

IN THE RACING APPEALS TRIBUNAL

JOSEPH SCERRI
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

REASONS FOR DETERMINATION OF THE APPELLANT'S APPLICATION PURSUANT TO CLAUSE 20 OF THE RACING APPEALS TRIBUNAL REGULATION 2024

INTRODUCTION

1. By a Notice filed with the Appeals Secretary on 11 July 2025, Joseph Scerri (the Appellant) has appealed against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) of 4 July 2025 imposing an interim suspension pursuant to r 169(5)(c) of the *Greyhound Racing Rules*. The Respondent's determination was said to be one made "*pending the finalisation of [the Respondent's] inquiry into a positive substance matter relating to a greyhound trained by [the Appellant]*".
2. The Notice of Appeal was accompanied by an application for an order for a stay pursuant to cl 20(1) of the *Racing Appeals Tribunal Regulation 2024*.
3. On 28 July 2025, having read the material and submissions filed by each party, I determined that the stay should be granted and indicated that my reasons for doing so would be published in due course. Those reasons now follow.

THE CASE AGAINST THE APPELLANT

4. There appears to be little factual dispute in terms of the case which is brought against the Appellant. That case may be summarised as follows.
5. On 27 March 2025 the Appellant, who is registered with the Respondent as a breeder, public trainer and stud master, attended the Wentworth Park racetrack where he presented *Tomorrow Wendy* (the greyhound) to compete in race 2. The greyhound won the race, following which urine and hair samples were taken for analysis.
6. On 22 May 2025, the Respondent advised the Appellant that it had received notification that a permanently banned prohibited substance, namely *Testosterone Propionate* (the substance) had been detected in the hair sample which had been taken from the greyhound. The Respondent further advised that an enquiry had commenced into the presence of the substance and that a confirmatory analysis would be conducted.
7. On 23 June 2025, the Respondent wrote to the Appellant advising that the presence of the substance in the hair sample taken from the greyhound had been confirmed. The correspondence further advised that the Respondent was “*considering issuing an interim suspension of [the Appellant’s licences] pending the outcome of the inquiry into this matter*” and invited the Appellant to make submissions about that proposed action by 27 June 2025. That period was later extended upon certain undertakings being given by the Appellant.
8. By correspondence of 4 July 2025, the Appellant’s Solicitor made submissions as to why the proposed interim suspension should not be implemented. Whilst it is not necessary, for present purposes, to canvass the entirety of the content of those submissions, they included a reference to the decision of this Tribunal in *Fairbairn v Greyhound Welfare and Integrity Commission*.¹ The significance of that decision in the present case is the subject of further discussion below.

¹ 1 June 2024.

9. On the same day (i.e. 4 July) the Respondent wrote to the Appellant advising him (inter alia) that it had been determined that (inter alia) an interim suspension should be imposed pursuant to r 169(5)(c) of the Rules.

THE PRINCIPLES GOVERNING THE PRESENT APPLICATION

10. There is no dispute between the parties that in order to succeed on the present application, the Appellant must establish that:

- (i) there is a serious question to be tried; and
- (ii) the balance of convenience favours the order sought being made.²

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

11. Whilst the Appellant has advanced a number of submissions in support of the proposition that there is a serious question to be tried, it is necessary, in view of the conclusion I have reached, to address only one of them. Put simply, the Appellant submits that there is a serious question to be tried as to whether the discretion conferred by r 169(5)(c) has been properly exercised. In advancing that case the Appellant relies on the previous determination of the Tribunal in *Fairbairn*, as well as the determinations in the matters of *Clarke v Greyhound Welfare and Integrity Commission*³ and *King v Greyhound Welfare and Integrity Commission*.⁴

12. As to the balance of convenience, the Appellant relies on an Affidavit of 17 July 2025 which I have read.

² See *Marshall v Greyhound Welfare and Integrity Commission* (21 December 2023) at [16].

³ 30 May 2024.

⁴ 7 July 2025.

Submissions of the Respondent

13. The Respondent's submissions did not squarely address the Appellant's reliance on the previous decisions cited above. However, it is noteworthy the Respondent's submissions did include the following:

- (13) [The Respondent] acted to impose an interim suspension on the Appellant's registration *in circumstances where the Appellant presented a greyhound which returned a positive result for a permanently banned prohibited substance.*
- (14) [The Respondent] considers *such conduct as objectively serious, as presentation offences, particularly those involving a permanently banned substance, erode and adversely affect each of [the Respondent's] objectives.*
- (15) *Further, presentation offences diminish the public's confidence in the greyhound racing industry, particularly with regard to wagering. The public must have confidence that there is a level playing field amongst competing greyhounds.*
- (16) if [the Respondent] chose not to exercise its discretion to impose an interim suspension under r 169(5)(c) in the current circumstances, *the Appellant's conduct* has the potential to impact the public's confidence in the regulator to exercise its functions, and in the industry more broadly (my emphasis in each case).

14. As to the balance of convenience, the Respondent submitted (inter alia) the following:

- (28) The objective seriousness of this matter, *being the detection of a permanently banned substance*, is such that any disadvantage to the Appellant is outweighed by the disadvantage that would be suffered by the Respondent, in that the integrity of the industry and the image of the sport would suffer significantly if a stay were granted (my emphasis).

CONSIDERATION

15. As indicated above, the issue of the nature of the discretionary power conferred under r 169(5)(c) of the Rules has been the subject of three previous determinations of this Tribunal. All of those determinations are relied upon by the Appellant.

