

**IN THE RACING APPEALS TRIBUNAL**

**SOPHIE BILAL**  
Appellant

**GREYHOUND WELFARE AND INTEGRITY COMMISSION**  
Respondent

**REASONS FOR DECISION**

**TRIBUNAL:** The Honourable G J Bellew SC

**DATE OF HEARING:** 22 February 2024

**DATE OF DECISION:** 28 February 2024

**APPEARANCES:** Mr D Cleverley for the Appellant  
Dr A Groves for the Respondent

**ORDERS**

- 1 The Appeal is upheld.
- 2 The determination of the Respondent dated 9 November 2023 refusing the Appellant's application for registration as a greyhound Owner/Trainer on the basis that she is not a fit and proper person is quashed.
- 3 The Tribunal notes the indication given by the Respondent's representative at the hearing that the Respondent will now proceed to effect the Appellant's registration.
- 4 The appeal fee is to be refunded.

## **BACKGROUND**

1. By an application dated 22 August 2023,<sup>1</sup> Sophie Bilal (the Appellant) sought registration with the Greyhound Welfare and Integrity Commission (the Respondent) as a greyhound Owner/Trainer.
2. By letter dated 9 November 2023, the Respondent advised the Appellant that her application had been refused. The reasons for that decision were expressed in the following terms:<sup>2</sup>

*The reason for refusing your application for registration as a Greyhound Owner Trainer is:*

- *Under the fit and proper person framework, criteria 13 – applicant is involved in or associated with organised crime.*
3. The reference to the “fit and proper person framework” (the framework) is a reference to a guide published by the Respondent as to some of the criteria which may be applied in determining whether an applicant for registration is a fit and proper person, and the likely outcome thereof. Further reference is made to the framework below.
  4. On 15 November 2023, the Appellant filed a Notice of Appeal against the Respondent’s decision. The appeal was heard on 22 February 2024, at which time the Tribunal reserved its decision. For the purposes of the hearing the Tribunal was provided, in advance, with an Appeal Book containing all relevant material, and thanks the Respondent’s representative for attending to its preparation.

## **THE NATURE OF THE PRESENT APPEAL AND THE ONUS OF PROOF**

5. Before addressing the appeal itself, there is a preliminary procedural matter which was raised during the course of the hearing and which is in issue. It concerns the question of which party bears the onus of proof on the hearing of an appeal of this

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<sup>1</sup> AB 70 and following.

<sup>2</sup> AB 4.

nature. Consideration of that question must begin by reference to the governing legislation.

6. Section 16 of the *Racing Appeals Tribunal Act 1983* (NSW) (the Act) makes provision for the procedure to be followed in an appeal and is in the following terms:

**16 Procedure on Appeal**

- (1) *An appeal to the Tribunal is to be by way of a **new hearing** and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal* (emphasis added).

7. Section 17A of the Act sets out the powers of the Tribunal when determining an appeal:

**17A Determination of appeals relating to greyhound racing or harness racing**

- (1) *The Tribunal may do any of the following in respect of an appeal under s 15A or 15B—*

(a) *dismiss the appeal,*

(b) *confirm the decision appealed against or **vary the decision by substituting any decision that could have been made by ... the Greyhound Welfare and Integrity Commission** .....*

(c) *make such other order in relation to the disposal of the appeal as the Tribunal thinks fit.*

- (2) *The decision of the Tribunal is final and is taken to be a decision of the person or body whose decision is the subject of the appeal* (emphasis added).

8. The Appellant submitted that, given the nature of the appeal, the Respondent bore the onus of proof. The Respondent submitted the reverse.

