Flaherty v National Greyhound Racing Club Ltd [2005] APP.L.R. 09/14

CA on appeal from the High Court, Chancery division, (Mr Justice Evans-Lombe) before The President, Scott baker LJ; Sir Peter Gibson. 14th September 2005

Lord Justice Scott Baker:

1. On 10 September 2002 the stewards of the National Greyhound Racing Club Limited ("the NGRC"), who are the appellants, found Mr Tom Flaherty, who is the respondent, in breach of the NGRC rules of racing. They directed that he should be reprimanded and fined £400. On 8 December 2004, after a hearing that had lasted some 10 days, Evans-Lombe J declared that the stewards' decision was reached in breach of the NGRC's implied obligation of fairness under the contract between the respondent and the NGRC and that the decision was of no effect. The present appeal is brought by permission of Evans-Lombe J.

Background

2. The NGRC is a company limited by guarantee, and is the body in the United Kingdom responsible for regulating the sport of greyhound racing. In 2004 the sport is said to have attracted £1.6 billion in betting. 3.7 million paying customers passed through the gates of 31 racecourses under its supervision. Wimbledon Greyhound Stadium ("WGS") is one of those racecourses and the one with which this case is concerned. The NGRC's objects include: (i) licensing greyhound racecourses, trainers and officials associated with greyhound racing; (ii) issuing the rules of racing, which is the code for regulating greyhound racing; and (iii) acting as the body responsible for the discipline and conduct of racing in England, Wales and Scotland.

3. Stewards are appointed by the NGRC to determine at an inquiry whether there has been a breach of the rules of racing by any licensee and, if so, whether to exercise any power under the rules against that person. Until he returned his licence to the NGRC just after the stewards' decision in this case, the respondent was a trainer licensed by the NGRC.

4. It was established in ***Law v NGRC*** [1983] 1 WLR 1302 that the status of the stewards was that of a domestic tribunal and that their power to impose penalties for breach of the NGRC rules derive from contract. All those who wish to take part in racing in greyhound stadia licensed by the NGRC are deemed under rule 2 to have read the rules and to have submitted themselves to such rules and to the NGRC's jurisdiction.

5. The respondent is a greyhound owner who lives in Scotland. He was the owner and trainer of a racing greyhound called Knockeevan King ("the greyhound"). On 4 May 2002 the greyhound won the first heat of the greyhound Derby, thus qualifying for the second round that took place on 11 May 2002 at the same stadium. Having won the first heat, the greyhound was one of the favourites for the event. The prize for the winner of the Derby was £75,000, but winning would also increase the greyhound's stud value. Following success in the first heat the respondent returned with the greyhound to Scotland. On the morning of 11 May the respondent set off from Edinburgh by car with his wife, bringing the greyhound with them. The greyhound had been checked, in accordance with the respondent's usual practice, by his vet, a Mr Hastie, about 50 hours before they left. The greyhound was due to run in heat number 8 at 9.15pm, which it duly did, coming last of five runners despite the fact that it was the favourite to win the race.

6. Dogs taking part in races at WGS were kennelled in a building known as the paddock. The individual kennels in which the dogs were placed were in an area observed by security cameras. The door to each kennel was locked as soon as a greyhound was put in it. The main panel of the door of each kennel was comprised of a fine wire mesh enabling the dog to breathe but preventing access to it by a stranger. The time fixed for kennelling the greyhound was 6.15pm. The respondent and his wife arrived between 5pm and 6pm and their evidence to the inquiry was that prior to kennelling the greyhound urinated and defecated and seemed generally healthy. As was the ordinary practice, there was an inspection by the duty vet before the greyhound was kennelled. This was a fairly cursory inspection whose object was to ensure that all dogs taking part in races showed no signs of being unfit to do so, in particular that they showed no symptoms of disease or lameness. The greyhound passed the inspection and was kennelled between 6.15 and 6.30pm.

7. The respondent and his wife returned to the kennel at about 9pm to get ready for the race. The NGRC has a programme of random testing of greyhounds for the presence of drugs at races. The practice was to take a urine sample from the dog immediately after it had been taken out of the kennel but before the race. The respondent's greyhound was selected for testing on the evening in question. The process took place under the supervision of the testing steward. The sample was sent to the Horseracing Forensic Laboratory ("HFL"), a leading independent laboratory experienced in drug detection and analysis for sports regulators. On 17 June 2002 HFL issued a certificate of analysis which stated that the greyhound's urine contained hexamine. Hexamine is a drug that would ordinarily be thought of as a drug used to treat urinary tract infections in greyhounds. It is not a drug that would ordinarily be thought of as a 'stopping' drug. The administration of any quantity of hexamine by the respondent to the greyhound and racing the greyhound with hexamine present in its body was prohibited by rule 174(a)(i) of the rules of racing. Hexamine is only available on prescription in the United Kingdom but is generally available in Ireland.

8. It is the practice before a race to parade the dogs by walking them round a circuit of the track. The respondent's wife took the greyhound on the parade and noticed that it hung back instead of pressing forward which was its usual behaviour. When she placed her hand under its belly to guide it into the starting trap it showed signs of pain. It finished last of five runners, being bumped on the first bend. Its time was 0.19 of a second slower than in the first heat.

9. When the respondent and his wife returned to the kennel after the race they discovered that the greyhound had, unusually, urinated on its bed quilt whilst in the kennel before the race. Nevertheless, the greyhound was fit to travel and in good health on their return to Scotland.

10. The certificate of analysis by HFL stating that the sample contained hexamine was sent to the security co-ordinator for the NGRC, a Mr Thompson, who sent a copy to Mr Harris, the racing manager at WGS who in turn notified the respondent of the result of the test.

11. On 28 June 2002 the respondent sent an e-mail to the NGRC setting out his detailed account of what he considered to be the material facts. The thrust of his position was that he concurred with the result of the test; neither he nor his wife had administered hexamine and the greyhound had been under their sole control during the days prior to the race. He believed the dog had been 'stopped' by a third party.

12. On 19 July 2002, the area stipendiary steward, Ms McNally and Mr Harris the racing manager at WGS attended a local inquiry at WGS into the positive urine sample and submitted a brief report to the senior steward. On 12 August 2002 Mr Melville, the chief executive of the NGRC, wrote to the respondent informing him that the senior steward had ordered an inquiry by the stewards into whether there had been a breach of the rules of racing including rule 174(a)(i). The letter enclosed copies of the documents which were to form the basis for the inquiry. It informed the respondent of the date when the inquiry would take place, his right to legal representation, the procedure to be adopted by the inquiry and that advance notice was required of the respondent's witnesses under the rules of racing.