16. The issue was first addressed in *Clarke*. The principles developed in that determination as to the nature of the power were confirmed and applied in the matter of *Fairbairn*. They were again confirmed and applied in the most recent matter of *King*. It was not suggested by the Respondent in *Fairbairn* or *King*, nor has it been suggested in the present case, that the Tribunal's determinations as to the nature of the discretion under r 169(5)(c) were in some way erroneous. There is therefore no reason not to adopt precisely the same approach as was adopted in each of those previous determinations.

17. In an effort to make the position clear, I summarise the Tribunal's position as to the exercise of the power under r 169(5)(c), as articulated in those determinations, as follows:

1. Rule 169(5)(c) permits the imposition of an interim suspension pending the outcome of (inter alia) an "enquiry", a term which is sufficiently wide to encompass a disciplinary investigation.⁵
2. Inherent in the terms of r 169(5)(c) is the proposition that carrying out the enquiry is necessary for the purpose of the Respondent being in a position to determine what, if any, further action should be instituted. The corollary of that proposition is that if the Respondent is in a position to make that determination, then there is likely to be no warrant for the exercise of the discretion to impose an interim suspension.⁶
3. In other words, the discretion to impose an interim suspension is inextricably linked to the necessity for the conduct of some further enquiry. It is the necessity for that enquiry that triggers the discretion to impose an interim suspension.⁷

⁵ *Clarke* at [28]; *Fairbairn* at [32]; *King* at [23].

⁶ *Fairbairn* at [33].

⁷ *Fairbairn* at [34]; *King* at [24].

4. The Rules do not prescribe the criteria which might otherwise inform the exercise of the discretion. An obvious, but certainly not the only, instance in which the exercise of the power under r 169(5)(c) might be appropriate would be in circumstances where there was prima facie evidence of a so-called presentation offence, but where the Respondent was awaiting the results of scientific analysis. Another might be where a criminal charge has been laid against a participant, but the view is taken that a Court should determine that charge before any determination is made as to what, if any, disciplinary action should be taken.⁸ Resort to r 169(5)(c) in a case where there exists some prima facie evidence of a breach, but where the complexity of the allegation requires some further investigation, might also be warranted.⁹
5. However, if the evidence is sufficient to bring a charge against a participant there is likely to be a strong argument that there is little or no warrant for the exercise of the discretion to impose an interim suspension, for the simple reason that there may be no identified basis on which any further inquiry is necessary.¹⁰
6. If, on the Respondent's own case, it has in its possession evidence which establishes a prima facie case against a participant for the commission of an offence, a fundamental question will arise, namely: *What is it that remains to be investigated to as to justify the exercise of the discretion to impose an interim suspension?* Where the Respondent seeks to justify the imposition of an interim suspension it is likely to be necessary for the Respondent to adduce some evidence in response to that question. A failure to do so will support a conclusion that the discretion has not been properly exercised.¹¹

18. Applying those principles to the present case, the following conclusions are open.

⁸ *Fairbairn* at [37]; *King* at [25].

⁹ *Clarke* at [31]; *King* at [23].

¹⁰ *Fairbairn* at [39]; *King* at [25].

¹¹ *Fairbairn* at [40].

19. First, there does not appear to be any dispute that the Appellant presented the greyhound to race on 27 March 2025.
20. Secondly, the Respondent has in its possession evidence of scientific analysis confirming the presence of a permanently banned substance in one of the samples taken from the greyhound immediately following the race.
21. Thirdly, it follows that on the evidence which has been made available on this application, and without making any final determination, the Respondent appears to be in a position to establish, at least to a prima facie level, the commission by the Appellant of at least one (and perhaps more than one) offence against the Rules.
22. Fourthly, a number of the submissions advanced on behalf of the Respondent¹² tend to proceed on that precise basis.
23. Fifthly, in advising the Appellant on 23 June 2025 that it was considering the imposition of an interim suspension, the Respondent indicated that such action was “*pending the outcome of the inquiry into this matter*”. Why, and in relation what issue(s), that inquiry was said to be necessary having regard to the evidence in the Respondent’s possession, was not made clear.
24. Sixthly, in those circumstances, the same question arises as that which arose in *Clarke, Fairbairn and King*, namely: *What is it that remains to be investigated so as to justify the exercise of the discretion to impose an interim suspension?* The Respondent, with the benefit of those decisions, has chosen not to adduce any evidence in answer to that question. There is an inference available in those circumstances that nothing remains to be investigated and that there is nothing preventing the Respondent from charging the Appellant with an offence.

¹² Extracted at [13] above.

25. In all of those circumstances, consistent with the Tribunal's previous determinations, there is clearly a serious question to be tried as to whether the discretion to impose an interim suspension has been properly exercised. The evidence tends to point to a conclusion that it has not.

26. I am further satisfied that the matters raised by the Appellant in his affidavit support a conclusion that the balance of convenience lies in his favour. The economic ramifications of an interim suspension are significant, as is the potential impact upon the Appellant, as well as others. I am unable to accept the submission advanced by the Respondent that these matters are outweighed by the adverse impact which would be imposed on the industry if a stay were granted. That is particularly so in the circumstances I have outlined regarding the exercise of the discretion to impose the interim suspension.

CONCLUSION

27. It was for these reasons that I concluded that the order sought by the Appellant should be granted. In the circumstances, I propose to take the same course as I did in the matter of *King*¹³ and not make any further orders at this point.

28. Finally, given that the operation of r 169(5)(c) has now been the subject of a series of decisions by the Tribunal, it may be prudent if a precis of those decisions was provided to Stewards to provide guidance in future cases where the same issues arise.

THE HONOURABLE G J BELLEW SC

29 July 2025

¹³ At [34].