9. I have not been able to find, and have not been referred to, any previous decision of the Tribunal in which this issue has been fully considered. For the purposes of advancing the Appellant's case, Mr Cleverly referred me to other decisions in

which the Tribunal (differently constituted) appears to have assumed that the onus was on the Appellant in an appeal involving an issue of fitness. For example, in a matter of *Scott*<sup>3</sup> the Tribunal commented that the Appellant “*carried the onus to satisfy the Tribunal he is a fit and proper person....*”. Similarly in a matter of *Gallagher*<sup>4</sup> the Tribunal concluded that the Appellant had “*satisfied the Tribunal that he [was] a fit and proper person*”. Conversely, there appear to have been occasions on which the Tribunal seems to have taken the opposite view.<sup>5</sup>

10. Leaving aside any inconsistency in approach, and to the extent that the Tribunal has previously concluded (at least inferentially) that the onus lies on the Appellant in an appeal of this nature, I respectfully disagree. In my view, the onus remains on the Respondent, as it was at first instance, to establish that the Appellant is not a fit and proper person. I have reached that conclusion for the following reasons.

11. First, such a conclusion is entirely consistent with s 16 of the Act, which makes it clear that an appeal will be by way of a hearing *de novo*. A hearing of that nature is one in which the Tribunal exercises the original jurisdiction of the decision maker (i.e., the Respondent) and in which the jurisdiction of the Tribunal extends not only to any issue which was before the Respondent, but to any issue which might have arisen in the meantime.<sup>6</sup> The proposition that the Appellant bears the onus of proof therefore runs entirely contrary to both the provisions of s 16 generally, and the nature of a hearing *de novo* in particular.

12. Secondly, such a conclusion is fortified by the provisions of s 17A(1)(b) of the Act, the effect of which is that on the hearing of this appeal, the Tribunal stands in shoes of the Respondent. In light of that provision, it would be entirely inconsistent for the Respondent to bear the onus at first instance (which is accepted to be the case) but to reverse that position for the purposes of appeal,

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<sup>3</sup> A decision of 15 July 2015 at p. 15.

<sup>4</sup> A decision of 18 August 2017.

<sup>5</sup> See for example the decision in *Wright v Greyhound Welfare Integrity Commission* dated 11 October 2022 at [4].

<sup>6</sup> *Harris v Caladine* (1991) 172 CLR 84; [1991] HCA 9 at 96.

in circumstances where the Tribunal has, on the determination of the appeal, precisely the same powers as the Respondent had at first instance.

13. Thirdly, such a conclusion is supported by a number of authorities decided specifically in the context of hearings *de novo* in which, at first instance, the relevant regulators had asserted that the respective appellants were not fit and proper persons. Those authorities are directly applicable to the present case.<sup>7</sup>

14. In the circumstances of the present case it is not necessary for me to address the test of fitness. If the Respondent establishes its case, then it would follow on any view that the Appellant was not a fit and proper person to be registered. The issue in the present case is whether, on one or other of the bases on which the Respondent relies, the case that the Appellant is not a fit and proper person has been made out.

#### **THE RESPONDENT'S CASE**

15. Section 47 of the *Greyhound Racing Act 2007* (NSW) (the Greyhound Act) is contained within Division 2 of Part 5 which deals with the control and regulation of the greyhound industry. It is in the following terms:

##### **47 General provisions**

*(1) The Commission is to exercise its registration functions under this Division so as to ensure that any person registered by the Commission is a person who, in the opinion of the Commission, is a fit and proper person to be registered (having regard in particular to the need to protect the public interest as it relates to the greyhound industry).*

*(2) Without limiting subsection (1), a person is not to be registered if the person has a conviction and the Commission is of the opinion that the circumstances of the offence concerned are such as to render the person unfit to be registered.*

*(3) This section does not limit any provisions of the greyhound racing rules relating to the exercise of the registration functions of the Commission.*

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<sup>7</sup> See for example *Legal Practitioner v Council of the Law Society of the ACT* [2011] ACTSC 110 at [21]-[27] and the authorities cited therein; *Stanoeski v The Council of the Law Society of NSW* [2008] NSWCA 93 at [58]-[64]; *Connop v Law Society of the Northern Territory* [2016] NTSC 38 at [17]-[19].

