THE HIGH COURT

[RECORD NO. 2017 874 JR]

BETWEEN

OWEN MCKENNA

APPLICANT

AND

THE CONTROL APPEAL COMMITTEE OF THE IRISH GREYHOUND BOARD (BORD NA GCON)

RESPONDENT

JUDGMENT of Ms. Justice O'Regan delivered on the 9th day of November 2018

Issues

1. The applicant is seeking an order quashing the decision by the respondent bearing the date 18th August 2017 whereby the respondent dismissed the applicant's appeal against the decision of the Control Committee of the Irish Greyhound Board (being a decision of the 24th February 2017) wherein the Control Committee were satisfied that a prohibited substance, hydrochlorothiazide, was present in such of the applicant's animals as had been tested. A total fine of €1,000 was imposed and certain prize money stood forfeit.

2. Leave was granted to maintain the within proceedings by order of the 13th November 2017.

3. As a consequence of the original statement of opposition of the respondent, the applicant submitted an amended statement of ground of the 10th April 2018 and thereafter the amended statement of opposition was filed bearing date 7th May 2018.

Statement of grounds

4. The applicant is seeking the relief of an order of *certiorari* in respect of the respondent's decision of the 18th August 2017, together with an order that the applicant's appeal be remitted to another division of the respondent for reconsideration. A declaration is sought that the respondent failed to determine the appeal in accordance with law, and/or acted contrary to fair procedure and/or natural justice, and/or unreasonably, and/or irrationally. The applicant suggests that the decision was based on serious errors of fact and breached the principles of legitimate expectation and proportionality and was objectively unjustified discrimination against him.

5. The taking of the various samples on the 5th, 12th and 19th September 2015, all at Shelbourne Park greyhound stadium, are set out. Three of the applicant's greyhounds were involved.

6. The applicant complains of the finding relative to the testing maintenance and control of the sample was in the UK laboratory and the ruling that the respondent was happy to rely on the certificate issued from same. A further issue raised is in respect of the applicant's feeding regime. A complaint is made that the finding that the applicant's feeding regime could not be considered normal and ordinary feeding was unreasonable and/or irrational. A similar difficulty arises from the applicant's point of view in respect of the finding that the applicant was engaged in a reckless feeding regime and must accept the consequences of same. It is complained that insufficient reasoning was furnished within the decision and same was irrational. Furthermore, the applicant complains that the appropriate weighing exercise as to the competing evidence of the parties was not undertaken. The applicant in the amended statement of grounds complains that there was a fundamental error of law and of fact, and breach of fair procedures and natural and constitutional justice by only considering the submissions made by the Irish Greyhound Board (hereinafter IGB) in respect of an allegation of a previous caution given to the applicant. The applicant asserts that the respondent accepted and acted on the evidence of the respondent in respect of such alleged caution notwithstanding the applicant's dispute in this regard. It is asserted that the finding that the applicant's feeding regime could not be considered normal and ordinary feeding was an error of fact, and the respondent effectively retrospectively applied its advisory notice of the 6th November 2015. The final complaint is that similar cases, entirely analogous to the matters presented against the applicant, were dismissed by the IGB's Control Committee, in the past.

Statutory framework

7. Regulations came into being in 2007 pursuant to the provisions of the Greyhound Industry Act 1958. Under Regulation 6, S.I. 301/2007 the Control Committee was set up and Regulations 10 and 11 dealt with the Control Appeals Committee set up and make up. Regulation 12 deals with the functions of the Appeal Committee and Regulation 13 deals with its procedure. Regulation 14 deals with the hearing of appeals.

8. Under regulation 14(5) the appeal is to be grounded upon the prior decision, the notice of appeal, the observations of the CEO of the board, or some person on his behalf, the observation of any person requested by the appeals committee, and information in the conduct of the appeal. Regulation 14(11) provides that unless requested by the Appeals Committee, an appellant is not permitted to elaborate in writing or make further submissions in respect of the grounds of appeal and additional submissions or grounds shall not be considered.

