

RACING APPEALS TRIBUNAL

DANA LOUISE BURNS

Appellant

GREYHOUND WELFARE AND INTEGRITY COMMISSION

Respondent

DETERMINATION

31 August 2023

Introduction

1. The Appellant, Dana Louise Burns (**Ms Burns**) is a registered owner/trainer with the Respondent, Greyhound Welfare and Integrity Commission (**GWIC**).
2. Following an investigation, the GWIC determined that Ms Burns had on 22 November 2022 received transfers of greyhounds “Sketchy Comrade” and “Sketchy Deliver” into her custody whilst the original trainer, Mr Allan Ivers, was subject to disciplinary action and that by doing so Ms Burns breached the GWIC Transfer Policy (**Policy**). Mr Ivers is Ms Burns’s husband and resides with her at the kennel address in Greta, New South Wales.
3. On 28 April 2023, Ms Burns was issued with a notice of charge and proposed disciplinary action (**Notice**). Ms Burns was charged with an offence under Rule 156(w) of the NSW Greyhound Racing Rules (**Rules**) which requires a participant to comply with a policy or code of practice such as the Policy. The Notice proposed a penalty of a 9 month disqualification and invited Ms Burns to a hearing on 30 May 2023.
4. On 29 May 2023, Ms Burns’s legal representatives entered a plea of guilty on behalf of Ms Burns and provided written submissions as to penalty.
5. On 31 May 2023, the GWIC determined that, having regard to Ms Burns’s plea of guilty and the other matters referred to in its determination, Ms Burns was to be disqualified for 29 weeks commencing midnight Saturday, 3 June 2023 and expiring 12:01 AM on Saturday, 23 December 2023 (**Decision**).
6. By notice of appeal dated 1 June 2023, Ms Burns appeals the Decision and applied for a stay of the Decision pursuant to Regulation 14 of the *Racing Appeals Tribunal Regulation, 2015* (**Regulation**) pending the determination of the appeal. The application for a stay was opposed by the GWIC.

7. On 6 June 2023, the Tribunal made an order pursuant to Regulation 17 staying the Decision pending the determination of the appeal or other order on the condition that Ms Burns prosecuted the appeal with expedition.
8. On 8 June 2023, the parties provided to the Tribunal proposed consent orders for the expeditious preparation of the proceedings for hearing. The last of those orders provided for the Tribunal to determine the appeal on the papers, that is, without an oral hearing.
9. The Tribunal made orders in accordance with each of the orders proposed by the parties with the exception of the last order. That order was varied by the Tribunal to provide that it would, in accordance with the request of the parties, proceed to determine the appeal on the papers if it was sufficiently informed on the basis of the Tribunal Book and the written submissions of the parties to be able to do so.
10. The parties filed with the Tribunal an agreed Tribunal Book and each provided written submissions. Having considered the Tribunal Book and the written submissions of the parties, the Tribunal is sufficiently informed to determine the appeal on the papers and has proceeded to do so.
11. The appeal is only as to penalty. Ms Burns asserts that the penalty imposed by the GWIC is manifestly excessive. In accordance with s 16 of the *Racing Appeals Tribunal Act, 1983* (NSW) (**RATA**), an appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal.

Jurisdiction

12. Pursuant to s 15A of the RATA, any person that is aggrieved by any decision of the GWIC may, in accordance with the Regulations, appeal the decision to the Tribunal.
13. According to Regulation 10, an appeal to the Tribunal under section 15A, is to be initiated by lodging a written notice of appeal within 7 days of the date on which an appellant is notified of the decision appealed against.
14. The Decision was made and notified on 31 May 2023 and the appeal was lodged on 1 June 2023.
15. The Tribunal accordingly has jurisdiction to hear the appeal. Neither party submitted to the contrary.

Rule 156(w) of the Rules and the Greyhound Transfer Policy

16. Rule 156(w) of the Rules provide that an offence is committed if a person “*fails to comply with a policy or code of practice adopted by a Controlling Body.*”
17. The Policy was adopted by the GWIC as a “*Controlling Body*”, it being the body or entity prescribed by the *Greyhound Racing Act, 2017* (NSW) (**Act**) as having control of greyhound racing in New South Wales.
18. The Policy was implemented on 7 April 2021. Its purpose includes to ensure that the Rules restricting the transfer of greyhounds by participants who are under investigation or subject to disciplinary action are enforced. Rule 155A (restrictions on owners and trainers notified

of positive analysis) and Rule 178C (restrictions on defaulters and persons disqualified, suspended or warned off) restrict the transfer of greyhounds by participants who are under investigation.

