

DECISION

Racing Integrity Act 2016, section 252AB

Review application number	RAP-36	
Name	Matthew Evans	
Panel	Mr. Peter O'Neill (Acting Chairperson) Mr Darren Guppy (Panel Member) Ms Lyndsey Hicks (Panel Member)	
Code	Greyhounds	
Rule	Charge 1 Greyhounds Australasian Rule GAR 163(a)(i) An offence is committed if a person (including an official): (a) in connection with greyhound racing: (i) corruptly; accepts, or offers to accept, offers, or gives, any money, share in a bet or other benefit to any person, including but not limited to a person having duties in relation to the breeding and/or the registration of greyhounds or any person having charge of, or access to, a greyhound. Charge 3 Greyhounds Australasian Rule GAR 165(a) An offence is committed if a person (including an official): (a) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing	
Penalty Notice number	Charge 1 - PN-008575 Charge 3 - PN-008559	
Appearances & Representation	Applicant	Jack Dunn
	Respondent	Damien Paynard Benjamin Campbell, MinterEllison
Hearing Date	18 August 2023	

Decision Date	28 August 2023
Decision	<p>Pursuant to section 252AH(1)(c), the racing decision made on 25 July 2023, is set aside there is substituted a decision that:</p> <p>(a) Charge One – GAR 163(a)(i) – the decision of the Panel is to impose a twenty-four-month disqualification commencing on 13 March 2023 and ending on 11 March 2025.</p> <p>(b) Charge Three – GAR 165(a) – The Panel does not impose a sanction for this offence.</p>
Panel Penalty	Twenty-four-month disqualification commencing on 13 March 2023.
Case References	<p><i>Allan Ivers</i>, Unreported, Greyhound Welfare & Integrity Commission, 28 February 2023.</p> <p><i>Armagas Ltd v. Mundogas S.A. (The Ocean Frost)</i>, [1985] 1 Lloyd's Rep.1.</p> <p><i>Australian Building and Construction Commissioner v Pattison</i> (2022) 399 ALR 599</p> <p><i>Blackman v Commissioner of Taxation</i> (1993) 43 FCR 449.</p> <p><i>Briginshaw v Briginshaw</i> (1938) 60 CLR 336.</p> <p><i>Camden v McKenzie</i> [2007] QCA 136.</p> <p><i>Construction, Forestry, Mining and Energy Union v Cahill</i> (2010) 194 IR 461.</p> <p><i>Cubillo v Commonwealth of Australia</i> [2000] FCA 1084; (2000) 174 ALR 97.</p> <p><i>Desleigh Forster v Queensland Racing Integrity Commission</i> (unreported, Queensland Racing Appeals Panel, 3 May 2023).</p> <p><i>Edmondson v Queensland All Codes Racing Industry Board</i> [2016] QCAT 70.</p> <p><i>Khoury v R</i> [2011] NSWCCA 118.</p> <p><i>Kioa v West</i> (1985) 159 CLR 550.</p> <p><i>Michelle Mallia</i>, Unreported, Victorian Racing Tribunal, 7 August 2020.</p> <p><i>Michelle Russell v Racing New South Wales</i> (unreported, Racing New South Wales Appeal Panel, 15 July 2021).</p> <p><i>NSW Bar Association v Evatt</i> (1968) 117 CLR 177.</p> <p><i>Onassis v Vergottis</i> [1968] 2 Lloyds Rep 403.</p> <p><i>Queensland Racing Integrity Commission v Gilroy</i> [2016] QCATA 146.</p> <p><i>Re Matusko and Australian Postal Corporation</i> (1995) 21 AAR 9.</p> <p><i>Royer v Western Australia</i> [2009] WASCA 139.</p>

R v Abou-Chabake [2004] NSWCCA 356.

R v Goodwin (unreported, 3 December 1990, NSWCCA).

R v Many (unreported, 11 December 1990, NSWCCA).

Reasons for Decision

Background

- [1] The Applicant in this matter, Mr Matthew Evans is a licensed greyhound trainer, owner and breeder.
- [2] The Applicant was the licensed trainer of the greyhound Uncle Charlie.
- [3] Mr Andrew Clarke was formerly also a licensed greyhound trainer and at the relevant time in August 2022 and was the trainer of the greyhound Aerobic Rouge.
- [4] On 4 August 2022, the draw took place for Race 1 at the Ipswich Greyhound Racing Club on 8 August 2022.¹ Uncle Charlie drew box 7,² and Aerobic Rouge was drawn as first reserve.³
- [5] On the same day, 4 August 2022, Mr Clarke called a number of trainers who had dogs starting in the Race including Jeffrey Henzell,⁴ Tyrone Henzell,⁵ Paul Sutton,⁶ and Sam Lees.⁷
- [6] Mr Clarke offered each of the trainers mentioned in the preceding paragraph money to scratch their dog from the race.
- [7] On 4 August 2023, Mr Clarke paid the Applicant \$300 by way of a bank transfer with the description "andrew".⁸
- [8] On or about 5 August 2022 the Applicant scratched Uncle Charlie from the race and was replaced by Mr Clarke's greyhound, Aerobic Rouge.⁹
- [9] On 8 August 2022 Aerobic Rouge won Race 1 at the Ipswich Greyhound Racing Club.
- [10] On 11 August 2022, Mr Clarke paid the Applicant a further \$300 by bank transfer with the description "matt evans".¹⁰
- [11] In early-September 2022, the Queensland Police Services attended the Applicant's property in relation to allegations relating to the events involving the scratching of Uncle Charlie from the race.¹¹

¹ Document 8, Transcript – Matt Evans Interview, p 2 In 33-36; Document 12, Transcript – Andrew Clarke Interview, p 2 In 19-20.

² Document 8, Transcript – Matt Evans Interview, p 2 In 33-36.

³ Document 4, Transcript – Jeffrey & Tyrone Henzell Interview, p 2 In 39, p 8 In 194; Document 6, Transcript – Anne Clelland Interview, p 9 In 246; Document 10, Transcript – Sam Lees Interview, p 3 In 57-60.

⁴ Document 4, Transcript – Jeffrey & Tyrone Henzell Interview, p 2 In 37-42.

⁵ Document 4, Transcript – Jeffrey & Tyrone Henzell Interview, p 9-10 In 243-251.

⁶ Document 9, Transcript – Paul Sutton Interview, p 1-3 In 17-49.

⁷ Document 10, Transcript – Sam Lees Interview, p 2-3 In 33-54.

⁸ Document 45, Andrew Clarke Bank Statement, p 1; Document 47, Matt Evans Bank Statement, p 7.

⁹ Document 8, Transcript – Matt Evans Interview, p 1 In 12; Document 16, Transcript – Matt Evans Interview, p 1 In 6.

¹⁰ Document 45, Andrew Clarke Bank Statement, p 2; Document 47, Matt Evans Bank Statement, p 8.

¹¹ Document 8, Transcript – Matt Evans Interview, p 6 In 143-147.

- [12] On 16 September 2019 the Stewards' Panel commenced an inquiry into the circumstances of Uncle Charlie being scratched and replaced by Aerobic Rouge by initially interviewing Mr Andrew Clarke.
- [13] The Stewards' Inquiry involved a number of interviews conducted over a period of some months with the Applicant, Mr Clarke and the other participants in the race.
- [14] The Applicant provided oral evidence to the Stewards' Panel on 20 January 2023, 16 February 2023 and 13 March 2023 he also provided documentary evidence and/or submissions on 27 January 2023, 5 May 2023 and 30 May 2023.
- [15] Arising from the Stewards' Inquiry the Applicant was charged with three breaches of the Greyhounds Australasia Rules ('GAR').
- [16] Charge 1 alleged that the Applicant had contravened GAR 163(a)(i) which relevantly provides as follows:
An offence is committed if a person (including an official):
(a) in connection with greyhound racing:
(i) corruptly;
accepts, or offers to accept, offers, or gives, any money, share in a bet or other benefit to any person, including but not limited to a person having duties in relation to the breeding and/or the registration of greyhounds or any person having charge of, or access to, a greyhound.
- [17] Charge 2, was an alternative charge to Charge 1 and alleged that the Applicant had GAR 156(f)(i) which relevantly provides as follows:
An offence is committed if a person (including an official):
(f) has, in relation to a greyhound or greyhound racing, done something, or omitted to do something, which, in the opinion of a Controlling Body or the Stewards:
(i) is corrupt, fraudulent, or dishonest.
- [18] Charge 3 alleged that the Applicant had contravened GAR 165(a) which relevantly provides as follows:
An offence is committed if a person (including an official):
(a) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing
- [19] The particulars provided in respect of the three charges were essentially the same and were that the Applicant had committed the offences by accepting the two sums of \$300.00 from Mr Clarke, firstly on 4 August 2022 to scratch Uncle Charlie, and then on 11 August 2022 following Aerobic Rouge winning the race.
- [20] The particulars alleged that the conduct of the Applicant:
(a) In relation to Charges 1 and 2, was corrupt; and
(b) In relation to Charge 3, was detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing.
- [21] On 5 May 2023 the Applicant provided a submission by which he entered pleas of not guilty to each of the three charges and also provided submissions to defend the charges.¹²

¹² Document 57, Pleas and Submissions – Matthew Evans, 5 May 2023.