9. Under Regulation 28(5) where any person is found to have contravened any provision of the regulations, the Control Committee is effectively empowered to impose a fine, direct payment of costs and expenses, exercise the powers of the board under s. 45 and 47 of the 1958 Act, or do any act or thing or impose such disciplinary action contemplated under Articles 29 and 32 of the Racing Regulations. Under Article 12(3) of S.I. 301/2007, the respondent has the same powers as to the penalty to be imposed upon an individual who has breached the regulations has also been afforded to the Control Committee.

10. Insofar as the concept of Category 2 feeding is concerned, under EU Regulation 1069/2009, Article 9 defines Category 2 feed and Article 11 goes on to provide that Category 2 feed is to be disposed of in the prescribed manner and not used for feeding of terrestrial animals of a given species. Under Article 18, Member States are permitted to authorise such user under conditions.

11. Subsequently, under the EU (Animal by – products) Regulations 2014, full effect was given to the EU Regulation aforesaid within this jurisdiction including enabling the Minister to afford a licence to a particular party authorising the use of Category 2 feeding.

12. In Regulation 2 of S.I. 302 of 2007, a prohibited substance is defined as meaning any substance which by its nature could affect the performance of a greyhound and could not be traced to normal and ordinary feeding.

The decision
13. The decision records that a preliminary application was made on behalf of the applicant that the hearing would proceed by way of a *de novo* hearing. This application was acceded to by the respondent. The parties were requested to discuss the matter to ascertain whether or not the hearing could be shortened and when the parties returned it was indicated that the issue was now a food contamination issue and that there was no evidence to suggest that any of the animals in question received a direct injection. Counsel for the applicant stated that issues had been narrowed substantially and there was no challenge to the taking custody and control of the samples save only where the sample was sent to England for testing and the custody whilst it was there. Evidence was given by the applicant as to his feeding regime and the decision records that he accepted that by feeding his animals Category 2 meat that any contamination or drugs in that meat would get into the dog's system. It states that he fairly accepted that maybe he had been reckless in his feeding regime by feeding such meat and further that he was aware that there was some risk but proceeded anyway. He did not accept that he had been warned following a hearing in July 2015, but he did however accept that he applied for a meat feeder's licence shortly after the hearing which he received in October 2015.

14. Dr. Jim Healy, veterinary surgeon, gave evidence on behalf of the IGB up to the dispatch of and subsequent receipt of the sample and certificate of result from the UK indicating that he was not in a position to give evidence regarding the carrying out of the testing process in the UK laboratory. He was satisfied that hydrochlorothiazide was a prohibited substance and had an effect on performance. He also indicated that it did not matter whether it got into the dog's system directly or indirectly. Thereafter, counsel on behalf of the applicant argued that there was a flaw in the chain of evidence as there was no evidence as to the test, storage and maintenance of the sample in the UK. That issue was not raised in the notice of appeal, however counsel indicated as this was a *de novo* hearing, the committee was entitled to consider it and make a finding in his client's favour. The solicitor on behalf of the IGB argued that under the relevant regulations, the committee was bound by what was contained in the notice of appeal and he highlighted the provisions of Article 14(5) and Article 14(11) of the regulations together with Article 14(18), and stated that as the issue of the custody in the UK laboratory was not raised at all, the appeal committee could not make a finding in relation thereto.

15. In submissions, the solicitor for the IGB indicated that the applicant had accepted that he was involved in a reckless feeding regime and that it could not be considered normal ordinary feeding in any way; he asserted that the applicant was given a direction by the Control Committee in July 2015 and nevertheless continued the same feeding regime, even after the advisory notice of the 6th November 2015 the applicant still continued to feed Category 2 meat to his greyhounds. He argued that the affordability of quality meat was not a matter of concern to the Appeals Committee and that the applicant took a chance knowing that he was in breach of regulations. He argued that the fine imposed by the Control Committee was reasonable.

16. Counsel on behalf of the applicant submitted that the applicant's feeding regime could only be considered normal and ordinary feeding and argued that hydrochlorothiazide was not a prohibited substance and did not affect performance and he did not accept that the applicant got any advice from the Control Committee in July 2015. He further argued that his client had applied for a meat feeder's licence in July 2015 which had nothing to do with anything anyone said in the Control Committee. He argued that the charge should be dismissed because of a break in the chain of evidence whilst the sample was in the UK laboratory and further argued that the sample was taken prior to the guidance direction of November 2015 and prior to that date the IGB had no policy in force regarding feeding.

