RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 13 APRIL 2022

APPELLANT SHANE WATERHOUSE

RESPONDENT GREYHOUND WELFARE AND INTEGRITY COMMISSION

GREYHOUNDS AUSTRALASIA RULE 86(g) and 86(o)

DECISION

1. **Charge 1 – Severity appeal upheld; penalty varied to disqualification of 2 years, of which 6 months is suspended conditionally for 12 months, to commence 10 August 2021**
2. **Charge 2 – Appeal against adverse finding dismissed; severity appeal dismissed; penalty of 4 months disqualification imposed, to commence 16 November 2021**
3. **Penalties to be served concurrently**
4. **No order for appeal deposit to be refunded**

1. The appellant appeals against the decision of GWIC of 16 November 2021 to impose upon him a period of disqualification of two years for a breach of Rule 86(g) and disqualify him for a period of four months for a breach of rule 86(o), each of those penalties to be served concurrently.

2. The charges and the particulars are as follows:

> "Charge 1: Rule 86(g)
>
> A person (including an official) shall be guilty of an offence if the person-
>
> > (g) wilfully assaults, obstructs, impedes, abuses, interferes, threatens or insults the Controlling Body, any member of the Controlling Body, a club, any member of the committee of a club, any Steward or any other official of the Controlling Body or a club in or at any place including in or in the vicinity of the place where an inquiry is to take place, is taking place or has taken place;
>
> Particulars
>
> That Mr Waterhouse, as a registered Public Trainer, assaulted an official of the Casino Greyhound Club ('Club') on 15 July 2021 at the Club, with the circumstances being:
>
> > (a) Mr Luke Mason is the assistant manager of the Club;
> >
> > (b) Mr Waterhouse attended at the Club in the morning of 15 July 2021;
> >
> > (c) Mr Waterhouse approached Mr Mason in the office of the Club;
> >
> > (d) Mr Waterhouse then slapped Mr Mason across the face.
>
> Charge 2: Rule 86(o)
>
> A person (including an official) shall be guilty of an offence if the person-
>
> > (o) has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;

Particulars

That Mr Shane Waterhouse, as a person disqualified on an interim basis, did a thing that was improper or constitutes misconduct in that:

(a) Mr Waterhouse was a registered Public Trainer with the Commission;

(b) On or about 10 August 2021 Mr Waterhouse was served with a Notice of Disciplinary Action (Interim Disqualification), disqualifying his registrations on an interim basis;

(c) During a kennel inspection at 49 Hartley Street Casino ("the Property"), Mr Waterhouse told Inspector Santin that he was:

i training greyhounds in his custody; and

ii arranging to have greyhounds in his custody run on a straight track at another greyhound racing participant's property;

(d) In conducting these activities whilst being a disqualified person, Mr Waterhouse was not adhering to the restrictions imposed on a disqualified person under Local Rule 99B(1)(c) which, in the opinion of the Controlling Body, is improper and constitutes misconduct."

3. In respect of these matters, the appellant, when lodging his notice of appeal, did not admit a breach to the Tribunal of either matter. Subsequently, when legally represented on the appeal, it became an indication to the Tribunal that the appellant admitted the breach of Charge 1, but wished to appeal on the grounds of severity, and maintained a denial of a breach of Charge 2, and also maintained an appeal on severity.

4. The evidence thus has essentially focused upon that relevant to Charge 2.

5. That evidence has comprised the 166-page brief served upon the Tribunal and the appellant and, critically, that contains a substantial history involving proposed actions, interim decisions, evidence in relation to Charge 1 in some detail, interviews, a transcript of an inquiry and various decisions. As necessary, the Tribunal will address those. In addition, there is an updated report on behalf of the appellant of psychologist Neill Dark of 27 January 2022. The appellant has given evidence.

6. The issue for determination enlivens each of the particulars of Charge 2. The question whether, if the particulars are found established, the conduct

in which the appellant engaged was improper, and therefore misconduct as pleaded, has not been the subject of direct submissions. The Tribunal will return to that.