(4) In this section—

**"conviction"** has the same meaning as in the Criminal Records Act 1991 but does not include a conviction that is spent under that Act.

16. Table 1 of the framework is headed:

*Guidance to applicants regarding the Commission's application of 'Fit and Proper' person test for registration as greyhound racing industry participant.*

17. The framework includes the following entry which, although not numbered, is clearly Clause 13 referred to in the Respondent's letter to the Appellant advising of the decision:

<b>Criminal history or background of applicant</b>	<b>Commission's likely position</b>
Applicant is involved in or associated with organised crime.	Application will be refused.

18. With all of these matters in mind, it is important to make plain the Respondent's case, namely that the Appellant is not a fit and proper person to be registered as an Owner/Trainer of greyhounds because she is:

- (a) *involved in* organised crime; or
- (b) *associated with* organised crime.

19. To be "involved in" something in this context means to have a part, or actively participate, in something. To be "associated with" something, is to be connected to it.<sup>8</sup>

20. Bearing in mind the Respondent's case as I have stated it above at [18], it should be noted that the submissions filed by the Respondent dated 1 December 2023, included the following:

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<sup>8</sup> *Collins English Dictionary.*

....registration of an applicant who is **known to be associated with persons charged with serious criminal offences and/or who are members of OMCGs** would have a deleterious effect on public confidence in the greyhound industry (emphasis added).

21. It needs to be made clear that the emphasised passage is **not** the Respondent's case, and is not the case that the Appellant is required to meet. The Respondent's case is as I have previously articulated it.

22. In order to find in the Respondent's favour on this appeal I must reach a state of reasonable satisfaction as to one or other of the bases on which the case is brought. Both allegations against the Appellant are of the utmost gravity. That is not meant, in any way, as a criticism of the Respondent. The simple fact is that where a case is based upon such a serious allegation, and where the resolution of it may result in serious consequences for the person in question, I must be reasonably satisfied that the allegation is made out. In determining whether I am so satisfied, I must scrutinise the evidence closely, and I must bear in mind that such a case cannot be established by inexact proof, or the drawing of indirect inferences.<sup>9</sup>

### **THE EVIDENCE**

23. It is common ground between the parties that the Appellant has no criminal history whatsoever.<sup>10</sup> The evidence relied upon by the Respondent to prove that the Appellant is involved in, or associated with, organised crime, and is therefore not a fit and proper person to be registered, is largely constituted by an email dated 27 September 2023 from Mitchell Clark, an officer of the NSW Police Force, to the Respondent. It is evident from that email that on 20 September 2023, officer Clark had visited premises in Wollongorang (the premises) at which the Appellant's father resides, but at which (it is agreed) the Appellant does not.

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<sup>99</sup> See *Briginshaw v Briginshaw* (1938) 60 CLR 336; [1938] HCA 34 at 360-362 per Dixon J.

<sup>10</sup> See Certificate at AB 75.

24. It is appropriate at this point to set out the terms of that email in full (omitting the formal parts):

*On the 20<sup>th</sup> of September 2023 we attended 6237 Federal Highway Wollogorang to conduct an FPO<sup>11</sup> compliance search on Ali Bilal the defacto partner [sic] Chloe Bilal. During the execution of the search warrant Nathan Lazarus, born 15 January 1993 was charged with two offences being assault police officer in execution of duty and hinder or resist police officer. H78254211 relates, he is set to attend Goulburn Local Court on the 25/10/2023 for mention. Lazarus is a confirmed FINKS OMCG member.*

*The location is used as a kennel facility for dog breeding and greyhound training by Chloe Bilal. Prior to the execution of the search Police Rescue Squad used a drone to conduct surveillance of the property, another male, Scott Janiak was seen to be handling the Greyhounds. Janiak is not a registered greyhound handler. Janiak is also a confirmed FINKS OMCG member and has extensive criminal antecedents.*