17. Under the heading of "Decision of the Control Appeal Committee", the Appeal Committee indicated that it had considered all of the matters raised before it and the submissions and arguments made before the Control Committee and thereafter made six findings, including that hydrochlorothiazide was a prohibited substance that could affect performance and there were no threshold levels for the finding of a breach of regulation. The decision went on as follows: -

> "3. The feeding regime of the applicant could not be considered normal and ordinary feeding;
>
> 4. They were satisfied that the testing maintenance and control of the sample whilst in the UK laboratory was in order and were happy to rely on the certificate issuing from the same.
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> 5. The appellant was engaged in a reckless feeding regime and must accept consequences of same.
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> 6. The Control Appeal Committee are strictly bound by the provisions contained in the 2007/2008 Regulations."

Applicable jurisprudence and submissions
18. The applicant argued as follows: -

> (1) Failure to establish a chain of custody was a significant issue which should have resulted in the charges being dismissed and in the circumstances the respondent was in breach of fair procedure by accepting the proffered certificate from the IGB without formal proof. In this regard, it was argued that the applicant was denied the opportunity to test evidence by cross – examination.
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> (2) The applicant relies on the judgment of Keane C.J. in *Borges v. Fitness to Practice Committee of the Medical Council* [2004] 1 IR 103 where the Chief Justice indicated that basic fairness of procedure required that where an allegation involved conduct which reflects a person's good name or reputation, the person should be allowed to cross – examine by counsel his accusers.
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> (3) The applicant argued that as it was accepted by the IGB at the hearing of the appeal, that the presence of the substance in the relevant sample had arisen as a result of a food contamination issue, however, given the finding that the feeding regime of the applicant could not be considered normal and ordinary feeding, this had far – reaching consequences for the applicant.
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> (4) It is argued that the finding that the applicant was engaged in a reckless feeding regime is a conclusion without reason or rationale and/or such reason is inadequate or unintelligible. The decision does not set out any explanation for arriving at such a finding.
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> (5) The applicant argues that it is not possible to understand the actual reason for refusing the appeal on the basis that he was engaged in a reckless feeding regime and there is no information contained within the decision to explain this finding.

(6) In the seminal judgment *Mallak v. The Minister for Justice* [2012] 3 IR 297, Fennelly J. at Para. 69 indicated that a person affected by a decision has a right to know the reasons on which they are based. At Para. 3 of his judgment, Fennelly J. indicated that the decision must be *bona fide* held and factually sustainable and not unreasonable and that at Para. 68 he held that it was not a matter of complying with a formal rule, but the underlying objective is to attain fairness and enable the individual to respond to the concerns of the decision maker.

(7) Murray C.J., in *Meadows v. Minister for Justice* [2010] 2 IR 701, held that an administrative decision affecting a person's rights must disclose the essential rationale on foot of which the decision was taken which rationale should be patent or capable of being inferred from the terms and the context of the decision.

(8) In the decision of Kelly J. in *Desmond Mulholland and Donal Kinsella v. An Bord Pleanala (No.2)* [2006] 1 IR 453, at p. 460, the court set out three criteria to be complied with in respect of the duty to give reasons as follows: -

> (i) Does it allow the applicant to consider whether he has a reasonable chance of succeeding on appeal?
>
> (ii) Does it demonstrate that the respondent body has directed its mind adequately to the issues?
>
> (iii) Does it give sufficient information to enable the court to review the decision?

(9) In *EMI Records (Ireland) Ltd. & Ors. v. Data Protection Commissioner* [2013] IESC 34, Clarke J. indicated that if the person affected by an administrative decision could be in any reasonable doubt as to what the actual reasons were, it must follow that adequate reasons have not been given.

(10) The applicant argues that none of the jurisprudence aforesaid has been met.

(11) The applicant argues that the initial agreement prior to the commencement of the hearing, achieved at between the parties, related only to the physical taking of the sample. Accordingly, details of the taking custody and control of same while in the UK was a material deficit in the evidence and should have resulted in the dismissal of the charge.

