

IN THE RACING APPEALS TRIBUNAL

CHLOE BILAL
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION

Appearances: **Mr D McGirr for the Appellant**

Ms A Summerson-Hingston for the Respondent

Date of determination: **23 August 2024**

ORDERS:

- 1. The Appeal is upheld.**
- 2. The determinations made by the Respondent on 18 October 2023 are set aside.**
- 3. In lieu thereof, a suspension of 8 months is imposed in respect of each of the two breaches of r 141(1)(a) of the *Greyhound Racing Rules*.**
- 4. The periods of suspension imposed by the operation of order [3] are ordered to be served concurrently and shall commence at midnight on Monday, 2 September 2024.**
- 5. The previous order for a stay is vacated.**
- 6. The appeal deposit is to be refunded.**

INTRODUCTION

1. By a Notice of Appeal dated 24 October 2023,¹ Chloe Bilal (the Appellant) appeals against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) to impose concurrent suspensions of 11 months for each of two breaches of r 141(1)(a) of the *Greyhound Racing Rules* (the Rules). On 13 November 2024, the Tribunal made an order for a stay in favour of the Appellant, pending the determination of the appeal.
2. The hearing of the appeal took place on 15 April 2024, following which the parties were given the opportunity to make further written submissions with the benefit of the transcript. The timetable for the filing of those submissions was extended at the request of the Appellant's Solicitor.
3. Following the hearing, the Appellant was the subject of further disciplinary action instituted by the Respondent, arising from allegations separate to those which are the subject of this appeal. In the course of dealing with applications stemming from that recent action, I observed that for what I considered were obvious reasons, and in circumstances where the Appellant had the benefit of a stay in respect of the present matter, I would defer the publication of this determination until such time as the position in terms of the other matters became clearer.
4. The Appellant's Solicitor has since made a specific request that I publish this determination without waiting for the resolution of the more recent matters.
5. The parties provided a Tribunal Book (TB) containing documentary evidence and submissions. In addition, I heard oral evidence in the course of the hearing, and have received further written submissions from both parties. I have also been provided with a transcript of the hearing which unfortunately omits some of the evidence, due to the fact that parts of the recording were not clearly audible to the

¹ TB 1 and following.

transcriber. However, I am satisfied that neither party is prejudiced by those omissions.

6. Finally, I should note that because of the time over which the appeal has been on foot, I have been provided with multiple sets of written submissions by the parties. Obviously, those which were provided in advance of the hearing were prepared without addressing the principal issues which emerged from the evidence which was given. In those circumstances, whilst I have not ignored the earlier submissions, I have obviously focussed upon those which were prepared following the hearing with the benefit of the transcript.

THE CASE AGAINST THE APPELLANT

7. The following summary of the case against the Appellant, with which the Respondent expressly agrees,² is drawn from the submissions of the Appellant which were provided following the hearing.³
8. On 23 January 2023, *Joshua Keeping* competed in a race meeting at Nowra. On 24 February 2023, *Rampage Soldier* competed in a race meeting at Goulburn. Both greyhounds were trained by the Appellant. Urine samples taken from each of them following those races detected the presence of Cobalt, in each case in excess of the prescribed threshold of 100 nanograms per millilitre prescribed by the Rules. Cobalt is a prohibited substance under the Rules. It is a Category 2 substance for the purposes of the Penalty Guidelines issued by the Respondent, although as I have noted below those Guidelines are not binding on me.
9. The Appellant subsequently pleaded guilty to two breaches of r 141(1)(a) of the Rules which is in the following terms:

141 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*

² Submissions at [2].

³ Submissions at [3] – [8]; [17] – [18].

....

must present the greyhound free of any prohibited substance.

10. The breaches were particularised as follows:

- (i) *Joshua Keeping* was not free of a prohibited substance at race 5 at Nowra on 23 January 2023, in that it had in excess of the prescribed threshold of Cobalt;
- (ii) *Rampage Soldier* was not free of a prohibited substance at race 1 at Goulburn on 14 February 2023, in that it had in excess of the prescribed threshold of Cobalt.

11. The penalties imposed upon the Appellant by the Respondent have previously been noted.⁴

THE ISSUES

12. Whilst the fundamental issue for my determination is that of penalty, inextricably linked to that issue is a further question, namely the cause or source of the elevated levels of Cobalt found in each of the greyhounds.⁵ The determination of that question bears directly upon the question of penalty, and it is appropriate to consider it at this point.