19. The Policy applies to all greyhound racing industry participants registered with the GWIC and to the transfer of any greyhounds owned or kept by these participants.
20. The Policy makes plain that that a failure to comply with its terms may result in disciplinary action under the Act.

The Charge

21. On 28 April 2023, Ms Burns received a notice from the GWIC alleging a breach of Rule 156(w) to which she pleaded guilty prior to the hearing.
22. The particulars of the charge admitted by Ms Burns by her guilty plea were as follows:

That you, as a registered Owner Trainer at all relevant times, failed to comply with a policy adopted by a Controlling Body in circumstances where:

- (a) You are a close associate of Mr Allan Ivers as defined by the GWIC Transfer Policy as you are in a close relationship with Mr Allan Ivers and share the same kennel address.
- (b) On 10 October 2022, Mr Allan Ivers, a person subject to disciplinary action as defined by the GWIC Transfer Policy, transferred the greyhounds Sketchy Comrade and Sketchy Deliver to you in breach of the Policy.
- (c) On 17 October 2022, Director of Race Day Operations, and integrity Mr Wade Birch informed Mr Allan Ivers of the facts set out in particular 'b'.
- (d) On 18 October 2022, the transfers of both Sketchy Comrade and Sketchy Deliver were reversed by GWIC.
- (e) On 3 November 2022 Mr Allan Ivers transferred the greyhounds Sketchy Comrade and Sketchy Deliver to Jade Murray.
- (f) On 22 November 2022, you received transfers for Sketchy Comrade and Sketchy Deliver from Jade Murray.
- (g) By Receiving the greyhounds Sketchy Comrade and Sketchy Deliver into your custody from Mr Murray whilst Mr Ivers remained subject to disciplinary action you have breached the GWIC Transfer Policy.

Documents upon which Ms Burns relied in the Appeal

23. Ms Burns relied upon the following:
 - (a) "Penalty Submissions", dated 29 May 2023;
 - (b) "Appellant's Submissions" undated but lodged with the Secretary on 23 June 2023;
 - (c) character references from Brendon Goff (10 May 2023), Shirley Bush (undated), Kelly Bravo (undated) and Geoffrey Rose (undated);
 - (d) decisions of the GWIC in the matters of *Kraeft*, *Ballentine*, *Duclos* and *Cassar*; and
 - (e) "Appellant's Submissions in Reply", dated 17 July 2023.

24. Both the Penalty Submissions and the Appellant's Submissions refer (at [32] and [47] respectively) to a written statement of Ms Burns dated 26 May 2023. That statement did not form part of the Tribunal Book.
25. On 30 August 2023, the Secretary, at the request of the Tribunal, requested a copy of that statement from the parties. On 31 August 2023, the Tribunal was informed by the solicitors for Ms Burns that the statement referred to in the respective submissions had been prepared in draft but not executed nor filed and the submissions accordingly contained an error for which an apology was provided to both the Tribunal and the GWIC.
26. Ms Burns accordingly amended each of the submissions by striking out the words "*as set out in her statement of 26 May 2023 and*" where they appear in the Penalty Submissions ([32]) and the Appellant's Submissions ([47]).
27. On 31 August 2023, the Tribunal requested that the GWIC indicate whether it wished to be heard in relation to Ms Burns's amended submissions. The GWIC said that it did not wish to be heard in relation to those submissions.
28. The Tribunal has had regard to Ms Burns's submissions in their amended form.