13. On 10 September 2002 the stewards held their inquiry into the positive urine sample of the greyhound. Six stewards were in attendance:
Mr Nicholson (the senior steward),
Mr Crittall (the veterinary steward),
Mr Dunnett,
Mr Bentall,
Ms Kershaw and
Col McDermott.
Also present were:
The respondent,
Mr Betteridge (secretary to the senior steward),
Mr Harris,
Mr Rowe (Mr Harris's immediate superior at WGS),
Ms McNally,
Mr Thompson, and
Mr Melville.

14. The inquiry hearing lasted between 1 and 2 hours. At the outset Mr Thompson read out a pro forma statement and with it the documents that were before the inquiry, including Mr Harris's evidence. The respondent then presented his own evidence and case, largely following a prepared script. His case challenged the security at WGS and relied on two letters from veterinary surgeons, Mr Fegan and Mr Hastie.

15. The fundamental issue at the inquiry was whether the respondent had administered hexamine to the greyhound. He suggested two alternative possibilities. The first was that hexamine was administered to the greyhound by an unknown and unidentified third party who squirted or sprayed liquid hexamine through the mesh grill at the front of the kennel door while the greyhound was kennelled before the race. The second was that the hexamine was present in the greyhound as a result of some form of trace contamination.

16. After hearing all the evidence and the submissions made by the respondent, the respondent and most of the other attendees were shown out of the room in which the inquiry had been held. The stewards then deliberated for about 20 minutes. However, Mr Melville remained present with the stewards during their deliberations. The stewards found the respondent in breach of the rules of racing. The respondent was informed orally of this decision on the day of the inquiry and in writing by Mr Melville on 11 September 2002. On 20 September 2002 the stewards' decision was published in the NGRC's calendar.

17. On 31 December 2002 the respondent's solicitor's asked the NGRC to reopen the inquiry under the rules of racing on the grounds of procedural unfairness, the apparent bias of Mr Crittall, the perversity of the stewards' decision and new expert evidence. In July 2004 the respondent again invited the NGRC to reopen the inquiry, but without identifying any grounds for doing so. The NGRC declined both requests and the respondent has not challenged either decision.

18. On 26 March 2003 the respondent commenced proceedings in the Chancery Division seeking a declaration that the stewards' decision was invalid on a variety of grounds. On 5 July 2004 the respondent made further criticisms of the NGRC relating in one way or another to the allegation that the decision of the stewards was perverse. This resulted in an adjournment of the trial for the pleadings to be amended and further evidence to be filed. The trial began on 4 October 2004; the oral evidence was completed on 8 October 2004. The judge heard oral submissions on 14 and 15 October and there was then a further adjournment to consider what has been called "the Melville issue" which had arisen on the last day of the evidence. I shall return to this issue later. In the result the hearing before the judge took 10 days and resulted in a judgment of 106 paragraphs extending over some 30 pages. He dealt with many issues, not all of which are the subject of this appeal.

19. It seems to me inherently unsatisfactory that a hearing before a sporting tribunal lasting between 1 and 2 hours should be followed by a High Court hearing lasting 10 days and an appeal taking up a further day and a half. It is important to bear in mind the words of Mance LJ in ***Modahl v British Athletic Federation Limited*** [2002] 1 WLR 1192, 1226 para 115 to the effect that a conclusion that the disciplinary process should be looked at overall matched the desirable aim of affording to bodies exercising jurisdiction over sporting activities as great a latitude as is consistent with the fundamental requirements of fairness. In this regard he cited the words of Sir Robert Megarry V-C *in* ***McInnes v Onslow Fane*** [1978] 1 WLR 1520, 1535 F – H approved by Sir Nicolas Browne-Wilkinson V-C in ***Cowley v Heartley***, *The Times 24 July 1986*: *"I think that the courts must be slow to allow an implied obligation to be fair to be used as a means of bringing before the court for review honest decisions of bodies exercising jurisdiction over sporting and other activities which those bodies are far better fitted to judge than the courts. This is so even where those bodies are concerned with the means of livelihood of those who take part in those activities. The concepts of natural justice and the duty to be fair must not be allowed to discredit themselves by making unreasonable requirements and imposing undue burdens. Bodies such as the board which promote a public interest by seeking to maintain high standards in a field of activity which otherwise might easily become degraded and corrupt ought not to be hampered in their work without good cause."*

20. I respectfully agree with the observations of Sir Nicolas Browne-Wilkinson V-C that it is the courts' function to control illegality and make sure that a body does not act outside its powers. But it is not in the interest of sport or anybody else for the courts to seek to double guess regulating bodies in charge of domestic arrangements.

21. Sports regulating bodies ordinarily have unrivalled and practical knowledge of the particular sport that they are required to regulate. They cannot be expected to act in every detail as if they are a court of law. Provided they act lawfully and within the ambit of their powers, the courts should allow them to get on with the job they are required to do. It is important to look at

the consequences of anything that appears to have gone wrong. Mr Timothy Charlton QC, who has appeared with Mr Jasbir Dhillon for the NGRC, submits that the judge never explained why he felt it proper to intervene in this case. He never confronted the overall question whether there had been a fair result or whether the procedural defects had produced an unfair result.

22. It is unnecessary for the purposes of this appeal to refer in any detail to the voluminous NGRC rules of racing. The respondent was found to have broken several rules and directions of the stewards but the thrust of the finding was breach of rule 174(a)(i), administering to a racing greyhound within 7 days before a race a substance which could affect the performance or well being of the animal the origins of which could not be traced to normal and ordinary feeding.

Apparent bias of Mr Crittall

23. Three main issues have been argued on the appeal before us. The first concerns the finding by the judge of apparent bias of Mr Crittall. At the trial the respondent argued that Mr Crittall, the veterinary steward who sat on the inquiry was actually biased. But the judge rejected this contention. That allegation was based on the respondent's contention that Mr Crittall demonstrated his actual bias against him during the hearing before the tribunal by his aggressive attitude towards him, in particular when questioning him, and his apparent contempt for the respondent's suggestion that the security arrangements in the paddock were insufficient to have prevented an ill disposed person from administering hexamine to the greyhound when it was kennelled before the race, and for the expertise of the respondent's veterinary witness Mr Fegan.