7. There are four particulars to be addressed, the first two of which are not in dispute under "found established", namely, that the appellant was a registered public trainer and, secondly, on 10 August 2021 he was served with a Notice of Disciplinary Action described as an interim disqualification of his registration.

8. The first part of particular 3 is not in dispute that there was a kennel inspection at his property. The second part of particular 2 addresses two ingredients and they are, in full, "(i) training greyhounds in his custody and (ii) arranging to have greyhounds in his custody run on a straight track at another greyhound racing participant's property."

9. The fourth particular is a conclusion invitation, namely, that by conducting those activities whilst disqualified, and contrary to his restrictions, he has engaged in conduct which is improper and, therefore, is misconduct.

10. The key factual matters in relation to particulars 1 and 2, as they are described, require consideration of what the actual terms of his disqualification of 10 August 2021 were. And, in the notice to him of that date, limitations prescribed by the Act and the Rules were set out to him.

11. Two of those many dot point forms in that letter are relevant. Firstly:

> "You are unable to enter, go or remain at any time any place where greyhounds are trained, kept or raced".

And:

> "You are unable to otherwise participate in or associate with greyhound racing".

12. There were many others which do not need further analysis.

13. The rules provide some key definitions relevant to the particulars.

14. The first is what is a greyhound. And in this case that is relevant. And there are two definitions, as follows:

> "'greyhound' means a dog or bitch of the species registered or licensed pursuant to the Rules of a Controlling Body.
>
> 'greyhound' means a greyhound that is owned or kept in connection with greyhound racing."

"Greyhound racing" is defined as follows:

> "means everything and anyone who participates, at any level, at any time, with any activity associated with greyhounds or racing and includes, but is not limited to-
>
> (a) the keeping of greyhounds which are in the care or custody of registered or other persons;
>
> (b) the registration and breeding of greyhounds;
>
> (c) any matter or thing connected with greyhound racing."

There is also the definition of "train", and that is:

> "shall mean the preparation, education or exercise of a greyhound to race or trial."

15. The facts are that the respondent determined to commence an inquiry into the appellant as a result of the conduct associated with charge 1. As it has been particularised already, it needs not to be summarised. The effect of that was that under s 58(3) the appellant was given notice of a proposed interim disqualification of him, and the impact, if that disqualification was imposed upon him, was set out. He made submissions. A determination was made, as stated, on 10 August 2021, to impose that interim disqualification or, as it might otherwise be described under s 59, disqualification, because of the conduct involving the official Mr Mason. There is no doubt the appellant was notified of that limitation on his capacity and he knew and understood it.

16. He sought some exemptions, which were not granted.

17. A kennel inspection took place with an inspector of the respondent. Numerous matters were discussed. The relevant ones referred to by Inspector Santon in the inquiry on 16 November 2021 contained the following words, from the appellant, when Santon reports on what the appellant said to him, as follows:

> "I'm not allowed to train them, I'm stood down, so I'm not allowed to train them."

And later:

> "Look, I'm not going to lie to you, I've been taking them out and running them."

And later:

> "I'd been exercising them for their mental health plus my mental health to save me from killing myself."

Question, by the Chairman, Mr Tutt:

> "Okay. Where were you exercising them, Mr Waterhouse?"

Answer:

> "Johnny Martin's straight track, because it's a controlled, safe environment there."

And later:

> Appellant: "I've been doing it for three years out there and I'm going to keep doing it because the dogs need it for their health and their well-being."

And later:

> Appellant: "Yes, I've been running them. And, yes, I've been running them and, yes, I'm going to keep running them."

And later:

> "And the dogs need it for their mental health."

Question:

> Mr Tutt: "You take them to Mr Martin's track?"
>
> Appellant: "Yeah."

And later:

> "I've never lied about it."

18. The appellant gave evidence at the inquiry about these matters where, in the course of questions again, he said: "The dogs come first." He then confirmed the evidence of Mr Santon.

19. The appellant gave evidence to the Tribunal in relation to this issue. He again reiterated that he was simply exercising the greyhounds for their mental health, because it is not in their interests to keep them in the two-

and-a-half by three metre kennels in which they are locked up all day and that they therefore need exercise.

