RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

FRIDAY 28 OCTOBER 2022

APPELLANT MARK GATT

RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULES 156(f), and 165(c)

SEVERITY APPEAL

DECISION:

1. **Appeal upheld**
2. **Charge 1 – Penalty of 5 months 2 weeks disqualification imposed**
3. **Charge 2 – Penalty of 4 months disqualification imposed, 2 weeks to be cumulative to penalty on Charge 1**
4. **Total penalty of 6 months disqualification imposed**
5. **Appeal deposit refunded**

1. The appellant, licensed trainer Mark Gatt, appeals against the decision of the Greyhound Welfare and Integrity Commission of 2 August 2022 to impose upon him a total period of a seven-month disqualification.

2. The appellant faced two charges. They were, firstly, contrary to rule 156(f)(i), that he did a thing that in the opinion of the controlling body was improper and constituted misconduct by striking the greyhound Hudson Road on its face and, secondly, contrary to 165(c), that he used contemptuous, unseemly improper, insulting or offensive language towards or in relation to GWIC stewards. That language will be set out later.

3. In respect of the first charge, a six-month disqualification. In respect of the second charge, a five-month disqualification, with one month of charge 2 to be cumulative to charge 1, thus giving the total of seven months.

4. The appellant pleaded guilty to the two charges before the Commission and has maintained that admission of the breach of the rules on appeal. This has at all times been a severity appeal.

5. The evidence has comprised, in the main, a video of the incident of the striking, the transcript of the interview by the stewards with the appellant in which the language the subject of charge 2 was uttered. And, in particular, there are a number of references on behalf of the appellant and, importantly, three veterinary reports and a number of precedent cases. They are the main pieces of evidence. There were, of course, other parts. The necessity to examine the evidence in great detail falls away.

6. On behalf of the appellant and prior to the hearing detailed submissions were made and supporting documents provided. One of the issues taken in those submissions was procedural fairness in respect of the conduct of the Commission's hearing. Suffice it to say that the Tribunal determined it was not necessary to make any determination on that point because this is a de novo hearing and it is for the Tribunal to decide for itself the appropriate penalties in each matter and that to the extent there may have been some procedural fairness in the speed with which the Commission determined the matter, and therefore unfairness, that has been cured on appeal by the appellant being able to put forward for consideration by the Tribunal all material upon which he relies.

7. The submissions also contain a challenge to the use to be made of the 1 January 2022 Penalty Guidelines of the respondent, and that will be touched upon as well. In addition, particular weight is placed upon medical conditions which are said to be new evidence and the references which support that medical evidence, together with parity cases which it is said on behalf of the appellant indicate that the penalties considered appropriate by the respondent were disproportionate.

8. The facts are that the appellant, a well-regarded licensed trainer of 26 years' standing with no prior matters, presented the subject greyhound in the weighing and generally pre-race kennelling area at Wentworth Park. It is the evidence that that area was then able to be observed through glass windows by members of the public, and also present in addition to officials were fellow participants and, of course, their greyhounds. A race meeting was being conducted.

9. The appellant's greyhound was weighed and then, in the ordinary course, removed from the weighing cage. The appellant straddled the greyhound and then lifted the leash up from beneath the greyhound's neck and as the leash was sought to be fixed, the greyhound has quickly raised its head and struck the appellant in the face. It was sudden, it was obviously unexpected, and it was a quite forceful blow to the face.

10. The appellant momentarily paused and raised his body from that bent position, attempting to fix the leash to a more slightly, but not completely, upright position. He then moved his right hand with the fist closed some 30 to 40 centimetres to his right, level with but away from the greyhound's head. He then, with not inconsiderable force, struck the greyhound with that fist to the right side of its face. The greyhound's head was pushed quickly to the left. The greyhound further reacted by going down slightly on its front legs. It was not completely on the ground. Its legs were splayed out in front of it at an angle which does not have to be described further.

