 5.

167. Each party is to advise the Tribunal, upon receipt of these written reasons for decision, whether they wish to have a further hearing on the issue of penalty, noting that submissions were made in some detail by the appellant on 20 February 2022 and at the hearing on 19 July 2023.

168. The Tribunal, noting that this matter must be finalised after 7 November 2023 but prior to 30 November 2023, requires that indication as soon as possible.

169. Upon receipt of advice by both parties as to how they wish the matter to continue, the Tribunal will issue further directions.
