IN THE RACING APPEALS TRIBUNAL

CHARLIE GATT
Appellant

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DECISION

Hearing date:	**25 March 2024**
Decision date:	**28 March 2024**
Appearances:	**The Appellant appeared in person**
	Mr M Tutt (Solicitor) for the Respondent

ORDERS

1. **The appeal is upheld.**
2. **The determination of the Respondent of 12 February 2024 is quashed.**
3. **In lieu thereof, the Appellant is disqualified for a period of 6 months commencing on 21 February 2024.**
4. **The appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice dated 14 February 2024[1], Charlie Gatt (the Appellant) has appealed against a determination made on 12 February 2024 by the Greyhound Welfare and Integrity Commission (the Respondent) imposing a disqualification of 8 months for a breach of Rule 141(1)(a) of the *Greyhound Racing Rules* (the Rules). The Notice of Appeal stated that the appeal was against both the finding of guilt and the penalty imposed. However, in circumstances where the Appellant pleaded guilty to the charge in the first instance, the matter has proceeded on the basis that the appeal is against the severity of penalty only.

2. The Notice of Appeal was accompanied by an application for a stay of the decision pursuant to cl 14(1)(a) of the *Racing Appeals Tribunal Regulation 2015* (NSW) (the Regulation). That application was refused for the reasons published on 4 March 2024.

3. The hearing of the appeal took place on 25 March 2024, in advance of which I was provided with an Appeal Book (AB) containing relevant documents. The Appellant appeared at the hearing in person, accompanied by his wife Angela. He was assisted in the presentation of his case by Mr Jeff Collerson, a person well known (and highly respected) in the greyhound racing industry. In the course of advancing his case, the Appellant provided me with a number of written testimonials to which I have referred in more detail below.

4. The Respondent was represented at the hearing by Mr Tutt, Solicitor.

5. Following the hearing judgment was reserved and I have been provided with a transcript to assist me in the preparation of these reasons.

THE CHARGE

6. On 31 January 2024 the Respondent forwarded a Notice to the Appellant setting out an allegation that he had breached Rule 141(1)(a) of the Rules. The breach was particularised in the following terms:

[1] AB 162.

1. *That [the Appellant], as a registered Public Trainer, while in charge of the greyhound 'Sirius Cuddles' ("Greyhound") presented the Greyhound for the purpose of competing in race 11 at the Wentworth Park meeting on 20 September 2023 ("Event") in circumstances where the Greyhound was not free of any prohibited substance;*
2. *The prohibited substance detected in the sample of urine taken from the Greyhound following the Event was 5ß-Androstane-3α, 17ß-Diol at a mass concentration of 20ng/mL; and*
3. *5ß-Androstane-3α, 17ß-Diol at a mass concentration greater than 20ng/mL is a permanently banned prohibited substance under Rule 139(1)(t) of the Rules.*

7. A breach of r 141(1)(a) is colloquially referred to as a "presentation offence" and is an absolute offence.

THE RELEVANT PROVISIONS OF THE RULES

8. Rule 139 of the Rules is in the following terms

> ***139 Permanently banned prohibited substances, and certain offences in relation to them***
>
> *(1) The following prohibited substances, or any metabolite, isomer or artefact of any of them are deemed to be permanently banned prohibited substances:*
>
> *...*
> *(t) anabolic androgenic steroids excluding those that are defined as an exempted;*

9. Rule 140 is in the following terms:

> ***140 Prohibited Substances subject to a threshold***
>
> *In addition to the exempted substances, a substance is not a prohibited substance for certain offences identified in these Rules if detected at or below the following thresholds in a sample of the specified sample type:*
>
> *(a) testosterone as evidenced by the presence of 5ß-Androstane-3α, 17ß-Diol at or below a concentration of 10 nanograms per millilitre in a sample of urine taken from a female greyhound.*

10. 5ß-Androstane-3α, 17ß-Diol is commonly referred to as "BaB". The evidence in the present case is that the quantity of BaB which was found to be present in the greyhound may have exceeded 20 ng/mL, which is substantially greater than the prescribed threshold of 10 ng/mL.