(12) The applicant argues that the respondents relied on an entirely incorrect understanding of his evidence in finding that he accepted that he had been cautioned by the Control Committee in July 2015 and this amounted to a serious error of fact, and therefore was open to challenge on the basis of the *State (McKeown) v. Scully* [1986] IR 524 where O'Hanlon J. found that the impugned decision was open to challenge on the grounds of inadequacy of evidence to support it.

(13) The applicant states that the respondent relies on selective and unfair evidence without taking on board the applicant's submissions while same were rejected in defiance of the statement by Cooke J. in T.*M.A.A. v. Refugee Appeals Tribunal & Anor*. [2009] IEHC 23 where at Para. 20, Cooke J. indicated that: -

> "…the adjudicating authority is required to carry out and to explain is to evaluate the totality of the information available; to weigh in the balance the different elements that tip in one direction and the other and to come to a conclusion as to the credibility of the evidence as a whole."

(14) The applicant argues that as the penalty imposed has an impact on the applicant's livelihood and the reasons given within the decision were not reasonable, rational or proportionate.

(15) The applicant argues that he has a right to be treated equally by applying the same rules as prevailed in other similar type cases. The advisory note, which post-dated the taking of the samples, of the 6th November 2015 should not have been considered.

(16) The applicant relies on the decision of McGovern J. in *C.O.I. v. Minister for Justice, Equality and Law Reform* [2008] 1 IR 208, Para. 18, when it was indicated that:

> "consistency of decisions based on the same objective facts may, in appropriate circumstances, be a significant element in ensuring that a decision is objectively fair rather than arbitrary"

while acknowledging a tribunal is not actually bound by previous decisions.

(17) The applicant argues that the parties merely agreed in advance of the hearing as to the physical taking of the sample and as there is no statutory exception such as is contained in matters relative to drink driving (see McGrath on Evidence, 2nd Ed. 2014, p. 162) then evidence is required in respect of the certificate in the instant circumstances which was outstanding when the matter was before the tribunal. The applicant argues that although the issue of the testing, storage and maintenance of the sample in the UK was not within the notice of appeal, nevertheless the respondent entertained same, and accordingly it is a relevant matter.

(18) The applicant argues that his good name and reputation was at stake and accordingly if the regulations were insufficient to deal with an investigation as to the testing storage and maintenance of the sample while in the UK the procedures should be altered (the applicant refers to the judgment of Barron J. in *Flanagan v. UCD* [1988] IR 724 at p. 730). The applicant further argues that the procedure neither has the semblance nor the substance of a fair hearing and was therefore contrary to natural justice when the applicant was not in a position to cross – examine his accusers – the applicant refers to the judgment of Keane C.J. in *Borges v. Fitness to Practice Committee* aforesaid in this regard.

(19) The applicant argues that the decision is entirely inconsistent with prior decisions of the Control Committee without explanation and therefore irrational.

(20) The applicant refers to the statement of opposition to the effect that the respondent was entitled to have regard to the applicant's concession that when cross – examined he admitted he had been cautioned by the Control Committee

(see Para. 12 of the amended statement of opposition of the 2nd May 2012). The applicant argues that this is factually incorrect.

The respondent's submissions

19. The respondent argued as follows: -

(1) The respondent refers to *O'Donoghue v. An Bord Pleanala* [1991] ILRM 750 wherein Murphy J. stated at p. 757 that the reasons furnished must be sufficient to enable the court to review that the tribunal has directed its mind adequately to the issues before it and a discursive judgment was not required.

(2) The respondent refers to *The State [Keegan] v. Stardust Compensation Tribunal* [1986] IR 642 where Henchy J. found that unreasonableness in the context of a judicial review decision involved a consideration of whether the conclusion reached in the decision can be said to flow from the premises. If it does not, it stands to be condemned. The test of unreasonableness and irrationality involves a consideration as to whether or not the decision plainly and unambiguously flies in the face of fundamental reason and common sense.