*Chloe Bilal was the search. Police located numerous items of interest in the main dwelling house, including what is believed to be PEDs<sup>12</sup> and steroids. Chloe stated that only her and Ali Bilal stay in the dwelling. A FINKS OMCG vest was in the wardrobe of the main bedroom, this is believed to belong to Ali Bilal. Ali Bilal is the president of the FINKS OMCG interstate chapter and resides at this address.*

25. During the course of the hearing Dr Groves, who appeared for the Respondent, accepted<sup>13</sup> (leaving aside the question of the weight that might be attached to them) that the following propositions emerge from the evidence:

1. Ali Bilal, the Appellant's father, and his de facto partner lived at the premises at the time of the police attendance.
2. The Appellant does not live at the premises, and did not live there at the time of the police attendance.
3. The police attended the premises on 28 September 2023 for the purposes of ascertaining the compliance, by Ali Bilal, with the conditions of a Firearms Prohibition Order which had been made against him.

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<sup>11</sup> "FPO" is an abbreviation for *Firearms Prohibition Order*.

<sup>12</sup> PED is an abbreviation for performance enhancing drugs.

<sup>13</sup> T 14.4 and following.



4. When police visited the premises, and following an altercation, Nathan Lazarus was charged with offences of assaulting police and resisting arrest.
5. Nathan Lazarus, on the assertion of the police, is a member of the Finks OMCG, but that assertion is not corroborated.
6. Scott Janiak was seen handling greyhounds at the premises on the day of the police attendance.
7. Scott Janiak, on the assertion of the police, is a member of the Finks OMCG and has a criminal history, but neither assertion is corroborated.
8. Police located material at the premises which they “believed” to be PEDs and Steroids, but there is no evidence of the results of any analysis of that material.
9. In a search of a bedroom, what are generally referred to as the “colours” of the FINKS OMCG were found in the form of a vest in the wardrobe, the inference being that this belonged to Ali Bilal.
10. Ali Bilal, on the assertion of the police, is the President of the FINKS OMCG interstate chapter, but that assertion is not corroborated.

## **SUBMISSIONS OF THE PARTIES**

### **Submissions of the Appellant**

26. It was submitted by Mr Cleverley on behalf of the Appellant that on a proper construction of s 47 of the Greyhound Act, the principal focus in terms of the registration of participants (or proposed participants) in the greyhound racing industry, and associated determinations of fitness and propriety, was upon whether the person in question had a criminal history. As I understood it, his submission was that in a case such as this, where the Appellant has no criminal history at all, s 47 was somehow to be “read down”, such that there was a less stringent test of fitness to be applied.

27. I am unable to accept that submission. The use of the words “*without limiting subsection (1)*” which appear at the commencement of subsection (2) make it abundantly clear that a conclusion that a person is not fit and proper may be made

even if a person does not have a conviction for the commission of a criminal offence. Whilst the absence of such a conviction is obviously a factor to be taken into account, it does not lead to some different or less stringent test being applied.

28. Mr Cleverley also referred me to a number of previous determinations in which the Tribunal concluded the participant concerned was a fit and proper person. He submitted that in each of those determinations, the Tribunal had allowed the appeal in circumstances where the case of the respective participant was “less compelling” than that of the Appellant. In doing so, Mr Cleverley was inviting me to undertake some kind of comparative exercise and conclude that the same outcome was warranted in the present case. The difficulty with such an exercise is that cases are necessarily fact specific. Moreover, analysing such material by attempting to elevate factual circumstances into unifying legal propositions reflects an incorrect approach. For those reasons, the decisions to which I was referred were of limited assistance.

29. Mr Cleverley accepted that the evidence tended to establish that *other* persons who were identified may have, or may have had, some involvement in or association with, organised crime. However, he submitted that there was simply no evidence which established, to the required standard, that *the Appellant* was so involved or associated. Accepting that Ali Bilal is the Appellant’s father, and that it was therefore open to infer the existence of some association between them by virtue of that relationship, Mr Cleverley submitted there was nothing to suggest that such association went beyond being familial in nature. Specifically, he submitted that there was nothing to suggest that from the point of view of the Appellant, such relationship extended to an involvement in, or association with, organised crime.