20. He then said that the greyhounds he exercised were unnamed greyhounds.

21. It is necessary to pause and note at this stage that it is not in dispute that at the time of the inspection by Mr Santon there were 10 greyhounds at the property. It is the appellant's evidence to the Tribunal that it was the seven unnamed but microchipped greyhounds that were subject to the exercise, and the three named greyhounds, Ballyneale Conor, Elite Honcho and Kiera Bale, were not exercised.

22. The appellant gave evidence about not racing greyhounds until they are named, which does not appear on the submissions made and the Tribunal takes, as it is entitled to do, those submission matters as facts established, that in fact they can be trained before they are named and, indeed, they can be presented, before they are named, at slipping tracks, and they can also be taken, once named, to registered training tracks and racecourses.

23. There is some evidence which does not need to be examined because it does not cover the issues here about a suggestion that the appellant should retire the particular greyhounds. He told the inquiry he was not prepared to do that because he had then spent $20,000 on them. He now updates that to $25,000. And it is not necessary to examine that in more detail because the dogs remained registered with GWIC.

24. The fact is that these greyhounds remain greyhounds within the purview of the respondent.

25. The appellant was quite adamant that he knew he could not train his registered dogs, those with names, and he was quite adamant also, and has been consistent at all times, that it was not safe to exercise the dogs on a public street and for that reason he took them to Mr Martin's track.

26. He sought to distinguish the tracks of Mr Martin on the basis that the one to which he took them was simply a paddock as such, enclosed by fencing, with gates at each end, and that it had no other training-related facilities such as lures, starting boxes and the like. The appellant was of the opinion it was public property. He sought to distinguish that particular area, as against Mr Martin's other training track, which had other facilities of a more sophisticated nature for training purposes, such as lures and starting boxes.

27. That evidence needs to be examined so as to be able to be satisfied within the definitions the Tribunal has made reference to and within particular 2, as it is set out, that in fact it is a "track at another greyhound racing participant's property".

28. No issue has been taken that Martin is a registered participant and it is quite apparent from the totality of the evidence available to the Tribunal that Martin has property within the particulars as described.

29. There was some other evidence, orally, today in relation to the age at which greyhounds can be trained and race, and it appears to be that it is permissible under the rules from 16 months, the age at which these unnamed greyhounds then stood, but that generally, it is the appellant's evidence, they are not raced until they were two years of age. Nothing essentially turns upon that because of the definitions to which the Tribunal will return.

30. The issues, therefore, become narrowed down when considered to the Briginshaw standard of comfortable satisfaction with conduct which is said to be improper and therefore misconduct, and therefore the analysis of the evidence with that in mind to what was and was not required of the appellant whilst disqualified from 10 August 2021.

31. Firstly, was he training greyhounds?

32. That would require the Tribunal to be satisfied that what he was doing was exercising them – because there was no talk of preparation or education – to race or trial. It is conceded by the respondent that for the Tribunal to form an opinion of training being established, it must be inferred that what he was doing was not just exercising them for their welfare but, as it were, maintaining their fitness so that they could, with further training by way of exercise or otherwise, improve their condition to a state where they could be presented to trial or race.

33. It is the appellant's evidence that the greyhounds at that age and in the condition in which they then stood, and with the limitations upon him, were simply at a stage where they could walk or chase a ball. The Tribunal accepts his evidence that at that point it would take a further four months of attention before they could reach a stage of racing or trialling. The Tribunal accepts that at that point, when he made the admissions of his conduct, they were not at that condition.

34. The Tribunal does not find from the totality of the evidence that he has been found to have continued to exercise the greyhounds over and above the limited evidence available to the Tribunal, despite the fact he said he would continue to do so, that he in fact did so, which might then have improved their condition such that it could be said that he had bettered their condition to the stage where they could race or trial.