THE CAUSE OR SOURCE OF THE ELEVATED LEVELS OF COBALT

The evidence of the Appellant

13. The Appellant gave oral evidence at the hearing. That evidence included the following:

- (i) in January 2024, she was feeding *SavourLife*-brand kibble (the kibble) to *Joshua Keeping*;⁶

⁴ At [1] above.

⁵ Transcript 3.32 – 3.35.

⁶ Transcript 5.17 – 5.41.

- (ii) the kibble was fed to *Joshua Keeping* at about 2.00 pm on race day;⁷
- (iii) the race meeting was held at about 5.00 pm;⁸
- (iv) supplements were also given to *Joshua Keeping* in the form of a product known as Ranvet⁹ (Ranvet);
- (v) the Appellant ceased using the kibble in or about March 2023;¹⁰
- (vi) the Appellant also fed the kibble to *Rampage Soldier* at or about the time as the breach was discovered;¹¹
- (vii) as a consequence of her own research, the Appellant had concluded that the kibble was the cause of the elevated Cobalt levels in each greyhound.¹²

14. The evidence before me includes what was referred to as a “Sample History” setting out the results of the analysis of samples taken from greyhounds trained by the Appellant during the period 23 January 2023 to 15 December 2023.¹³ The Appellant agreed in evidence that the data contained in that history reflected what were described as “abnormal readings”.¹⁴ When asked to explain why, in circumstances where she stopped using the kibble in or about March 2023, abnormal readings were returned in respect of greyhounds *after* that date, the Appellant cited what she described as “*environmental factors*” as the explanation.¹⁵ The precise basis on which the Appellant came to that view, and the particular factors to which she was referring, were not expanded upon in any real detail.

⁷ Transcript 5.43.

⁸ Transcript 5.47.

⁹ Transcript 6.22 – 6.35.

¹⁰ Transcript 6.43 – 7.20.

¹¹ Transcript 7.25 – 7.28.

¹² Transcript 8.19 – 8.40

¹³ TB 220.

¹⁴ Transcript 11.31.

¹⁵ Transcript 11.36 – 12.9.

THE EXPERT EVIDENCE

Dr Derek Major

15. Dr Major provided a total of three reports upon which the Appellant relied, dated 9 October 2023, 5 November 2023 and 13 February 2024. The opinions expressed by Dr Major¹⁶ included that:

- (i) on the available evidence, the primary source of the Cobalt was outside the knowledge and control of the Appellant;
- (ii) Cobalt does not meet the definition of a prohibited substance;
- (iii) there is no evidence that Cobalt affects a greyhound's performance;
- (iv) urine is a poor test for Cobalt exposure in a greyhound;
- (v) Cobalt levels in urine can be subject to significant variables, on account of urine concentration.

16. Two observations might be made at this point in respect of those conclusions.

17. The first, is that in light of the common ground between the parties regarding the nature of Cobalt as a prohibited substance,¹⁷ I have ignored that part of Dr Major's opinion referred to in [1](ii) above.

18. The second, is that although the Tribunal is not a Court, there is no reason why the assessment of expert evidence should not be approached in the same way. That means, amongst other things, that experts should only be permitted to express opinions that fall within their identified area of training, study and experience. Dr Major is not in a position to express an opinion as to whether a fact is or is not within a person's knowledge. Such an opinion falls outside his area of scientific expertise. I have therefore not had regard to that part of his opinion.

¹⁶ TB 186.

¹⁷ At [8] above.

Dr Steven Karamatic

19. Dr Karamatic provided an initial report for the Respondent dated 18 January 2024.¹⁸ His opinions included the following:

- (i) Cobalt is a prohibited substance as defined by the Rules;¹⁹
- (ii) the amount of Cobalt in normal greyhound feed is negligible, and such feed contributes to background dietary levels of Cobalt in a greyhound;²⁰
- (iii) one particular brand of feed appears to have a higher concentration of Cobalt than others, and may be linked to excessive Cobalt levels in greyhounds, however this brand was not the kibble used at the Appellant's kennel and fed to the greyhounds;²¹
- (iv) testing of a sample of the kibble established the presence of levels of Cobalt which were within the range which would normally be present and which thus contributed to background levels of Cobalt, but which would not have caused elevated levels, particularly given the lapse of time between the time at which the Appellant fed the kibble to the greyhounds, and the time at which the sample was taken in each case.²²

20. In a supplementary report of 8 March 2024²³ Dr Karamatic confirmed his previously expressed opinions. He also addressed the Sample History, stating:²⁴

The urinary cobalt concentration results provided by GWIC are from 2023 and include the period after which the specific kibble was no longer fed. While five results are within the normal range expected ... recent results of 107 ng/mL and 20 mg/mL show that abnormal cobalt urinary concentrations have continued, despite no longer feeding the kibble that is alleged to be the dominant source of

¹⁸ Commencing at TB 193.