30. Mr Cleverley further submitted that, properly viewed, the Respondent was seeking to attribute responsibility to the Appellant for the activities of her father, in circumstances where the evidence fell substantially short of establishing *her*

involvement in, or association with, those activities. In this respect, Mr Cleverley emphasised that:

- (i) the Appellant did not live at the premises;
- (ii) the Appellant's only connection to those premises was the fact that her father lived there;
- (iii) there was no evidence of the precise nature and extent of the Appellant's relationship with her father; and
- (iv) there was no evidence of any association between the Appellant and either Nathan Lazarus or Scott Janiak.

31. In all of these circumstances, Mr Cleverley submitted that the Respondent had not made out its case, and that the appeal should be upheld.

#### **Submissions of the Respondent**

32. Whilst Dr Groves did not abandon that part of the Respondent's case which alleges that the Appellant is not a fit and proper person because she is involved in organised crime, it might fairly be said that her submissions focussed upon the alternative proposition that the Appellant is associated with such activity. That case was put in the following terms at the hearing:<sup>14</sup>

*An association with organised crime must therefore involve an association with people involved in organised crime .... [T]hat association in the case of the Appellant is by virtue of the fact that her father, Mr Bilal, primary occupant of those premises, appears to be involved in organised crime.*

33. Dr Groves submitted that in the circumstances of this case, an association existed between the Appellant and her father, and, in a broader sense, between the Appellant and the premises from which serious criminal activity was being perpetrated. Dr Groves further submitted that the evidence clearly established that the Appellant was associated with members of the FINKS OMCG including

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<sup>14</sup> T 16.32 – T 16.37.

her father, and that this was sufficient to establish the Appellant's association with organised crime.

34. Dr Groves further submitted that from a public perspective, a dim view would be taken of the conduct which was occurring out at the premises at the time of the police attendance, and that this gave rise to a necessity to assess all of the evidence against a background of the fundamental need to protect the integrity of greyhound racing.

### **CONSIDERATION**

35. There are three relevant propositions which are unassailable.

36. The first, is that in when considering and determining an issue of whether a person is fit and proper to hold a registration as an Owner/Trainer, it is necessary to bear in mind the fundamental need to protect the integrity of the greyhound racing industry.

37. The second, is that if a person who is proven to be involved in, or associated with, organised crime was registered as a participant in the greyhound racing industry, the general public would be likely to have a lack of confidence in the integrity of the industry as a whole.

38. The third, is that any person who is proven to be involved in, or associated with, organised crime is most unlikely, for that reason alone, to be regarded as a fit and proper person to hold such a registration.

39. All of that said, and however unassailable those propositions might be in and of themselves, they do not relieve the Respondent of the burden of proving that the Appellant is not a fit and proper person because she is involved in, or associated with, organised crime. If one or other of those cases is not made out, then the Appellant must succeed.

40. The following observations can be made in relation to the evidence:

1. It is common ground that the Appellant has no criminal history.
2. It is common ground that Ali Bilal is the Appellant's father.
3. There is no evidence of the extent of the relationship between the Appellant and her father.
4. The Appellant's father lives at the premises.
5. The Appellant's father was, at the time of the police attendance at the premises, subject to a Firearms Prohibition Order.
6. There is nothing to suggest that the Appellant was subject to that order, or that the Appellant was involved in the commission of any offence(s) which resulted in the order being made.
7. There is no evidence whatsoever of any relationship between the Appellant and Nathan Lazarus.
8. There is no evidence whatsoever of any relationship between the Appellant and Scott Janiak.
9. The Appellant has made it clear that if she succeeds in gaining registration she will not be training greyhounds from the premises.<sup>15</sup>
10. A jacket bearing the FINKS OMCG colours was found in a bedroom in the premises, and is (inferentially) owned by the Appellant's father.

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<sup>15</sup> T 14.3.