35. The Tribunal accepts his evidence that he knew he could not train them, that what he was doing was exercising them for their welfare, and that he

was not exercising them for the purposes of racing or trialling. The Tribunal accepts, based on the totality of the evidence – and it will be touched upon again – as to his care for his greyhounds, his belief he could not exercise them in the street, his belief that it was necessary to take them elsewhere to do so, and that in doing that he was not doing it for the purposes of maintaining physical fitness for the purposes of racing or trialling.

36. Particular 1 is not found established.

37. Then the second point arises, that he has arranged to have them in his custody to run on a straight track at another greyhound racing participant's property. There are three ingredients. Were the greyhounds in his custody? Yes. Did he take them to run on a straight track? Yes. Was it at another greyhound racing participant's property? Yes.

38. How is that established? Firstly, they are greyhounds. The Tribunal has referred to the definition of greyhound and there is no doubt that the reason the appellant had bred these unnamed greyhounds, through the mother Kiera Bale, is that he was doing so for the purposes of greyhound racing. He therefore owned them and kept them in connection with greyhound racing. They therefore fell within the definition of greyhound. They also fall within the first of the definitions of greyhound to which the Tribunal referred, and that is that they were registered or licensed under the rules. There has been no dispute about that.

39. And what is greyhound racing? And that is necessary also to meet the definition of greyhound. It is "everything or anyone, at any level, at any time, with any activity associated with greyhounds", and that is exceptionally broad. And it is "any matter or thing connected with greyhound racing". These greyhounds were bred for the purposes of racing or for other sale within the industry. It is, therefore, without examining it in greater detail, that these were greyhounds, as particularised in particular 2, and within the definition of greyhound.

40. They were in his custody. That is not in dispute.

41. He has described it as a straight track, and that is Mr Martin's track. And the evidence establishes that Martin is and was a greyhound racing participant. It is, therefore, that particular 2 or, as it is set out in the particulars, (c) ii, is found established.

42. It is, therefore, that they are ingredients to which the Tribunal can turn in considering whether (d) is satisfied. That is, that it is an activity while he was a disqualified person. That is not in issue. The Tribunal has referred to the restrictions imposed upon him, and those, therefore, by the rules, and those particularised fell within the actual particulars of 10 August 2021 and no issue has been taken with that.

43. Is it, therefore, that the Tribunal is able to form an opinion that that conduct was improper and therefore constitutes misconduct as Rule 86(o) requires? And, just to be clear, each of the other ingredients of 86(o) necessary to be proved by the respondent are found established.

44. “Improper”, simply described, means not at an acceptable standard. Is it not at an acceptable standard for a disqualified person, knowing that they could not engage in these types of activities, but apparently doing so solely for the welfare of the greyhound, a person who has engaged in improper conduct?

45. Firstly, he had knowledge of the limitations imposed upon him. He had sought to have them varied unsuccessfully. He therefore was acting either in complete ignorance of, or in defiance of, the limitations imposed upon him by the 10 August 2021 disqualification.

46. The Tribunal is of the opinion that that conduct, therefore, was improper, and if it was by way of ignorance, then that ignorance cannot be excused because of the requirement for a person with the privilege of a licence, although it was then disqualified, to know all of the limitations imposed upon them.

47. In those circumstances, the Tribunal is comfortably satisfied and finds it was improper, and there has been no suggestion to the contrary. And, secondly, that such impropriety constitutes misconduct.

48. The Tribunal finds charge 2 established as defined.

49. Accordingly, the appeal against the adverse finding in respect of Charge 2 is dismissed.

PENALTY

50. It is then necessary for the Tribunal to turn to consider the issue of penalty in respect of Charge 1 and Charge 2, now limited as to how it has been found.

51. The Tribunal will pause before deliberating further, by reason of the reduction in the finding made, to give the appellant and, if required, the respondent, if they wish to do, the opportunity to make further submissions now on the issue of whether the penalty which is advanced by the respondent of a four-month disqualification or, on behalf of the appellant, no penalty or time served, is still an appropriate submission.