11. Finally, Rule 141(1)(a) is in the following terms:

> ***Greyhound to be free of prohibited substances***
>
> *(1) The owner, trainer or other person in charge of a greyhound:*
>
> *(a) Nominated to compete in an event;*
>
> *(b) ....*
>
> *(c) ....*
>
> *must present the greyhound free of any prohibited substance.*

THE SAMPLE AND SUBSEQUENT ANALYSIS

12. At the material time, the Appellant was registered with the Respondent as a Public Trainer and Breeder.[2] He was, in that capacity, the trainer of '*Sirius Cuddles'* (the greyhound).

13. The greyhound, a female, competed in an event on 20 September 2023 at Wentworth Park. She won the event,[3] and was then subject to the collection of a urine sample.

14. On 10 November 2023, a Certificate of Analysis of the sample was issued, which certified that it contained BaB at a mass concentration greater than 20ng/mL[4].

15. A confirmation of that analysis was issued on 28 December 2023.[5]

THE DISCIPLINARY HEARING

10. On 12 February 2024, the Appellant attended a disciplinary hearing where he was interviewed by Troy Vasallo, the Chief Steward of the Respondent. When Mr Vasallo put the results of the analysis of the sample to the Appellant, the following exchange took place:[6]

> A .... But in hindsight, I should have scratched the bitch because the day before I saw a speck of blood on the kennel and the – on the concrete. And, I gave her three tablets of Orabolin. That's all, that's all I did.

[2] AB 130.
[3] AB 20.
[4] AB 22.
[5] AB 119 and following.
[6] Commencing at A 18; AB 137.

Q19 What did you give her three tablets of? Sorry
A Orabolin.
Q20 Orabolin?
A Yeah.

Q21 And, you gave that the day before?
A That's right. Yeah.
.....
Q27 Right. Okay. And, the Orabolin – was that – is that something that's prescribed to you by a vet?
A Well...

Q28 Where did you get it from?
A John Newell.

Q 29 John Newell. All right. And, when did you get it from John Newell?
A I got it before that, but I wasn't giving the dogs – the bitches any Orabolin. And then, once she – like, I've only got two or three – three bitches. And, after – after that time, I – I've now given them the Orabolin – quarter of a tablet of Orabolin.

Q30. Right. Is there any guidelines or instructions that John Newell provided in respect to dosage amounts or – or withholding period from giving Orabolin prior to a race? Is any of that information provided to you?
A Not at all. None at all.

Q 31 Did you ask him?
A No. I didn't.

Q 32 No. Did you do any – any research as to who long it may stay in the system or – or how long prior to a race you should – should be giving his Orabolin to the greyhound?
A I've given a quarter of a tablet of Orabolin every morning.

Q 33 Right. So before you gave the three tablets to this bitch, how much – or, how consistently were you giving Orabolin to Sirius Cuddles prior? Were – were you giving it a quarter of a tablet every day or –
A No.

Q 34 --- were you only doing that since?
A I didn't have the bitches on Orabolin at the time.

Q 35 Right.
A It's only after.

Q 36 Okay. So, your – so, your current practice is – you're giving them a quarter of a tablet of Orabolin a day?
A Yeah. That's right. In the morning. Yeah.

Q 37 Right. And, is that under veterinary guidance or is this under your own – is this something that your – you've decided to do yourself?
A Well, I've been – I've talked to a few trainers. And, they reckon a quarter of a tablet will keep the dogs off season.

Q 38 Right. And so – so, it's purely off just what other trainers have ---
A Yeah. Well ---

Q39 --- said? So, you haven't – you haven't gone and received any veterinary guidance in respect to this?
A Well I – I can't remember what the – what the label said, but I think they said half a tablet but I reckon a quarter of a tablet is just enough to keep 'em off season.

Q 40 Right. So, can I ask why you gave it three tablets?
A Because I saw a speck of blood. And, well in years – in previous years, you could stop the bitch by coming on season by giving 'em the Orabolin and all that crap.