11. The appellant then lifted the greyhound up with some speed, such that it was in an upright position, and the greyhound was moved away with the leash attached. The greyhound looked about as it was led to the veterinary examination table. It displayed no other symptoms.

12. The veterinary evidence that touches upon that action is firstly found in the report of GWIC Chief Veterinary Officer Dr Kuipers of 26 July 2022. The doctor was shown a video, and he describes a forceful blow with a closed right hand and a lifting of the dog's front weight off the ground by the neck. Firstly, the greyhound was not on the ground, on the images depicted, but was in a splayed position as described.

13. The assessment of the doctor was that the strike caused an abrupt shift in the head/neck position to the left, and he opined that the greyhound experienced physical pain. The basis for that analysis or opinion can only have been in relation to the physical and neurological type of consequences that could follow from such a blow. It is trite to say that a greyhound cannot express physical pain, but it can only be assessed from observation. The Tribunal does not share the opinion of Dr Kuipers that necessarily physical pain was experienced but certainly the blow would have occasioned to the greyhound an awareness of that striking.

14. The Tribunal does not share the opinion that the forceful jerking was of such force that the greyhound was lifted, firstly, completely off the ground and also that it would have inflicted the physical pain that the doctor opined. As for potential for a range of whiplash injuries, that is noted. He also said the greyhound would have suffered psychological trauma, which was evidenced by its submissive, avoidant behaviour immediately after being struck. Certainly, the greyhound displayed that submissive, avoidant behaviour but was quickly under control.

15. It was also noted that the greyhound received a pre-race examination and was fit to race, but Dr Kuipers opined that that was a cursory examination.

16. Dr Peter Yore, veterinary surgeon, for the appellant, also viewed the footage and described a greyhound as being extremely resilient, particularly in relation to head knocks. He described it as a rather rather nasty smack in the face. He said it was unfortunate, an understatement, but opined: “I did not think that this reactive blow was sufficient to cause physical or neurological harm. The greyhound was not staggered or unsteady and passed a veterinary examination shortly after the incident.”

17. The appellant took the greyhound for veterinary assessment after that to Caring Country Vets at Thirlmere where on 27 July 2022 it was examined by veterinarian Dr Matthew Walker, who opined that the greyhound was “healthy and fit to race”.

18. Based upon the totality of that evidence, it is that the blow has certainly caused the greyhound to react, and to react quite markedly, as the Tribunal has described, but not to the extent, in the Tribunal’s opinion, that Dr Kuipers opined.

19. The Tribunal proposes to deal with the referees at this point rather than later because their evidence goes to the objective seriousness of the conduct by reason of the condition of the appellant at the time of his actions.

20. On 14 August 2022, his partner, Ms Tanya Bowie, a partner of some 15 years, was able to report on a change in the appellant’s behaviour since he suffered a serious head knock in a motorbike accident. She observed him to have become short-tempered, aggressive, irrational and all these things were distinctly out of character. She reported that he is currently seeking counselling for this behaviour.

21. Wayne Billett, undated, known him for 20 years through the sport and describes him as a person who has invested significantly in and represented the industry. In particular, assisted the industry with track-related matters. A successful trainer, well respected by his peers, and first to put his hand up to assist and mentor.

22. The next is by Clinton Payne of 26 July 2022. Knows the appellant and been associated as a journalist with the racing industry for 20 years and in that time known the appellant for 10 years. He describes the appellant's conduct as being extremely out of character, an isolated incident, and a belief that he will not reoffend.

23. The next is by Peter Davis, 27 July 2022. Known him for 15 years and had greyhounds with him for training. Describes him as successful and a master of his craft, helpful to others, but, importantly, a very measured individual. He does not know what happened in the incident, which reduces the weight to be given to his reference, but says he nevertheless retains Mr Davis's confidence, being a highly professional and successful operator with dedication to the code and reliant on racing for his income.