¹⁹ TB 195; TB 202.

²⁰ TB 197.

²¹ TB 197.

²² TB 16.

²³ TB 218 – 219.

²⁴ TB 218 – 219 at [6]-[7].

cobalt in this kennel. ... If the kibble was the dominant source, which I doubt, it has been replaced by another source of cobalt ...

The oral evidence of Dr Major and Dr Karamatic

21. Dr Major gave evidence in the presence of Dr Karamatic, although strictly speaking the evidence of each witness was given separately rather than concurrently.

22. Dr Major expressed the opinion that kibble was likely to be the source of the elevated level of Cobalt in each greyhound.²⁵ When asked about the possible effect of Ranvet, Dr Major's evidence was as follows:²⁶

Q *I'll just stop you there, Dr Major. So you mentioned the four categories of factors that would introduce cobalt into a dog's system. One of those categories was supplementations. Can you tell the Tribunal how you come to the conclusions that it's kibble rather than supplementation that would introduce this level higher than 100?*

A *Well -----*

Q *(Inaudible).*

A *----- the only supplementation that one would suspect would be, in fact, the Ranvet mix that Dr Karamatic has put up there, and his sums are correct, in my view. But if that were fed, that supplementation could do it. I can't (inaudible) on that. I understand that Ms Bilal didn't use that supplement, and there's no record that she did.*

So there's no other supplements that appear to be at risk. You mentioned environment. There was one which unequivocally explored what the environment was, the soil. It's a process of elimination that I think it's highly likely that feed is the dominant source, or rather (inaudible) in relation to horses.

Q *When you say the dominant source, just to understand your evidence, you're saying that because you're saying that your assumption is that the Ranvet, that you accept the Ranvet might have been a factor, but your assumption here is that it was not used on the day of the relevant test.*

A *Based on the knowledge that it was not used on or around the day of the race.*

Q *And so is your evidence that if it wasn't used on the day of the relevant test, it would not have caused a spike?*

A *No.*

²⁵ Commencing at Transcript 15.10.

²⁶ Transcript 15.42 – 16.34.

Q *Right.*
A *It comes back to the fact that it's cumulative. If it had been used two weeks ago, there might be a few cobalt atoms hanging around, but they would not be the dominant force. Cobalt is a heavy metal. It's cumulative.*

23. It should be noted that Dr Major's expressed understanding that the Appellant did not administer supplements is at odds with the Appellant's evidence that she did so.

24. Dr Major's evidence in this respect continued:²⁷

Q *So the two possibilities are that a Ranvet administered pre, prior to race day, causes elevation in Cobalt. And the second possibility is the kibble causes – administered on race day or whatever, has caused an elevation of Cobalt. How are you confident that it's the kibble and not the Ranvet that has caused it?*
A *Because the dog has continuous source of kibble. So some restrict – supplements are withheld over a certain period of time before racing is to make sure that they don't come up with a significant amount. Whereas you feed the dog every day.*

25. Dr Major was taken to the Sample History to which I previously referred.²⁸ When asked to comment on the contents of that history in light of the Appellant's evidence as to her cessation of kibble in March 2003, Dr Major said:²⁹

I mean, there's two easy – at first flush, there's two easy explanations. Scenario 1 is that that batch had high levels in it as well, that particular (inaudible) had high levels too. And the other is that if the dog had a very concentrated urine sample.

26. For the reasons I have explained below, the Sample History, in my view, is an important piece of objective evidence. Dr Major's response, when given the opportunity to comment, did not substantively engage with the contents of the Sample History, or the issue it raises.

²⁷ Transcript 17.23 – 17.42.

²⁸ At [15] above.

²⁹ Transcript 27.1 – 27.4.