(3) The respondent relies on the comments of Murray C.J. in *Meadows* aforesaid to the effect that it is not for the court to step into the shoes of the decision maker and at Para. 56 of his judgment, Murray C.J. refers to the principle aforesaid by Henchy J. in *The State [Keegan] v. Stardust Compensation Tribunal.*

(4) The respondent argues that the respondent was constrained by the statutory framework, including the regulations. It refers to the judgment of Clarke J. in *Fitzgibbon v. Law Society* [2015] 1 IR 516, wherein Clarke J. held that the nature and scope of a statutory appeal depends on the true construction of the relevant statutory provisions and further identified the characteristic of the *de novo* appeal as being a decision taken by the first instance decision maker becomes wholly irrelevant and the appeal body must come to its own conclusion. Notwithstanding the foregoing, Clarke J. was satisfied that admissions made in the previous hearing is an exception to the hearsay rule and can be the subject matter of evidence at a *de novo* appeal with the weight to be attached to same being a matter for the appellant tribunal.

(5) The respondent argues that the tribunal hearing should not be equated with a hearing before the courts; the respondent was simply required to afford the applicant's basic fairness and to observe the precepts of natural and constitutional justice. In *Doyle v. Croke* (unreported, Costello J., 6th May, 1988), it was stated:- "when considering what procedures can properly be regarded as fair, the courts must consider procedures which would be appropriate to the type of organisation or association which is to adopt them and the nature and scope of the decision to which they relate".

(6) In *International Vessels Ltd. v. Minister for Marine (No. 2)* [1991] 2 IR 93, McCarthy J. stated that natural and constitutional justice does not require perfect or the best possible justice but rather requires reasonable fairness in all of the circumstances.

(7) In *Grant v. Garda Siochána Complaints Board* [1996] WJSC-HC 3617of the 12th June 1996, Murphy J. indicated that any comparison between the courts of justice and the investigating bodies is merely an analogy and as the principles of constitutional and natural justice would be applicable, there is no justification for importing all of the practice and procedure of the High Court principles governing their conduct (see Para. 10 of the judgment).

(8) In *Kiely v. Minister for Social Welfare* [1977] IR 267 Henchy J. pointed out that tribunals exercising quasi – judicial functions are frequently allowed to act informally, that is to depart from the rules of evidence in a courtroom but may not act in such a way as to impair a fair hearing or a fair result.

(9) The respondent argues that the parties from the outset agreed that the outstanding issue between them related to a food contamination issue and in those circumstances there was an express or implied admission that the relevant drug was present in the samples taken, so that the argument presented by the applicant in relation to the certificate runs counter to the agreement achieved between the parties immediately prior the hearing.

(10) Insofar as additional issues were raised as they were outside the scope of an appeal in accordance with the regulations they were not relevant.

(11) The applicant cannot import into the decision any statement within the statement of opposition with regard to the asserted caution afforded to the applicant, or the allegation that was contained in the statement of opposition that the applicant agreed that he had been cautioned.

(12) Insofar as the applicant argues that the tribunal should have had regard to the impact on the applicant's good name and reputation, the respondent argues that this could not possibly amount to a reason to disregard the prohibited drug due to non – normal feeding if such a finding was made.

(13) There is no evidence in the decision of the respondent to the effect that the applicant had accepted that he had been cautioned in or about July 2015.

(14) The respondent indicates that there is no evidence whatsoever that there was a retrospective application of the advisory note of November 2015.

(15) Neither the decision nor the affidavits by the applicant nor the affidavit of Denis Boland, the applicant's solicitor, suggests that the alleged inconsistent findings (comparable cases) were put before the respondent and the respondent also points to the fact that there is no mention in the notice of appeal of comparable cases and outcomes. In this regard the respondent also refers to the fact that the alleged comparable cases are decisions of the Control Committee as opposed to the Control Appeal Committee.

(16) The respondent refers to the affidavit of the applicant of the 10th November 2017, Para. 18 thereof, where the applicant indicated that the finding of a prohibited substance had arisen as a result of food contamination and this had been agreed prior to the commencement of the hearing. The respondent argues that this statement is entirely inconsistent with the current challenge to the acceptance of the certificate.

(17) The respondent refers to the fact that the respondent tribunal is an expert body and is entitled to the curial deference identified

by Hamilton C.J. in *Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare* [1998] 1 IR 34 where in the course of his judgment, the Chief Justice indicated that the court should be slow to interfere with decisions of expert tribunals, and where conclusions are based upon and identifiable error of law or an unsustainable finding of fact, such conclusions must be corrected.