Ms Burns Submissions in Chief

29. In support of her appeal, Ms Burns submitted, in summary, that:
 - (a) the objective seriousness of the offending in this case is at the very lowest end of the scale for offending for breaches of Rule 156(w) because:
 - an analysis of the objective seriousness of the offending requires a consideration of the Policy. It is a relatively recent policy, having come into effect in about April 2021. The purpose of the Policy, broadly speaking, is to protect the welfare of greyhounds, detail the process for transferring greyhounds from participants who are under investigation and to explain requirements to make applications for exemptions from the Policy;
 - importantly, positive obligations are imposed upon the transferor under the Policy not the person receiving the greyhounds such as Ms Burns. It is not immediately apparent upon reading the Policy how Ms Burns may have breached it until consideration of the penultimate paragraph. The breach arises from the operation of that provision which, it is submitted, contains some infelicities in drafting which might make it difficult for a lay person, such as Ms Burns, to appreciate her obligations;
 - when the greyhounds were transferred to Ms Burns on or about 22 November 2023 kennel notifications were lodged; accordingly, there was no attempt to hide the fact of the transfer from the GWIC; the greyhounds remained in the care of Ms Burns for a very short period of time, 14 days for Sketchy Deliver and less than three months in the case of Sketchy Comrade;
 - there is no question that the welfare of Sketchy Comrade and Sketchy Deliver were compromised;

- Ms Burns was not aware that she may have breached the Policy until she was notified of the Charge on 28 April 2023, several months after the greyhounds had left her care. It cannot therefore be said that Ms Burns was attempting to flout the policy for her own benefit, as she did not have any desire to train the greyhounds for any substantial period of time and moved them on even prior to any issue being raised with the transfer of those dogs to her;
- (b) this is her first offence; she has otherwise had an unblemished disciplinary history and is a person of good character and repute. Ms Burns has adduced references from Brendon Goff, Shirley Bush, Kelly Bravo and Geoffrey Rose who speak to her to trustworthy, honest, caring and polite disposition;
- (c) she has shown genuine remorse in her statement of 26 May 2023 and, by reason of her guilty plea six days before the day of the postponed hearing. Ms Burns has now read the Policy in full and the related rules. In future, the Respondent may be confident that Ms Burns will be more diligent in taking steps to closely analyse relevant policies and, where necessary, to obtain advice in respect of them;
- (d) she lives at the property where her dogs are kennelled with her two young daughters aged 3 and 6. Ms Burns earns a modest income of \$1,000 - \$1,500 per week (net). If Ms Burns were to be disqualified, she would have to move out of the home where she lives with her young children;
- (e) the offending was not deliberate; it was a genuine oversight. Ms Burns did not act deceitfully nor did she attempt to hide her conduct at any time. Kennel notifications were lodged. Ms Burns simply did not understand that what she was doing was wrong;
- (f) there is limited precedent available in respect of other persons who have been dealt with for a breach of the Policy, which is relatively new, having been in operation since April 2021. However, some guidance may be gleaned from breaches of other policies that have been dealt with by the Respondent as breaches of Rule 156(w) (or its predecessor Rule 86(ag)). It is submitted that in each of the following cases, the offending is more serious than the offending of Ms Burns:
 - *Kraeft* (21.11.22): in which Mr Kraeft was suspended for two months for allowing an unregistered person to handle a registered greyhound in breach of Rule 165(a). This was also Mr Kraeft's second offence for breach of a policy. Rule 165(a) is directed to maintaining the integrity of the industry. In all the circumstances, *Kraeft* is significantly more serious than Ms Burns's offending;
 - *Ballantine* (5.12.22): in which Mr Ballantine was fined \$1,000 in respect for charges comprising a failure to comply with Standard 3.16 of the Code of Practice, a failure to comply with Standard 5.2 of the Code of Practice, a breach of Rule 151(1) and a breach of Clause 10 of the Greyhound Racing Regulation. The Standards are directed to ensuring the health and safety of greyhounds, namely dental health and supervision. The breaches of rule 151(1) and clause 10 of the Greyhound Racing Regulation relate to the recordkeeping for greyhounds to promote their health and safety. This case was significantly more serious to Ms Burns's offending because it included direct welfare concerns;
 - *Duclos* (27.6.22): in which Mr Duclos was charged with, inter alia, a breach of clause 10 of the Greyhound Racing Regulation for failing to inform the GWIC about

a transfer of greyhounds to an unregistered participant for which Mr Duclos received a \$1,000 fine; and

- *Cassar* (11.6.21): in which Mr Cassar was charged with a failure to comply with clauses 2 and 4 of the Greyhound Re-Homing Policy having had at least two previous convictions for which he had served a period of suspension. This policy is directed to maintaining the integrity of the industry and welfare of retired dogs. In this matter Mr Cassar's registration was suspended for a period of 12 weeks, wholly suspended for a period of 12 months on condition that Mr Cassar did not commit a relevant breach during the 12 month period; and

(g) in all the circumstances, a reprimand or, alternatively, a fine would be an appropriate penalty.