24. The last is Anthony Lord, a trainer. And the Tribunal pauses to note the importance of references by licensed persons as against those from outside the industry. He has mentored the appellant in the past and always has noted the appellant's dogs to be happy, healthy, fit and notes the serious motorbike accident in which he suffered a bad hit to the head. In the two weeks prior to his reference, which is undated, he says he became concerned with the appellant's mental welfare to the point where he made contact with other people. He speaks to him six times a week and has noticed a serious change in his behaviour which caused him to follow people up on the mental health status of the appellant. He says that the appellant was very short with him, even swore at him on a few occasions, which is unusual. He has seen the video of the incident and says it is entirely out of character and he has mental health needs which need to be addressed. Therefore, he concludes that for Mark to act so out of character, something must be wrong.

25. To put those matters in context, the appellant has put in evidence medical material.

26. There is the report of Dr Daniel Buckingham of 3 August 2022. He is providing treatment to the appellant consequent upon a motorbike accident on 19 June 2022. He says he has a long-standing background of depression, anxiety and obsessive-compulsive disorder.

27. Ms Bridgitte Tran, chiropractor, is giving him movement therapy and she reported upon this matter on 3 August 2022 and that relates to a whiplash injury on 15 June 2022 and he is having weekly treatment.

28. There is the Emergency Department discharge summary from his admission from the motorbike accident. That contains some material which indicates he was only in hospital for one day. He was subject to various analyses for various injuries and in particular a CT of his brain excluded

acute intracranial abnormalities. Also, a number of possible neck, shoulder and the like fractures were eliminated. He was haemodynamically stable and he was sent out for follow-up with his general practitioner in three to five days. He was prescribed Panadol and ibuprofen.

29. There is not much to be found in that report, it has to be said, to provide a great deal of comfort for the report of Ms Mills. However, it does indicate that he had reported for those assessments and admission because of a head strike. To repeat: on the brain, no acute intracranial haemorrhage or extra-axial collection, no intracranial mass effect or midline shift, grey white matter differentiation is preserved, the ventricles and CSF spaces are within normal limits, no skull vault fracture.

30. There is then the psychologist's report of Ms Mills. Ms Mills was not able to give evidence today – she is not well – and no notice was given to her until yesterday, and no indication of objection to her report was advanced until this morning. Under objection to the tender of the report at all, the Tribunal, for various reasons, ruled it admissible and indicated it would be taken into account.

31. Ms Mills' report is dated 16 August 2022. She diagnosed him as suffering from temporary, emotional and behavioural dysregulation as a direct result of a motorbike accident on 19 June 2022. She then said: "Typical indicators for recovering from a brain trauma (concussion) are as follows". She then indicated a number of matters, the key ones being behavioural problems and emotional overreactions to minor situations. She noted he had been successfully treated for anxiety disorder and had not experienced behaviour or emotional dysregulation until the motorbike accident in June.

32. The concerns of the respondent and the basis of the objection was the evidence upon which Ms Mills could state brain trauma (concussion). As the Tribunal has read out the medical evidence, those words "brain trauma" and "concussion" are not used. At its highest, there was a reference to a head strike. It is consistent with a head strike that there would be on admission to an Emergency Department and CT scanning, but that showed nothing.

33. The Tribunal does not, therefore, have expert evidence, or medical evidence, but can only draw on common sense that a head strike in a motorbike accident could well lead to concussion. As to whether that is brain trauma or not does not matter. It provides a sufficient basis for the diagnosis, referred to by Ms Mills, of temporary emotional behaviour dysregulation which would cause behavioural problems and emotional overreaction to minor situations.

34. In summary, therefore, there is medical and lay evidence to confirm the fact that the appellant, as a result of his proximate motorbike accident, could

have emotional overreactions and behavioural problems consistent with the changes in his behaviour referred to by the referees and summarised by the Tribunal. Importantly, key points are not just emotional overreactions but short temper, aggression, irrationality and being very short with and even swearing at long-standing friends, a person with whom he speaks some six times a week.