- [22] On 16 May 2023 the Stewards' Panel provided correspondence to the Applicant in which the Applicant was formally found guilty of all three charges.¹³ The Stewards in that correspondence invited the Applicant to provide submissions on penalty.
- [23] On 30 May 2023 the Applicant provided penalty submissions which attached a number of documents.¹⁴
- [24] On 25 July 2023 the Stewards' Panel provided a Penalty Decision correspondence which imposed the following penalties:
- (a) Charge One (1) GRA 163 (a)(i) - 24 months disqualification.
 - (b) Charge Two (2) – GRA 156 (f)(i) – No Penalty as Charge was in the alternative.
 - (c) Charge Three (3) GRA 165 (1) – 6 months disqualification.
 - (d) the Rule breaches for Charge One (1) and Charge Three are to be served concurrently, totalling a period of disqualification of 24 months disqualification.
- [25] On 31 July 2023 the Stewards additionally issued three Penalty Notices numbered respectively 008575¹⁵, 008559¹⁶ and 008552.¹⁷
- [26] On 28 July 2023 the Applicant lodged an Application for Review with the Queensland Racing Appeals Panel seeking a review of the Stewards' decisions concerning both the findings of guilt and the penalties imposed.
- [27] Pursuant to section 252AB of the Racing Integrity Act 2016 the Applicant now seeks a review of both the findings of guilt and the penalties imposed.
- [28] The relevant grounds of review set out in the application for review were identified as follows:
- 1. *I am not guilty of the charge*
 - 2. *The evidence cannot support a conviction*
 - 3. *Improper interference in the inquiry by the QRIC Deputy Commissioner*
 - 4. *Evidence improperly excluded from the inquiry*
 - 5. *Denial of procedural fairness and natural justice*
 - 6. *Evidence admitted tainted by bias*
 - 7. *Decision made actuated by bias*
 - 8. *Evidence of Clarke given undue weight*
 - 9. *Evidence disregarded*
 - 10. *Human Rights*
 - 11. *Discrimination*

¹³ Document 58, Stewards' correspondence outlining findings on charges dated 16 May 2023.

¹⁴ Document 60, Penalty Submissions – Matthew Evans dated 30 May 2023.

¹⁵ Document 67, Penalty Notice 008575 – Charge 2.

¹⁶ Document 68, Penalty Notice 008559 – Charge 3.

¹⁷ Document 69, Penalty Notice 008552 – Charge 1.

12. Procedural irregularity

13. Misrepresentation.

- [29] Before this Panel, the whole of the materials provided to the Stewards' Inquiry were admitted into evidence and considered by the Panel.
- [30] Prior to the hearing the Applicant's legal representatives sought the Panel to issue witness notices to two witnesses, Mr Andrew Clarke and Mr Blair Guthrie.
- [31] The Panel acceded to the Applicant's request and on 15 August 2023 issued witness notices to the two named individuals and provided these to the Applicant's legal representatives to serve.
- [32] The hearing commenced on Friday, 18 August 2023. The Applicant raised as a preliminary issue the fact that Mr Clarke and Mr Guthrie had not been able to be served and as a consequence the Applicant was prejudiced in the conduct of his review application.
- [33] The Panel offered the Applicant the possibility of adjourning the hearing to allow more time to try and effect service on the nominated witnesses to address this difficulty. The matter was stood down to afford Mr Dunn the opportunity to take instructions and for the parties to confer.
- [34] When the matter resumed, Mr Dunn confirmed that the Applicant wished the matter to proceed and thereafter the hearing continued and was completed on 18 August 2023.

Application for admission of fresh evidence

- [35] On Monday, 21 August 2023 the Panel received a written submission from the Applicant's legal representatives dated 20 August 2023 seeking the admission of fresh evidence and an audio file.
- [36] The submissions set out that during the course of the hearing on Friday 18 August 2023 the Applicant received a telephone call on his mobile telephone from an unknown number. The Applicant also apparently received a text message from the same number asking the Applicant to call the number.
- [37] The Applicant called the number and recorded the conversation. The submission notes that the individual who answered the call identified as Mr Andrew Clarke and acknowledges his awareness of the hearing of the Racing Appeals Panel being conducted on 18 August 2023.
- [38] The Applicant seeks the admission of the recording of that conversation into evidence as fresh evidence. The Applicant contends that in the course of that conversation Mr Clarke makes certain admissions which are relevant and germane to the issues to be determined by the Panel.
- [39] In the Applicant's written submissions the Applicant relies upon section 252AO of the *Racing Integrity Act 2016* as supporting the application. This section provides as follows:

252AO Conducting review generally.

(1) In deciding a Panel review application, the Panel—

- (a) must act with impartiality; and*
- (b) must observe the rules of natural justice; and*
- (c) is not bound by the rules of evidence; and*
- (d) may inform itself in any way it considers appropriate.*

(2) Subject to this part, the procedure for deciding a Panel review application is at the discretion of the Panel.

[40] The Applicant then cites the decision of the High Court in *Kioa v West*¹⁸ and the observations of Brennan J about the requirements of natural justice as supporting the application to adduce fresh evidence.

[41] The Respondent was given leave by the Panel to provide a submission in reply addressing the application to adduce fresh evidence.

[42] The Respondent provided submissions on Tuesday, 22 August 2023 addressing the application. In those submissions the Respondent consents to the fresh evidence being admitted and then goes on to provide submissions as to the weight that can be afforded to the fresh evidence.

[43] Despite the concession by the Respondent, it is still necessary for the Panel to be satisfied that this is an appropriate case to effectively re-open the hearing and allow the admission of fresh evidence.

[44] The authors of 'Practice Manual for Tribunals' (Council of Australasian Tribunals' @ 172-173) note the following:-

Where a party seeks to re-open an issue of fact that has already been determined by the Tribunal in an earlier proceeding between the same parties, the Tribunal is required to consider whether to allow the matter to be re-opened and whether to receive evidence afresh (*Blackman v Commissioner of Taxation* (1993) 43 FCR 449; *Re Matusko and Australian Postal Corporation* (1995) 21 AAR 9). In deciding how to proceed, it will need to consider 'all relevant circumstances', including the requirements of procedural fairness (*Morales v Minister for Immigration and Multicultural Affairs* (1998) 82 FCR 374).

[45] In *Re Matusko and Australian Postal Corporation*¹⁹, the AAT said that it would not generally allow issues already decided by the Tribunal to be re-opened without good reason. It summarised the authorities as follows:

- (c) The Tribunal should use its flexible procedures to allow further consideration of issues where there is a reason to do so, for instance:
 - (i) where there is a different decision,
 - (ii) where there is a clear legislative intent,
 - (iii) where the reconsideration decision is not final,
 - (iv) **where there has been a change in circumstances or fresh evidence**, or
 - (v) **where justice to the parties requires a departure from the general rule**. (emphasis added)

[46] In the present case, no determination has been made by the Panel on the issues, and the application for fresh evidence has been made after evidence has closed, but prior to there being any determination of the matter.

[47] The authorities confirm that the conventional approach regarding an application for the admission of additional evidence is for the court to ask whether the additional evidence is "fresh", that is, evidence

¹⁸ (1985) 159 CLR 550 at 629 per Brennan J.

¹⁹ (1995) 21 AAR 9 at [33].

which the Applicant was unaware of and could not have obtained with reasonable diligence: *R v Goodwin* (unreported, 3 December 1990, NSWCCA); *R v Abou-Chabake* [2004] NSWCCA 356 at [63].

- [48] Fresh evidence is to be contrasted with new evidence which is not received. It is evidence that was available at the time, but not used and could have been obtained with reasonable diligence: *Khoury v R* [2011] NSWCCA 118 at [107]; *R v Many* (unreported, 11 December 1990, NSWCCA).
- [49] The Panel is satisfied that the audio recording the Applicant seeks to rely upon is fresh evidence.
- [50] In considering the application for reception of the evidence, the Panel considers that the last two considerations (highlighted above) identified by the AAT in the *Matusko* decision favour the application being accepted and the evidence being admitted and considered by the Panel in determining the matter.
- [51] As a consequence, the Panel accepts the fresh evidence and it will be considered along with the other evidence before the Panel.

Liability

- [52] The Respondent has provided submissions on liability in which it identifies three issues being in dispute.
- [53] The Respondent identifies the key issue in dispute as being whether Mr Clarke paid Mr Evans \$600.00 in relation to Mr Evans scratching Uncle Charlie whilst Aerobic Rouge was first reserve for the race. On one version of Mr Clarke's evidence, he alleges that he paid Mr Evans to scratch Uncle Charlie; Mr Evans denies this.
- [54] The Respondent then contends that arising from that key issue, two sub-issues arise on Mr Evans' case in relation to the key issue, those being:
- (a) did Mr Clarke purchase \$650 of temporary fencing from Mr Evans. The Respondent notes that this is the only alternative explanation put forward as to why Mr Clarke paid Mr Evans \$600; and
 - (b) was Uncle Charlie suffering from a split webbing so significant that Mr Evans scratched him from the Race. This is the only alternative explanation proffered for why Mr Evans scratched Uncle Charlie.
- [55] The Panel is satisfied that this is a correct summary of the issues in dispute.
- [56] Arising from the fresh evidence, there is a further issue in dispute, that being whether Mr Clarke was charged and found guilty of a fraud offence which involves his payments to Mr Clarke.

The Applicant's case

- [57] The Applicant's case essentially is that the evidence of Mr Clarke is so flawed and inherently unreliable because of the extent of the lies that he has told and the inconsistencies in his evidence that his evidence should be wholly set aside.
- [58] In the Applicant's preliminary outline of submissions, it is submitted that on the various occasions that Mr Clarke was interviewed by the Stewards that he:
1. Makes admissions both to misleading and providing false statements to Stewards.

2. Denies contacting various trainers for a start in the August 2022 race including the Applicant.
3. Provides inconsistencies in the offers to Paul Sutton, Jeffrey Henzell, Ty Henzell.
4. Inconsistencies as to when he allegedly made the financial transaction to the Applicant.
5. Inconsistencies as to how he found out how Uncle Charlie was scratched.
6. Admissions that he did purchase Temporary Fence Panels from the Applicant.
7. Denies ever purchasing Temporary Fence Panels from the Applicant.
8. Was criminally convicted of fraud relating to these matters.

