

**RACING PENALTIES APPEAL TRIBUNAL DETERMINATION**

**APPELLANT:** MR KEVIN EGERTON-GREEN

**APPLICATION NO:** 22/5931

**PANEL:** MR ROBERT NASH (CHAIRPERSON)  
MS NATALIE SINTON (MEMBER)  
MS KELLY ZHANG (MEMBER)

**DATE OF DETERMINATION:** 3 DECEMBER 2025

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**IN THE MATTER OF a determination in respect of an application for additional evidence to be adduced in respect of an appeal by KEVIN EGERTON-GREEN against the decision of the Stewards of Harness Racing to impose a disqualification period of 9 months for breach of Rule 190(1), (2) and (4) of the Rules of Harness Racing**

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Mr Kevin Egerton-Green self-represented.

Ms Venetia Bennett and Mr Stephen Waddington represented the Racing and Wagering Western Australia (RWVA) Stewards of Harness Racing.

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1. Mr Egerton-Green has been a licensed Trainer A class for around 20 years and was the trainer of PETER -ROMEO when PETER ROMEO raced at Gloucester Park on 13 May 2022.
2. PETER ROMEO placed third in Race 5 and was subject to a post-race urine swab that tested positive to Metformin, a prohibited race day substance.
3. Metformin is a human medication, prescribed for the treatment of type 2 diabetes.<sup>1</sup> It has no therapeutic use in horses.<sup>2</sup>
4. At a Stewards inquiry on 21 October 2022, Mr Egerton-Green pleaded guilty to presenting PETER ROMEO to race in Race 5 not free of Metformin, contrary to Rules of Harness Racing r 190.<sup>3</sup>

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<sup>1</sup> Transcript of RWVA Stewards' Inquiry on 21 October 2022, p 6

<sup>2</sup> Transcript of RWVA Stewards' Inquiry on 21 October 2022, p 21

<sup>3</sup> Transcript of RWVA Stewards' Inquiry on 21 October 2022, p 41

5. On 2 November 2022, the Stewards imposed a 9-month disqualification, with effect from 10 August 2022, the date of Mr Egerton-Green's suspension, pending the outcome of the matter. The penalty expired on 9 May 2023. PETER ROMEO was disqualified from the race.
6. On 7 February 2023, Mr Egerton-Green commenced an appeal against his disqualification. That appeal was not heard until 9 July 2025, more than two years after the expiry of Mr Egerton-Green's 9-month disqualification.
7. The delay in hearing the matter arises as a result of Mr Egerton-Green's desire to adduce evidence at the hearing of the appeal.
8. On 20 January 2025, the Chairperson made orders permitting Mr Egerton-Green to adduce evidence in the appeal.<sup>4</sup>
9. Following the hearing of the appeal on 9 July 2025, the Tribunal received and considered helpful further written submissions from the parties as to the matter of Prentice v RWWA Stewards of Harness Racing appeal no 816.
10. For the following reasons, the materials adduced in the appeal do not demonstrate error in the penalty imposed and the appeal must be dismissed.

### **Applicable principles**

11. The principles that are to be applied in an appeal against penalty to this Tribunal are well settled<sup>5</sup> and need not be repeated.

### **The source of the Metformin in PETER ROMEO's urine**

12. In the present case, the Stewards considered the possibility of environmental contamination, but were not satisfied that contamination was the source of the Metformin in PETER ROMEO's urine.
13. In coming to this conclusion, the Stewards considered a number of matters.
14. First, while Mr Egerton-Green is himself prescribed Metformin, he was confident that no tablet could have accidentally been ingested by the horse.<sup>6</sup> In any event, the Stewards would have considered this explanation to offer little mitigation as trainers are expected to take reasonable care with their medications to avoid just such a risk.
15. Second, any transfer of residue from his hands would be unlikely to result in the levels present in PETER ROMEO's urine and evidence was given at the Inquiry that ingestion is the most logical mechanism for the substance to become present in a horse.<sup>7</sup>
16. Third, contamination by way of exposure to the urine of a person who had taken Metformin was not supported by any evidence. Human medications are not commonly detected in horses, despite many people being on medications.
17. Mr Egerton-Green could not put forward an explanation for the detection of Metformin in PETER ROMEO's urine sample.<sup>8</sup> Of course he did not have to. Nor did the Stewards.

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<sup>4</sup> Egerton-Green v RWWA Stewards of Harness Racing determination dated 20 January 2025

<sup>5</sup> See for example *Lewthwaite v RWWA Stewards*, Appeal No. 863 [88]-[91], [94]

<sup>6</sup> Reasons for decision dated 2 November 2022 at [7]

<sup>7</sup> Reasons for decision dated 2 November 2022 at [8]

<sup>8</sup> Reasons for decision dated 2 November 2022 at [4]

18. An explanation for the presence of Metformin in PETER ROMEO's urine was not required for the offence to be made out, as the prohibition on the presentation of a horse not free of a prohibited substance is one of strict and absolute liability.
19. An explanation such as environmental contamination would be mitigating. The onus of establishing a mitigating factor falls on the person seeking to benefit from it.
20. As the Stewards correctly noted in their reasons for decision, while an explanation for the presence of a prohibited substance can – depending on the explanation - be mitigating, the absence of an explanation is not aggravating.
21. In the present case, the Stewards were required to impose penalty on the essentially neutral basis that they simply did not know how Metformin came to be in PETER ROMEO's urine. This is consistent with the approach taken by this Tribunal in *Prentice v RWWA Stewards of Harness Racing* appeal no 816.
22. The materials sought to be relied on by Mr Egerton-Green were of limited, if any, relevance and, at their highest, did no more than confirm that Metformin can be found in wastewater. The materials did not establish that it was more likely than not that Metformin came to be in PETER ROMEO's urine by way of environmental contamination. In other words, the materials relied on do not lead to the conclusion that a different penalty should be imposed.