16. At the conclusion of the hearing, Mr Vasallo indicated that the Respondent proposed, as a starting point, a disqualification of 12 months.[7] The Appellant was then given the opportunity to make submissions. Through an intermediary, he made reference to his age, his personal circumstances, his career in the greyhound racing industry, and the loss of the prizemoney which would ensue.[8] Having taken into account all of those matters, the Respondent concluded that a disqualification of 8 months was appropriate, to commence on 21 February 2024, and to expire on 21 October 2024.

THE EXPERT EVIDENCE

17. Present at the disciplinary hearing were Dr Adam Cawley, the Scientific Manager of Racing Analytical Services Limited (RASL), and Dr Tony Kuipers, the Chief Veterinary Officer of the Respondent.

18. Dr Cawley's evidence[9] was that the normal level of BaB in bitches was assessed at 1 ng/mL or less. He described the level of BaB in the sample taken from the

[7] Q 87; AB 146.
[8] Commencing at AB 87; AB 146.
[9] AB 45; AB 139.

greyhound as "high",[10] but was unable to express any opinion on the time at which the substance might have entered the greyhound's system, or the amount of the dosage.[11]

19. In a separate report dated 15 March 2024,[12] Dr Cawley confirmed that RASL was unable, in terms of the sample which was tested, to provide an accurate concentration greater than 20ng/ml, although he estimated such concentration to be approximately 30ng/mL. Dr Cawley expressed the view[13] that it was not possible for the presence of BaB in the sample to have been brought about by the administration of Orabolin. He also expressed the view[14] that the prescribed threshold of BaB of 10ng/ml was "generous" for the purposes of controlling the misuse of testosterone in female greyhounds.

20. Dr Kuipers' evidence[15] was that Orabolin is a form of anabolic androgenic steroid. He was unable to express a view as to whether its administration to the greyhound could have produced such a high level of BaB as was found in the sample. He confirmed[16] that the prescribed dosage of Orabolin is half a tablet daily. The dosage administered to the greyhound by the Appellant was obviously substantially higher than that.

21. What was not available at the time of the hearing, but which is before me, is a Certificate dated 6 March 2024 under the hand of Dr Edward Humphries, Veterinary Surgeon, which states:[17]

> *Mr Gatt has asked me for an opinion as to whether the administration of 3 tablets of compounded Orabolin could result in a positive swab containing (BaB). I consider that this is very possible given the circumstances of the tablet manufacture.*

[10] AB 47; AB 140.
[11] A 50 – 53; AB 140 – 141.
[12] Commencing at AB 184.
[13] At [17](b); AB 186.
[14] At [17[(c); AB 187.
[15] AB 59; AB 142.
[16] AB 60; AB 142.
[17] AB 190.

22. In a report provided to the Respondent dated 17 March 2024, Dr Steven Karamatic challenged Dr Humphries' opinion, stating[18] that he had experience in the testing or Orabolin tablets "on a number of occasions (when) testosterone had not been present". Importantly, Dr Karamatic stated[19] that any anabolic steroid confers an unfair performance advantage on any greyhound to whom it is given, by increasing its muscle mass, increasing its endurance, and altering its behaviour in terms of aggression and chasing desire.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

23. The Appellant made reference to the fact that he is now 71 years of age and that, aside from any income derived from training greyhounds, he is reliant on the age pension. Justifiably, he placed considerable emphasis on his prior good character. Whilst he relied, in that regard, on the objective fact that he had been licenced as a trainer for some 47 years without any relevant offending, he also provided what might be described as positive evidence of his good character, in the form of written testimonials from:

    (i) Dr John Newell BVSc, who has known him for 35 years, both as a participant in the industry, and as a client;

    (ii) Jeff Collerson, a person whose involvement in the greyhound racing industry needs no elucidation, and who has known him for a period of 47 years, both socially and professionally;

    (iii) Gabriel Mangafas, a previous Chairperson of the Greyhound Breeders Owners and Trainers Association (GBOTA) who has known him for more than 40 years, through the Appellant's membership of the GBOTA;

[18] At [22]; AB 178.
[19] At [24]; AB 179.