35. All of these matters are proximate to the appellant's conduct at the event on 23 July 2022. The bike accident was a mere number of weeks before. What is lacking in the expert evidence is an expert who will say that the actual act of striking a greyhound in the circumstances in which it did occur could be assessed to fall within the medical diagnoses and that the actual reaction to each of the circumstances he said inflamed him in the stewards' interview were consistent with those same factors. However, common sense dictates that each of the matters to which reference has been made give context to his behaviour.

36. Those then are the key facts upon which this decision is based.

37. This is a civil disciplinary proceeding in which the Tribunal must find a protective, not a punitive, order to ensure in the public interest that a sufficient message of deterrence is given to others. The penalty must be sufficient to achieve that object otherwise anything more would be oppressive.

38. In making that determination, the Tribunal must assess the facts that are currently here and project into the future, because part of the aspects of deterrence are to temper the conduct of the appellant in the future and to provide a clear and unambiguous message to other participants, the public and observers of the industry of the appropriate response to such conduct.

39. There are two distinctly separate aspects of conduct to be assessed on objective seriousness. The regulator – the respondent, the Commission – is driven by a statutory obligation in s 11 of the Greyhound Racing Act 2017, which the Tribunal must take into account as essentially it stands in the shoes of the Commission in determining penalty. The objects require the protection of the welfare of greyhounds and the maintenance of public confidence in the greyhound racing industry.

40. It is to be put in the context that that Act was brought into place after the abolition of the industry by reason of wrong conduct by participants and at a time when the industry is subject to substantial scrutiny from its opponents. It is, therefore, that the general deterrence message must be in the context of those facts.

41. The incident took place with the public able to observe it – there is no evidence of the public actually observing it – but also in the presence of

other licensed trainers. It is, therefore, that the message to the public must be one of condemnation of this conduct and the general deterrence message to other participants must be that, if they are seen to engage in this type of conduct themselves, consequences will follow.

42. The greyhound was entirely unprotected, as it were, from the actions of the appellant. It is to be remembered that the appellant's conduct was said to be a reaction to him being struck in the face by the greyhound's sudden and unexpected raising of its head in the fashion described. The Tribunal fully understands the reaction of the appellant to the strike to his face in those circumstances. Any right-minded person would be aggrieved by such an action.

43. But, two things. The reaction in which he engaged was not proper and the film quite clearly depicts a sufficient pause before the hand was moved to the right for him to reflect upon the reaction that was appropriate and, secondly, that pause then before the fist came into contact with the greyhound with the force with which it did was a further reaction time available to him. He did not avail himself of the thinking process he should have done. The action itself of a closed fist to an unprotected animal's face is disgraceful.

44. The welfare of the greyhound is required to be protected. That must come from the deterrence that must be specific in particular and general as well. There is no prior conduct of a like nature. The actions in which he engaged, being irrational and not thought through, are coloured by the fact that at the time when he did it, he had a medical condition which may have caused him to react in the way he did.

45. The Tribunal is not prepared to reject that evidence and finds that part of the reason why he acted out of character – and he has not done this type of thing that has come under adverse notice before – is governed by the medical and mental conditions he was then subject to. That is relevant to the specific deterrence.

46. In projecting to the future, it must be considered that the likelihood of this being repeated, if his counselling is successful, is reduced, and that is relevant to specific deterrence.

47. General deterrence, however, must take a stronger position. There cannot be any sign given to the industry at large, its observers or its opponents that a person with a disability can be permitted to strike a greyhound at a race meeting in a fashion in which the appellant did. There is also this factor, not submitted but considered by the Tribunal, that if a licensed trainer with the privilege of a licence and exercising that licence by taking a greyhound to a race meeting is then suffering from medical or mental conditions which might cause him to act contrary to the welfare of

the greyhound, that he simply should not be there. He should not be exercising the privilege of a licence. That is considered in the message of general deterrence which also requires maintenance of public confidence in the industry.