[59] The Applicant goes on to submit that anything that Mr Clarke has provided as evidence cannot be considered as credible or reliable. It is further submitted that Mr Clarke's evidence is tainted to such a point that the Panel could not be comfortably satisfied that the charges against the Applicant had been made out.

[60] In the Applicant's reply submissions, the Applicant has set out in some detail what it alleges are the various inconsistencies in the evidence over time of Mr Clarke. The Panel has noted those submissions and the various transcript references to the evidence of Mr Clarke and the other witnesses.

[61] The Applicant's preliminary submissions then address the alleged injury to Uncle Charlie and contend that the Stewards did not deny that Uncle Charlie had sustained an injury as follows:

"Matthew Evans: There was obviously - there's evidence when the coppers came around top of the split webbing.

*Facilitator: Oh, we're not denying that. We're not saying that's the case or not the case. We don't have - from our point of view we're interested in the payments prior to the race and after the race and the admissions by Mr. Clarke in relation to how this took place."*²⁰

[62] In the Applicant's reply submissions, it is submitted that the injury is consistent with the Applicant's version of events as to why Uncle Charlie was scratched from the race.

[63] The Applicant further relies upon the photographs of a greyhound which allegedly depict the injuries to Uncle Charlie. It is submitted that this is 'corroborative and independent evidence' which should be considered.

[64] The Applicant's preliminary submissions dated 10 August 2023 then address the issue of the transfer of the temporary fence Panels as the explanation for Mr Clarke paying the Applicant \$650.00.

[65] The submission contends that there is corroborating evidence to support the financial transfer of funding for the Panels between Mr Clarke and the Applicant and an independent witness, Blair Guthrie who had observed Mr Clarke at the Applicant's property.²¹

[66] In relation to the evidence of Mr Guthrie, the Panel is satisfied that his evidence goes no higher than to place Mr Clarke at the Applicant's residence on a day when Mr Guthrie was attending to pick up some temporary fence Panels that he had purchased.

[67] In his evidence Mr Guthrie confirmed the following:

²⁰ Exhibit 13, page 15, ll.396-397.

²¹ Exhibit 14, page 2, ll.28-34.

- (a) That he parked at the front of the property and Mr Clarke was around the back with the dogs.²²
- (b) That he purchased four temporary fence lines and paid a few hundred dollars to the Applicant.²³
- (c) The Applicant did not state anything to him about Mr Clarke or what his purpose was (for being at the property).²⁴

[68] The Panel is therefore satisfied that the evidence of Mr Guthrie does not corroborate the Applicant's explanation for the payment of the money by Mr Clarke, that being that it was for payment of the temporary fencing.

[69] The final issue addressed in the Applicant's preliminary submissions and the reply submissions is the evidence of the Applicant.

[70] It is submitted that the Applicant is a person of good character, having never been charged or convicted of a criminal offence. As a consequence, it is submitted that the Applicant's character should be taken at its highest when assessing the evidence he provided to the Stewards' Inquiry.

[71] In the Applicant's reply submissions²⁵ it is contended that the Applicant's evidence should be accepted, and the evidence of Mr Clarke should be rejected, and the Panel should find:

- (a) Uncle Charlie was scratched due to spilt webbing.
- (b) That three payments in total of \$650 were made to the Applicant by Andrew Clarke for the purchasing of temporary fencing Panels and in no way attributed to the medical scratching of Uncle Charlie.

[72] The Applicant then submits in consideration of the Applicant's evidence the Panel should find:

- (a) The Applicant is person of good character.
- (b) That the Applicant is credible and reliable.
- (c) That the Applicant's evidence is supported by independent witnesses.
- (d) That the Applicant's evidence is supported by financial documents.
- (e) That the Stewards at their own inquiry of the Applicant had determined Uncle Charlie's injury supporting the Applicant's evidence.
- (f) That the Applicant has never been charged or arrested in relation to the following matters by Queensland Police in relation to Fraud that Mr Andrew Clarke has been found guilty and convicted of.
- (g) That the Applicant provided his phone and allowed Queensland Police to execute a search warrant on his property relating to these allegations.

²² *Ibid*, page 2, ll.37-41.

²³ *Ibid*, page 4, ll.76-85.

²⁴ *Ibid*, page 5, ll.107-115.

²⁵ Applicant's reply submissions dated 17 August 2023, paragraph 28.

(h) That the Applicant has never lied or provided false statements to the Stewards at this inquiry or any other nor has the Applicant made admission to such conduct as opposed to Mr Andrew Clarke.

(i) That the Applicant has never been disqualified or suspended from the industry previously.²⁶

[73] The Applicant contends that the Panel cannot be reasonably satisfied on the balance of probabilities pursuant to *Briginshaw v Briginshaw*²⁷ that the Applicant is guilty of any offence based on the available evidence.

First Issue – The payments were for the applicant to scratch Uncle Charlie

[74] The Respondent in its submissions dated 15 August 2023 notes that Mr Clarke was interviewed by the Stewards' Inquiry on four occasions. The Respondent characterises each of those occasions as follows:

27. *First*, on 16 September 2022.²⁸ At this time, Mr Clarke strongly denied any wrongdoing. Mr Clarke's account at this time was self-serving and had inconsistencies.

28. *Second*, on 20 January 2023.²⁹ By this time, Mr Clarke had pleaded guilty in relation to his criminal matter.³⁰ He made references to Mr Evans being involved in the matter but refused to give a full account of what happened in case it affected Mr Evans.³¹

29. *Third*, on 1 February 2023.³² During this interview, Mr Clarke made full and frank admissions to his conduct. He gave a fulsome and complete account of what had occurred and Mr Evans' involvement in it.

30. He also explained why he pleaded guilty to the related criminal charge. He said police had strong evidence that Mr Clarke had paid Mr Evans to scratch Uncle Charlie. In particular, a text message between Mr Clarke and Trent Harding where Mr Clarke admits paying Mr Evans \$600 in relation to the Race.³³

31. *Fourth*, on 8 March 2023.³⁴ During this short interview, Mr Clarke gave further details of his conduct and how he paid Mr Evans.

[75] The Respondent contends that from those four versions, where there are discrepancies, the Panel should prefer the accounts in the final two interviews. It is submitted by that time, Mr Clarke had stopped trying to protect the Applicant, and gave a full explanation of the events that had transpired.³⁵

[76] The Respondent goes on to record that those accounts are broadly consistent with the evidence of Jeffrey Henzell, Tyrone Henzell, Mr Sutton, and Mr Lees regarding their interactions with Mr Clarke. The

²⁶ *Ibid*, paragraph 29.

²⁷ (1938) 60 CLR 336 at 350 (Rich J); at 362-3 (Dixon J).

²⁸ Document 2, Transcript – Andrew Clarke Interview.

²⁹ Document 5, Transcript – Andrew Clarke Interview.

³⁰ Document 5, Transcript – Andrew Clarke Interview, p 2 ln 24-25.

³¹ Document 5, Transcript – Andrew Clarke Interview, p 6 ln 17-149.

³² Document 11, Transcript – Andrew Clarke Interview; Document 12, Transcript – Andrew Clarke Interview.

³³ Document 12, Transcript – Andrew Clarke Interview, p 8 ln 186-192.

³⁴ Document 15, Transcript – Andrew Clarke Interview.

³⁵ Paragraph 32 of the Respondent's submissions dated 15 August 2023.

Respondent notes that the Applicant does not challenge their versions, and therefore the Panel can accept that this aspect of Mr Clarke's account is correct.

- [77] In relation to the second interview on 20 January 2023, the Panel accepts that Mr Clarke in that interview by his responses evinced an intention to try and protect the Applicant. His actions in doing so at that time are inconsistent with the allegation by the Applicant that Mr Clarke was falsely implicating him in order to drag someone else down with him.³⁶

Principles regarding assessment of credibility

- [78] Although this Review Application turns upon challenges made to the credibility of Mr Clarke as a witness, arising from Mr Clarke not being able to be served with a witness notice and the Applicant choosing to not provide additional evidence to the Panel, the Panel has not been afforded the opportunity of assessing the evidence of either of the key witnesses in person.
- [79] As a consequence, any assessment of the credibility of either of these witnesses will be dependent upon the Panel's assessment of the evidence before the Stewards' Inquiry and the other witness evidence and documentary evidence.
- [80] A number of authorities have addressed the issue of assessing witness credibility.
- [81] Perhaps one of the more detailed judicial statements on this issue can be found in the dissenting speech of Lord Pearce in the House of Lords in *Onassis v Vergottis* [1968] 2 Lloyd's Rep 403 at p 431:
- "Credibility' involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

³⁶ Paragraph 33 of the Respondent's submissions dated 15 August 2023.

[82] This was amplified by Lord Goff in *Armagas Ltd v. Mundogas S.A. (The Ocean Frost)*, [1985] 1 Lloyd's Rep. 1, p. 57:

"Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth."

[83] Keane J in *Camden v McKenzie*³⁷ stated:

"The rational resolution of an issue involving credibility of a witness will require reference to and analysis of any evidence independent of the parties which is apt to cast light on the probabilities of the situation."

[84] It is also important to observe that a trial judge (or other Tribunal of Fact) is in no way restricted in his or her assessment of a witness. He or she is not bound to accept any of that which the witness attests to or indeed may only accept part thereof.³⁸

[85] The Panel also notes that it is not only the credibility of Mr Clarke that falls for assessment in this review, but also that of the Applicant regarding the evidence he provided to the Stewards' Inquiry.