SUBMISSIONS MADE IN RELATION TO PENALTIES

52. The Tribunal turns to the issue of penalty. In respect of Charge 1, and, indeed, for that finding in Charge 2, it is necessary in each matter to find objective seriousness and then to determine what, if any, reduction might be made for subjective circumstances from that objective seriousness finding.

53. It is important for the Tribunal to remind itself again that this is a civil disciplinary hearing, not a criminal determination, and that in determining an appropriate order, it is not punishing the appellant but imposing a protective order. In determining that protective order, part of the considerations must be what message is to be given to this appellant on a personal basis and what message is necessary to be given to the community at large and, in particular, the broader greyhound racing industry, of the consequences of commission of this type of conduct.

54. In exercising that protective jurisdiction, it is necessary not only to have regard to the facts in this matter but to make a projection to the future in determining the appropriate message of the likelihood of reoffending and the like.

55. Turning to Charge 1, the facts are not in dispute.

56. It is that the appellant has committed an assault upon an official. That assault arose in circumstances where there had been conduct which in the appellant's mind was unfair towards him in respect of his exercise of his rights as a licensed person, as a licensed trainer, to conduct trials at the Casino racing facility. It was at the Casino racing facility that Mr Mason, the victim of the assault, was based. There was, therefore, in the appellant's mind an attitude towards him by the officials that he was not being fairly dealt with.

57. The officials' position was that the appellant was taking too long to conduct the trials that he insisted he be able to conduct in circumstances where he was insisting on his rights, which were not those he was entitled to in their entirety, as to how he would trial his greyhounds when others were there to trial as well. It is not necessary to further examine that history of the matter in greater detail. It is sufficient as a summary to accept that there was in the appellant's mind that he had been improperly and unfairly dealt with. The word "improper" is not used in the legal sense but merely what was in the mind of the appellant.

58. The appellant, therefore, approached Mr Mason, with whom he had had, and on whose behalf others had had as well, discussions, as well as with other officials at the racetrack, about these matters. There were issues about safety outside the track as well.

59. The appellant also at that time was suffering from mental health issues. And that is referred to – and the Tribunal will return to it – in the report of Mr

Dark, as well as his submissions to the respondent throughout the process in which the respondent engaged, and repeated on appeal on his behalf.

60. The appellant then entered the office where Mr Mason was working. There was a conversation. It does not really need to be addressed in detail, it is particularised. Mr Mason indicated a belief he did not have to extend any apology to the appellant and said he was sorry if he had done anything to upset him.

61. The appellant then engaged in his criminal conduct. He stood over Mr Mason and, having been told of the apology, slapped Mr Mason across the face with his right hand and soon afterwards said: “Don’t look away from me, otherwise I will slap you again.” That is the conduct to which the appellant has now admitted before the Tribunal.

62. Mr Mason, on advice, took out an apprehended violence order against the appellant at the Local Court and that remains on foot.

63. As a result of Mr Mason’s complaints, the appellant was charged with that criminal conduct and, upon a plea of guilty, received a fine of $500, and the appellant advises the Tribunal he has paid it.

64. There is, therefore, no ongoing supervision of the appellant by the criminal justice system for his criminal conduct, but of course he remains, as it were, under the purview of the criminal justice system by reason of the ongoing apprehended violence order. That essentially restricts him in relation to Mr Mason and for the protection of Mr Mason. It imposes limits on his ability to go to places where Mr Mason is exercising functions of an official nature under the subject industry.

65. What then of the objective seriousness of that conduct? The Tribunal here has reflected on occasions as to the gravity with which an assault upon an official must be viewed. That has been the view of Tribunals in this State and in the other States and Territories of this country, as well as by the regulatory bodies and their officials, for a long time as comprising conduct of the most serious kind. Indeed, it might be reflected in certain sporting codes striking an official leads to a lifetime ban.

66. A lifetime ban is not considered here, because it is not asked for and would not be consistent with parity, and it is a lifetime ban possible by the merest aspect of conduct or contact or assault without consideration of the gravity of the actual conduct.

67. Here, Mr Mason was going about his duty. He and all other officials are entitled to be protected by an appropriate order which makes it perfectly clear to a perpetrator and to the industry at large that the privilege of a licence cannot stand with a person who assaults an official.