(iv) Steven Crompton, who has known him for more than 10 years in the capacity of a greyhound owner who has entrusted his greyhounds to the Appellant for training; and

(v) Craig Pollard, who has known him in a personal capacity for more than 20 years

24. Those testimonials variously described the Appellant as "an individual who is particular with detail and compliance",[20] a person of "impeccable character",[21] an "honest person who follows the rules",[22] a "good and honest greyhound trainer,"[23] and a trainer who administers an "excellent level of care and treatment" to the greyhounds in his care.[24]

25. As I have already noted, Mr Collerson was present to support the Appellant at the hearing. Having provided a written testimonial, Mr Collerson addressed the Tribunal and said the following:[25]

> *I can honestly say I've never met a person with more integrity or honesty, or with higher principles than Charlie Gatt. ... When I mentioned to a dozen of his colleagues that he'd been disqualified, they were gobsmacked. They said, "Charlie Gatt? He wouldn't say boo to a fly, he would never do the wrong thing." And as I understand, it was, if anything, an error of judgment. He wasn't delivering a performance-enhancing drug to the dog. ... I guess it was an error of judgment. Charlie's a simple man. Okay? And I think it's just a savage penalty to rob him of his livelihood. He's already lost the best greyhound he's potentially ever had. It's already been taken from him because of this. It's been transferred to another trainer. And I just think it's a brutal decision to disqualify him. I can't see what good it will do anyone to rub him out of the industry that he loves and the industry that's liked him so much over nearly five decades of blemish-free activity. Surely, a warning, or even a good behaviour bond, would have been more appropriate. And it just breaks my heart to see what's happened to him.*

Submissions of the Respondent

26. On behalf of the Respondent, Mr Tutt unreservedly accepted that the Appellant was a person of blemish-free character and that this was a factor which was

[20] Dr Newell.
[21] Mr Collerson.
[22] Mr Mangafas.
[23] Mr Crompton.
[24] Mr Pollard.
[25] At T23 – 24.

plainly relevant to the determination of any penalty. That said, Mr Tutt submitted that considerations of prior good character could not be permitted to overshadow what he submitted was the high degree of objective seriousness of the offence.

27. Although Mr Tutt did not urge me to make a positive finding as to how the substance came to be present in the greyhound, he submitted that I would not be satisfied on the whole of the evidence that its presence was due to the administration of Orabolin. In this regard, he submitted that I should reject the opinion of Dr Humphreys.

28. Mr Tutt also submitted that in any event, the Appellant's administration of Orabolin to the greyhound was not carried out on veterinary advice. Whilst Mr Tutt did not suggest that this aggravated the offending, he sought to draw a distinction between that circumstance, and instances in which the Tribunal has taken into account, as a mitigating factor, medication which has been administered on veterinary advice, and which has resulted in a banned substance entering a greyhound's system. Mr Tutt also pointed out that the concentration of the prohibited substance which was detected in the sample was well in excess of the prescribed threshold.

29. Mr Tutt acknowledged the fact that the Appellant had not been charged with an administration offence, that he had entered an immediate plea of guilty, that his prior good character was deserving of appropriate weight, and that considerations of personal deterrence had no role to play. However, he submitted that general deterrence was a paramount consideration, as were the statutory objectives and functions of the Respondent set out in s 11 of the *Greyhound Racing Act 2017* (NSW).

30. In all of the circumstances, Mr Tutt submitted that the penalty imposed was appropriate.

PREVIOUS DETERMINATIONS OF THE TRIBUNAL

31. Mr Tutt referred me to a number of previous determinations of the Tribunal which, he submitted, supported the conclusion that the appeal should be dismissed.

32. It is appropriate that those determinations be considered, at the same time bearing in mind that no two cases are identical, and that what is sought when determining penalty is not numerical equivalence between cases, but the consistent application of principle.

33. I should also say, as was effectively acknowledged by Mr Tutt, that previous determinations of the Respondent (as opposed to previous decisions of the Tribunal) are subject to a further limitation, namely that they are not required to, and thus do not, set out the entirety of the reasoning process adopted, or for that matter enumerate and/or expand upon the entirety of the considerations taken into account in determining penalty. That is not intended, in any way, as a criticism of any decision-maker. It is simply reflective of the way in which those matters are dealt with.