Documents upon which GWIC relied in the Appeal

30. GWIC relied upon the following:

- (a) the Notice;
- (b) the Charge;
- (c) the Policy;
- (d) the Decision;
- (e) "Respondent's Submissions", dated 6 July 2023;
- (f) *Day v Harness Racing New South Wales* [2014] NSWCA 423; and
- (g) decisions of the Racing Appeals Tribunal in *Absalom* (17 August 2017) and *Francis* (30 May 2022).

GWIC's Submissions

31. In support of the penalty imposed, GWIC submitted, in summary, that:

- (a) the GWIC's Penalty Guidelines do not refer to offences relating to a breach of policy or the Code of Practice. They do, however, outline number of important factors that are taken into consideration in imposing a penalty:
 - ensure a level playing field for all participants and the betting public;
 - ensure that animal welfare is protected in the industry;
 - maintain community trust and public confidence in the integrity of greyhound racing;
 - deter the individual from committing similar offences;
 - deter others in the industry from committing similar offences;
 - demonstrate to the industry that the relevant conduct is not acceptable; and
 - ensure any punishment imposed is appropriate and proportionate, taking into account the specific circumstances of the individual and the offence committed.
- (b) breaches of Rule 156(w) involve varying facts and have historically encompassed a wide range of conduct;

- (c) rule 178C(3)(c) restricts the transfer of greyhounds where a person's registration has been suspended. In this instance Mr Ivers's registration had been suspended pending an investigation;
- (d) rule 178C(3)(c) imposed an obligation on Mr Ivers. However, clause 7 of the Policy imposes an obligation on both the transferor and the transferee. There remains a positive obligation on every registered participant to be aware of the relevant Rules and policies under which they are registered. In pleading guilty to the Charge, Ms Burns accepted that she was bound by the Policy and that she had breached it;
- (e) Ms Burns's lack of awareness or understanding of the Policy does not reduce the objective seriousness of the offence;
- (f) whilst it might be accepted that the Policy has been drafted in a manner that is less than perfect, when considering clause 7 and the Policy's purpose and principles, it is clear that an intention of the Policy is, among others, to restrict a participant who is subject to an inquiry or disciplinary action, from transferring greyhounds to a close associate in name and therefore diluting the impact of a penalty;
- (g) the GWIC relies on participants receiving greyhounds to comply with the Policy and engage honestly in respect of the transfer of greyhounds from a participant in circumstances such as those that gave rise to the Charge;
- (h) upon consideration of the facts of this matter in their entirety, together with the clear intent of the Policy, Ms Burns's actions in accepting the transfers could be said to be at best, complete indifference to her obligations to comply with the Policy, and at worst, intentional disregard;
- (i) Ms Burns's conduct in disregarding the Policy, whether intentionally or in ignorance, is relevant to the objective seriousness of the offence. The GWIC, once aware of the contravention, has undertaken investigations into the matter which have extended to the conduct of Mr Ivers and a Mr Smith;
- (j) Whether Ms Burns's actions in flouting the Policy were coloured by intentional dishonesty is relevant but not the ultimate consideration for the Tribunal. The Tribunal is invited to consider Ms Burns's actions by reference to its decision in *Francis* at [18] and, in particular, that "...the integrity of the industry is driven by the necessity for the regulator to be able to trust participants, and for participants to expect that when exercising the privilege of a licence, they will do so in accordance with the rules. That is, the receipt of a licence carries with it a burden and a privilege."
- (k) the Policy is one that relies upon the honesty and transparency of participants. It requires participants to be aware of their obligations and ensure their compliance so as not to find themselves in breach of the Rules; and
- (l) a period of disqualification is warranted when having regard to the principles of specific and general deterrence. For the GWIC to ensure it is adhering to its principal objectives as outlined in section 11 of the Act, the industry must be on notice that a breach of the Policy is one that carries with it a serious penalty.