68. That, therefore, leads to a substantial starting point. It is a submission that there be a suspension or time served in respect of that conduct. The Tribunal reflects but briefly on the appropriateness of a suspension and discounts it immediately and in its entirety. There can be no place in the industry as a starting point on objective seriousness of allowing someone who has assaulted an official to retain the privilege of a licence and it must be removed by an order as serious as a disqualification, and it shall be.

69. In assessing the actual severity of the assault itself, a few things might be said. Firstly, it was a slap and not a punch or a head-butt or striking with some form of weapon. It was with the hand, as a slap must be. And there is no evidence of Mr Mason of any physical harm. Indeed, Mr Mason remained in the room. He did so to try and keep the situation pacified. It is, therefore, that the assault, as grave as it was, cannot be viewed at the upper end of the range of seriousness when various types of assault are considered.

70. It is necessary to have regard to parity. The appellant does not take issue with the parity cases advanced by the regulator today.

71. The first of which is Mulrine, a GWIC decision of 14 October 2021, subsequently dealt with by the Tribunal on 17 December 2021, where there was a pushing by the use of a stomach to another participant who then fell onto yet another participant, causing that third person to be knocked to the ground. The appellant there before the Tribunal had 38 years in the industry with no prior matters and pleaded guilty. The Tribunal reduced the penalty to a three-month suspension, which was wholly and conditionally suspended for 12 months. The Tribunal agrees with the submissions for the respondent here that that was a much less serious case because the participants there had a significant and volatile history, which the Tribunal found in its determination, and they had been disputing with each other over a period of time. And it is to be noted also it was an assault involving a participant and not an official. Therefore, that case can in fact be distinguished. But what it does indicate is that some form of protective order was required.

72. The second matter is Burnett, a decision of GWIC of 25 August 2021, subject to an ongoing appeal before this Tribunal. There were a number of charges, one of which was a push to a steward's arm which led to a 12-month disqualification. And the Tribunal again notes there is a severity appeal as well as a factual finding appeal in respect of that conduct. Twelve months, therefore, was considered by the regulator to be an appropriate period, allowing for subjective factors, for a push.

73. The third matter was Vallario, again GWIC, 29 April 2021. There were various types of conduct. The one in question involved a lunge towards a steward with a gesture as if to punch that steward. In respect of that matter,

a nine-month disqualification was imposed, noting there was no physical contact. So, for a lunge with a gesturing motion of a punch without contact, a nine-month disqualification was appropriate. Here, the conduct, of course, is more serious.

74. The fourth matter was Carter, in which there were a number of assaults, one of which involved poking a steward, for which a three-year disqualification was imposed. Another for pushing a club official, for which a four-year disqualification was imposed. And the last one, of assaulting a steward by head-butting and punching a number of times to the head and body, for which an eight-year disqualification was appropriate. That latter matter of eight years is, indeed, an outlier. Head-butting and punching a number of times, as compared to a slap to the face, must be recognised.
This conduct was not as serious as that and it is said that in the Carter matter there was a lack of any real submissions on behalf of the participant there and there may well have been some medical issues about which there is no evidence before the Tribunal.

75. Parity, therefore, indicates that it could not be an outcome of less than nine months for only a lunge where there is an assault, and it could be anything up to three or four years for the equivalent of poking or pushing. If a push generates four years, then it must be said a slap might have a starting point of something more than that. A poke, presumably with a finger, in the chest was seen sufficiently bad to justify three years and therefore contact with the face must necessarily involve a starting point greater than that.

76. The Tribunal is of the opinion that a starting point of that which was found appropriate by the respondent here of three years is not out of the range appropriate for the slapping of an official on duty. Indeed, the Tribunal considers that that would be a minimum starting point, but it is not asked to impose a greater starting point. It has not embarked upon a Parker-type warning to the appellant and therefore the Tribunal will not engage in a greater starting point than three years.