Summary of the relevant witness evidence

[86] On the same day, 4 August 2023, Mr Clarke called a number of trainers who had dogs starting in the Race including Jeffrey Henzell,³⁹ Tyrone Henzell,⁴⁰ Paul Sutton,⁴¹ and Sam Lees.⁴²

[87] The evidence of each of the other trainers that Mr Clarke contacted on 4 August 2022 was to the effect that Mr Clarke offered them money to scratch their dogs from the race. The Stewards Inquiry heard evidence from each of Jeffrey Henzell,⁴³ Tyrone Henzell,⁴⁴ Paul Sutton,⁴⁵ and Sam Lees⁴⁶ which was largely consistent although there may have been some variation regarding the amounts that Mr Clarke was alleged to have offered to each trainer. The Panel accepts that this evidence is effectively unchallenged. Each of those trainers confirmed rejecting the offer made by Mr Clarke.

[88] Mr Clarke made admissions to contacting Paul Sutton, Jeff Henzell and Sam Lees and offering them money to scratch their dogs from the race.⁴⁷

³⁷ [2007] QCA 136 at [34].

³⁸ *Cubillo v Commonwealth of Australia* [2000] FCA 1084; (2000) 174 ALR 97 at [188] to [123].

³⁹ Document 4, Transcript – Jeffrey & Tyronne Henzell Interview, p 2 In 37-42.

⁴⁰ Document 4, Transcript – Jeffrey & Tyronne Henzell Interview, p 9-10 In 243-251.

⁴¹ Document 9, Transcript – Paul Sutton Interview, p 1-3 In 17-49.

⁴² Document 10, Transcript – Sam Lees Interview, p 2-3 In 33-54.

⁴³ Document 4, Transcript – Jeffrey & Tyronne Henzell Interview, p 2 In 37-42.

⁴⁴ Document 4, Transcript – Jeffrey & Tyronne Henzell Interview, p 9-10 In 243-251.

⁴⁵ Document 9, Transcript – Paul Sutton Interview, p 1-3 In 17-49.

⁴⁶ Document 10, Transcript – Sam Lees Interview, p 2-3 In 33-54.

⁴⁷ Document 12, Transcript – Andrew Clarke Interview, pages 2-3, ll.19-64.

[89] Mr Clarke indicated that he did not speak to Jeffrey Henzell because he was asleep. This is inconsistent with the evidence of Jeffrey Henzell who confirmed receiving a call from Mr Clarke.

[90] The Panel does not consider that Mr Clarke was deliberately trying to mislead the Stewards' Inquiry regarding this issue in light of his frank admission to contacting Tyrone Henzell and offering him a bribe. It appears more likely that Mr Clarke has simply failed to remember the conversation with Jeffrey Henzell.

[91] Mr Clarke then confirmed that he contacted the Applicant and offered him money to scratch his dog, Uncle Charlie from the race. His evidence was as follows:

Wade Hadley: Now, I've obviously left out the obvious one which was the scratching, Matthew J Evans. Did you speak to Matthew Evans?

Andrew Clarke: Yes.

Wade Hadley: What did you put to Matthew Evans?

Andrew Clarke: Three hundred and 300 for scratch.

Wade Hadley: When you say 300 and 300, was that 300 pre-race and 300 post-race?

Andrew Clarke: Yep. Three hundred to scratch, and 300 if she come through to win through the [unclear].

Wade Hadley: What was his response to you?

Andrew Clarke: He said, yes, he'll do it.

Wade Hadley: Okay. Did he give you a reason why he was going to accept it?

Andrew Clarke: He did say that he was going to scratch anyway because his dog had injured pads.

Wade Hadley: Why did you then accept paying 300 and 300 if...

Andrew Clarke: Because there was no guarantee it was going to be done. Once they had the money, it was a guarantee it was going to scratch, and it was guaranteed for me to start. I knew I was going to win the race. I knew it was going to happen. [Unclear]⁴⁸

[92] Mr Clarke gave evidence in the initial interview that Aerobic Rouge had been trialling well including trials at Ipswich and Albion Park.⁴⁹ Mr Clarke also gave evidence that he knew Aerobic Rouge would win if it was able to gain a start.⁵⁰

[93] Mr Clarke made admissions to making the payments via way of bank transfers and he went on to identify the payments from his Commonwealth Bank account statements that were made to the Applicant and that the first \$300.00 payment was made for the scratching of Uncle Charlie.⁵¹

[94] Mr Clarke also confirmed that following Aerobic Rouge winning the race he transferred the second amount to the Applicant.⁵²

[95] Mr Clarke's relevant bank statements confirm two payments of \$300.00 by Mr Clarke to the Applicant, the first on 4 August 2022 and the second on 11 August 2022 (three days following the race).⁵³

⁴⁸ *Ibid*, page 4, ll.69-87.

⁴⁹ Document 2, Transcript – Andrew Clarke Interview, p 8 ln 194-201.

⁵⁰ Document 12, Transcript – Andrew Clarke Interview, p 4 ln 86-87.

⁵¹ *Ibid*, pages 5-6, ln.92-110.

⁵² Document 12, Transcript – Andrew Clarke Interview, p 5 ln 111-114, p 6 ln 151-152.

⁵³ Document 47 – Exhibit 47.

- [96] The bank statements provided by the Applicant from his Commonwealth Bank account confirm those two payments being made to the Applicant's bank account.⁵⁴
- [97] Mr Clarke went on in his evidence to the Stewards' Inquiry to deny ever purchasing any temporary fencing from the Applicant.⁵⁵
- [98] As noted in the Respondent's submissions, the only evidence that corroborates the Applicant's version that the payment was for temporary fencing was the belated entry on the bank transfer of an additional \$50.00 which Mr Clarke recorded as '650 temp fencing'.⁵⁶ Mr Clarke went on to explain in his evidence that additional payment and the description was his idea after the police had commenced investigating to try and disguise what had occurred.⁵⁷
- [99] The Panel further notes that in the audio recording which has been admitted as fresh evidence that Mr Clarke denies that the Stewards at any time offered him any form of inducement to provide evidence to the Stewards' Inquiry. Given this occurred in an 'off the record' conversation which Mr Clarke was unaware was being recorded, the Panel considers this is a reliable admission from Mr Clarke.
- [100] In relation to the evidence of the Applicant, he initially participated in an interview with the Stewards on 20 January 2023.⁵⁸
- [101] In that interview the Applicant:
- (a) Alleged that Uncle Charlie had split his webbing either the day when the field was drawn (4 August 2022) or the day after.⁵⁹
 - (b) Denied speaking to anyone in relation to this race, including any other trainer involved in the race until the day of the race and specifically denied speaking to Mr Clarke until after the race.⁶⁰
 - (c) Denied having any telephone conversations with Mr Clarke prior to the race and denied having his telephone number.⁶¹
 - (d) Admitted backing Mr Clarke's dog in the race the day before the race.⁶²
 - (e) Denied having any form of relationship with Mr Clarke and denied communicating with him prior to speaking with him on 8 August 2022 other than a conversation at an unknown time where he asked for the Applicant's father's telephone number.⁶³
 - (f) Then immediately made an admission that he previously had been a friend of Mr Clarke on Facebook with their being some conversations on Messenger.⁶⁴

⁵⁴ *Ibid*, bank statements of the Applicant, pages 7 and 8 of 20.

⁵⁵ Document 15, Transcript – Andrew Clarke Interview, p 3 ln 51-52. Also confirmed at Document 12, Transcript – Andrew Clarke Interview, p.5, ln 120-126.

⁵⁶ Document 47 – Exhibit 47 – bank statements of the Applicant, page 15 of 20, 6 September 2022.

⁵⁷ Document 15, Transcript – Andrew Clarke Interview, p 3 ln 46-47.

⁵⁸ Document 8, Transcript – Matthew Evans Interview.

⁵⁹ *Ibid*, page 2, ln 33-42.

⁶⁰ *Ibid*, page 3-4, ln 55-90.

⁶¹ *Ibid*, page 5, ln 103-104.

⁶² *Ibid*, page 5, ln 105-113.

⁶³ *Ibid*, page 5-6, ln 124-13.

⁶⁴ *Ibid*, page 6 ln 133-155.

(g) Again denied speaking to Mr Clarke (in any way) prior to 8 August 2022.⁶⁵

[102] The Applicant then went on to provide a version regarding Mr Clarke buying temporary fence Panels from him as follows:

- (a) The Applicant admitted that he received money from Mr Clarke when he 'bought a couple of pet Panels off me'.⁶⁶
- (b) The Applicant could not initially recall when that was and then said it was two to three months ago (that is October/November 2022).⁶⁷ The Applicant then recanted that evidence and stated that it would have been before the race on 8 August 2022.⁶⁸
- (c) The Applicant initially estimate that Mr Clarke had bought one or two Panels but then increased that to ten to twelve.⁶⁹
- (d) The Applicant could not recall how many Panels other people had purchased.⁷⁰
- (e) The Applicant could not initially recall how Mr Clarke had paid for the Panels and said it could have been a bank transfer but that he was not sure.⁷¹
- (f) The Applicant could not recall when Mr Clarke picked up the Panels and he did not believe that Mr Clarke paid in full.⁷²
- (g) Stated that he did not give a receipt to any of the purchasers.⁷³

[103] The Applicant was then taken to the inconsistency between his earlier evidence and later evidence regarding the extent of his communication and involvement with Mr Clarke:

Aleisha Turner: Just [unclear] Mr Chairman. Mr Evans, your initial evidence was that you had no contact with Mr Clarke other than when he asked for your father's number.

Matt Evans: Yep.