27. Dr Karamatic's opinion was that on the assumption that Ranvet was used at the material time, it was the likely source of the elevated Cobalt levels.³⁰ In his opinion, the kibble was not the source.³¹ However, in cross-examination, Dr Karamatic was asked:³²

Q *I'd suggest it would be inherently unlikely, Dr Karamatic, though, that within 12 hours a dog should show 100 nanograms per millilitre of sample, within 12 hours of administration of Ranvet – one scoop of Ranvet. It would be unlikely.*

A *Ah, I wouldn't go as far as unlikely, I would say extremely unlikely at 24 hours, but there could be, perhaps (inaudible) 5 per cent of the population at 12 hours.*

28. Dr Karamatic accepted that it was possible for kibble to have varied levels of Cobalt³³ (albeit not "wildly" variable). He also accepted that the level of Cobalt in a greyhound can be attributable to numerous circumstances, including environmental factors.³⁴ He was then asked:³⁵

Q *And so you accept that your conclusion that it might have been Ranvet in your report that caused the spike, is necessarily speculative?*

A *It can explain a number of possibilities but I can't say with any certainty what it was exactly about this greyhound was actually exposed to (inaudible).*

29. Following the conclusions expressed by Dr Karamatic, the Appellant was recalled. In the course of further evidence, the Appellant said that:³⁶

- (i) she gave a level teaspoon of Ranvet to her dogs every day, apart from race day;
- (ii) Ranvet was administered between 2pm and 3pm;
- (iii) she gave *Joshua Keeping* a dose of Ranvet on the day prior to the race following which the Cobalt was detected;

³⁰ Transcript 29.42 – 30.7.

³¹ Transcript 30.29 – 31.16.

³² Transcript 34.5 – 34.10.

³³ Transcript 34.30 – 34.33

³⁴ Transcript 35.15 – 35.18.

³⁵ Transcript 35.19 – 35.24.

³⁶ Transcript 36.1 – 36.31.

- (iv) she gave *Rampage Soldier* a dose of Ranvet on the day prior to the race following which the Cobalt was detected.³⁷

30. When Dr Karamatic was asked whether this evidence altered his opinion in any way, he confirmed his previously expressed opinion that Ranvet was likely to be the source of the elevated levels of Cobalt:³⁸

I do think it's the most likely cause for the breach, that evidence. There are some reasons provided by (inaudible) as to why the elimination time might be different in animals.

Q *So does that mean that the evidence that it was administered daily other than on race day fortifies the views that you've expressed in your reports?*

A *I think it is the most likely explanation, yeah, I'm a little more confident in saying that that would be the cause.*

Q *Why do you feel more confident with ---*

A *Because we have the known source of the cobalt that has been used at the property, which is not an insignificant amount of cobalt (inaudible) product, 200 micrograms. And the reason we chose VAM at the time for the administration study was it was the highest concentration of cobalt in a registered product. That's why we used the highest dose as well.*

This product is slightly lower at roughly 200. Assuming that the correct dose is given, the way things might be scooped out into feeds it's possible that slightly more or less might be given on a day to a dog. And also the dog's weight might be different, so the dose rate might be different.

Also, the dogs are locked up on race day, so they don't get the opportunity to urinate. I'm not sure, some of these may have been post-race samples, but potentially the greyhound didn't urinate. It's all in its whole bladder, (inaudible) of the sample from earlier, the time period is still (inaudible) within the bladder, so that forms part of the sample that's collected.

So the hard and fast detection time, (inaudible) 24 hours, might not apply to every single case, but I was a bit conservative before saying it was definitely 24 hours, because there will be variation in population, which I've explained at paragraph 31.

31. When further cross-examined, Dr Karamatic was asked:³⁹

³⁷ It should be noted that although the incorrect dates were put to the Appellant when these questions were asked, they were later clarified with the Appellant and the evidence corrected at Transcript 38.46 – 39.5.

³⁸ Transcript 39.7 – 39.40.

³⁹ Transcript 40.1 – 40.36

- Q *Dr Karamatic, you've given evidence that you would expect 24 hours, that it would be 24 hours for cobalt in a dog's system to return to normal. Do you remember giving that evidence?*
- A Yes.
- Q *And do you also accept that given what we've heard from Ms Bilal, it would be around 24 hours from the time she was administering the cobalt to the time the dogs were tested?*
- A *(Inaudible).*
- Q *One was significantly over, would you accept that?*
- A *Yeah, 6 hours (inaudible), yeah (inaudible) exact, but there's going to be variation, so a few hours difference (inaudible) a few hours difference.*
- Q *Dr Karamatic, you would accept that your evidence was that it would take, ordinarily, normally, 24 hours is the time that it would take for the cobalt to return to normal levels. That was your evidence, wasn't it?*
- A Yes, I accept that.
- Q *And so, normally it would be unlikely that the Ranvet would have been the cause of the cobalt in Joshua Keeping and Rampage Soldier, given what Ms Bilal said about the timing?*
- A *It would be unlikely that that dose of cobalt would cause a threshold breach at 24 hours after administration.*
- Q *And it would be even more unlikely if the Ranvet given to the dogs was less than 5 grams, would you accept that?*
- A *That's true. (Inaudible) was slower (inaudible).*