48. There can be no place for the striking of a greyhound by a person, with no medical or mental condition, and there can be no place for a person striking a greyhound, who suffers from a medical or mental condition. The medical conditions can only go to reduce the gravity of the specific deterrence message, not the general deterrence message.

49. The Tribunal then turns to his subsequent conduct before the stewards.

50. Some hours after this incident, and whilst still subject to those medical and mental conditions, the appellant was called before the stewards for two reasons.

51. The transcript reflects on the fact that he was there to discuss the form of the greyhound and he then described it as “a bit of a poof”. That is the first of the allegations of language used. It appears, on the submissions made on his behalf, that the description of a greyhound racing in the form that this one did is often so described by industry participants. There has been no evidence of that. It is not a greatly important part of these factual matters on the second charge. So that the Tribunal is prepared to take notice of that submission as being factually correct.

52. The appellant was then present while the weighing steward Mr Page described what he saw. There is no doubt that the video images do not support the evidence of Mr Page. It is said that Mr Page’s evidence is so contrary that it was one of the reasons why the appellant started to react strongly and then react inappropriately.

53. Mr Page has suggested that the greyhound was lying on the floor. It obviously was not. He said it was lying with its head down on his bedding. Well, there was simply no bedding even present or anywhere near that area. A very strange piece of evidence from the weight steward.

54. It was then put quite strongly by the appellant, and fairly so, that it was standing up. And then Mr Page started to lessen the gravity of his evidence by suggesting he had his paws out in front of him with his head down, but he did not know where his chin was. Well, that is a more accurate reflection of what in fact did happen. But it was one of the reasons the appellant now says, and the submissions say, he reacted in the way in which he did.

55. The particulars go on to describe – and they will be set out in this decision – the range of language that the appellant engaged in. It is disgraceful.

56. One of the functions of the regulator, and supported strongly by the Tribunal here and elsewhere since time immemorial, once Tribunals commenced to react to these matters, is the necessity for the protection of the office of steward. If a steward cannot go about a steward's functions unhindered or un-obstructed, or is dealt with inappropriately, then the race meetings will not operate with the smoothness that they require.

57. This appellant, enraged apparently by Mr Page's comments, unhappy with the repeated questioning in respect of the incident, but entirely unheedful of the continuous warnings that the steward Mr Vassallo gave him that he was overstepping the mark, proceeded to embark in language that was not just disrespectful but was downright unacceptable. Mr Vassallo gave him the opportunity to go out of the room and gather his thoughts. That led to the steward getting an earful for his trouble.

58. The appellant was also asked about what he recalled of the incident. And there is no doubt that the appellant either was very forgetful, or, alternatively, set out to mislead the stewards because he wanted to tell the stewards he pulled its ear. He went on later to say: "I honestly don't know what I did."

59. Well, he has seen the video, he now knows what he did, he struck the greyhound. He did not just grab its head or its ear, pull its ear. And, quite fairly, it was put to him that he had to be mindful of his language, to which the steward was told he should not make a big deal about nothing. Well, it is a big deal. And it was more than nothing.

60. The appellant conceded that what he did was not a good image for the sport.

61. A range of language then fell into that context, with repeated warnings and suggestions that he should behave himself. It was not that long an exercise. But it puts two things in context. One, the appellant's view about his capacity to strike dogs if he feels like it. And the other, his attitude stewards. He said, for example: "It's fucking – if a dog hits you in the fucking head, you fucking hit the cunt."

62. Well, that is an extraordinary view of a licensed person with the privilege of presenting a greyhound to race. Then about what was his description of the incident when he is obviously talking about grabbing it by the ears, how he could possibly take exception to his continual questioning when he used words such as: "I just fucking told you what happened." And then when questioned further: "You're fucking pissing me off."