34. With those matters in mind, I turn to consider each of the determinations to which I was taken.

Staines

35. In *Staines,*[26] a disqualification of 24 weeks (i.e. 6 months) had been imposed by the Respondent following a plea of guilty to a breach of the then equivalent of r 141(1)(a). There were two prohibited substances detected in the relevant sample.

36. The Tribunal observed that it was not incumbent upon the Respondent to establish "how, when, why or by what route" the substances came to be present in the greyhound.[27] The Tribunal found[28] that there was no evidence of how the substance came to be administered.

37. The Tribunal noted that the relevant guideline at that time provided a starting point of a disqualification of 52 weeks[29]. It was acknowledged that the Appellant had been a trainer for 43 years, 32 of which were (essentially) blemish-free.[30] The

[26] A decision of 11 February 2019.
[27] At [13].
[28] At [14].
[29] At [20]].
[30] At [32].

Tribunal concluded[31] that the Appellant's career must have involved "numerous tests by swabbing of greyhounds" which had resulted in "no prior positives". The Appellant also relied on independent evidence of his prior good character[32] although it must be said that such evidence appears to have been more limited than that which is before me in the present case. The Tribunal took into account the Appellant's "contribution to the community"[33] along with the fact that the level of the substances detected was low.[34]

38. Leaving aside the discount for the plea, the Tribunal commented[35] that it had previously "*found in many, many decisions that a discount of some 15 to 20 per cent is more than appropriate for the majority of subjective circumstances*", and that *"to extend that 15 to 20 per cent discount to a possible 33 per cent discount or in any event, the number of weeks considered appropriate, is a substantial extension of leniency …".* Ultimately, the Tribunal concluded that the disqualification of 24 weeks was appropriate and dismissed the appeal.

39. Without intending any disrespect to the observations of the (then) Tribunal referred to in [38] above, I should say that it is my firm view that, leaving aside the discount of 25% which is accepted should be applied to a plea of guilty, expressing discounts for subjective factors in fixed percentages, or in terms of a defined range (be such range defined loosely or otherwise), is something that should be avoided. This is so for two reasons.

40. The first, is that it has a tendency to promote misplaced notions of an underlying necessity to achieve numerical equivalence in penalty.[36] The second, is that the discretionary determination of any penalty involves a process of instinctive synthesis, in which the decision-maker takes into account all relevant considerations and ascribes what he or she considers is the appropriate amount of weight to each of them, before reaching a value judgment as to the appropriate

[31] At [24].
[32] At [26]-[27].
[33] At [29].
[34] At [29].
[35] At [32].
[36] See generally *Hili v The Queen; Jones v The Queen* [2015] HCA 45; (2015) 242 CLR 520

outcome. Any approach which involves the application of fixed percentages, or a fixed range, to an assessment of a subjective case (other than to the extent that such a case involves a plea of guilty) runs contrary to the very notion of a discretionary determination. The key to the proper practice of assessing a penalty involves a balancing of objective seriousness against subjective considerations.[37]

Arietos

41. The offender in this case[38] was charged with administering a prohibited substance, as well as a presentation offence equivalent to that to which the Appellant has pleaded guilty. The administration offence was dismissed. In respect of the presentation offence, the Respondent imposed a penalty of 10 months. The substance in question was BaB[39] in an amount more than double the permitted threshold.[40] The offender, who had been a registered trainer of 31 years without any relevant history, had pleaded guilty.[41] At that time, the relevant guideline prescribed a starting point of a 12 month disqualification.[42]

Comito

42. The offender in this case[43] pleaded guilty to a presentation offence arising from the detection of BaB of approximately double the permissible threshold.[44] He had held a trainer's licence for a period of 11 years without any prior offending.[45] A 9 month disqualification was imposed by the Respondent.[46]

Scott

43. The offender in this case[47] was charged with a presentation offence arising from the detection of BaB. The offender pleaded guilty and a disqualification of 9 months was imposed by the Respondent.[48] In reaching its determination, the

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[37] *R v Pickett* [2010] NSWCCA 273 at [59].
[38] A decision of the Respondent dated 31 January 2020.
[39] At [3].
[40] At [18]
[41] At [18].
[42] At [18].
[43] A decision of the Respondent dated 2 February 2021. The offender also pleaded guilty to another offence which is not relevant for present purposes.
[44] At [7].
[45] At [7].
[46] At [7].
[47] A decision of the Respondent dated 25 June 2021.
[48] At [7].