Submissions of the Appellant

32. Counsel for the Appellant submitted⁴⁰ that it was not necessary for me to make a positive finding as to how the elevated levels of Cobalt came to be present in the greyhounds, but nevertheless invited me to find that Ranvet was most unlikely to have been the source, and that the evidence supported the conclusion that the source was the kibble. In this regard, counsel relied upon what he categorised as concessions made by Dr Karamatic in the passages of evidence I have previously set out. Counsel also relied upon the fact that the Appellant's evidence as to the administration of Ranvet, and particularly the timing of that administration, was not challenged.⁴¹

⁴⁰ Submissions at [23].

⁴¹ Submissions at [27].

33. The ultimate submission advanced on behalf of the Appellant was that I should conclude on the whole of the evidence that the kibble was the source of the elevated Cobalt levels for the following principal reasons:⁴²

- (i) the kibble was fed to each greyhound on the dates on which the respective samples were taken;
- (ii) Cobalt was present in the kibble;
- (iii) both Dr Major and Dr Karamatic were *ad idem* as to the possibility that kibble can lead to variations in Cobalt levels;
- (iv) save for Ranvet, no other plausible explanation for the presence of the Cobalt had been advanced;
- (v) on the evidence, I could not be satisfied that Ranvet was the source;
- (vi) Dr Major's conclusions should thus be accepted, and a finding made that the source of the Cobalt was the kibble.

Submissions of the Respondent

34. The Respondent similarly took the position that I was not required to make a finding as to the source of the elevated Cobalt levels which had been detected. However, it was the Respondent's submission that I could not be satisfied that the source was the kibble. It was submitted that Dr Major's opinion suffered from the fundamental flaw of being based, at least partly, on the proposition that the Appellant did not use Ranvet, which was at odds with the Appellant's evidence.

35. Unsurprisingly, the Respondent placed significant weight on the evidence of Dr Karamatic. It was submitted that his unequivocal opinion was that the amount of Cobalt generally found in greyhound kibble is negligible, as confirmed by the results of the sample testing, such that the elevated levels which were detected in these two greyhounds was highly unlikely to be attributable to the kibble.

⁴² Submissions at [35].

CONSIDERATION

36. In terms of the cause and source of the elevated levels of Cobalt, two possible explanations arise on the evidence. The first, which is propounded by the Appellant, is that such levels are attributable to the kibble. The second, which is founded in the opinion of Dr Karamatic, is that they are attributable to Ranvet.
37. As the parties have properly acknowledged, I am not *bound* to make a finding in respect of that issue. That position reflects the simple fact that in a case of this kind, the evidence may be such that I am simply not able to make a finding one way or the other. Importantly, a conclusion that I am not persuaded that the cause or source of the elevated levels of Cobalt was the kibble, does not lead to a conclusion that the cause or source was Ranvet. An inability to find one fact which is alleged does not establish the truth of the contrary fact.⁴³
38. As counsel for the Appellant fairly put it in his submissions,⁴⁴ I must attempt, as best I can, to grapple with the probabilities as they present themselves on the evidence, and weigh up the probabilities. In acknowledging the position in which I was placed, counsel candidly and properly acknowledged that some of the evidence was less than clear.
39. Having considered the evidence closely, I am not persuaded that the cause or source of the elevated levels of Cobalt detected in either greyhound was the kibble. That is so for the following reasons.
40. First, and in circumstances where it is generally unchallenged, I accept the evidence given by the Appellant as to her husbandry practices in respect of these two greyhounds. Whilst that evidence provides, for want of a better term, some “springboard” to the expert evidence, it is obviously not determinative of any issue.

⁴³ See generally *Kuligowski v Metrobus* (2004) 220 CLR 363; [2004] HCA 34 at [60].

⁴⁴ At [34].