Ms Burns's Reply Submissions

32. In her submissions in response, Ms Burns contended, in summary, that:
- (a) as she pleaded guilty to a breach of the Policy, its proper construction is not in issue (cf. *Day v Harness Racing New South Wales* [2014] NSWCA 423). The poor drafting of the Policy is only relied upon by Ms Burns on the issue of penalty and her culpability in circumstances where the drafting made it difficult for Ms Burns to understand. The poor drafting of the Policy is a circumstance reducing the objective seriousness and Ms Burns's culpability in respect of the offending;
 - (b) there is no evidence to support an inference that Ms Burns's conduct demonstrates "*at best, complete indifference to her obligations to comply with the Policy, and at worst, intentional disregard*";
 - (c) the GWIC, in its submissions, attempts to impermissibly broaden the particularised offending to include not only the receipt of the greyhounds but also a later transfer by Ms Burns to Mr Smith;
 - (d) there is no evidence to support the submission that Ms Burns received a monetary benefit from the breach;
 - (e) the Tribunal's decision in *Francis* is of no relevance because it involved a finding that Mr Francis made an intentional false statement to deceive the GWIC in a licence application. No such finding has, or could be made against Ms Burns. GWIC does not meaningfully address any of parity cases relied upon by Ms Burns other than submitting that they are distinguishable but without explaining how or why that may be the case.

Consideration

33. In the consideration that follows, the Tribunal has had regard to all of the submissions made by the parties and summarised in these reasons. However, the Tribunal proposes to only refer to such of those submissions which are necessary to explain its reasoning.

The Tribunal's approach to the determination of Penalty

34. Ms Burns pleaded guilty to the Charge. In doing so, she has admitted each of the particulars alleged against her in the Charge and that those facts and matters comprised a breach of Rule 156(w).
35. Rule 174(1) provides that a person found guilty of an offence under the Rules may be penalised by any one or a combination of the following penalties: a reprimand; a fine not exceeding an amount specified in a relevant Act or the Rules in respect of any offence; suspensions; disqualification; cancellation of a registration or a licence; or warning off.
36. None of the Act, the Rules or the GWIC Penalty Guidelines (July 2022) (**Guidelines**) prescribe a penalty or range of penalties for a breach of Rule 156(w). Accordingly, the determination of an appropriate penalty involves the exercise of a discretion by the Tribunal.
37. The Guidelines identify a number of important considerations that the GWIC takes into account when imposing a penalty and which provide some guidance as to the manner in which the Tribunal may exercise its discretion, including the need to:

- ensure a level playing field for all participants and the betting public;
- ensure that animal welfare is protected in the industry;
- maintain community trust and public confidence in the integrity of greyhound racing;
- deter the individual from committing similar offences;
- deter others in the industry from committing similar offences;
- demonstrate to the industry that the relevant conduct is not acceptable; and
- ensure any punishment imposed is appropriate and proportionate, taking into account the specific circumstances of the individual and the offence committed.

38. As the Tribunal has said on many occasions that, notwithstanding the existence of guidelines, penalty is to be determined on the merits of each particular set of circumstances (see, for example, *Donovan v Harness Racing New South Wales*, 9 September 2022).
39. The considerations outlined in the Guidelines are consistent with those that a Court or Tribunal would ordinarily take into account when exercising a discretion to impose an appropriate penalty in any given circumstance. In *Loy v Racing New South Wales* (21 March 2022) at [66], the Tribunal said that in the exercise of its discretion it must ensure that a penalty:
- (a) is proportionate to the gravity of the offence;
 - (b) ensures that the offender is adequately punished for the offence;
 - (c) deters the offender and other persons from committing similar offences;
 - (d) takes into consideration all the conduct of the offender including that which would aggravate the offence; and
 - (e) takes into account by way of mitigation or reduction of sanction factors such as discounts for early guilty pleas, evidence of character and record and evidence of remorse or contrition.
40. The Guidelines specify “Minimum Starting Points” for what would appear to be the more or most serious category of offences, such as the use of prohibited substances and conduct and welfare matters, including the abuse or assault of staff of the controlling body or industry officials.
41. The Tribunal is not bound by decisions of the GWIC in so-called “parity cases”. At best they provide an insight into the manner in which the GWIC has treated breaches of the rules, regulations and policies of greyhound racing. In any event, as the Tribunal has remarked on numerous occasions, so-called parity cases are often “*not of great assistance*” because “*...factual differences occur in relation to pleas of guilty, compared to not guilty, priors or lack thereof, the actual facts and circumstances surrounding the breach and the number and type of them.*” (See, for example, the decision of the Tribunal in *Gallager v HRNSW*, 22 September 2021 at [46]).