Aleisha Turner: We pushed you on that a bit and you said that was the only contact. It's now come out that in fact, you actually have had more contact than that. In fact, you've met up with Andrew Clarke, you've sold him some Panels, and there's been a bank transaction. So how come you didn't tell us that initially when we asked you had you had any contact with Mr Clarke?

Matt Evans: Well, I didn't see that relevant. I don't know.

Aleisha Turner: What do you deem to be contact with somebody? A phone call? Seeing someone face to face? So you've said he's at your property collecting these Panels.

Matt Evans: Yep.

Aleisha Turner: You don't think that that's contact with a person?

Matt Evans: Well, yeah.

⁶⁵ *Ibid*, page 7 ln 157-174.

⁶⁶ *Ibid*, page 7 ln 179-182.

⁶⁷ *Ibid*, page 8 ln 185-192.

⁶⁸ *Ibid*, page 8 ln 198.

⁶⁹ *Ibid*, page 8, ln 202-203.

⁷⁰ *Ibid*, page 8 ln 212-219.

⁷¹ *Ibid*, page 10 ln 261-262.

⁷² *Ibid*, page 10 ln 267-270.

⁷³ *Ibid*, page 11 ln 274-275.

Aleisha Turner: So why wasn't that disclosed initially when we asked you?

Matt Evans: Because I didn't think about it.⁷⁴

[104] The Applicant was then questioned about how payment occurred and how the arrangements were made regarding the purchase of the Panels, and he provided the following evidence⁷⁵:

Aleisha Turner: Okay. Just in respect of this transaction, so you're saying he just came and picked up Panels once? It was just a once off transaction?

Matt Evans: Yeah. He picked them up once, yeah.

Aleisha Turner: So - and he paid you in a lump sum by bank transfer?

Matt Evans: No.

Aleisha Turner: He didn't?

Matt Evans: No.

Aleisha Turner: What was - how did he pay you then?

Matt Evans: Well, I don't know if it was cash or bank transfer but it was like a couple of times.

Aleisha Turner: It was a couple of times?

Matt Evans: Yeah and Blair Gothrey was there when he was picking up Panels so he'll back me up.

Aleisha Turner: So what do you mean it was a couple of times? What do you mean? Did he pay you instalments or...

Matt Evans: Well, yeah.

Aleisha Turner: What were the instalments? What were the amounts?

Matt Evans: I couldn't tell you. I'd have to either go through - if it's on my bank, I'd have to go through and have a look.

Aleisha Turner: Okay. So how did you agree on a price then? Was this verbally with Mr Clarke or was it through text messages or through Messenger?

Matt Evans: Yeah. It would have been just verbal.

Aleisha Turner: Okay and when did you have that conversation with him about buying the Panels?

Matt Evans: Probably at the track. I don't know.

Aleisha Turner: You agreed on a price at the time?

Matt Evans: They were just up for \$50 a Panel, yeah.

Wade Hadley: Were they advertised?

Matt Evans: No.

Wade Hadley: No.

Matt Evans: Just obviously word of mouth.

Wade Hadley: Word of mouth, yeah.

Aleisha Turner: Okay and at that time as well, when you agreed on say approximately \$50 a Panel, did you then say to him I'm happy for you to pay it off? Or how did you give him your bank details

⁷⁴ *Ibid*, page 13, ln. 320-338.

⁷⁵ *Ibid*, pages 13-15, ln. 342-379.

or what happened? Or did you say when are you going to give me cash? I'm struggling to accept that it was cash because I'm certain you would have remembered when he handed over \$500 to \$600 cash on multiple...

Matt Evans: No, I don't. I get cash all the time.

Aleisha Turner: What for?

Matt Evans: I'm a tiler.

[105] In assessing the evidence of the Applicant, the Panel has also considered the further transcript of the interview with the Applicant on 16 February 2023⁷⁶ and some of the inconsistencies in that transcript.

Analysis of the submissions and evidence

[106] The Respondent submits that where the evidence of Mr Clarke and the Applicant are inconsistent, that the Panel should prefer the evidence of Mr Clarke and reject the evidence of the Applicant for the three following reasons:

1. There is no rational reason for Mr Clarke admitting to paying Mr Evans to scratch his dog unless it was true. Making the admissions and pleading guilty to the criminal offence affected Mr Clarke's Family Court matter relating to the care of his son;⁷⁷ a case he considered more important.⁷⁸ If Mr Clarke did not pay Mr Evans—as Mr Evans says—then surely Mr Clarke would have maintained his innocence and not made these admissions so as not to jeopardise his Family Court case.

The Respondent also submits that this is a complete response regarding the Applicant's submissions that Mr Clarke's admissions are not credible. The Respondent concedes that initially Mr Clarke gave inconsistent accounts to the Stewards during the Inquiry. It is submitted that therefore the Panel would have difficulty in accepting any self-serving evidence that Mr Clarke gave. The Respondent contends that Mr Clarke's admission to paying Mr Evans is not self-serving; it is strongly against his interests and as a consequence, the Panel can more readily accept the admission.

2. Mr Clarke's account is corroborated by the independent and unchallenged evidence of Jeffrey Henzell, Tyrone Henzell, Mr Sutton, and Mr Lees. The Respondent submits that these accounts confirm that Mr Clarke's account is truthful. The Respondent's submission then states:

Those accounts are also consistent with Mr Clarke calling Mr Evans to ask him if he will scratch his dog after the others refused, which Mr Evans denies.⁷⁹ Those accounts paired with Mr Clarke's two \$300 payments—one being made the day before Mr Evans scratched his dog, and one after Mr Clarke's dog won the race—would ground a strong circumstantial case that Mr Clarke paid Mr Evans to scratch his dog. But, in light of Mr Clarke's admissions—which is direct evidence of Mr Evans' involvement—this evidence simply corroborates Mr Clarke's admissions.

⁷⁶ Document 13 – Exhibit 13 – Matt Evans Interview, 16 February 2023.

⁷⁷ Document 12, Transcript – Andrew Clarke Interview, p 9 In 231-237

⁷⁸ Document 12, Transcript – Andrew Clarke Interview, p 7 In 171-173.

⁷⁹ Document 8, Transcript – Matt Evans Interview, p 3-4 In 55-56, 70-86.

3. Before the Panel accepts Mr Evans' evidence, it would have to find *both* of the sub-issues in his favour, and it is submitted that the Panel would have great difficulty in doing that. The Respondent submits that the Panel needs to find in the Applicant's favour on both sub-issues because:
 - (a) if Mr Clarke did not buy the temporary fencing, then the payment could only have been for Mr Evans to scratch his dog from the Race consistent with Mr Clarke's admissions. No other reason for the payment has been put forward; and
 - (b) if Uncle Charlie was not injured before the Race, then there was no reason for Mr Evans to scratch him except that Mr Clarke paid him to.

[107] The Panel will address its findings on those sub-issues in the next section.

[108] In relation to the contest between the evidence of Mr Clarke and that of the Applicant, the Panel accepts the submissions and analysis of the evidence provided by the Respondent.

[109] The Panel finds the explanation provided by the Applicant for the payments being made by Mr Clarke to him to be vague, inconsistent and lacking in the necessary detail which would convince the Panel that it was a true version.

[110] There was significant unexplained inconsistency in the evidence of the Applicant regarding the extent of his communications and business dealings with Mr Clarke. On one version he had no business dealings or communication with Mr Clarke other than an occasion when Mr Clarke might have sought out the Applicant's father's telephone number. On the other version, there had been earlier communications (not detailed) regarding arrangements being made for Mr Clarke to purchase the temporary fencing Panels.

[111] The Applicant has at no time provided a cogent explanation of how Mr Clarke was aware of his bank details to enable Mr Clarke to transfer money to him. Clearly that information could only have been provided by the Applicant to Mr Clarke, however, the evidence is silent as to when it occurred and how Mr Clarke was provided with the information by the Applicant.

[112] The evidence of the Applicant as to how Mr Clarke was made aware that he had temporary fencing Panels is also extremely vague and unconvincing. The Applicant confirmed that he did not advertise the fencing Panels and he was left to assert that Mr Clarke must have become aware by word of mouth. The Panel does not accept this version.

[113] The evidence of the Applicant regarding how and when the arrangements were made with Mr Clarke for the purchase of the fencing Panels is also vague and unconvincing.

[114] If the version of the Applicant is to be believed, some time (it appears prior to 4 August 2022) he had verbally agreed to sell fence Panels to Mr Clarke. As noted above, no detail is provided as to how this was negotiated, what the terms were, when payment was to be made and then when the fencing Panels were to be picked up.

[115] The Applicant has also failed to provide any adequate explanation as to the reason why it was necessary for instalment payments to be made by Mr Clarke as opposed to Mr Clarke simply paying cash when he came to pick up the Panels.

[116] If the version of the Applicant is to be accepted, there are a series of extraordinary coincidences that occur around the key dates in August and September 2022:

- (a) At some time prior to 4 August 2022 Mr Clarke agrees to buy temporary fence Panels from the Applicant;
- (b) On 4 August 2022 the draw occurs for the race on 8 August 2022;
- (c) Mr Clarke makes contact with four other people that are linked to the race on 8 August 2022 and offers them money to scratch their dog from the race;
- (d) The same day on 4 August 2022, Mr Clarke makes a payment of \$300.00 to the Applicant that is consistent with the amounts that he has offered to the other trainers;
- (e) On 5 August 2022 the Applicant scratches Uncle Charlie from the race on Monday 8 August 2022;
- (f) Following Aerobic Rouge winning the race on 8 August 2022, Mr Clarke makes a further payment of \$300.00 to the Applicant, which is consistent with what he had promised to do with the other trainers if his dog won the race on 8 August 2022;
- (g) A significant period of time elapses before Mr Clarke allegedly pays the balance of the amount owing on the alleged fence Panel purchase of \$50.00 on 6 September 2022;
- (h) Following a further delay Mr Clarke allegedly belatedly attends at the Applicant's property to pick up his temporary fencing Panels.