Respondent took into account the fact that the offender had been registered for less than a year without any disciplinary history, along with the fact that she had "changed her husbandry practices".[49] The Respondent also referred to having taken into account in relation to the offender's "*personal, financial and medical circumstances"*.[50] No further detail was provided of those circumstances.

Norman

44. The offender in this case[51] was charged with a presentation offence, the substance being BaB. He had been a registered trainer for 31 years, and had pleaded guilty.[52] His record as a trainer was not blemish-free, having been found guilty of a prior presentation offence (albeit in 2008).[53] A disqualification of 8 months was imposed by the Respondent.[54]

Burgin

45. The Appellant in this case[55] had pleaded not guilty to a presentation offence which involved the detection of a number of substances, including BaB.[56] He was found guilty at first instance and disqualified for a period of 12 months.[57]

46. The Tribunal dismissed the appeal as to the finding of guilt.[58] The appeal against severity of penalty was also dismissed.[59]

47. In addressing the question of penalty, the Tribunal observed[60] that permanently banned substances have a marked impact on the integrity of greyhound racing and that offending of this kind required the imposition of a "substantial protective order". It was noted[61] that the Appellant had been "associated" with the greyhound racing industry for 10 years, 5 of which were as a public trainer and

[49] At [8].
[50] At [8].
[51] A decision of the Respondent dated 2 March 2022.
[52] At [6].
[53] At [6].
[54] At [5].
[55] A decision of the Tribunal of 22 November 2023
[56] At [3] – [4].
[57] At [1].
[58] At [31] – [32].
[59] At [73].
[60] At [41].
[61] At [48].

breeder. He had incurred penalties for two prior breaches in that time, for which he was suspended (in the first instance) for a period of 14 months, and (in the second instance) fined.[62] It is noteworthy that in this context, the Tribunal made the following observation:[63]

> *The Tribunal has expressed, ad nauseam, for many years that those who are in the industry for a lengthy period of time and have no prior matters should expect that the discounts given to them on a subjective basis are greater than those that are given to people either of a lesser time in the industry or who have prior matters. The Tribunal remains of that opinion.*

48. Whilst I do not, for the reasons previously expressed, consider it appropriate to adopt an approach to the assessment of a subjective case which involves the application of fixed discounts or defined percentages, I most certainly embrace the proposition that a lengthy and offence-free history in the industry is an important subjective factor to be taken into account in such an assessment. That is of particular significance in the present case.

CONSIDERATION

49. The principal objectives of the Commission under the Act are to:

    (i) promote and protect the welfare of greyhounds;
    (ii) safeguard the integrity of greyhound racing and betting; and
    (iii) maintain public confidence in the greyhound racing industry.

50. Any presentation offence necessarily has the fundamental capacity to adversely affect, and to erode at least to some degree, each and every one of those objectives. It follows that any presentation offence will, by its very nature, be regarded as objectively serious. The present case is no exception.

51. The level of objective seriousness of any offence will always fall to be determined according to its own facts and circumstances. In the case of a presentation

[62] At [50].
[63] At [52].

offence, relevant considerations bearing upon that determination may include (but are certainly not limited to) the nature of the substance, the degree to which it exceeds the prescribed threshold, whether its source can be determined, and whether it has come about as the consequence of the administration of a substance on veterinary advice.

52. Further, relevant to the protection of the integrity of the greyhound racing industry, and to the need to maintain public confidence in that industry, is the promotion of what is generally described as a level playing field. That is of some relevance in the present case, given that the greyhound won the event, and given the opinion of Dr Karamatic to which I previously referred.[64]

53. As I have noted, a breach of r 141(1)(a) is absolute. In the event that a person against whom such breach is alleged is able to explain how the prohibited substance entered the greyhound's system, such circumstances may be a mitigating factor. In the present case, I am not persuaded that the prohibited substance entered the greyhound's system as a consequence of the administration of Orabolin. In that regard, I prefer the evidence of Dr Cawley and Dr Kuipers to that of Dr Humphreys, whose contrary opinion is unsupported by any reasoning process. How the prohibited substance entered the greyhound's system in this instance is simply not established. To that extent, the offending falls into the second category of offence described in *McDonough*[65], namely one in which the Tribunal cannot determine how the prohibited substance entered the animal's system.