24. There was a conflict of evidence between the respondent and the NGRC's witnesses as to Mr Crittall's conduct during the inquiry. The judge accepted the evidence of the NGRC witnesses and held that the most that could be said in criticism of Mr Crittall's conduct was that his probing of the case advanced by the respondent was 'robust', and that as a result he and the respondent became cross with each other. The judge decided that there was *"an insufficient basis in fact for a finding of actual bias against Mr Crittall."*

25. The judge went on to consider the respondent's alternative submission of apparent bias which was that, even if actual bias was not established, all the facts were relevant to the question of whether there was nevertheless a real possibility that Mr Crittall was biased.

26. There is no dispute about the law relating to this issue. The test is expressed by Lord Hope of Craighead in ***Porter v Magill*** [2002] 2 AC 357, 494 at para 103: *"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."*

This test, involving a slight adjustment to the test previously propounded in ***R v Gough*** [1993] AC 646, brings the law into harmony with the Strasbourg interpretation of the application of Article 6 of the European Convention on Human Rights, most Commonwealth Countries and Scotland.

27. The test for apparent bias involves a two stage process. First the Court must ascertain all the circumstances which have a bearing on the suggestion that the tribunal was biased. Secondly it must ask itself whether those circumstances would lead a fair minded and informed observer to conclude that there was a real possibility that the tribunal was biased: see Lord Phillips of Worth Matravers MR in ***Re Medicaments and Related Classes Goods* (No. 2)** [2001] 1 WLR 700, 726 para 83. An allegation of apparent bias must be decided on the facts and circumstances of the individual case including the nature of the issue to be decided: see ***Locabail (UK) Limited v Bayfield Properties Limited*** [2000] 2 QB 451, 480 para 25. The relevant circumstances are those apparent to the court upon investigation; they are not restricted to the circumstances available to the hypothetical observer at the original hearing. Lord Phillips in *Medicaments* at paragraph 83 stated the principles as follows:

> *"(1) If a judge is shown to have been influenced by actual bias, his decision must be set aside. (2) Where actual bias has not been established the personal impartiality of the judge is to be presumed. (3) The court then has to decide whether, on an objective appraisal, the material facts give rise to a legitimate fear that the judge might not have been impartial. If they do the decision of the judge must be set aside. (4) The material facts are not limited to those which were apparent to the applicant. They are those which are ascertained upon investigation by the court. (5) An important consideration in making an objective appraisal of the facts is the desirability that the public should remain confident in the administration of justice."*

28. Bias means a predisposition or prejudice against one party's case or evidence on an issue for reasons unconnected with the merits of the issue. In ***R v Inner West London Coroner ex parte Dallaglio*** [1994] 4 All ER 139, 151, Simon Brown LJ, as he then was, said: *"Injustice will have occurred as a result of bias if 'the decision-maker unfairly regarded with disfavour the case of a party to the issue under consideration by him'. I take 'unfairly regarded with disfavour' to mean 'was pre-disposed or prejudiced against one party's case for reasons unconnected with the merits of the issue."*

29. The proceedings under consideration by the court in the present case are tribunal proceedings and not judicial proceedings. The context is critical. In ***Modahl*** para 128, Mance LJ said: *"The principles of natural justice or fairness must adapt to their context and can be approached with a measure of realism and good sense. Appendix B para (B7) of the defendant's rules makes clear that the disciplinary committee "will consist of members of the federation drug advisory committee, or its nominees". It was both natural and appropriate that the disciplinary committee should have among its members someone with experience of doping control and its procedures. Mr Guy was chosen for this reason, and because he spoke English and came from a different national athletic federation. There is no reason to think that he held or would hold any fixed or predetermined ideas on any of the issues being raised by the claimant in her challenge to the Portuguese results."*

30. The tribunal in the present case was exercising a domestic jurisdiction that involved a contractual relationship between the respondent and the NGRC. There were therefore special features that the hypothetical observer would have in mind. These include:
i) the nature, function and composition of the tribunal;
ii) the particular character of the tribunal's proceedings;
iii) the rules under which the proceedings are regulated;
iv) the nature of the inquiry; and
v) the particular subject matter with which the decision is concerned.

31. The proceedings were concerned with the management of greyhound racing. The NGRC owed a duty to all its contracting members to conduct fair inquiries into circumstances such as precipitated the inquiry in the present case. Most importantly, the inquiry was inquisitorial in nature conducted by stewards familiar with the world of greyhound racing and the conditions and

venues in which it is carried on. This immediately distinguishes it from adversarial court proceedings. Where proceedings are inquisitorial the tribunal necessarily has to test the evidence and the case presented. A person in the shoes of the respondent, who will be adversely affected if the decision goes against him, may, if he is to be accorded procedural fairness, have to be confronted with the matters which are adverse to his case. As Gleeson CJ put it in ***Re Refugee Tribunal and Another ex parte H and Another*** [2001] ALR 425 at para 30: *"Where, as in the present case, credibility is in issue, the person conducting inquisitorial proceedings will necessarily have to test the evidence presented--often vigorously. Moreover, the need to ensure that the person who will be affected by the decision is accorded procedural fairness will often require that he or she be plainly confronted with matters which bear adversely on his or her credit or which bring his or her account into question. Similar questions by a judge in curial proceedings in which the parties are legally represented may more readily give rise to an apprehension of bias than in the case of inquisitorial proceedings."*

32. Returning therefore to the first stage of the two stage test: what are the circumstances that have a bearing on the suggestion that the tribunal was biased? Mr Charlton complains that the judge did not identify in terms the circumstances. He simply said at para 62: *"Subject to the issue of waiver, which I will shortly deal with, I have come to the conclusion that a fair-minded observer informed of the facts of this case, which I have sought to describe in this judgment, would conclude that there was a real possibility that Mr Crittall's consideration of the NGRC's case against (the respondent) alleging breaches of its rules, was biased in favour of finding that case proved."*

33. In my judgment it is an important exercise in an 'apparent bias' case to identify with some precision those facts on which the suggestion of bias can be based. The judge did not expressly carry out that exercise in this case. However, the basis for his finding of apparent bias appears by implication to be the material that he has set out in paragraphs 57 to 61 of his judgment.

34. The judge in paragraph 57 referred to the respondent's explanation for the presence of hexamine in the greyhound's urine sample, namely that the security arrangements at WGS, and in particular the security arrangements protecting greyhounds in the kennels in the paddock from wrongful interference, were deficient. The judge mentioned the evidence against the respondent's contention, i.e. that the arrangements were at least adequate, as that of Mr Harris, the racing manager of WGS, and a letter from Ms McNally, the area stipendiary steward. The judge then continued in paragraphs 59 – 61 as follows:

"Mr Crittall's veterinary practice had been retained by WGS to provide veterinary services between 1970 and 1st December 2001. Mr Crittall said under cross-examination that he had attended WGS during that period of 31 years approximately once a week, sharing the duties with other members of his practice, their attendance averaging approximately 4 attendances a week. The practice charged £30 an hour until 2000 and thereafter £50 an hour. Thus the practice earned approximately £750 a week from this source. This made WGS the practice's principal client over many years and was considered by Mr Crittall as a valued and loyal client.