### **Reasons for penalty**

23. In their reasons for penalty dated 2 November 2022, the Stewards noted that Mr Egerton-Green had held a license for many years, and is clearly passionate about and extensively involved in, the industry.
24. The Stewards considered Mr Egerton-Green's conduct throughout the inquiry to have been respectful and courteous, and considered that his plea and his approach to the matter were deserving of mitigation.<sup>9</sup> The Stewards noted that Mr Egerton-Green has a previous presentation offence for which a disqualification was imposed, meaning he could not be afforded the same level of mitigation that would be afforded to a person with an unblemished record.<sup>10</sup>
25. As to penalty, the Stewards observed that Metformin had not been previously detected in Western Australia. As a result, the Stewards took "extra time, care and attention" in determining penalty, and "carefully considered various decisions of other authorities."<sup>11</sup>
26. The Stewards identified the nature of Metformin, a human medication with no therapeutic use in horses, as elevating the seriousness of the offence, as it is a substance that should not be in the horse at all.<sup>12</sup> As such, the Stewards did not consider that a penalty in line with those imposed for presentation offences involving routine veterinary treatments to be appropriate.<sup>13</sup> Further, Metformin's status as a permanently banned substance was considered to be another matter that elevated the seriousness of this offence.<sup>14</sup> This approach is consistent with the approach of this Tribunal in *Ferguson v RWWA Stewards Appeal No 843*.

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<sup>9</sup> Reasons for decision dated 2 November 2022 at [4]

<sup>10</sup> Reasons for decision dated 2 November 2022 at [3]

<sup>11</sup> Reasons for decision dated 2 November 2022 at [13]

<sup>12</sup> Reasons for decision dated 2 November 2022 at [19]

<sup>13</sup> Reasons for decision dated 2 November 2022 at [25]

<sup>14</sup> Reasons for decision dated 2 November 2022 at [26]

27. In all of those circumstances, the Stewards determined that a disqualification was the appropriate penalty.

### **The appeal**

28. By his notice of appeal, Mr Egerton-Green raises three grounds of appeal. As was apparent from his submissions at the hearing, in substance, Mr Egerton-Green appeals the imposition of a disqualification in circumstances where he says the possibility of environmental contamination was not excluded by the Stewards as the source of the Metformin in PETER ROMEO, and in circumstances where, if any contamination occurred at Gloucester Park Mr Egerton-Green would have no control over, or means of establishing this fact.
29. Further, Mr Egerton-Green points to penalties imposed in other jurisdictions in which people were fined for Metformin offences as establishing error in the imposition of a disqualification in his case.
30. Mr Egerton-Green also questions the inclusion of Metformin as a prohibited substance in the Rules. The simple answer to this is of course that as an AMPK activator, Metformin is prohibited, and it is not the role of this Tribunal to do otherwise than treat it as a prohibited substance.
31. In relation to the first issue, as the Stewards noted, the possibility of environmental contamination was entirely speculative. There was no evidence to suggest any other horse present at Gloucester Park on 13 May 2022 tested positive to Metformin, which would make the possibility of environmental contamination more plausible.
32. In relation to the decisions of other jurisdictions, no more needs to be said about those than that on the limited information provided to the Tribunal, each involved a finding that contamination was the likely source – a finding that was based on evidence. Both the finding and the evidence were absent in this case. In any event, that a penalty imposed in this jurisdiction exceeds an established range in another jurisdiction does not establish error.<sup>15</sup>
33. Having regard to the nature of Metformin as a permanently banned substance which has no legitimate therapeutic use in horses and well established principle that the maintenance of public confidence in the integrity of the racing industry is facilitated by the imposition of stringent controls on trainers presenting horses to race without prohibited substances in their system regardless of whether or not the trainer is at fault,<sup>16</sup> it has not been established that the Stewards' conclusions as to penalty were so unreasonable or plainly unjust as to imply error in their exercise of sentencing discretion.
34. The appeal must therefore be dismissed.

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<sup>15</sup> See for example *Lewthwaite v RWWA (Thoroughbred)*, Appeal No. 863 at [106]

<sup>16</sup> *Harper v Racing Penalties Appeal Tribunal of Western Australia* (1995) 12 WAR 337 at 349

## Conclusion

35. It not having been established that a 9-month disqualification was manifestly excessive, Mr Egerton-Green's appeal is dismissed.
36. The Tribunal acknowledges Mr Egerton-Green's genuine frustration at having been disqualified in circumstances where it is not suggested that he administered Metformin to PETER ROMEO, and the Tribunal is willing to accept that he does not know how it came to be present in the horse. It is important to note however that he has not been penalized for having administered Metformin to the horse.
37. Metformin is a permanently banned substance. It was present in PETER ROMEO's urine. It should not have been.
38. The evidence at the inquiry in this matter was that the most likely route by which it came to be in PETER ROMEO's urine was by the horse ingesting it. He should not have. It is essential to the integrity of the industry that great care be taken to ensure a horse does not ingest a prohibited substance. As such, deterrent penalties must be imposed to encourage all involved in the industry to take every precaution to avoid a horse ingesting a prohibited substance.
39. For those reasons, the appeal will be dismissed.



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**NATALIE SINTON**



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**ROBERT NASH  
CHAIRPERSON**



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**KELLY ZHANG  
MEMBER**