Objective Seriousness of the Breach

42. Whilst Ms Burns contends and the GWIC accepts that the Policy may suffer from infelicitous drafting, the Tribunal is of the view that its object, purpose and intent is demonstrably clear.

43. Clause 2 makes plain that the purpose of the Policy is to restrict the transfer of greyhounds by participants who are under investigation or subject to disciplinary action, including by transfer to a close associate. In the case of a transfer to a close associate, the evident purpose of the Policy is to ensure that the “*intent of the Rules restricting the transfer of greyhounds is not compromised...*”
44. Consistent with this purpose and object, clause 7 provides that any participant who receives a greyhound transferred under the Policy “*is subject to the same restrictions imposed on the original transferor*”.
45. The plain object of the Policy is to ensure that participants who are under investigation or subject to disciplinary action do not, except where the GWIC provides an exemption under clause 6, transfer their greyhounds to a close associate. It does so by not only restricting a transfer by the person under investigation but also restricting the circumstances in which the close associate may accept a transfer.
46. The Tribunal accordingly rejects Ms Burns’s submission that the poor drafting of the Policy is a circumstance reducing the objective seriousness and culpability of her offending.
47. As the Tribunal said in *Francis* (at [18]) “*...the integrity of the industry is driven by the necessity for the regulator to be able to trust participants, and for participants to expect that when exercising the privilege of a licence, they will do so in accordance with the rules. That is, the receipt of a licence carries with it a burden and a privilege.*” It is incumbent upon all participants to be aware of the rules, regulations and policies of the industry and to comply with them.
48. Ms Burns failed to do so.
49. The GWIC submitted that, upon a consideration of the facts in their entirety, together with the clear intent of the Policy, Ms Burns’s actions in accepting the transfers were at best in complete indifference to her obligations to comply with the Policy, and at worst, intentional disregard of the Policy.
50. In pleading guilty, Ms Burns admitted each of the particulars to the Charge (see paragraph 22 of these reasons). The Charge contained no allegation that Ms Burns was aware of the Policy and acted in wanton disregard of it.
51. If Ms Burns had acted in an intentional manner, it is unlikely that she would have lodged kennel notifications with the GWIC on or about 22 November 2022 when the greyhounds were transferred to her. Rather, that conduct is consistent with a person who had acted honestly but in ignorance of the Policy.
52. There is no direct evidence that Ms Burns intended to breach the Policy nor is there any evidence from which an inference to that effect can or should be reasonably drawn. Such evidence, if it existed, would ordinarily comprise an aggravating factor.
53. The Tribunal has carefully considered each of the prior GWIC decisions upon which Ms Burns relies. None of those cases involved a breach of the Policy. Each otherwise turned on their particular facts and circumstances which are different to those under consideration. Only *Ballantine* concerned a breach of the Code of Practice which is arguably similar in character to the Policy but each of the provisions of the Code in issue in *Ballantine* were qualitatively different to the Policy. Thus, none of the decisions of the GWIC to which

reference has been made provide guidance as to either the objective seriousness of the breach or the appropriate penalty.