Mr Crittall had had contact with Mr Harris in the latter's capacity as racing manger at WGS, a post which he held for some 3 or 4 years. Mr Harris had in fact worked for WGS since 1975. Mr Crittall described Mr Harris as "a colleague" with whom he had worked at WGS. He also knew Mr Rowe, Mr Harris' immediate superior at WGS. He had been acquainted with Mr Rowe for longer than Mr Harris. Both Mr Rowe and Mr Harris attended the Tribunal hearing. Mr Crittall had over the years been allowed free entry for himself and his family to WGS which he occasionally made use of. He had also been invited by the management to lunch at some important meetings such as the Greyhound Derby.

It was from the evidence of Mr Crittall, assisted by photographs and a plan that I was able to obtain a mental picture of the layout of WGS and, in particular, the layout of the Paddock and how the greyhounds were given a veterinary inspection and disposed of before races. He evidently had firm views about the adequacy of WGS security arrangements. I accept that in the course of the Steward's hearing he forcefully expressed those views. So far as the Stewards are concerned, he appears to have played a dominant part at the hearing particularly in the questioning of (the respondent). Mr Crittall has been an NGRC Steward for the past 13 years."

35. In summary therefore the judge's concerns appear to fall under three headings:
i) Mr Crittall's prior relationship with the owners of WGS;
ii) Mr Crittall's prior professional contacts with Mr Rowe and Mr Harris;
iii) Mr Crittall's expression of views at the inquiry about the security arrangements at WGS.

Mr Crittall's relationship with WGS

36. The first point made by Mr Charlton is that there was no dispute at the inquiry that the greyhound tested positive for hexamine; the issue was how the drug got there. Mr Charlton describes the issue about the security arrangements at WGS which was the issue as to which the question of bias was raised, as a sub- issue, and so it was.

37. It is important to be clear about Mr Crittall's relationship with WGS. He had been a veterinarian for over 40 years, specialising in small animals including greyhounds. From 1 January 1970 to 1 December 2001 Mr Crittall's veterinary practice carried out veterinary duties at WGS. Those duties were those prescribed under the rules of racing to be carried out by a veterinarian licensed by the NGRC. On average Mr Crittall attended once a week and other members of his practice a further three times a week. Between 1996 and 2000 his practice charged £30 per hour for their services. This was found to be wholly uneconomic and raised to £50 per hour in 2001. But that was still under the market rate for Mr Crittall's practice and since 2001 neither Mr Crittall nor any member of his practice had worked for WGS.

38. Mr Crittall had also been a steward for the NGRC for nearly 12 years, a role which he described as upholding the rules of the NGRC, the integrity of the sport and the welfare of greyhounds. As a steward he attended on average two inquiry days a month and was well aware of the manner in which NGRC inquiries were conducted. His duties as a vet were limited to the welfare of greyhounds before, during and after racing. In evidence he said his practice earned about £750 per week or £40,000 per annum from WGS. It was, he said, a regular income but a small part of the total income of the practice. Mr Crittall's relationship with WGS had been a purely professional one, but it had ceased 10 months before the inquiry. He had no financial interest at the time of the inquiry. In any event, WGS was not a party to the inquiry.

39. Mr Crittall was the veterinary steward and was appointed to the inquiry because of his expertise. In a letter dated 26 November 2001, i.e. before the events with which this case is concerned, the chief executive of the NGRC wrote that, although he was not chief executive when the decision to elect Mr Crittall was made, the decision was made with the knowledge that the

veterinary steward should be someone with hands-on experience of what is happening in greyhound stadia and the problems that are faced by trainers and promoters. In my judgment his expertise was a qualification rather than a disability. Although there does not appear to be any obligation for the veterinary steward to sit on an inquiry, there are many circumstances where his expertise is likely to prove invaluable and it is to be remembered that animal welfare issues are likely to arise as well as doping issues.

40. A not dissimilar question arose in ***Nwabueze v General Medical Council*** [2000] 1 WLR 1760, concerning a lay member's presence on the Professional Conduct Committee of the General Medical Council. Lord Hope of Craighead, giving the opinion of the Judicial Committee of the Privy Council, said at 1771: *"From this summary it can be seen that Mrs. Walker was and is eminently well qualified to sit on the Professional Conduct Committee as one of its lay members. She brought to that membership an extensive knowledge of the health service in Wales, as a result of having worked there for many years as a nurse and midwife and her period of service as director of the South East Wales Institute. It is in the public interest that those who serve as lay members on disciplinary bodies of this kind should be well-informed and have experience of working in the area within which cases are likely to arise on which they may be called upon to adjudicate. It could not possibly be suggested that there was anything in Mrs. Walker's general background that would be likely to give rise to the danger or possibility of bias on her part when she was considering a case from Wales."*

41. It is to be noted that in the present case the allegation of actual bias was rejected. The starting point thereafter for consideration of apparent bias seems to me to be that the integrity of Mr Crittall is to be presumed. I can see nothing in his relationship with WGS that takes the present case out of the ordinary run in which it is entirely appropriate for an individual with expertise to sit on a specialist tribunal. Stewards should not be divorced from greyhound racing; they are part of it. They are the regulators.

42. One of the questions that occurred during the course of argument was whether Mr Crittall's knowledge of this particular stadium (WGS) in some way put the case in a different category from one in which Mr Crittall did not have the same detailed knowledge. One has in my view to ask whether there was some factual issue before the tribunal on which Mr Crittall had such expertise that it made it unfair to participate in the tribunal's decision.

43. Mr Crittall was, of course, very familiar with the paddock and the kennelling area and would therefore be more readily able then others without his knowledge to assess the likelihood of a third party administering hexamine to the greyhound. But how relevant was Mr Crittall's knowledge in the particular circumstances of this case? It is important to consider this question in the context of how the case unfolded before the tribunal.