(18) The respondent refers to the fact that notwithstanding that it was not until October 2015 that the applicant, pursuant to an application of the July 2015, received a licence to feed Category 2 feed nevertheless the applicant did feed his greyhounds Category 2 feed in or about September 2015 when the relevant samples were taken. It is argued that the applicant must have known prior to September 2015 when he applied for the licence that to feed Category 2 feed without a licence ran counter to the regulations herein before identified and to this extent it can be said that the decision that the applicant's feeding regime was not normal ordinary feeding is sustainable as is the finding that the applicant was reckless in his feeding regime. The decision notes that the applicant was aware there were some risks in feeding Category 2 feed at the time to his animals but he proceeded anyway.

(19) The respondent points to the fact that the Certificate from the UK was not challenged during the course of the hearing before the respondent but rather the taking control and maintenance of the sample while in the UK.

Decision

UK certificate
20. The decision records that prior to the hearing the parties accepted that the issue was now a food contamination issue and there was no evidence to suggest that any of the dogs received a direct injection. It is noted that counsel on behalf of the applicant stated that the issues had been narrowed substantially and there was no challenge to the taking custody and control of the samples save only where the sample was sent to England for testing and the custody whilst it was there. As aforesaid, the plaintiff in his affidavit of the 10th November 2017, states that the finding of a prohibited substance had arisen as a result of food contamination that was agreed between the parties prior to the commencement of the hearing. This statement does not accord with the suggestion that there was an outstanding issue as to whether or not the samples taken from the dogs actually had a prohibited substance. Further, the outstanding issue was not identified as the admissibility of the certificate but rather the custody of the sample while in the UK.

21. It appears to me that it was implicit in the agreement aforesaid and the content of Para. 18 of the plaintiff's grounding affidavit that there was a drug present in the sample which is what the certificate states – this is consistent with the fact that the appellant's submissions to the respondent did not include a denial of hydrochlorothiazide being in the dog's system.

22. The applicant stated in his second affidavit of the 20th March 2018 at Para. 9 that it had not been necessary to call his vet to give evidence during the currency of the hearing because of the agreement achieved which statement is in my view inconsistent with the submissions made to the court to the effect that the parties agreed only in respect of the physical taking of the sample.

23. Further, in respect of the custody and control of the sample, whilst in the UK evidence was in fact given by Dr. Jim Healy that the laboratory in the UK was of the highest ISO standard and was UKAS accredited.

24. There is nothing in the notice of appeal to the respondent seeking to condemn the certificate, which merely notes the presence of hydrochlorothiazide, a fact which, as aforesaid was not in dispute.

25. I am not satisfied that because the tribunal made a finding in respect of the certificate and the custody and control of the sample while in the UK, that this conferred powers on the tribunal not comprised within the statutory framework. In this regard, it is clear that the tribunal does not have powers within the Act of 1958 or the regulations to investigate the control and maintenance of the sample while in the UK. It is not possible for the tribunal to assume such powers during the currency of a particular hearing. The certificate was not raised as an issue either in the notice of appeal or immediately in advance of the hearing.

26. Even if I am incorrect in respect of the foregoing, the nature of the agreement achieved between the parties as identified in Para. 18 of the grounding affidavit of the applicant of the 10th November 2017 is such that this is an issue in which I would exercise my discretion not to afford relief.

Misstatement of fact
27. This heading relates to whether or not the applicant had been given a caution following the hearing before the Control Committee on the 14th July 2015.

28. The applicant argues that no such caution was given and the respondent failed to undertake the relevant and appropriate weighing exercise in respect of the competing evidence in this regard.

29. In fact, there is no mention of a caution, warning or advice given to the applicant in the decision of the respondent, save for the fact that the decision records that the applicant made submissions to the effect that he did not accept that he had received any such advice and that his application for the meat feeder's licence on the 24th July 2015 had nothing to do with any advice or anything the Control Committee said to him. In the closing arguments on behalf of the IGB, no reference is made to caution, advice or warning. In the circumstances, the applicant has failed to establish that the issue relative to caution, advice or warning formed the basis of any of the findings of the respondent. The fact that reference is made to the caution in the statement of opposition is not sufficient to impute same into the decision.