77. The next issue on the assault matter – and of course it will touch upon Charge 2 as well – are the subjective factors of the appellant. He did not plead guilty to the inquiry but has pleaded guilty to the Tribunal. He did not plead guilty when he lodged his original appeal.

78. Generally, it has been the practice of the Tribunal – and each case turns on its own facts and circumstances – to not give a 25 percent discount for that history, because at two of the three stages where he might have accepted his wrong conduct and his remorse for it, he has not expressed it by a plea.

79. There is the utilitarian value now engaged in before this Tribunal and ordinarily it would not be more than a 15 percent discount. The respondent here, very generously, gave a further discount in respect of that matter on the basis of a number of factors.

80. Other matters of a subjective nature are that the appellant has no priors and he has been in the industry for nine years. He is entitled to the benefit of a good past history. There is no relevant other disciplinary history. And he is entitled to a further discount in respect of those matters.

81. There is then the issue of his mental health. He has at all times put forward his case, most vehemently, that greyhounds are effectively his life. The Tribunal made reference to the fact that he considers the welfare of his greyhounds to be more important than his own welfare. The Tribunal accepts that is his motivation in respect of his conduct on Charge 2 and to some extent it has an impact upon his conduct on the assault.

82. The appellant has expressed to psychologist Mr Dark, reflected in his report of 27 January 2022, of a mental state which is best described as fragile. There has been no request for confidentiality and the following matters, therefore, can be read into this decision.

83. He had an initial appointment with Mr Dark on 16 June 2021. He has had nine sessions up to 27 January 2022 and he gives evidence to the Tribunal that he attends fortnightly. He does so for psychological support and counselling in respect of depression and anxiety. There are a number of factors in his life which have caused that depression and anxiety. He expresses he is benefiting, as Mr Dark projected that he would benefit, from ongoing psychological support.

84. There are some matters which the Tribunal notes in Mr Dark's report. It will not read into this decision about the impact of that depression and anxiety upon the mental well-being of the appellant. Those matters in paragraphs 3 and 4 of Mr Dark's report are taken into account but not read into this decision.

85. It can be read in, however, that through those two paragraphs, a loss of the privilege of training, of being able to train or race his greyhounds at racing tracks, will of course impact his income, and the Tribunal accepts that, and it will, of course, have a substantial impact upon his mental well-being.

86. The Tribunal again returns to the fact that his conduct here was at a time when he was not at his best mentally. That has not been expressed by Mr Dark, but the Tribunal accepts the numerous expressions to that effect in the evidence on his own behalf and expressed by Ms Klein on his behalf in submissions she has made to the respondent in his support.

87. Those are strong subjective factors.

88. The Tribunal also has regard in considering his subjective factors, and it is relevant to the message that he is to receive on objective seriousness as well, that it is the evidence that the appellant is remorseful for the striking of Mr Mason and he has expressed that remorse directly in his plea to the Local Court. And also he has demonstrated that since he was placed upon the AVO, he has complied with it, on his evidence. And, in addition, as an acceptance of his wrongdoing and a means by which he will not reoffend, he being under financial hardship, the fact he has paid the court fine is a further reflection in his favour of an unlikelihood of reoffending. And that is relevant to the message which he must receive.

89. The Tribunal then turns to Charge 2.

90. The objective seriousness of that matter is that a person taking the privilege of a licence and subject to a loss of that privilege on an interim basis elects to act, through ignorance, but for the welfare of his greyhounds, in contravention of the terms imposed upon him by the regulatory authority. It is conduct in the industry to which he is licensed. It is misconduct. The message to be given quite clearly to this appellant and to the industry at large is that if a privilege in the industry is lost, then those privileges cannot be in any way exercised, and if they are, it is a blatant disregard of the rules and of the status of the regulator and it requires a salutary message to be given that such conduct cannot be accepted.

91. The severity of the objective seriousness in that matter is lessened by the Tribunal's acceptance that the appellant solely engaged in that conduct for the benefit and welfare of his greyhounds and elected to put their benefit and welfare above that of his own rights. He did so knowingly.