44. In the first place, hexamine is not a ***'stopping' drug***. It is a therapeutic drug principally used in the treatment of urinary tract infection. Accordingly, the theory advanced by the respondent that some unidentified third party administered hexamine to the greyhound for such a purpose was inherently unlikely. What was the motive? If the motive was to stop the dog, there were far more effective ways of doing it. If the motive was not to stop the dog, the motive is not easily identifiable. On the other hand, if the greyhound had developed a urinary tract infection there was every reason why the respondent should himself wish to treat it with hexamine so that it could run in the second heat of the greyhound Derby with the possibility of qualifying for the later stages of a prestigious event and ultimately winning a valuable prize. Mr Crittall said the symptoms the respondent described the greyhound as having were consistent with a urinary tract infection. The modest nature of the penalty imposed on the respondent suggests that this may be what the tribunal felt had happened. Further, although at one time there was an issue whether it was possible to administer hexamine to the greyhound by squirting it through the wire mesh of the kennel, the tribunal eventually rejected Mr Harris's statement that this was not physically possible. In the event there was no issue whether it was physically impossible for a third party to reach the greyhound and administer hexamine. The issue was a much wider one, namely the likelihood of a third party in all the circumstances having done so during the period the greyhound was out of the custody of the respondent during its kennelling. This issue required far broader consideration than a simple assessment of the layout of the premises. Accordingly, I have no difficulty in concluding that there was nothing objectionable about the particular expertise that Mr Crittall brought to this case.

45. Each individual kennel door was covered by a fine wire mesh. Any vehicle for delivering hexamine would require a narrow circumference, such as a needle. Although it would be theoretically possible to squirt hexamine through the mesh, the kennels were about four foot deep and, bearing in mind an animal's likely reaction would be to move away from anything being squirted at it, it would have been a difficult exercise. To spray or squirt the greyhound with a significant quantity of hexamine would have required the third party's attendance for a significant period of time and it would have been difficult to do it unobserved. It also involved the unlikelihood of spraying the dog in such a manner as to enable the dog to lick off the hexamine in sufficient quantity to affect its performance.

Mr Crittall's prior professional contact with Mr Rowe and Mr Harris.

46. At the time of the inquiry Mr Harris was the racing manager of WGS. His evidence about the security at WGS was challenged by the respondent. There was other evidence in the form of a letter from the area stipendiary steward that the security arrangements, policing and management of the greyhounds at WGS were of a high standard. Mr Rowe was Mr Harris' immediate superior. He attended the inquiry but did not give evidence.

47. For 3 or 4 years up to 2001 Mr Crittall had contact with Mr Harris in his capacity as racing manager of WGS. Mr Crittall described him as a colleague rather than a personal friend. They never met outside WGS or at an inquiry. Mr Crittall would greet Mr Harris on arrival at WGS as a colleague in the same way that he greeted others at WGS.

48. Mr Crittall had known Mr Rowe for longer than Mr Harris. The relationship was a business one and had ended well before the inquiry. WGS, the employer of Mr Rowe and Mr Harris, was not a party to the inquiry. And although Mr Rowe attended, as he was entitled to under the rules because the incident under inquiry had taken place at WGS, he took no part in the inquiry. It is impossible to see how Mr Crittall's prior professional contact with Mr Rowe could raise any possibility of bias in Mr Crittall.

49. As to Mr Harris, again the relationship was entirely professional and had ceased in 2001 (other than on those occasions Mr Harris attended inquiries). Mr Harris's evidence at the inquiry was challenged by the respondent and part of Mr Harris's evidence, namely that it was impossible for the hexamine to have been administered by a third party, was rejected by the inquiry. There is nothing to suggest that the stewards did not consider the respondent's case on its merits and in my judgment there was nothing to suggest that the prior relationship between Mr Crittall and Messrs Rowe and Harris in any way militated against Mr Crittall's fair participation in the inquiry. Nor is there anything to suggest Mr Crittall was disposed to accept any

part of Mr Harris's evidence for reasons unconnected with the merits. Indeed Mr Crittall and the other stewards in fact rejected part of it.

50. The judge referred to Mr Crittall over the years having occasionally accepted free entry for himself and his family to WGS and invitations to lunch at various important meetings. Mr Crittall was asked in evidence if he ever went to WGS other than in his capacity as a vet, on social or other evenings. He said he occasionally took his wife and family for an evening. Asked about complimentary invitations, he said he always paid for his wife and family's dinner when he took them. He said: "They may have given me free entry but I gather that quite often happens when people go for dinner." He had also been invited to the odd lunch before an important meeting. In my judgment there is nothing remotely unusual or unacceptable in this and nothing in my judgment that lays the ground for an apparent bias claim in respect of Mr Crittall's relationship with Mr Rowe and Mr Harris.

51. No authority has been cited to support the contention that Mr Crittall's prior relationship with Mr Rowe and Mr Harris should have disqualified him from participating in the inquiry. Indeed it seems to me that such authorities as there are point in the other direction. ***Man O'War Station Limited v Oakland City Council*** [2002] UKPC 28 was cited by Mr Charlton as a helpful analogy. In that case the Privy Council held that it was unreal to suggest that a prior past professional association between a witness and the judge gave rise to a danger of partiality. They upheld a decision of the New Zealand Court of Appeal. Gault J had explained the position as follows at paragraph 9: *"The submission is of appearance of bias by a Judge of some eight years standing. He participated in the hearing of the appeal in a civil case on a dispute between landowners and a local authority. He had occasional association before appointment with a surveyor witness essentially in unrelated business circumstances. Even taking full account of the relationship both Judge and witness had with Mr Max Grierson we do not consider this gives rise to concern for a real danger or possibility of bias. The fact of a solicitor-client relationship which terminated eight years earlier does not add to that. To take any other view would be unrealistic in the New Zealand situation; even in Auckland. Senior legal practitioners with busy commercial and conveyancing practices must come into contact and establish business associations with a considerable proportion of the professional practitioners in related fields such as surveying and civil engineering. The proposition that because of such an association they should be regarded as in danger of failure to carry out judicial functions impartially eight years after retiring from practice is unreal."*

Lord Steyn observed that this was a corner of the law in which the context and particular circumstances are of supreme importance.

Mr Crittall's expression of views at the inquiry about the security arrangements at WGS.