41. Secondly, the Appellant's position necessarily relies, to a not insignificant extent, on the opinion of Dr Major. In his evidence, Dr Major expressly accepted that if Ranvet was fed to the greyhounds, it "*could do it*". In other words, it was Dr Major's opinion that Ranvet was at least *capable* of causing the elevated Cobalt levels. The acknowledgement of the existence of that possibility necessarily dilutes the proposition that kibble was the likely cause.
42. Thirdly, although Dr Major dismissed that possibility, it is apparent that he did so on the basis of his understanding that the Appellant did not feed Ranvet to either greyhound. It was the Appellant's unequivocal evidence that she did so. That necessarily tends against the acceptance of Dr Major's opinion.
43. Fourthly, there is, in my view, considerable merit in the submission advanced by the Respondent regarding the contents of the Sample Summary. The Appellant's evidence was that she ceased giving the greyhounds the kibble in March 2023. Accepting that to be the case, if the kibble was the source of the Cobalt, a reduction in Cobalt levels would be expected to be evident in the results of any tests conducted after that time. The contents of the Sample Summary do not reflect that. In fact, some of the contents reflect the opposite. It follows, in my view, that the Sample Summary constitutes an important piece of evidence which tends completely against the conclusion that the kibble was the source of the elevated levels of Cobalt. Importantly, that evidence is entirely objective.
44. Fifthly, my conclusion as to the analysis of the Sample Summary finds express support in the evidence of Dr Karamatic, in circumstances where, as I have pointed out, Dr Major did not engage with the issue when given the opportunity to do so.
45. Sixthly, the results of sample testing carried out by Dr Karamatic tend completely against the conclusion that the kibble was the cause or source of the elevated Cobalt levels. Such results, again, constitute evidence which is entirely objective. In my view, the probative value of that evidence is not reduced by the fact that the

sample which was tested was obtained commercially, rather than being supplied by the Appellant. There is nothing to suggest that the chemical make-up of the sample was in any way different to that which was administered to the greyhounds.

46. Seventhly, and consistent with the opinions of Dr Karamatic in relation to the sample testing, the evidence establishes that the amount of Cobalt in greyhound feed is negligible, and forms part of the background dietary levels of Cobalt in a greyhound. That is at odds with a conclusion that the kibble was the likely source of the elevated Cobalt levels in each greyhound in the present case.

47. Finally, I recognise the concessions made by Dr Karamatic, and in particular, his acceptance that his opinion that Ranvet may have been the cause was necessarily speculative. However, as I have pointed out, rejection of one proposition does not prove the truth of the contrary. Moreover, in making that particular concession, Dr Karamatic expressly accepted that he could not say with any certainty what had occurred. That, in my view, was an honest concession, and one reflective of evidence, the general nature of which counsel for the Appellant accepted was unclear.

48. For all of these reasons, I am not persuaded that the source of the elevated levels of Cobalt detected in either greyhound was the kibble. As I have pointed out, a great deal of the evidence does not support that proposition. For the reasons that I have already explained, that does not lead to a conclusion that the source was Ranvet. I am simply unable to determine the source one way or the other.

49. It follows, in light of the conclusion that I have reached, that the Appellant is unable to provide any explanation for the presence of the elevated levels of Cobalt in the system of either greyhound. In that respect, so-called presentation cases of this kind generally into one of three categories, namely:

1. where there is evidence of positive culpability on the part of the participant, for example, where there is evidence of the participant knowingly and intentionally administering the prohibited substance;
2. where the participant provides no explanation for the presence of the prohibited substance, or where such explanation which is proffered is rejected, such that the Tribunal is left in a position of having no real idea as to how the substance came to be in the animal's system;
3. where the participant provides an explanation for the presence of the prohibited substance which the Tribunal accepts, and which supports a conclusion that there is no culpability at all.

50. I am unable to accept the submission advanced on behalf of the Appellant that, in the event that I reached the conclusion I have reached, the case would not fall within Category 2, and would fall between, as it were, Categories 2 and 3. The simple fact is that for the reasons I have expressed, I have rejected the Appellant's proffered explanation and have concluded that I am not able to determine the source of the elevated levels of Cobalt. That puts the case into Category 2. The fact that it does so is not an aggravating factor. However, it has been acknowledged that cases falling into Category 2 may not be materially dissimilar to those falling into Category 1, depending on the circumstances.⁴⁵ That is obviously relevant to assessing the objective seriousness of the breaches, although I make it clear that there is no suggestion whatsoever that the Appellant knowingly and intentionally administered the substance, such that she bears some degree of positive culpability. That has never been the Respondent's case, and I have not assessed penalty on that basis.