54. In all of the circumstances, and particularly bearing in mind the level of the prohibited substance which was detected in the sample, the seriousness of the Appellant's offending must be regarded as high. Whilst I am satisfied that personal deterrence has no role to play in the assessment of any penalty, general

[64] At [22] above.
[65] A decision of the Racing Appeals Tribunal in Victoria of 24 June 2008.

deterrence remains a paramount consideration, particularly given the Respondent's statutory objectives previously set out.

55. There is no doubt that the Appellant has a powerful subjective case. He pleaded guilty at the first available opportunity and I am satisfied, having observed him in person at the hearing, that he is genuinely remorseful for what has occurred and is most unlikely to offend again.

56. It would be difficult (to say the least) to imagine a more praiseworthy history of participation in the greyhound racing industry than that of the Appellant. Whilst a career of 47 years without offending tends to speak for itself, it is necessary to put it into its true perspective. It can be reasonably inferred that during that 47 year period, greyhounds trained by the Appellant would have been subject to a large degree of sample testing and analysis. The fact that the Appellant has never come under notice for this kind of offending leads to only one conclusion, namely, that he is a person who is honest, who is conscious of his obligations as a trainer, who respects the rules to which he is subject, and who is cognisant of the need to protect the integrity of the greyhound racing industry. I am satisfied in these circumstances that any sanction which might be imposed, but particularly one of disqualification, will have a profound effect upon the Appellant. Being disqualified from participating in an industry which he obviously loves, to which he has made a significant contribution, and in which he has obviously earned great respect over a long period, will be a significant penalty in and of itself.

57. It would be equally difficult to imagine more powerful character evidence than that which was placed before me in the hearing. As I have outlined, that evidence was both in writing and oral, and came from a wide range of members of the community who have known the Appellant for a long time, and in varying capacities. Clearly the Appellant, both in terms of his participation in the greyhound racing industry and otherwise, is a man of impeccable character for whom a breach of this nature represents a marked departure from his customary high standards.

58. All of these factors must be afforded the appropriate degree of weight in any determination of penalty. A failure to do so would be unfair to the Appellant, and would fail to give effect to the previous observations of the Tribunal, with which I expressly agree.[66]

59. At the same time, it would be an error if I were to allow the weight ascribed to the offender's subjective case to result in the imposition of a penalty which was not properly reflective of the objective seriousness of the offence to which he has pleaded guilty. It remains of the utmost importance that any penalty imposed for offending of this nature act as a deterrent to those who might be minded to act in a similar way. I accept unreservedly that the Appellant does not need to be deterred from offending of this kind, but it remains fundamentally necessary that any penalty imposed send a clear message to those who **do** need to be deterred that breaches of this nature will necessarily result in the imposition of a substantial penalty, which is more likely than not to involve a period of disqualification. It is equally important for any penalty to reflect, and promote, the principal statutory objectives of the Respondent to which I have previously referred.[67] These considerations prevent me from being able to adopt the course urged by Mr Collerson on the Appellant's behalf. Such a course would, if implemented, simply fail to convey the message that must be conveyed to all participants in the greyhound racing industry, namely that offending of this nature will be met with zero tolerance.

60. Clearly, the offending must meet with a period of disqualification. I have come to the view that such period should be one of 6 months. Such a penalty, in my view, takes into account all relevant considerations and, importantly, is one which is consistent with the previous determinations of the Tribunal which I have considered.

[66] At [47] – [48] above.
[67] At [49] above.

61. Given that the previous application for a stay was declined, that disqualification should commence on the date specified in the original determination. As the Appellant has been successful, the appeal deposit should be refunded.

ORDERS

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

    1. The appeal is upheld.

    2. The determination of the Respondent of 21 February 2024 is quashed.

    3. In lieu thereof, the Appellant is disqualified for a period of 6 months, commencing on 21 February 2024.

    4. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

28 March 2024