52. The judge said in paragraph 61 of his judgment that Mr Crittall evidently had firm views about the adequacy of WGS's security arrangements. But it is important to have in mind the context of this finding, which is that the judge preferred the NGRC witnesses' account at the hearing, so that the most that could be said of Mr Crittall's conduct was that his questioning was 'robust' and that as a result he and the respondent became cross with each other. As the judge pointed out, the respondent admitted in cross-examination that he was, despite Mr Crittall's aggressive manner, able to get across to the stewards the points he wished to make and that at no stage did he suggest to the stewards that Mr Crittall should stand down. It should also be borne in mind that the security question was not in his area of expertise; he was a veterinary surgeon. Further, the question of the adequacy of the security arrangements was but a relatively small part of the case and WGS were not a party to the proceedings. Mr Dunnett, in a witness statement, put the situation into perspective when he said the stewards reached their decision on the basis of all the evidence including the following.

a) A positive finding for hexamine.

b) The respondent's admission that the greyhound contained symptoms consistent with a urinary tract infection - symptoms which were not present before the greyhound was kennelled.

c) Mr Fegan's written evidence that at higher dosages hexamine had been known to cause distress, albeit he was not present at the inquiry to back up his assertion or to explain at what level hexamine had been known to cause distress.

d) Hexamine is not a recognised 'stopper' and Mr Hastie (the respondent's vet) in all his years as a greyhound veterinary surgeon could not recall the use of hexamine other than in the treatment of urinary infection or disease.

e) The stewards had never come across an unexplained hexamine case before and certainly not within the last few years. This indicated trace contamination was unlikely.

f) The respondent's oral evidence that although he was aware that something was wrong whilst preparing to return to Edinburgh, he did not consult the duty vet before embarking on a long journey. This was, on the one hand, inconsistent with his love of greyhounds and, on the other, consistent with his being aware of, and having treated, his dog's problem with hexamine.

g) Wet kennel bedding was consistent with urinary tract infection.

h) Although the respondent suggested the possibility of contamination, he produced no evidence to suggest how it might have arisen.

i) If a third party had wanted to 'stop' a greyhound, using a substance that would have no effect on the dog in normal dosage was not the likely way to go about it.

j) Anyone trying to administer hexamine through the wire mesh grill would be likely to have been spotted doing so as there were officials and trainers in the locality.

k) The respondent had a motive for administering hexamine if he thought the greyhound was suffering from a urinary tract infection.

l) It was too great a coincidence that the greyhound was suffering from a urinary tract infection and that the animal tested positive for the very drug used to treat that condition.

In my judgment these underlying reasons for the stewards' decision emphasise that the security question was indeed very much a sub-issue.

53. The judge's conclusion was that the stewards were entitled on the evidence to conclude that the respondent had administered a therapeutic dose of hexamine to the greyhound in order to suppress a urinary tract infection at some point before it was kennelled and that there was thus a breach of rule 174(a)(i) and the stewards' directions. But, he added, the possibility that it had been administered when the greyhound was kennelled by some ill-disposed third party, although on balance unlikely, could not be ruled out. He went on to say that if the respondent could establish that the hearing before the tribunal was vitiated by procedural unfairness it was open to him to contend that, had there been a fair hearing, he would have been acquitted of the charges.

54. When examined, the judge's reasons for finding apparent bias on the part of Mr Crittall and consequently the tribunal do not, either individually or collectively, in my judgment, provide a firm foundation for his conclusion. There is nothing in my view about Mr Crittall's former relationship with WGS or with Mr Rowe and Mr Harris to suggest to the impartial observer that he could not fairly sit on the tribunal. Nor would his robust approach in what were inquisitorial proceedings have led an informed observer to conclude there was a real possibility that he was biased against the respondent's case. Certainly, Mr Crittall put a number of questions to the respondent about his case that an unknown third party administered hexamine to the greyhound. He was entitled to do so, particularly as it seemed to him (with some justification, I would add) an unlikely scenario. He was entitled to put questions on the basis of his knowledge and common sense and he was entitled to do so in a robust manner. The questions were all within the bounds of legitimate questioning by a member of an inquisitorial domestic disciplinary body on matters which were relevant to the case. The respondent himself admitted that his version of events was highly improbable. Mr Crittall acknowledged that he drew on his knowledge of the physical layout of the WGS kennels, the size of the mesh in the grill and the difficulty getting the greyhound to ingest a sufficient quantity of hexamine. But it seems to me he was doing nothing more than that envisaged by Lord Wilberforce in *Calvin v Carr* [1980] AC 574, 596. It is not as if there was any other witness at the inquiry to contradict his knowledge. *Calvin v Carr* was a case that concerned a ruling by the committee of the Jockey Club of Australia. Lord Wilberforce, in the context of horse racing, said that stewards are entitled to use the evidence of their eyes and their experience. He said at p.597 that the appeal process he was there considering was an essentially domestic proceeding "in which experience and opinion as to what is in the interest of racing as a whole play a large part, and in which the standards are those which have come to be accepted over the history of this sporting activity." Much the same could in my view be said about greyhound racing.

55. In my judgment the judge fell into error in concluding that a fair-minded observer informed of all of the facts of the case would conclude that there was a real possibility that Mr Crittall's consideration of the NGRC's case against the respondent was biased in favour of finding that case proved. The judge stated the law of apparent bias correctly, but in my judgment applied it erroneously to the facts.

Waiver

56. The judge, having concluded that the case of apparent bias was made out, went on to reject the NGRC's plea of waiver. The respondent had not, in his judgment, waived his right to object to Mr Crittall. His reasoning is at paragraphs 63-71 of his judgment. In summary the reasons are:
    i) The respondent did not have sufficient knowledge of Mr Crittall's past connection with WGS or any knowledge that Mr Crittall had worked with Mr Harris and Mr Rowe.
    ii) The respondent was not aware of his right to object to Mr Crittall's presence.
    iii) The respondent did not clearly and unequivocally demonstrate his waiver of his right to object to Mr Crittall.

57. In the light of my conclusion that the respondent's case of apparent bias fails, the issue of waiver does not arise. I do not therefore propose to go in any detail into this issue. Suffice it, however, to say that having heard the argument of both sides I have considerable doubt whether the judge's findings can stand.

The Melville issue.

58. At the conclusion of the hearing before the tribunal all those who were not stewards, with the exception of Mr Melville, the chief executive of the NGRC, and Mr Betteridge, the secretary to the senior steward, withdrew. The presence of Mr Melville at the deliberations arose for the first time during the cross-examination of Mr Crittall in the following exchange:

    Q. "My question is: to your knowledge, did any of them have any knowledge of the security arrangements at Wimbledon Stadium?

    A. I would say yes.

    Q. Who would that have been?

    A. I am sure that senior steward would be aware of them, Chief Executive would have been aware of them.

    MR JUSTICE EVANS-LOMBE: He was not a steward.

    A. He was not a steward, my Lord, but he sits in at the deliberations and during the whole of the inquiry.

    MR JUSTICE EVANS-LOMBE: Is he allowed to contribute to them?