63. Then he had the temerity to say to a steward in an inquiry, when he was the subject of that inquiry and obviously in trouble, "Just shut up and listen

to me." And then, in relation to his actions again: "The dog hit me in the fucking head and I reacted to it. I fucking clipped him." He did more than that, he belted him. And then he had this to say: "If someone hits you in the head, you just fucking – well, I do, I know that." And then, of course, despite the fact he was being warned and he was carrying on the way he did, he had the temerity to suggest to the stewards: "You're just treating me like a fucking idiot."

64. And later: "You're just trying to piss me off." And what was his reaction to the disciplinary process to which it must have been inevitable to him that he would be subject for his disgraceful conduct, both in relation to the striking of the dog and his reaction to the stewards, he said: "Well, I couldn't give a fuck. I couldn't give a fuck."

65. Well, apparently he now does because he has gone to this appeal and attempted to indicate that none of that behaviour should be held against him. At highest, he concedes it was bad language, it was inappropriate, but he has an excuse for it. Well, the Tribunal is satisfied that he does have an excuse for it, but it does not excuse his conduct.

66. As the Tribunal reflected, the office of steward must be maintained. The privilege of a licence carries with it the necessity to respect the office of steward.

67. This appellant has displayed, unambiguously, that he is not fit to enjoy the privilege of a licence in two respects. Firstly, the striking of a greyhound, a grave welfare issue and public image issue, adequately summarised as a necessity for a clear message of general deterrence, and in reaction to his conduct towards the steward in the disrespect that he has displayed.

68. Simply put, those matters indicate he should not have the privilege of a licence.

69. Of course, the Tribunal must take into account several matters in determining what is an appropriate penalty.

70. The first of which is the GWIC Penalty Guidelines of 1 January 2022. Those guidelines are designed to be guidelines. As they themselves say, they are not mandatory, they are guidelines. That is consistent with the approach the Tribunal has adopted to this code's penalty guidelines and that in the harness racing industry's guidelines, but also respecting, for example, where mandatory minimum penalties have been introduced in the rules of Racing for the thoroughbreds - for certain conduct a minimum penalty must be imposed unless special or exceptional circumstances are found.

71. Here, the guideline chooses to find minimum penalties as a starting point, but allow that to be reduced if special circumstances can be established. The purpose of the guidelines is clearly set out and, as stated, they are a guide and not mandatory, and aggravating and mitigating circumstances may well lead to a change in that starting point. It is suggested to be a minimum starting point.

72. The use of the word minimum is seized upon by the appellant's representative to indicate a wrong approach to penalty matters. The Tribunal has dealt with that at substantial length in the recent appeal of Amanda Turnbull v Harness Racing New South Wales and does not propose to embark upon a lengthy dissertation in this appeal. The Tribunal will treat the guidelines as it has treated these guidelines since they first came in in other codes, and now in this code, on the basis that they provide a measure of certainty to stewards or the internal hearing panel, as it is with this Commission, as to what is a likely approach they should adopt in determining penalty, but also provides a clear message to participants that if they engage in certain conduct, the consequences that the regulator considers to be appropriate will follow.

73. It is, therefore, that the Tribunal does not disregard it. However, the Tribunal is required to determine objective seriousness for itself and, if the facts and circumstances warrant it, make some discount from that objective seriousness determination by reason of subjective circumstances, usually but not always.

74. The Tribunal will treat this as a guideline and not a tramline. It will treat this penalty guideline as an indication, as it has expressed, that the regulator considers certain consequences should follow. But the guideline clearly recognises special circumstances can cause a change in what is considered to be a minimum.

75. The striking offence does not carry with it a minimum penalty. The behaviour to stewards matter, Rule 165 matters generally, carries with it a minimum starting point of nine months. As reflected, that can be up or down on circumstances and can be particularly changed because of special circumstances. The Tribunal repeats that it will deal with this case on its own facts and circumstances.