54. The Guidelines specify “Minimum Starting Points” for what the GWIC considers are the more or most serious category of offences, such as the use of prohibited substances and conduct and welfare matters, the abuse or assault of staff of the controlling body or industry officials. The prescribed offences and penalties are directed at ensuring a level playing field for all participants and the betting public, ensuring that animal welfare is protected in the industry and to maintain community trust and public confidence in the integrity of greyhound racing.
55. A breach of the Policy is not conduct which has attracted the attention of the Guidelines. It can thus be assumed that the GWIC has not considered a breach of the Policy to be in the more or most serious category of offences. In considering the gravity of the offending in this case it is instructive to consider the nature and character of the offending referred to in the Guidelines.
56. The GWIC contends that the starting point for a breach of the Policy is a 9 month disqualification. The Guidelines only prescribe a 9 month disqualification starting point in one instance, a first offence for abuse of staff, industry officials or other participants. That is understandable given the obvious gravity of such an offence and the industry’s zero tolerance for such behaviour.
57. For a category 2 substance abuse, the Guidelines provide that a first offence carries a 4 month minimum suspension and for a category 3 substance abuse, a first offence carries a 2 month minimum suspension. Possession of a permanently banned prohibited substance carries a minimum 12 month disqualification.
58. More significant penalties are prescribed for other doping related offences. These are offences which are serious because, self-evidently, they impact the creation of a level playing field for all participants and the betting public and the maintenance of community trust and public confidence in the integrity of greyhound racing.
59. By comparison, a breach of the Policy, whilst important, is not, in the opinion of the Tribunal as objectively serious as abuse of staff, industry officials or other participants which carries a 9 month disqualification and some of the lesser doping offences.
60. In these circumstances, the Tribunal is of the view that the appropriate starting point for a breach of the Policy is a 12 week suspension. Such a starting point not only maintains a degree of proportionality with other more serious offences for which minimum sanctions are prescribed in the Guidelines but also serves the objectives of maintaining community trust and public confidence in the integrity of greyhound racing, of deterring Ms Burns from committing similar offences, of deterring others in the industry from committing similar offences and demonstrates to the industry that the conduct is not acceptable.

Mitigating Factors

61. This is Ms Burns first offence. She otherwise has an unblemished disciplinary history.
62. Ms Burns pleaded guilty and is accordingly entitled to a 25% discount.

63. Each of the character references relied upon by Ms Burns speak to her good character and repute. Mr Goff describes Ms Burns as an *“honest, caring and extremely passionate person”* who *“...shows immense pride and care for her family”* including her dogs. Mr Rose describes Ms Burns as *“...always... approachable when asked about to help in rehoming of greyhounds...trustworthy, polite and always well presented.”* Ms Bravo said that she has always known Ms Burns to be *“...an honest young lady who has had a genuine love of greyhounds from a young age.”* Lastly, Ms Bush describes Ms Burns as *“...a very caring person...has been with greyhounds for many years. She takes pride in all she does and the welfare of her animals is very important to her...”*
64. Ms Burns has showed genuine remorse by reason of her plea of guilty 6 days prior to the postponed hearing.
65. She has since being charged, read the Policy in full and aware of the restrictions imposed by the Policy including the ability to apply for an exemption if the circumstances warrant it.
66. The Tribunal notes that in its submissions, the GWIC accepts each of the “subjective factors” to which Ms Burns refers in her submissions and summarised in paragraphs 61 to 65 of these reasons.
67. The Tribunal accepts that Ms Burns is now cognisant of her obligations under the Policy and is unlikely to re-offend.
68. Having regard to these mitigating factors, the starting point being a suspension of 12 weeks is to be reduced by 25% for the early guilty plea. Having regard to Ms Burns’ otherwise unblemished disciplinary history, her good character and repute, her remorse and the fact that she is now fully conversant with her obligations and unlikely to re-offend, Ms Burns is to serve a suspension of 4 weeks.
69. In finding that Ms Burns is to serve a suspension of 4 weeks, the Tribunal has taken into account that the kennels are at her home and that the orders may cause her some loss of income and inconvenience in having to re-house any greyhounds currently in her possession for the period of the suspension. That is an unfortunate but necessary consequence of her conduct.
70. The orders of the Tribunal will permit Ms Burns a period of 7 days to make any necessary arrangements to re-house her greyhounds before the suspension takes effect. Further, as Ms Burns has succeeded in her appeal, the appeal deposit should be refunded to her.

Orders

71. The Tribunal orders that:
1. The appeal is upheld.
 2. The decision of the GWIC dated 31 May 2023 is varied by setting aside the disqualification of 29 weeks and substituting for it an order that Ms Burns be suspended for 4 weeks with effect from 12.00 am (midnight), 8 September 2023.
 3. The order made by the Tribunal on 6 June 2023 staying the decision of the GWIC dated 31 May 2023 the subject of the appeal be vacated with effect from 11.59 pm, 7 September 2023.

4. The appeal deposit be refunded to Ms Burns.

A.P. Lo Surdo SC
Acting Racing Appeals Tribunal