    A. During the deliberations?

    MR JUSTICE EVANS-LOMBE: Yes.

    A. He can. In fact, it is very often asked by senior steward, "Have you any questions of this trainer?" or-

    MR JUSTICE EVANS-LOMBE: Oh no, I am not talking about that.

    A. During the deliberations-

    MR JUSTICE EVANS-LOMBE: After you have withdrawn-

    A. After they have withdrawn-

    MR JUSTICE EVANS-LOMBE: He withdraws with you, does he not?

    A. Well, the other people withdraw, my Lord, but, yes, we do-

    MR JUSTICE EVANS-LOMBE: Mr Melville was there during your deliberations, after the hearing was over?

A. He was indeed.

MR PENNY: He is involved in the decision making process?

A. He is able to contribute any views that he might have, and it is up to the stewards themselves to take account of them

MR JUSTICE EVANS-LOMBE: He does not have a vote, in other words?

A. He has no vote.

MR JUSTICE EVANS-LOMBE: But he can contribute to the discussion?

A. That is why he stays in, my Lord. He has very extensive knowledge of greyhound racing."

59. No complaint was made about Mr Melville's presence at the deliberations until the respondent's closing submissions were delivered to the appellants the day before the day fixed for closing submissions (14 October 2002), when Mr Penny took the point that this was a further example of procedural unfairness. In his written submissions he referred to the statement in Wade on Administrative Law 9th Edn at page 457: *"The mere presence of a non member while the tribunal is deliberating is enough to invalidate the proceedings."*

60. He cited ***Cooper v Wilson*** [1937] KB 309 and ***R v Leicestershire Fire Authority ex parte Thompson*** (1978) LGR 373 and submitted that there had been "*manifest procedural unfairness*" and *"a clear breach of natural justice."* The NGRC objected to the point having been raised in this way and the judge was persuaded to adjourn so that the issue could be pleaded by both sides and further evidence filed. In the event, the appellant filed further evidence from the NGRC stewards. The respondent then indicated that the evidence was not challenged; Mr Penny did not wish to cross-examine the witnesses and the parties agreed, with the judge's concurrence, that the issue could be dealt with by written submissions without the need for a further hearing.

61. The further evidence was in the form of statements from Mr Nicholson, Mr Dunnett, Ms Kershaw, Mr McDermott, Mr Bentall and Mr Crittall. Apart from Ms Kershaw, who could not remember what had happened, the thrust of the evidence of all the others was that Mr Melville played no part, other than to confirm that the respondent had no previous finding against him. As a matter of routine Mr Melville attended disciplinary inquiries and, in the course of a hearing would be asked whether he wished to put any question to any of the witnesses. Also as a matter of routine, he was allowed to remain in the inquiry room when it was cleared at the end of the hearing. This was so that the stewards could obtain clarification from him of the relevant rules and how they were applied. In cases where a breach of the rules was found, he was available to inform the stewards of any previous convictions. On occasions, Mr Melville would draw the stewards' attention to penalties awarded in previous inquiries for similar breaches. Otherwise, Mr Melville would not be "asked for or permitted to give any opinion or view as to whether the affected person is in breach of that rule as that is a matter exclusively for the stewards." Mr Nicholson's evidence was that Mr Melville had not sought to ask any questions at the inquiry and that during the deliberations no explanation of the rules was required and his only intervention was to inform the stewards that the respondent had no previous record of breaking the rules. In short, the further evidence was that Mr Melville made no contribution to the deliberations. The stewards had made their decision on the basis of the evidence and submissions at the inquiry.

62. Mr Penny's decision not to cross-examine was explained thus: *"Mr Flaherty is not in a position to, and does not take issue with the stewards new evidence to the effect that Mr Melville did not in fact contribute to the determination of the outcome of this case."*

63. The judge referred to what he described as a striking contrast between the evidence that had been filed and Mr Crittall's answers in cross-examination. He then cited ***Cooper, The Leicester Fire Authority Case*** and a number of other authorities before concluding:

> *"(i) The rule against non-members being present at the deliberations of a tribunal flows from a different principle of procedural fairness from that considered by the cases on bias. Here the principle is the right of an "accused" to know the case against him and to hear, and deal with, if he can, all the evidence and submissions in support of that case which are brought before the relevant tribunal. A failure to observe this principle may induce bias in the tribunal, but that it is a different matter.*
>
> *(ii) The appearance of injustice as it may be perceived by the "accused" as a result of his knowledge that a non-member, connected with his accuser, was present at the tribunal's deliberations, is sufficient to undermine the tribunal's decision provided the appearance of injustice is sufficiently stark.*
>
> *(iii) The fact that it can be proved by evidence, including evidence from the tribunal members themselves, that no injustice has actually been done, is immaterial."*

He regarded himself as bound by the ***Cooper*** line of authorities.

64. The respondent does not seek to support these conclusions of the judge. Both sides are in agreement that the judge erred in his analysis of the law on this issue. I have considerable sympathy with the judge, who did not have the benefit of oral argument and who may well have been misled by the written submissions of Mr Penny in which the case of ***Cooper*** was highlighted.

65. It is now common ground that the correct test is whether there was apparent bias, and that the judge was wrong to hold that the appearance of interference in the deliberations of a tribunal by a stranger is a special class of procedural unfairness.

66. The main difficulty with the judge's conclusions is his finding that the evidence going to whether an injustice had actually been done was immaterial, the mere presence of Mr Melville being enough.

67. It seems to me, having read and re-read the relevant passages from Mr Crittall's cross-examination, that he said nothing that contradicts the evidence later obtained from the stewards (himself included) about what happened during the deliberations at this inquiry. It is not suggested that Mr Melville actually participated in the deliberations on the respondent's case.

68. In my judgment it was not good practice for Mr Melville to retire with the stewards. Best practice would be for him to have left the inquiry room when it was cleared at the end of the hearing. Again best practice would be for such questions to be posed and answered in the respondent's presence. He could, I am sure, have remained available to deal with any questions that arose on the rules or previous breaches of them. Mr Charlton accepts that the best practice was not followed, and as I understand it Mr Melville no longer retires with the stewards. However, as Mr Charlton points out, the fact that best practice was not followed does not of itself make the inquiry unfair.