[117] The Panel finds the explanation relied upon by the Applicant to be inherently implausible and unreliable. The Panel is not satisfied that Mr Clarke ever agreed to buy fence Panels from the Applicant, or that the payments made by Mr Clarke were for fence Panels.

[118] The Panel accepts that the allegation of a purchase of fence Panels was a ruse created by Mr Clarke to try and disguise the true nature of the payments made to the Applicant.

[119] The Panel accepts that in making admissions to the Stewards' Inquiry on 1 February 2023 Mr Clarke was making admissions against interest. He has further confirmed in the audio recording made on 18 August 2023 that no inducement was held out to him to participate in that interview. Given this, the Panel accepts and prefers the evidence provided by Mr Clarke on 1 February 2023 and on 8 March 2023 over the evidence of the Applicant where there is any inconsistency.

[120] The Panel finds that the Applicant was offered a payment of \$300.00 to scratch Uncle Charlie from the race, that he accepted that offer and following receipt of the payment of \$300.00 by Mr Clarke, the Applicant scratched Uncle Charlie from the race.

[121] The Panel is also satisfied that the Applicant was paid a further sum of \$300.00 by Mr Clarke on 11 August 2022 in accordance with the arrangement that he had made with the Applicant following Aerobic Rouge winning Race 1 on 8 August 2022.

[122] The Panel is as a consequence satisfied on the balance of probabilities to the *Briginshaw v Briginshaw* standard that both Charge 1 and Charge 3 have been satisfied and that the Applicant is guilty of both charges.

[123] This leaves for consideration the issues of the injury to Uncle Charlie and findings regarding the fresh evidence.

The injury to Uncle Charlie

- [124] The primary position of the Respondent on this issue is that it is not necessary for the Panel to make a finding on this issue because even if it is accepted that the Applicant was going to scratch Uncle Charlie, he still *accepted* Mr Clarke's bribe and as a consequence, has engaged in corrupt conduct.
- [125] The Respondent submits that the honest and lawful way to have dealt with that situation was to refuse the offer (which the Panel notes the other trainers did). The Respondent submits that instead, the Applicant engaged in corrupt conduct that is of the same nature and significance regardless of whether he was planning to scratch Uncle Charlie.
- [126] The Panel in light of the finding made above in relation to the Applicant's conduct in accepting the two payments from Mr Clarke accepts this submission by the Respondent.
- [127] Regardless of whether the Applicant would have gone on to submits that the Panel would not be satisfied that the Applicant would have gone on to scratch Uncle Charlie in any event, the Panel is satisfied that the offence is made out upon the Applicant accepting the initial payment.
- [128] If the Panel should be found to be error in that finding, the Panel will go on to consider whether it is satisfied on the balance of probabilities that Uncle Charlie had an injury on 5 August 2022 which required the dog to be scratched.
- [129] The only evidence that supports that Uncle Charlie had split-webbing that required him to be scratched is the evidence of the Applicant. The Respondent submits that the Applicant's evidence on this issue is self-serving and should be treated cautiously.
- [130] There is no contemporaneous veterinary evidence or photographs to corroborate that Uncle Charlie had an injury which justified his scratching from the race.
- [131] The Applicant relies upon the photographs that have been tendered in support of the review application which are alleged to have been taken by officers of the Queensland Police Service on 17 September 2022 when the police attended at the Applicant's residence.
- [132] The first issue with those photographs is that it is not clear on the evidence before the Panel that the dog depicted in the photographs is in fact Uncle Charlie.
- [133] Secondly, despite a number of photographs being taken of the dog's paw the Panel cannot conclude from those photographs alone whether the dog was suffering an injury as at the date of the photographs or that this injury would cause the dog to be scratched.
- [134] Thirdly, given the date that the photographs were taken, approximately six weeks after 4 August 2022, the photographs cannot provide any evidence that Uncle Charlie was in fact injured on 4 August 2022.
- [135] Fourthly, as noted in the Respondent's submissions, Uncle Charlie had raced on numerous occasions between 4 August 2022 and when the photographs were taken on 17 September 2022.
- [136] The Panel can therefore place no weight on the photographs as being evidence supporting Uncle Charlie having an injury on 4 August 2022 of sufficient severity that necessitated his scratching from the race.
- [137] Given the concerns raised by the Panel regarding the reliability of the Applicant's evidence as set out above, the Panel is not satisfied that Uncle Charlie had an injury on 4 or 5 August 2022 which necessitated the dog being scratched.

[138] This supports the Panel's findings that the payments accepted by the Applicant were for a corrupt purpose.

The audio recording

[139] The Panel finds that in relation to the audio recording there is only one aspect of that recording that is inconsistent with the evidence before the Panel.

[140] In the audio recording, Mr Clarke (assuming that the other male voice is Mr Clarke) agrees to a leading assertion put to him by the Applicant that the QP9 related to Mr Clarke's conduct involving other trainers such as the Henzells and did not relate to the Applicant.

[141] Following the application being made for the fresh evidence to be admitted, the Panel issued a direction requiring the parties to use their best endeavours to obtain a copy of the QP9. The Panel notes that during the audio recording, Mr Clarke indicated that he may have a copy at home.

[142] The Applicant and the Respondent have both confirmed that they have not been able to provide a copy of the QP9.

[143] It is therefore necessary for the Panel to determine what weight if any should be given to the comments made by Mr Clarke on the audio recording in light of the evidence before the Panel.

[144] In the telephone interview with Mr Clarke on 20 January 2023⁸⁰, Mr Clarke told the Stewards that if the Applicant wanted to keep his name clear, he was not going to talk.⁸¹ If the Applicant was not involved and did not form part of the allegations in the QP9, there would be no reason for Mr Clarke to stay quiet to protect him. Mr Clarke further observed:

Andrew Clarke: Yep. If Matty reckons nothing's happened, well, he can continue racing his dogs and I'll just sit on in from suspension. I guess that's the - what's - that's just what's going to have to happen. [Unclear].

Wade Hadley: I don't know whether you'd believe that you're only going to get a suspension for this.

Andrew Clarke: Well, it will. It will. It'll be a suspension or a disqualification. It will be either one of them. You're not going to get off Scott free.

Wade Hadley: No.

Andrew Clarke: But if he's maintaining that nothing's happened, well, you've obviously got police records and if not, you can obtain them, that clearly have everything in there. I don't know how Matty didn't get prosecuted, but anyway. That's another whole story.⁸²

[145] Once again, this passage appears to be more consistent with the QP9 relating to the Applicant rather than anything to do with any of the other trainers.

[146] In the later interview conducted on 1 February 2023, Mr Clarke stated:

Just going to be a drawn-out process so I just pleaded guilty and that was it. It had everything on QP9. They had obviously bank statements, they did have a message to Trent Harding stating, he goes, oh we're going to get on your [bids]. I said, yeah mate, yeah we're getting on them because I

⁸⁰ Document 5 – Exhibit 5 – Transcript – Andrew Clarke interview 20 January 2023.

⁸¹ *Ibid*, page 4, ln. 96-97.

⁸² *Ibid*, page 5, ln 102-113.

didn't pay Matt Evans 300 and 300 just to lose for no reason. As soon as they had that admission, there's no point fighting it.⁸³

[147] It is difficult to see how this passage can comfortably sit with an allegation that Mr Clarke was charged and convicted in relation to matters only relating to the other trainers.

[148] The only payments that are in evidence are the payments made to the Applicant.

[149] The admission that Mr Clarke refers to as being a key factor in convincing him to plead guilty is an admission to paying the Applicant to scratch his dog.

[150] In light of this, the Panel accepts and prefers the evidence that Mr Clarke gave during the interviews with the Stewards rather than the evidence given in a telephone conversation that Mr Clarke was not aware was being covertly recorded.

[151] The Panel accepts the Respondent's submissions on this issue.

[152] The Panel is not satisfied that the contents of the audio recording in light of the above finding can impact the Panel's finding that it satisfied that the Applicant has contravened the two rules from the GAR.

[153] The parties have in their respective submissions which address the fresh evidence also addressed a number of allegations made by the Applicant regarding the actions and conduct of the Respondent.

[154] The Panel does not intend to address those issues other than to note that the Panel is satisfied that the actions of the Respondent in defending the review application have been appropriate.

Penalty

[155] In relation to penalty, the Applicant provided oral submissions at the hearing.

[156] In the Applicant's oral submissions, it was emphasised that what will be appropriate as the penalty will be dependent upon the findings of fact made. It was submitted that Uncle Charlie was always going to be medically scratched because of his injury and therefore would not have been in the race.

[157] As a consequence, the Applicant contends that the offence should be seen as being at the lower end of the scale.

[158] It was also emphasised that the Applicant was a man of good reputation and character, that he had limited history of offences in the greyhound industry and no criminal history.

[159] The Applicant also relied upon the various character references that have been provided which all attest to the good character of the Applicant. I note between what was submitted to the Stewards' Inquiry and what has been provided during the application for the review the following character references are available to the Panel:

- (a) A reference from Mr John Catton which makes some reference to Mr Catton being aware of the situation that Mr Evans has found himself in, it is not expressly made clear that Mr Catton is aware of the charges, or the circumstances of the offending behaviour alleged against Mr Evans;
- (b) A reference from Mr Matthew Cranitch, an experienced senior teacher with the Queensland Department of Education and a former President of the Australian Education Union. That

⁸³ Document 12, Transcript – Andrew Clarke Interview – Part 2, p 8 In 187-192.

reference is addressed to the Racing Appeals Panel and therefore indicates some awareness of the current review; however, Mr Cranitch does not indicate in the reference that he has been made specifically aware of the charges or the circumstances of the offending behaviour;

- (c) A reference from Ms Deborah Vandenberg who is another teacher employed by Education Queensland. Once again that reference is addressed to the Queensland Racing Appeals Panel, however, Ms Vandenberg does not indicate that she has been made specifically aware of the charges or the circumstances of the offending behaviour.
- (d) A reference from Mr Scott Duncan, a retired Queensland police officer with some thirty-seven years of experience. Once again, that reference is addressed to the Racing Appeals Panel but does not clarify that Mr Duncan is aware of the charges that Mr Evans was facing or the circumstances of the offending behaviour.