THE ISSUE OF PENALTY

Submissions of the Appellant

51. Contingent upon the possibility that I may reach the view on the first issue that I have reached, counsel for the Appellant emphasised (and I have expressly

⁴⁵ See *McDonough* [2008] VRAT 6.

acknowledged) that there is no suggestion that the Appellant deliberately administered Cobalt to either greyhound. With that in mind, counsel relied on the following subjective circumstances:

- (i) the Appellant's short registration history;
- (ii) her early pleas of guilty;
- (iii) her co-operation with the Respondent's investigation;
- (iv) her personal circumstances, and the financial consequences which will follow from any suspension; and
- (v) the fact that the Appellant's previous offences were minor in nature.⁴⁶

52. Whilst counsel acknowledged the seriousness of offending of this nature, and accepted that some period of suspension was appropriate, it was submitted that a suspension of 11 months went beyond what was necessary to reflect the objective seriousness of the offending, as well as general and specific deterrence.⁴⁷

Submissions of the Respondent

53. The Respondent submitted that the penalty of imposed at first instance remained appropriate for the following reasons:

- (i) although it was not suggested that the Appellant had deliberately administered a prohibited substance, it remained the case that she had presented two greyhounds for competition in circumstances where neither was free of a prohibited substance;⁴⁸
- (ii) the evidence did not support a finding that the Appellant was entirely blameless;⁴⁹

⁴⁶ Submissions at [42].

⁴⁷ Submissions at [44].

⁴⁸ Submissions at [13].

⁴⁹ Submissions at [14].

- (iii) properly analysed, the Appellant’s history was “*unenviable*”, and not as inconsequential as had been suggested in the submissions made on her behalf;⁵⁰
- (iv) a suspension remained appropriate;⁵¹
- (v) on the whole of the evidence, the appropriate suspension was the 11 month period which was imposed at first instance.⁵²

54. In advancing these submissions, the Respondent referred me to previous decisions in *Macindoe*,⁵³ *Lazarus*,⁵⁴ *Cameron*,⁵⁵ *Roberts*,⁵⁶ *Geary*⁵⁷ and *Suli*.⁵⁸ In doing so, the Respondent acknowledged that such decisions were not binding, and made it clear that they were provided for my assistance.⁵⁹ I would only add, as I have noted in other cases, that determinations of the Respondent (as opposed to the Tribunal) are necessarily of limited assistance because they do not record the entirety of the reasoning process which led to a particular conclusion being reached. That said, and bearing in mind the need to strive for consistency, I am grateful for the assistance which has been provided, and have read all of the determinations which were provided to me. In doing so, I bear in mind that what is sought in determining a penalty is consistency in the application of principle, and not mathematical equivalence.

CONSIDERATION

55. The objective seriousness of matters of this nature was expressly recognised by counsel for the Appellant, who conceded that a suspension was inevitable. Put simply, offending of this kind strikes at the heart of the integrity of, and public confidence in, the greyhound racing industry. It has the clear capacity to adversely

⁵⁰ Submissions at [15] – [18].

⁵¹ Submissions at [19].

⁵² Submissions at [40].

⁵³ A decision of the Respondent of 10 February 2024.

⁵⁴ A decision of the Respondent of 30 January 2023.

⁵⁵ Decisions of the Respondent of 1 October 2022 and 15 December 2022.

⁵⁶ A decision of the Tribunal of 7 December 2022.

⁵⁷ A decision of the Respondent of 30 April 2019.

⁵⁸ A decision of the Queensland Civil and Administrative Tribunal of 11 April 2024 ([2024] QCAT 149).

⁵⁹ Submissions at [25].

affect both. For that reason, even in cases where there is no allegation of deliberate administration of the prohibited substance, any determination of penalty must have regard to considerations of general deterrence.

56. The fact that there are two offences is a relevant consideration. In making that observation, I obviously accept that this is not a case in which, having been made aware of a breach, the Appellant proceeded to commit an identical breach on a subsequent occasion. Clearly, the Appellant did not become aware of any issue in respect of either greyhound until after the event. However, cases involving more than one breach will generally be regarded as being of greater gravity than those in which there is a single instance of offending. That simply reflects common sense. All of that said, I accept that the offending in the present case is to be viewed as the one episode for the purposes of considering totality, as well as for the purposes of determining questions of cumulation or concurrency of any suspensions which might be imposed.⁶⁰

57. I accept that the Appellant pleaded guilty at the first available opportunity, which entitles her to a discount. I have taken that into account. On the evidence which is available to me, it is also apparent that the Appellant co-operated with the Respondent's investigation into the offending. Participants are, of course, under an obligation to assist and co-operate with regulators in that respect. In a recent decision of *O'Neil v Greyhound Welfare and Integrity Commission*⁶¹ I made the following observation as to the weight to be given to a participant's co-operation as a mitigating factor:

It might also be fairly said that the Appellant did not simply co-operate with the investigation in a cursory or superficial way. She was completely candid in her answers to questions put to her, made full admissions to the offending, and disclosed the entirety of the background to the existence of the lure. I accept the weight which can be afforded to a participant's co-operation with an investigation is necessarily limited. That stems from the fundamental fact that industry participants have an obligation to act in that way. However, recognising that co-

⁶⁰ See *Elder v Harness Racing New South Wales*, 17 July 2024 at [20].