69. Mr Penny chose, for entirely understandable reasons, not to challenge the evidence of the stewards as to what happened during the deliberations in this case. He submitted, however, that little weight should be given to their evidence. In my judgment he cannot have his cake and eat it. The law is set out by Latham LJ in ***Deepak Fertilisers and Petrochemical Limited v Davy McKee (UK) London Limited*** [2002] EWCA Civ 1396 at paragraph 49: *"The general rule in adversarial proceedings, as between the parties, is that one party should not be entitled to impugn the evidence of another party's witness if he has not asked appropriate questions enabling the witness to deal with the criticisms that are being made. This general rule is stated in Phipson on Evidence 15th Ed at para 11-26 in the following terms:*

> *"As a rule a party should put to each of his opponent's witnesses in turn so much of his own case as concerns that particular witness, or in which he had a share, eg if the witness has deposed a conversation, the opposing counsel should put to the witnesses any significant differences from his own case. If he asks no questions he will generally be taken to accept the witness's account and will not be permitted to attack it in his final speech…Failure to cross-examine will not, however, always amount to acceptance of the witness's testimony, if for example the witness has had notice to the contrary beforehand, or the story itself is of an incredible or romancing character"."*

70. In my judgment the judge should have taken into account the further evidence from the stewards; it was the only evidence of what happened during the deliberations in this case.

71. It is important to bear in mind the position of Mr Melville. He is the chief executive of NGRC; he is not a prosecutor. He was concerned with administration. He did not instigate the proceedings; that was done by the senior steward, Mr Nicholson, and it was the senior steward who conducted the inquisition. This was an inquiry into whether or not the rules had been broken.

72. Mr Charlton helpfully referred to three categories of case where an outsider becomes involved in the decision-making process of a tribunal. The term 'outsider' is used to describe both someone who is not a member of the tribunal in question and someone who, although ordinarily a member of the tribunal, is not actually entitled to sit on it because he is disqualified for some reason, for example a close personal connection with a witness or party.

73. The first category is where an 'outsider' has dealings with the tribunal members in private. Suppose the 'outsider' contributes to the matters under consideration by the tribunal and makes points that the 'accused' has no opportunity to answer. If the contributions are relevant to the tribunal's decision or regarded by the members as relevant, then the 'accused' will not have had a fair opportunity to meet the points against him and there will have been a breach of that aspect of natural justice. Mr Charlton makes the point that the status, or identity, of the 'outsider' in this category of case is irrelevant. It could, for example, be the prosecutor, the shorthand writer or anyone who sits in private with the tribunal members. Whether or not there has been a breach of the right of the 'accused' to a fair opportunity to meet points against him is a question of fact. Either there has been a breach or there has not been a breach.

74. The second category is one that can arise because of the identity or status of the 'outsider'. Although the 'outsider' remains silent, his identity or status may operate to influence the tribunal. An example would be where the 'outsider' has the power to decide whether the tribunal members hold office. Sedley J in ***R v Chelsea and Westminster Health Care NHS Trust ex parte L*** (30 October 1997, unreported) described it as the "brooding presence" class of case. The nature of the objection in this class of case is grounded on bias; actual bias if it is found that the silent presence influences the deliberations, or apparent bias if a fair minded and independent observer would conclude there was a real possibility of such influence occurring.

75. The third category is where the 'outsider' is present with the tribunal in private, but there is no evidence to demonstrate either that he made some form of impermissible contribution which falls foul of the right of the '*accused*' to be heard (category 1); or that he is a "*brooding presence*" (category 2). In this third category, submits Mr Charlton, the concern will be the risk of unfairness to the 'accused' that may occur. The nature of the risk will largely depend on the status or identity of the outsider. A tea lady is one thing, someone closely involved with the facts in issue is another. This class of case is concerned with the risk of improper influence on the decision making process and the correct test is Lord Hope's test for apparent bias in ***Porter v Magill*** (see para 26 above). It is into this category that the present case falls and the judge should have applied the apparent bias test.

76. The judge should therefore have given full weight to the uncontradicted evidence of the stewards as to what happened during the deliberations. Had he done so he would have concluded that Mr Melville took no part in them. The situation might have been different had Mr Melville been the prosecutor; but he was not. If anyone, it was the senior steward, but in truth he was conducting an inquisitorial process rather than a prosecution. The respondent's argument is that applying the apparent bias test of what the fair minded and informed observer would have concluded, the answer is that there was a sufficient risk of bias (i.e. more than de minimis) to justify setting aside the decision of the stewards. Mr Penny points out that this was the argument that he advanced in the concluding paragraph of his written submissions to the judge. I cannot accept the respondent's submission, which in my judgment fails on the facts. There simply is no basis for a finding of apparent bias in the light of the stewards' evidence as to what in fact occurred. The informed observer, apprised of all the relevant circumstances, would have concluded that there was no real possibility of bias occurring through Mr Melville's presence.

An overview

77. In my judgment it is important to stand back and ask the question posed by Lord Wilberforce in ***Calvin v Carr*** at p.593C whether, having regard to the course of the proceedings, there has been a fair result ("……those who have joined in an organisation or contract, should be taken to have agreed to accept what in the end is a fair decision, notwithstanding some initial defect").

78. In ***Modahl*** Latham LJ, having cited Lord Wilberforce in C*alvin v Carr* said:

> *"61…..the test which is appropriate to ask is whether, having regard to the course of proceedings there has been a fair result. As Lord Wilberforce indicated, there may be circumstances in which by reason of corruption or bias or some other deficiency the end result cannot be described as fair. The question in every case is the extent to which the deficiency alleged has produced overall unfairness."*

79. I have earlier in this judgment cited the words of Mance LJ at para 115 in the same case. It is in my judgment of paramount importance that sporting bodies should be given as free a hand as possible, consistent with the fundamental requirements of fairness, to run their own disciplinary processes without the interference of the courts.

80. In my judgment there was no procedural unfairness in the present case. Nor could any fair minded observer possibly have any objection to the result arrived at. The judge never confronted the ultimate question whether the procedural defects that he found had occurred affected the overall result. It was not disputed that the respondent's greyhound tested positive for hexamine. The only question was whether the respondent administered it. When one looks at the question of motive and the opportunity for anyone other then the respondent to have done so, the case against him in my view was overwhelming. It is difficult to see how the tribunal could conceivably have come to any other decision.

Conclusion

81. In my judgment the judge was in error in finding apparent bias on the part of Mr Crittall and he was in error in his analysis of the Melville issue. There was no procedural unfairness and the conclusion of the tribunal was a just one. I would allow the appeal.

Sir Peter Gibson: I agree.

The President: I also agree.

Mr Timothy Charlton Q.C and Mr Jasbir Dhillon (instructed by Messrs Kirkpatrick & Lockhart Nicholson Graham LLP) for the Appellant
Mr Tim Penny (instructed by Messrs Russell Jones and Walker) for the Respondent