[160] Each of the references speaks to the honesty and integrity of Mr Evans.

[161] The Panel also refers to the submissions made by the Applicant on penalty to the Stewards' Inquiry.

[162] In that submission the Applicant noted that he was a married man with four children aged between 5 and 15.

[163] The Applicant further noted that he is self-employed as a tiler but because of back pain he has had to scale back the extent of his work and this has impacted his financial circumstances. He notes that in the past year he has earned approximately \$100,000 from his greyhound training activities.

[164] The Applicant indicated that he uses the funds from the greyhound training to help support the family and he also intends to use those funds to place each of his children in private schools. He submits that without the income from the greyhound training the family's financial position will become perilous.

[165] The Applicant also raised the impact that a conviction or a period of suspension or disqualification would have on his application to join the Queensland Police Service.

[166] The Applicant has provided one comparative decision that he relies upon, a decision of the Victorian Racing Tribunal in the matter of Michelle Mallia.⁸⁴

[167] In the *Mallia* matter, Ms Mallia sent messages on social media to other greyhound trainers asking whether they had a dog that could be entered at a race at Warrnambool, whether injured or not, to make up the field for the race.

[168] At paragraph [9], the Tribunal accepted that the actions of Ms Mallia in conspiring to affect the make-up of the race constituted misconduct. The Tribunal found that her actions struck at the integrity of greyhound racing and involved a trainer attempting to manipulate the number of runners in the race.

[169] In setting a penalty, the Tribunal noted at paragraph [10] that it took into account the following matters:

- (a) The importance of maintaining the integrity of the sport;
- (b) General and specific deterrence;
- (c) Ms Mallia's guilty plea;

⁸⁴ Unreported, Victorian Racing Tribunal, 7 August 2020.

- (d) The medical evidence from Ms Mallia's general practitioner that at the time of the offence Ms Mallia was 'under significant psychological and physical threat' from her husband;
- (e) Ms Mallia had no previous breaches of this nature.

[170] In respect of that charge, the Tribunal imposed a suspension of six months and a \$1,500.00 fine.

[171] The Panel also notes that Ms Mallia faced a second charge arising from her making a false statement to the Stewards, the Tribunal imposed a six-month suspension to be served concurrently with the suspension for charge 1.

[172] The Respondent has provided written submissions on sanction in which it is submitted that the Panel would impose a 24-month disqualification for three reasons as follows:

1. The relevant offending is very likely to erode the public confidence in greyhound racing and be detrimental to the integrity of the industry, along with all those members of it. The Respondent submits that it is a dishonest offence that raises real issues with the veracity of scratching of greyhounds from races; something which effects race outcomes, as it did in this case.
2. There was no remorse, and no acceptance of guilt by the Applicant in the face of a strong case. The Respondent contends that a significant sanction is required to properly deter the Applicant from engaging in similar conduct in the future.
3. There were no strong mitigating factors in this case. The Respondent submits that by the very nature of the offending, the Applicant has been found guilty of, he is not a person of good character. As a consequence, it is submitted by the Respondent that the Panel would impose a significant sanction as a lesser is not warranted or appropriate.

[173] The Respondent further submits that the same conduct by the Applicant, that being accepting money to scratch his greyhound gave rise to both offences.

[174] The Respondent contends that in accordance with the course of conduct principle⁸⁵, which can be applied in criminal sentencing,⁸⁶ and imposing civil penalties.⁸⁷

[175] The Respondent submits that there is a clear interrelationship between the two elements of the two offences, and they were both contravened through the same conduct. As a consequence, the Respondent contends the Applicant should not be sanctioned twice for that same criminality and the Panel should only impose one sanction for the two offences.

[176] The Respondent submits that this should be for the offence under GAR 163(a)(i) because it is the more specific to the Applicant's offending.

[177] The Panel accept this submission and consider that it is appropriate in this matter to set aside the Stewards' decision on sanction and to substitute its own decision to impose a single sanction for the offence under GAR 163(a)(i) and impose no sanction for the offence under GAR 165(a).

⁸⁵ Citing *Construction, Forestry, Mining and Energy Union v Cahill* (2010) 194 IR 461 at [39] (Middleton and Gordon JJ, Middleton J agreeing with the summary of the principle at [1]).

⁸⁶ *Royer v Western Australia* [2009] WASCA 139 – which dealt with the sentencing of a defendant for numerous offences arising out of a home invasion and sexual assault.

⁸⁷ *Australian Building and Construction Commissioner v Pattison* (2022) 399 ALR 599 at [96]-[97] (Kiefel CJ, Gageler, Keane, Gordon, Steward, and Gleeson JJ).

[178] This leaves the issue of what constitutes the appropriate penalty to be imposed.

Principles and factors relevant to imposing a sanction

[179] The Respondent submits that the primary purpose of imposing sanctions under the Rules of Racing is protective. It is not about punishment.⁸⁸ The Respondent contends it is about protecting public confidence in, and the integrity of, the sport of greyhound racing.⁸⁹ Deterrence both specific and general-is also relevant.⁹⁰

[180] The Respondent submits that the Panel ought to consider the following factors in determining the appropriate penalty:

- (a) the nature of the offence.
- (b) the extent of the offence.
- (c) the circumstances of the offence.
- (d) Mr Evans' history.
- (e) Mr Evans' remorse, or lack thereof; and
- (f) any other mitigating factors.

[181] The Panel consider that these are relevant factors to consider in determining the penalty to be imposed upon the Applicant.

Nature of the offence

[182] The Respondent submits that the offence of engaging in corrupt conduct in connection with greyhound racing is likely to harm the integrity of greyhound racing. Taking bribes that affect the running of a race is unacceptable behaviour, completely inconsistent with protecting the public confidence in the industry. In fact, it erodes that very confidence.

[183] The Panel accept that the receiving of bribes for the purpose of manipulating the outcome of a race in some way is conduct that strikes at the very heart of the integrity of the sport of racing. It is conduct that is likely to cause members of the community to view the racing industry as a whole in a negative light. This type of conduct is clearly one that brings the industry into disrepute, and it is likely to significantly damage the reputation of the industry and those who participate in it.

[184] It is conduct which warrants a significant penalty for the purposes of both specific and general deterrence and to protect the reputation and integrity of the sport.

Extent of the offence

⁸⁸ *NSW Bar Association v Evatt* (1968) 117 CLR 177 at 183-4 (the Court: Barwick CJ, Kitto, Taylor, Menzies, and Owen JJ).

⁸⁹ *Michelle Russell v Racing New South Wales* (unreported, Racing New South Wales Appeal Panel, 15 July 2021) at [33]. See also section 3(1) of the Racing Integrity Act 2016 (Qld) which sets out the main purposes of the Act.

⁹⁰ *Re: Desleigh Forster* (unreported, Queensland Racing Appeals Panel, 3 May 2023) at [52] (Chairperson O'Brien AM; Deputy Chairperson O'Neill, Panel Member Guppy).

[185] In context, the Respondent submits that when the amount of the \$600.00 bribe is compared to the prize money available for winning the race, that being \$1,400.00, the Applicant received almost half of the winning prize money for simply scratching Uncle Charlie from the race.

[186] The Panel accepts this submission and is satisfied on the balance of probabilities that the bribe amount can be characterised as being significant.

Circumstances of the offence

[187] The Respondent contends that there are two surrounding circumstances of the offence that may be relevant to the sanction to be imposed.

[188] Firstly, whether the Applicant would have scratched Uncle Charlie regardless of whether he received the bribe from Mr Clarke. Secondly, the bet that the Applicant placed on Aerobic Rouge, which the Respondent submits is likely to further erode public confidence when viewed together with the offending conduct.

Would the Applicant have scratched Uncle Charlie regardless of the bribe?

[189] This issue has been considered in detail above, and the Panel rely on the findings set out above.

[190] It is the Panel's view, that the Applicant's action in accepting the payments from Mr Clarke which were paid for the purpose of securing the scratching of Uncle Charlie resulted in the Applicant engaging in corrupt conduct. The Panel notes that the view of Mr Clarke was that irrespective of whether the Applicant was going to scratch the dog, that making the payments guaranteed the scratching once the Applicant had the money.⁹¹

[191] If the Panel is in error in that finding, for the same reasons set out above, the Panel is not satisfied on the balance of probabilities that it has been established that between 5 August 2022 and 8 August 2022 that Uncle Charlie was suffering from an injury that would have prevented Uncle Charlie from racing on 8 August 2022.

[192] The Panel is not satisfied that the photographs that have been provided by the Applicant which he states were taken by members of the Queensland Police Service at the time of the raid on the Applicant's residence in early September 2022 establish that the dog had an injury which would have prevented the dog from racing.

[193] This is consistent with the fact that between 8 August 2022 and the time of the police raid Uncle Charlie had in fact raced on numerous occasions.

[194] Further, those photographs (given the date that they were taken) could not provide probative evidence of there being an injury to Uncle Charlie in the timeframe between 4 August 2022 and 8 August 2022.

[195] The Panel is only left with the uncorroborated evidence of the Applicant to the Stewards' Inquiry that Uncle Charlie did in fact have an injury which would require him to be scratched.