Reasons / irrationality
30. I accept the arguments made by the respondent in respect of the finding that the feeding regime of the applicant could not be considered normal and ordinary feeding. There is ample evidence within the decision as a whole to ascertain why this finding was made – namely that the applicant had accepted that notwithstanding that he did not have a Category 2 feeding licence in September 2015, nevertheless he continued to feed his animals Category 2 feed and was aware that this was a risk that nevertheless he undertook such prohibited feeding regime.

31. It cannot in my view be said that the conclusions or findings of the respondent were based upon an identifiable error of law or an unsustainable finding of fact. The decision records that the applicant had accepted that by feeding Category 2 meat any contamination or drug in the meat would get into the dogs' system and he fairly accepted that maybe he had been reckless in his feeding regime. Further, given that the applicant gave evidence in respect of his feeding regime in September 2015 and that he had not received the meat feeder's licence of the 12th October 2015, there was clear evidence before the tribunal that the applicant's feeding regime was contrary to the relevant statutory provisions and the fact that the IGB may not have issued an advisory notice prior to the 6th November 2015 did not equate to feeding Category 2 meat without a licence was permissible in September 2015.

32. In addition it is noted that in closing arguments the Board submitted that the applicant took a chance knowing he was in breach of the Regulations and this argument was not countered by the applicants closing arguments.

33. Similarly, in relation to the finding that the applicant was engaged in a reckless feeding regime this was supported by evidence contained in the content of the entirety of the decision of the 18th August 2017 when one has regard to the statutory provisions surrounding the greyhound industry. The statement in the decision to the effect that the applicant fairly accepted that maybe he had been reckless is not impugned and therefore I am satisfied that finding Number 5 clearly flows from this evidence.

Retrospective effect
34. The appellant argues that the advisory note of the 6th of November 2015 was given retrospective effect, however in my view the applicant wholly fails in this argument as the advisory note was raised by the IGB in its submissions merely in respect of feeding after that date and was also referred to in submissions on behalf of the applicant to the effect that the advisory note did not issue until November 2015, and prior to that date the IGB had no policy in force regarding feeding. Given the limited reference therefore to the advisory note contained within the decision and the finding at Finding No. 6 to the effect that the respondents were strictly bound by the provisions contained in the 2007/2008 regulations, there is no evidence whatsoever that there was a retrospective application of the advisory note of the 6th November 2015.

Comparable cases
35. In the notes taken by Mr. Coleman and exhibited in his affidavit there is a brief reference to other cases taken before the Control Committee regarding food contamination where the finding was made in favour of the owners of the greyhounds. However, there is no reference to the details of such cases. In neither the submissions to the respondent nor the affidavit of Mr. Denis Boland, solicitor on behalf of the applicant, of the 13th November 2017, is there any reference to particular cases being cited to the respondent. The affidavit of Mr. Boland suggests that the decision is inconsistent with other cases but does not suggest that such other cases were identified and considered.

36. In the summary of the submissions made to the respondent and recorded in the decision, there is no reference to the outcome of alleged comparable cases, nor is there such reference in the notice of appeal of the 20th March 2017.

37. In the circumstances, I am satisfied that the applicant has not established that the respondent erred in not considering alleged comparable cases - the applicant has not discharged the burden of proof necessary to condemn the decision on this basis.

Impact on livelihood
There is nothing in the decision, whether by way of evidence or submissions, as to the alleged impact of any potential finding or penalty on the applicant's livelihood. The IGB argued that the fine was reasonable in its closing arguments and the applicant did not pass any comment on this aspect of the matter in his closing arguments. This theme was not developed in either written or oral submissions to this court. In the amended Statement of Grounds (Para. 22) the applicant states that because the decision affects his personal rights the decision must demonstrate that such rights were considered and the decision must be reasonable, rational and proportionate having regard to such rights. However, there is no evidence that the applicant raised this matter before the respondent – see the decision and various affidavits by and on behalf of the applicant. I am satisfied that the applicant has not established the requisite proof to condemn the decision under this heading.

Conclusion
38. I am satisfied that in all the circumstances the plaintiff has failed to discharge the burden necessary to secure an order of *certiorari* in respect of the *impugned* decision.