41. Further, and bearing in mind the observations I have already made as to the necessity to closely scrutinise the evidence and the impermissibility of drawing indirect inferences, the assertions that:

- (a) Nathan Lazarus is a member of the FINKS OMCG;
- (b) Scott Janiak is a member of the FINKS OMCG;
- (c) Scott Janiak has a criminal history; and
- (d) the Appellant's father is the President of the FINKS OMCG

are entirely uncorroborated, and their basis is entirely unidentified.

42. Moreover, and in particular, the assertions in (a), (b) and (c), even if they could be established to a point of reasonable satisfaction, are of little or no significance, given the absence of any evidence of a relationship between the Appellant and either person.

43. In the course of the hearing, Dr Groves submitted that the Respondent did not "allege that [the Appellant] is a criminal".<sup>16</sup> However, in circumstances where the first basis on which the Respondent puts its case is that the Appellant is "involved in organised crime", there can be no doubt that the Respondent **does** make such an allegation. However, for the reasons that follow, I am not satisfied that that case, or the alternative case put by the Respondent, is made out.

44. To begin with, and even if (going beyond what was said in *Briginshaw*) I were to infer that:

- (i) the relationship between the Appellant and her father is a close one;
- (ii) the Appellant's father is a member of, and a person in authority in, the FINKS OMGC; and
- (iii) the Appellant's father is, as a consequence of that position, involved in organised crime,

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<sup>16</sup> T 15.45.

it would not follow, on the basis of those factors alone, that the *Appellant* was similarly involved. To so conclude would be to attribute responsibility to the Appellant for the activities of her father solely on the basis of their relationship, in circumstances where there is not a scintilla of evidence which would establish that the Appellant even *knows* of her father's involvement in any such activity.

45. If one were to take such a reasoning process to its logical conclusion, it would mean that on each and every occasion when a parent was proven to be involved in some form of criminal activity, his or her child would also be deemed to be involved by virtue of nothing more than their familial relationship. A moment's reflection on that proposition exposes its insurmountable shortcomings.

46. Further, and even if it is accepted that a person's association with organised crime *can* stem from an association with people who are involved in such crime, the latter association does not, of itself, establish the former. There is a clear distinction to be drawn between associating with *a person* on the one hand, and associating with *activities in which that person may be involved* on the other.

47. The reasoning process on which the Respondent's case is based might reasonably be described as one of guilt by association. In other words, the Respondent seeks to establish its case by virtue of nothing more than the fact that the Appellant is Ali Bilal's daughter, absent any evidence of the Appellant's knowledge of, much less involvement in or association with, any criminal activity in which Ali Bilal might be involved, organised or otherwise. Apart from being inherently flawed and entirely unfair to the Appellant, such a process of reasoning also runs completely contrary to modern day notions of social and familial independence.

#### **CONCLUSION AND ORDERS**

48. For the reasons I have expressed, I am not satisfied, on the basis of either case brought, that the Respondent has established that the Appellant is not a fit and

proper person to be registered as a greyhound Owner/Trainer. Accordingly, the Appellant must succeed on the appeal.

49. In the course of the hearing Dr Groves made it clear that in the event that I found in favour of the Appellant, the Respondent would act in accordance with such a finding and would proceed to register the Appellant as an Owner/Trainer.<sup>17</sup> I propose to make orders in accordance with that stated position.

50. Given that the Appellant has been successful, the appeal fee should be refunded.

51. I make the following orders:

1. The Appeal is upheld.
2. The determination of the Respondent dated 9 November 2023 refusing the Appellant's application for registration as a greyhound owner/trainer on the basis that she is not a fit and proper person is quashed.
3. The Tribunal notes the indication given by the Respondent's representative at the hearing that the Respondent will now proceed to effect the Appellant's registration.
  
4. The appeal fee is to be refunded.

**THE HONOURABLE G J BELLEW SC**

**28 February 2024**

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<sup>17</sup> At T 17.40 – T 17.44.