

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

Matter for determination	Decision dated 28 July 2022 of decision makers Wade Birch, Director Race Day Operations & Integrity, Dean Degan, Senior Steward, and Pete Austin, Senior Inspector to disqualify Ms Charmaine Roberts for thirteen (13) months, effective immediately.
Internal review decision date	5 September 2022
Internal review decision by	Mr Chris Wheeler Acting Chief Commissioner Mr Peter Collins Commissioner
Internal review decision summary	Vary the decision of 28 July 2022 and instead disqualify Ms Charmaine Roberts for a period of twelve (12) months, effective immediately.

REASONS FOR DECISION

1. These are the reasons for decision following an application by Ms Charmaine Roberts (“**Ms Roberts**”) for internal review under the *Greyhound Racing Act 2017* (“**Act**”) of a Commission decision made by the Director Race Day Operations & Integrity, Mr Birch, Senior Steward Mr Degan and Senior Inspector Mr Austin of the Greyhound Welfare & Integrity Commission (“**Commission**” or “**GWIC**”). That decision was to disqualify Ms Roberts for a period of thirteen (13) months.
2. This is a reviewable decision within the meaning of section 91(1) of the Act. As we were not substantially involved in making the reviewable decision, we have dealt 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. On 5 July 2022 Ms Roberts was issued with a Notice of Charge & Proposed Disciplinary Action (“**Notice**”), charging Ms Roberts with a breach of Rule 83(2)(a) of the Greyhound Racing Rules (“**Rules**”) which reads:

Rule 83(2)(a), Rules

- (2) The owner, trainer or person in charge of a greyhound-
 - (a) nominated to compete in an Event;

....

shall present the greyhound free of any prohibited substance.

- (3) The owner, trainer or person in charge of a greyhound presented contrary to sub-rule (2) shall be guilty of an offence.

5. The particulars of the charge were:

- 1 That Ms Roberts, as a registered Public Trainer and Breeder, while in charge of the greyhound 'Payton Keeping' ("**Greyhound**"), presented the Greyhound for the purpose of competing in race 8 at the Wentworth Park meeting on 16 April 2022 ("**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 prior to the Event was cobalt at or in excess of the threshold of 100 nanograms per millilitre; and
- 3 Cobalt at or in excess of the threshold of 100 nanograms per millilitre is a prohibited substance under Rule 83(10) of the Rules.

6. Ms Roberts attended a hearing on 25 July 2022 alongside her legal representative. Prior to the hearing, Ms Roberts pleaded guilty to the Charge. At the hearing, Ms Roberts legal representative made submissions on penalty.

7. On 28 July 2022 Commission decision makers found the charge proven and disqualified Ms Roberts for a period of thirteen (13) months.

8. In determining the appropriateness of the thirteen (13) month disqualification the decision makers had regard to all the submissions made on behalf of Ms Roberts and included;

- GWIC's Penalty Guidelines, which outlines the objective seriousness of the offence for a person with the antecedents held by Ms Roberts and indicated a penalty of an 18-month disqualification. The decision-makers noted the need for GWIC to rely upon its own penalty guidelines when determining an appropriate penalty, because to do otherwise would not provide any level of certainty to industry participants as to what likely outcomes will follow from breaches of this, or other rules;
- The length of time Ms Roberts has held a registration, being since 1990, a period of approximately thirty-two (32) years;
- Ms Roberts disciplinary history – noting that she had three prior breaches of the same Rule for the detection of the same substance – once in 2016 and twice more recently in 2020;
- Ms Roberts plea of guilty at the earliest opportunity, which afforded her a reduction of penalty of 25% from the 18-month period stipulated in the Penalty Guidelines. For ease of sentencing, whilst a 25% discount on penalty equates to 13.5 months, it was determined not to be a requirement to strictly apply a mathematical formula to the penalty guidelines, and a penalty of a 13-month disqualification was the appropriate penalty;

- The submissions made on Ms Roberts behalf, including in relation to her contribution to the sport and the likely source of the positive result on the analyst findings, however the decision-makers could not be comfortably satisfied on the evidence of the likely source that led to the positive analysis and did not accept this submission;
- Ultimately the decision makers determined that no further discount should be applied, having regard to Ms Roberts disciplinary history which disclosed four breaches in a period of six years under the same rule. The decision makers determined that this outweighed any other factors in mitigation and that no further discount could appropriately be given.

Internal Review Application

9. Ms Roberts sought an internal review of the decision of 28 July 2022. The internal review was in relation to the severity of the penalty. As this was a severity review, as reviewers we are required to consider the appropriateness of the thirteen (13) month disqualification.
10. Ms Roberts was legally represented at the internal review hearing on 30 August 2022.
11. As internal reviewers, we had regard to all the evidence provided in relation to the initial hearing before the Commission decision makers on 25 July 2022, Together with all the material provided as part of the internal review application.

Findings

12. This matter is the first internal review relating to a decision that has relied on the Commission's new Penalty Guidelines when determining the appropriate penalty. These Guidelines came in effect on 1 January 2022 and relate to offending conduct that occurred on or after that date. The Guidelines provided that for second or subsequent category two offences in the previous five years, the appropriate penalty was an 18-month disqualification. The Guidelines also outline a 25% discount upon the entering of a plea of guilty. In this matter Ms Roberts received that automatic discount.
13. The Commission's decision makers considered that as Ms Roberts had three prior offences under the same Rule and for the same substance, that any additional subjective features that would have otherwise reduced the penalty further were outweighed by the objective seriousness. The objective seriousness for this matter being Ms Roberts repeat offending over a relatively short period of time.
14. It should be noted that notwithstanding there were three prior offences in Ms Roberts disciplinary history, two of those offences were dealt with at the same time, which effectively means Ms Roberts has been dealt with on three separate instances for the four positive swabs.