[196] Given the concerns expressed above about the reliability of the Applicant's evidence, the Panel does not accept the uncorroborated evidence of the claimant on this issue.

⁹¹ See transcript of statement of Andrew Clarke, 13 March 2023, In.81-87.

The Applicant's bet on Aerobic Rouge

[197] The Respondent's sanction submissions record that the Applicant placed a \$200.00 bet on Aerobic Rouge to win the race. It was paying \$7.50.⁹²

[198] Consequently, the Applicant stood to win \$1,500.00 after Aerobic Rouge won the race.

[199] The Respondent contends that in those circumstances, the Applicant's bet, paired with accepting a bribe to scratch his dog, so that Aerobic Rouge could race and win, may further impact the public confidence in the greyhound racing industry.

[200] The Panel also accepts the accuracy of this submission and finds that a strong sanction is justified in these circumstances.

The Applicant's history

[201] The Respondent concedes that the Applicant has a limited history of contravening the predecessor to the GAR. The Respondent's submission records between 9 May 2020 and 20 April 2022 the Applicant committed five offences none of which related to corruption.⁹³

The Applicant's lack of remorse

[202] The Respondent submits that the Applicant has shown no contrition or remorse for the offence. To the contrary, the Respondent contends that in the face of a strong case against him, he has maintained his innocence even after being found guilty of the offences.

[203] The Respondent submits that this is a reason supporting a strong sanction when considered together with the nature of the offence – being one of dishonesty, where there is no remorse or contrition shown, ground a strong need for specific deterrence so that the Applicant does not engage in similar conduct in the future.

Other mitigating factors: The letters of support.

[204] The Respondent contends that because the character references do not confirm that the respective authors were aware that the Applicant had been found guilty of corruption, an offence that clearly goes to a person's character, they can be afforded no weight by the Panel.

[205] The Respondent further submits that they are inconsistent with the Panel's finding that the Applicant is guilty of corrupt conduct.

[206] To the extent that the letters of support have been relied upon to bolster the Applicant's case on liability, that is, to support a submission that in light of his previous long-standing good character the Panel should find that it is implausible that he would engage in corrupt conduct, the Panel accepts the submissions of the Respondent and gives the letters of support no weight given the failure of the authors to confirm that they are aware of the true circumstances of the offending behaviour.

⁹² Document 8, Transcript – Matt Evans Interview, p.7 In 166.

⁹³ The Applicant's Disciplinary History.

[207] To the extent that the letters of support are relied upon as a mitigating factor, although the Respondent's criticisms still apply, the Panel is prepared to afford the letters of support some limited weight as mitigating factors.

Comparative provided by the Respondent

[208] At the hearing on 18 August 2023 the Respondent provided the Panel with one comparative decision from the Greyhound Welfare & Integrity Commission in the matter of *Allan Ivers*⁹⁴

[209] In that matter, Mr Ivers was charged with two charges of offering to accept a bribe to scratch a dog from two separate races. He was also charged with two charges of having placed various bets on behalf of a minor.

[210] Mr Ivers pleaded guilty to those four charges (a fifth charge was withdrawn by the Stewards).

[211] Mr Ivers was disqualified for a period of two years.

[212] The Respondent provided further submissions on sanction which addressed the above decision. The submission notes that the two relevant offences related to the objectively less serious conduct of merely making offers to scratch a greyhound – not actually accepting an amount. The Respondent notes, in effect attempted bribery, rather than bribery.

[213] The further submission on sanction notes that the decision does not identify whether Mr Ivers offered to accept a specific amount of money to scratch his greyhounds. It merely states that he made offers. It also did not set out Mr Ivers' antecedents – other than his length of time in the industry.

[214] As a consequence, the Respondent concedes that the matter has limited utility to the Panel.

[215] In relation to the matter of *Mallia* that the Applicant relies upon, the Panel considers that it is also of limited utility in the determination of the appropriate penalty because of the significant factual differences between that matter and the current matter.

[216] In *Mallia* the matter again did not involve the offer and acceptance of a cash payment. This is a significant distinguishing factor which confirms that the *Mallia* matter falls into a lower range than the Applicant's position.

[217] Ms Mallia pleaded guilty to the charges, the Applicant has not. Ms Mallia would have been entitled to a discount on the penalty to be placed upon her. The Respondent has not entered an early plea and therefore will not receive the potentially significant benefit of a discount.

[218] The other distinguishing factor about *Mallia* was the fact that Ms Mallia provided medical evidence apparently establishing that she was suffering from a psychological condition at the time that the offending behaviour occurred.

[219] Those distinguishing factors may well explain why Ms Mallia received a penalty of a six-month suspension and a fine.

[220] The Panel considers that neither of the comparative decisions provided by the parties is of significant assistance in determining the penalty to be applied in the present case.

Discussion

⁹⁴ Unreported, Greyhound Welfare & Integrity Commission, 28 February 2023.

[221] The Panel notes that the main purposes of the *Racing Integrity Act 2016* as set out in section 3(1) of the Act are:

- (a) to maintain public confidence in the racing of animals in Queensland for which betting is lawful; and
- (b) to ensure the integrity of all persons involved with racing or betting under this Act or the Racing Act; and
- (c) to safeguard the welfare of all animals that are or have been involved in racing under this Act or the *Racing Act*.

[222] In this matter both of the sub-purposes identified in sub-paragraphs (a) and (b) of section 3(1) of matter of the Act are engaged and require in the Panel's view a significant penalty to be imposed.

[223] The Panel takes into account the following mitigating factors in favour of the Applicant:

- (a) The Applicant's relatively clear disciplinary history;
- (b) The Applicant's otherwise good character as demonstrated by the letters of support he has provided;
- (c) The length of time that the Applicant has been involved in the industry;
- (d) The financial impact on the Applicant's family of a lengthy period of suspension or disqualification.

[224] The Panel takes into account the following aggravating factors:

- (a) The Applicant did not plead guilty to the charge and therefore loses the benefit of a discount on the proposed penalty;
- (b) The lack of remorse shown by the Applicant;
- (c) The seriousness of a breach of GAR 163(a)(i);
- (d) The effect of an allegation of this nature involving the payment of a bribe on the image of greyhound racing;
- (e) The duty of Racing Integrity Commission to ensure that the integrity of the sport is maintained. It is fundamental to the integrity of racing that the outcome of races are not manipulated in any manner;
- (f) The Applicant also benefitting financially from betting on Aerobic Rouge when combined with the Applicant taking a bribe to scratch Uncle Charlie from the race. Those circumstances require the imposition of a significant penalty to specifically deter the Applicant from engaging in such conduct in the future;
- (g) The requirement that the penalty imposed also act as a general deterrent for other industry participants.

[225] The Panel confirm and support the observations of Thomas J, President in paragraphs [24] and [25] of *Queensland Racing Integrity Commission v Gilroy*⁹⁵ where his Honour stated:

⁹⁵ [2016] QCATA 146 at [24].

[24] A key consideration in determining penalty is to maintain the integrity of the industry as a whole and to demonstrate to participants in the industry and the public, that behaviour which breaches the rules will not be tolerated. There is a need to deter participants in the industry from acting in a way that is in breach of the rules, which have been formulated to achieve the purposes which include: maintenance of public confidence, ensuring the integrity of all persons involved in the industry, and safeguarding the welfare of all animals involved in racing.

[226] The Panel is therefore satisfied that it is appropriate in the circumstances to impose a single sanction for the offence under GAR 163(a)(i) and that a penalty of a 24-month disqualification is appropriate in the circumstances.

Statement under 252AH(3)

[227] The Panel notes its requirement to make a finding in matters where disqualification action is taken being reliant on one of the factors noted in Section 252AH, namely:

252AH Decision of Panel

....

(3) If the Panel's decision includes the taking of disqualification action against the Applicant, the Panel

must decide whether the action is taken because of a serious risk caused to—

- (a) the welfare or health of an animal; or
- (b) the safety of any person; or
- (c) the integrity of the Queensland racing industry.

[228] The Panel refers to the purposes of the Act as outlined in Section 3 which includes maintaining public confidence in the racing of animals, to ensure the integrity of all persons involved with racing or betting and to safeguard the welfare of all animals involved. It is Imperative to meeting these purposes to ensure that racing activities and that the outcomes of races are not tainted by corruption.

To do otherwise clearly undermines the public's confidence in racing and significantly detracts from the integrity of the sport.

[229] Accordingly, the Panel considers a serious risk is caused to integrity of the Queensland racing industry such as to warrant the imposition of the disqualification action in the circumstances of this case in accordance with section 252AH(3)(c).

Human Rights Act 2019

[230] The Panel recognises the need for regard to be had of the *Human Rights Act 2019* in circumstances where it intends to impose a period of disqualification. Particularly, any disqualification needs to be 'reasonable and demonstrably justifiable'. The Panel has taken into account the matters noted in section 13 of the *Human Rights Act* and is satisfied that the facts and circumstances of this matter are

such that a period of disqualification is reasonable and justified.

Orders

[231] The decision of the Panel is to set aside the racing decision made on 25 July 2023, and to substitute a decision that:

- (a) **Charge One** – GAR 163(a)(i) – the decision of the Panel is to impose a twenty-four month disqualification commencing on 13 March 2023 and ending on 11 March 2025.
- (b) **Charge Three** – GAR 165(a) – The Panel does not impose a sanction for this offence.

Appeal

Panel decisions are appealable to QCAT in relation to a disqualification action and only on a question of law. A completed appeal application must be lodged to QCAT within 28 days of this Racing Appeal Panel decision.

To access the approved application form to appeal this decision or for more information about QCAT please visit their [website](#).

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