76. The Tribunal must be informed by parity cases, as to do otherwise would cause others to be aggrieved or this appellant to be aggrieved. It is difficult to find precise similarities.

77. For the appellant, the GWIC decision of 31 March 2022 of Roberts, a decision which involved improper conduct and misconduct by striking of a greyhound. The facts are that at the conclusion of a race in the catching area, another greyhound approached that trainer's greyhound and that

appellant at the time that action occurred knew that on a previous occasion in similar circumstances his greyhound had been attacked and was subsequently euthanased. He, therefore, in self-protection of his greyhound, struck the other greyhound to the head with one strike and hit it with a leash. He was subject to a $1000 fine, $500 conditionally suspended. A licensed person of seven years, no like matters on his record. However, a plea of not guilty.

78. The next matter is the Tribunal's decision of Mulrine, 17 December 2021, an old 86(o) matter, misconduct, striking another person The Tribunal finds no great comfort in that matter by reason of the fact that that involved a licensed person pushing another licensed person who fell into another one sitting down. The outcome was a suspension of three months wholly suspended.

79. The next matter is Irwin, which dealt with insulting and offensive language to a GWIC official. There was then a Covid policy in place. The veterinary officer carrying out a pre-race examination was not satisfied that that licensed person was complying with the Covid rules, he would not let the greyhound go for purposes of examination, he would not step back from the table. He was directed to do so. He was told by the licensed trainer to "fuck off" and later on to "go and get fucked". The effect of that was a fine in the sum of $500 wholly suspended.

80. The next matter is the decision of the Tribunal of Hooper of 10 November 2021 where there was contemptuous behaviour towards the controlling body when he said the words: "Because I've got the shits here, that's why the language isn't gonna be reduced. I'm sick of dealing with GWIC, you're fucking morons." That was a finding that the language was not directed to the stewards in their particular inquiry but directed to GWIC generally. Limited subjective circumstances. There was no plea. Time in the industry was reasonable and there he was subject to a $300 fine for that part of the matter.

81. The next matter is Wrigley, 9 June 2022, a Commission decision. Offensive language on two separate occasions. That was where phone calls were made to staff and essentially the key matter was words such as "maybe I shouldn't be such a bitch to people". In each case – and there was more language than that, obviously – he was subject to a reprimand. A licensed person of 10 years with no previous maters.

82. None of those matters provide a precise equivalent of the facts and circumstances here. The submissions in respect of those matters for the appellant have essentially touched on the fact that because of the outcomes for those people, this matter has been entirely disproportionate in the outcome visited upon the appellant. The Tribunal does not find, as is so often the case and respecting the detailed research on behalf of the

appellant, that those matters greatly assist him. The Tribunal has reflected at some length on the gravity of the conduct here and does not determine from any of those matters that the conduct has the same level of gravity as was engaged in on this occasion by this appellant.

83. It is, therefore, that the Tribunal is not persuaded that the various precedent cases advanced on behalf of the appellant lead to a monetary penalty being appropriate for the conduct.

84. The respondent relies on two decisions, being its decisions, the first one of 15 August 2019 of Cowling, where a six-month warning off was given to an unlicensed and unregistered person for language given to a steward in an inquiry. And the second was Millar, 20 February 2019, where a disqualification of six months was given for language to a steward in circumstances where the trainer did not actually appear at the inquiry.

85. Two matters about those two decisions. They both predate the penalty guideline, but they do contain substantial penalties of disqualification and warning off. They do indicate that whilst those matters have their level of seriousness, that substantial penalties of loss of the privilege of a licence can follow.

86. Parity, therefore, in the Tribunal's opinion, does not provide a substantial reason to discount what the Tribunal considers to be an appropriate penalty in these matters.

87. The key factor here is the Tribunal's acceptance that at the time he engaged in this conduct he was suffering from the mental conditions and acting out of character. That reduces, as the Tribunal has said, the subjective message required.