92. It is submitted on his behalf that a focus should be upon the title of this regulator, which is the Greyhound Welfare Integrity Commission, and, therefore, upon the word "welfare". The Tribunal accepts that welfare of greyhounds is a primary object to be found in s 11 of the Greyhound Racing Act. But it is not just welfare to which the regulator must attend. It also is an integrity body. It has the duty of licensing, it has the duty of effecting its functions so that licensing is properly carried out to ensure the integrity of the industry and, critically, the welfare of greyhounds. The Tribunal finds no comfort in that submission as taking it away from the primary focus here, which is misconduct by disregarding a limitation imposed by a regulator.

93. In the Tribunal's opinion, there being no substantial parity to which the Tribunal can turn, except the case of Smyth, where there was a 17-month disqualification, retaining three greyhounds in custody and a subsequent

warning off for a period of three months for retaining those greyhounds in custody.

94. Here, the appellant at the time he engaged in the disregard was also the subject of disciplinary proceedings which were on foot. That makes his conduct more objectively serious.

95. He has not admitted the charge and maintained a denial of the breach and therefore he is not entitled to a 25 percent discount.

96. The Tribunal takes into account, as it did, each of the subjective matters to which it referred in respect of Charge 1.

97. The ultimate outcome sought by the respondent is that the two-year disqualification for Charge 1 and the four-month disqualification for Charge 2 be the outcome before this appeal and that they be served concurrently. It is the position of the appellant that when all these matters are taken into account, he should have a time served only or, alternatively, some short period of further suspension.

98. The Tribunal has indicated that in respect of charge 1 a suspension is not appropriate and that there should be a disqualification. It is of the ssame opinion for charge 2.

99. In respect of the first matter, the Tribunal has determined, for the reasons expressed, a starting point of three years. The Tribunal diverges slightly from the opinion of the respondent that there be a two-year disqualification. The Tribunal has formed the opinion that it will give – and it was given weight by the regulator – greater weight to the issues of mental health at the time of the commission of these matters and will give greater weight to the fact that the appellant is so driven – and it has been accepted by the Tribunal – by the welfare of the greyhounds, even to the extent of placing them before his own well-being.

100. However, at the end of the day, there must be a disqualification. The message required must be a substantial one. Precise mathematics is not required. The Tribunal is of the opinion that it cannot reduce these matters to time served. To do so would not provide the necessary subjective and objective message.

101. The Tribunal has determined that the matter is so serious in respect of Charge 1 that a period of disqualification of two years is appropriate.

102. However, for the reasons just expressed, the Tribunal will suspend the last six months of that disqualification on the condition that the appellant be of good behaviour for a period of 12 months.

103. It is, therefore, in effect that the period of time to be served for Charge 1 is 18 months, with the final six months suspended.

104. The date of commencement of that period will date from the date of the interim disqualification of 10 August 2021.

105. In respect of Charge 2, the Tribunal agrees with the determination made by the regulator, although making its own decision, it emphasises, that a period of disqualification of four months is appropriate. That period of disqualification of four months, however, is to commence on the date it was imposed by the regulator of 16 November 2021. Particular 2 having being found, but not 1, is of such seriousness that a reduction from the respondent's position is not justified.

106. As submitted by the respondent, and the Tribunal agrees, each charge is to be served concurrently.

107. That then means in respect of Charge 1 the severity appeal is upheld.

108. In respect of Charge 2, the severity appeal is dismissed.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

109. In respect of the appeal deposit, the Tribunal is reminded that it ordered the payment of that be deferred. It has not, therefore, been paid. The reasons for that deferral were, amongst others, financial hardship. There is nothing to detract from the state of financial hardship.

110. In essence, the appellant appealed in respect of Charge 2 and was unsuccessful, both in the breach finding and the penalty finding. In respect of Charge 1, he has been partially successful. Ordinarily, therefore, there would be a partial forfeiture.

111. Having regard, however, to the fact that there was initially an order that it not be paid, he has ongoing financial hardship, the Tribunal accepts that will continue for him, the deposit is not ordered to be paid.

112. There is no deposit and, therefore, no order for a refund.