15. Ms Roberts' legal representative provided to us additional material that was not otherwise available to the Commission's original decision makers. This material includes character references from a Barrister, the CEO of Greyhound Clubs Australia, and the Secretary of the Dubbo Racing Club. The references speak to Ms Roberts' lengthy involvement in the greyhound racing industry and the effect a penalty such as the one imposed will have on her livelihood and general reputation. They speak to her volunteer work for an extended time within greyhound racing particularly at the Dubbo Greyhound Club. It is clear from the reference material provided on behalf of Ms Roberts that her involvement in greyhound racing is significant and she devotes a large part of her personal time to volunteering in the industry.
16. Other submissions in respect to Ms Roberts' personal circumstances were made to us as Reviewers but we do not repeat them for reasons of privacy in these proceedings. They are of course relevant factors which were considered in determining whether the penalty ought be mitigated further from the original decision.
17. We note that precedent cases were provided to assist us as Reviewers in determining appropriate penalty. We also have regard to the Penalty Guidelines as an appropriate tool for guiding the determination of a penalty for these types of matters. We also had regard to the Racing Appeals Tribunal who in the decision of *Oldfield* said the following;

*"It is, therefore, that the regulator, originally GRNSW and subsequently GWIC in adopting the GRNSW Penalty Table, have determined that for prohibited substance matters the privilege of a licence will be lost under a disqualification. Anything less than a disqualification is a substantial discount. The Tribunal has expressed now for years that it is the Tribunal's opinion, as presently constituted, that presentations with prohibited substances should warrant a disqualification."*¹
18. Penalty Guidelines are simply that - they are guidelines. They are designed to provide a level of consistency to the industry. In striving for consistency, it is important that the regulator also has the ability to apply other sentencing principals which may warrant a departure from the otherwise stated proposed penalty contained within the guidelines.
19. Factors in mitigation, other than a plea of guilty, must be properly considered.
20. The submission was made on behalf of Ms Roberts that cobalt at the level it was detected was not performance enhancing. Whether a prohibited substance is performance enhancing or inhibiting is not relevant under the prohibited substance rules. Prohibited substance rules simply provide that a prohibited substance is any substance which is capable at any time of causing any direct or indirect effect on the greyhound's system. This includes substance where there is a threshold, such as in the present case where cobalt is a prohibited substance when a greyhound presents to race with a level in excess of 100 nanograms per millilitre.

¹ Racing Appeals Tribunal appeal of Mr Peter Oldfield, 18 June 2021 at [16].

21. If a particular substance is more egregious than another, such as a substance that is designed to provide a competitive edge to a greyhound, then this is reflected in the Penalty Guidelines as warranting a more severe penalty, as reflected by the categorised severity of the prohibited substances.
22. Indeed, many matters that the regulator deals with will be prohibited substance cases where therapeutic veterinary products are detected. Frequently a therapeutic substance is detected in a greyhound's swab sample because of some inadvertence by the trainer such as a miscalculation of a withholding period. We must remind ourselves as internal reviewers that simply assessing a substance as to its performance enhancing effect is something that we do not need to consider in any prohibited substance matter. The elements required under this rule for us to consider is whether the greyhound was presented to race, who was the relevant trainer and whether a prohibited substance was detected in the greyhound's system. We also note that the submissions made on behalf of Ms Roberts were that the substance (cobalt), at the level it was detected, is not performance enhancing although no scientific evidence was provided to support such a contention. For the reasons above such scientific evidence would have had little persuasion.
23. In coming to our decision, we think that the Penalty Guidelines should be given significant value and determine that we should not depart from them in any substantial way. We have determined that a reduction of a further one month from the original decision to be appropriate to reflect the subjective factors relevant to Ms Roberts.
24. We think that the matters personal to Ms Roberts that are not outlined here for privacy reasons warrant a further reduction of one-month from the ultimate penalty imposed, bring the period of disqualification to that of 12 months.
25. We do agree with the Commission's decision makers that Ms Roberts history of three (3) prior positive substance matters counts significantly against her. We are of the view that this was clearly a matter where a disqualification was warranted, as is reflected by the Penalty Guidelines.
26. Further, the Racing Appeals Tribunal stated their view that presentations with prohibited substances warrant a period of disqualification.
27. Like every penalty, there will be hardship. A twelve-month disqualification represents a significant hardship to Ms Roberts, but we note the Commission has already exercised its discretion very favourably under Local Rule 178C in providing exemptions for Ms Roberts to reside at her property, shared by her partner who is also a greyhound trainer and breeder and a property at which a large number of greyhounds reside.

Decision

28. In accordance with section 91(7)(a) of the Act, having reviewed all the material and having conducted the internal review over audio-visual software with Ms Roberts and her legal

representative, we vary the original decision made by the decision makers on 28 July 2022 and instead impose a disqualification on Ms Roberts for a period of 12-months.

Mr Chris Wheeler, Acting Chief Commissioner

Mr Peter Collins, Commissioner

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