⁶¹ A decision of 19 August 2024 at [40].

operation may be afforded at different levels, the Appellant's general approach to the investigation is deserving of at least some consideration.

58. I have adopted the same approach in the present case. The Appellant's co-operation is a factor to be taken into account, albeit one to which limited weight can be ascribed for the reasons explained.

59. I turn to the Appellant's history as a participant.⁶² That history establishes that the Appellant was:

- (i) registered as a participant on 2 November 2021;
- (ii) reprimanded for a breach of r 39(3) on 10 December 2021;
- (iii) fined for a breach of r 39(3) on 3 January 2022;
- (iv) suspended for a breach of r 83(2)(a)⁶³ on 17 January 2022;
- (v) suspended for a breach of r 83(2)(a) on 23 April 2022;
- (vi) reprimanded for a breach of r 101(3)(b) on 8 February 2023;
- (vii) fined for a breach of r 101(3)(b) on 8 February 2023.

60. The imposition of fines, and the administering of reprimands, tend to suggest breaches of a relatively minor nature and for the purposes of assessing penalty I have disregarded those particular outcomes in (ii), (iii), (vi) and (vii) above. However, the fact remains that since 2021, the Appellant has come under notice in respect of four presentation offences. The first two of those offences appear to have been committed within a little more than three months. The offences the subject of this appeal occurred approximately 8 months later. Whilst I have not treated the Appellant's history as an aggravating factor, it certainly does not mitigate the present offending. More specifically, I am unable to accept the submission advanced on behalf of the Appellant that such history generally reflects minor offending. On the contrary, it contains entries for repeated and

⁶² TB 171 – 172.

⁶³ Rule 83(2)(a) was the predecessor to r 141(1)(a) which is the relevant rule for present purposes.

serious presentation offences. It follows that personal deterrence is a relevant consideration.

61. Notwithstanding that no detailed submissions, I am prepared to accept that any suspension will cause the Appellant hardship and I have taken that into account, although its extent is not something that I am able to precisely determine. However, it remains the case that any hardship necessarily stems directly from, and is thus a consequence of, the offending. Moreover, as was observed in *Suli*,⁶⁴ a central issue on the question of penalty is the maintenance of public confidence in the greyhound racing industry.

62. I have had regard to the previous decisions to which I was referred by the Respondent. As I have said, those determinations have obvious limitations. Limited guidance is provided by the Tribunal's determination in *Roberts*.

63. In *Suli*, concurrent disqualifications of 12 months were imposed, 6 months of which were suspended. The substance in that case was also Cobalt. It is evident from reading the decision of the Tribunal that the seriousness of the offending,⁶⁵ general deterrence,⁶⁶ and the necessity for participants to take care to ensure that animals presented for competition are presented free of prohibited substances,⁶⁷ were predominant considerations in determining penalty. The history of the participant in *Suli* appears to have been of less significance than that of the Appellant.⁶⁸ Importantly, it was expressly recognised⁶⁹ that the presentation of greyhounds or other animals with elevated levels of Cobalt is "*taken to be a very serious matter*".

⁶⁴ At [57].

⁶⁵ At [46].

⁶⁶ At [47].

⁶⁷ At [48].

⁶⁸ At [32] – [33].

⁶⁹ At [33].

64. I have noted the submissions made by the Respondent as to the Penalty Guidelines.⁷⁰ Those Guidelines are just that, a guide, and are not binding on me in any event.

65. Taking all relevant factors into account, I have come to the view that a suspension of 8 months is appropriate in each case. That penalty, in my view, reflects the seriousness of the offending, whilst at the same time recognising the Appellant's pleas of guilty and associated subjective considerations.

66. Given that the Appellant has succeeded on the appeal, the appeal deposit should be refunded.

ORDERS

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

1. The Appeal is upheld.
2. The determinations made by the Respondent on 18 October 2023 are set aside.
3. In lieu thereof, a suspension of 8 months is imposed in respect of each of the two breaches of r 141(1)(a) of the *Greyhound Racing Rules*.
4. The periods of suspension imposed by the operation of order [3] are ordered to be served concurrently and shall commence at midnight on Monday, 2 September 2024.
5. The previous order for a stay is vacated.
6. The appeal deposit is to be refunded.

THE HONOURABLE G J BELLEW SC

23 August 2024

⁷⁰ Submissions at [21] and following.