88. The Tribunal does not agree with the submission for the appellant that a fine is appropriate. Having regard to the gravity with which the Tribunal has assessed each of these breaches, the Tribunal has determined that a suspension is inappropriate. The Tribunal is cognisant of the aspect of a penalty of disqualification and the hardship it occasions to a professional trainer of 26 years' standing with greyhounds his sole source of income. The Tribunal is conscious that it is possible at the conclusion of any period of disqualification there may be delays in relicensing.

89. The gravity of the first matter, the striking matter as such, as described, a disqualification is a necessary consequence. The Tribunal determines a starting point of eight months. That is a reduction in the period that the Commission considered appropriate and the reason for a different starting point is the new evidence, the medical evidence. It provides a reason for his conduct but not an excuse and, as reflected in considerations, a licensed

person with conditions electing to present a greyhound to race cannot expect to be excused substantially for wrongful conduct of a welfare nature.

90. In respect of the second charge, the guideline provides a starting point of nine months. Special circumstances can lead to a reduction. The Tribunal is satisfied that there are special circumstances. They are the medical conditions to which reference has been made.

91. The Tribunal considers also, for the reasons of the severity of the conduct in which he engaged, that the general deterrence message must be substantial. The Tribunal has determined that the guideline starting point of nine months is appropriate, but considers that for special circumstances described, the medical provisions, which give no excuse but a greater explanation for the extraordinary outbursts, that there be a three-month reduction in that starting point to a starting point of six months.

92. In relation to discounts for subjectives, the appellant has pleaded guilty. He has continued to express remorse and contrition for his conduct. He has accepted the wrongfulness of it, and they are strong factors in his favour. They have not reduced the objective seriousness of his conduct, but they go to the reduction appropriate when it comes to the aspect of special deterrence on subjective circumstance reductions. He has no prior matters, a substantial factor in his favour.

93. In each matter, the Tribunal has determined that there be a 25 percent reduction for the plea and cooperation. In the first charge, that is two months. In the second charge, that is one and a half months.

94. In addition, as reflected upon by the Commission, there should be a discount for his other subjective factors. The Commission found two weeks to be appropriate. While that might be capable of being increased, the Tribunal is satisfied that when it is added to the 25 percent discount of two months, a greater discount is not appropriate.

95. In each matter there will be a further discount, therefore, of two weeks.

96. In respect of charge 1, the Tribunal determines a period of disqualification of five months and two weeks,

97. In respect of charge 2, the Tribunal determines a period of disqualification of four months.

98. The Tribunal, under the rules, must determine cumulative or concurrent. The principles require each individual charge to have a starting point of cumulation. Is that appropriate on these facts?

99. The Tribunal notes that each of these matters occurred on the same occasion at the same race meeting and therefore they are relatively related. To some extent they arise from the same incident, namely, the striking of the dog led to the continuation of the inquiry after the performance aspects had been closed with no further action and therefore it could be said to be the same incident.

100. However, the conduct which took place subsequently was broken by a temporal disconnect when he had time to reflect upon what he had done and on numerous occasions during that stewards' inquiry he was given the opportunity to reflect upon his conduct and he persisted in it. To that extent, therefore, any reduction by reason of similarity of conduct between the two matters is reduced.

101. The Tribunal will allow that there be a cumulation of two weeks.

102. It is, therefore, that there is a first penalty of five months and two weeks. So far as the second matter is concerned, two weeks of that four months is cumulated. That provides a total period of disqualification, ignoring calculations between weeks and months, of six months.

103. The effect, therefore, is a period of disqualification in total of six months.

104. In that regard the severity appeal has been successful and is upheld.

105. Application is made for a refund of the appeal deposit.
106. This was a severity appeal. That severity appeal has been successful in that the penalties have been reduced.

107. Accordingly, the Tribunal orders the appeal deposit refunded.
