RACING APPEALS TRIBUNAL
NEW SOUTH WALES
TRIBUNAL MR D B ARMATI
EX TEMPORE DECISION
MONDAY 20 NOVEMBER 2023

APPELLANT TROY ROBINSON
RESPONDENT GWIC

GREYHOUNDS AUSTRALASIA RULE 21(1)(c)
Appeal Against Finding of Guilt by Stewards on GAR 21(1)(c) -Charge 7
DECISION:

1. **Appeal dismissed**

GREYHOUNDS AUSTRALASIA RULES 156(f)(i), 156(g)(iv) x 3, 156(h), 21(1)(c), 151(2)
SEVERITY APPEALS
DECISION:

1. **Appeal upheld**
2. **Penalties imposed:**
   - **Charge 1 – 3 months disqualification**
   - **Charges 3 and 4 – 4 months disqualification**
   - **Charge 5 – 7 months disqualification**
   - **Charge 6 – 5 months disqualification**
   - **Charge 7 – 3 months suspension**
   - **Charge 8 – $100 fine**
3. **Penalties to be served concurrently from 19 may 2023**
4. **Appeal deposit refunded**

1. The matter before the Tribunal is a severity appeal in respect of a number of charges but a plea of not guilty in respect of one charge. Another charge, to which a plea of not guilty had been entered, was withdrawn at the commencement of this appeal. The Tribunal is left to determine the meaning of the provision in Rule 21(1)(c) and then to apply the facts to the meaning that is gleaned.

2. Rule 21(1)(c) is in the following terms, and it is to be noted that it is under Part 4: Animal Welfare:

> "21(1) a person must ensure that any greyhound in the person's care or custody, is at all times provided with
> (c) kennels constructed and of a standard approved by a Controlling Body which are adequate in size and which are kept in a clean and sanitary condition."
>
> Charge 7 Particulars
>
> On 2 June 2022 Mr Robinson's kennels were not kept in a clean and sanitary condition. On 30 June 2022, Mr Robinson had failed to rectify the deficiencies identified on 2 June 2022 and his kennels were again not kept in a clean and sanitary condition.

3. It might be noted that the balance of sub-rule 1 deals with food, drink and protective apparel, exercise, veterinary attention and appropriate treatment. It is also necessary, because it is an animal welfare provision, to have regard to the balance of the rule, which in sub-rule (2) refers to prevent unnecessary pain or suffering or anything that would lead to it, or under (3), not to permit premises which are dangerous to the health, welfare or safety of a greyhound. The balance of Part 4 deals very much with issues of welfare.

4. It is to be noted in passing at this point that s 11 of the Greyhound Racing Act 2017 provides and mandates one of the key objectives of the regulator, and therefore the industry, is animal welfare.

5. Those remarks are made to put in context the meaning of the word "kennels" as found in 21(1)(c). It is common ground that kennels are not defined in the rule nor, it appears, in what is said to be the industry Code of Practice applicable to this appellant.

6. A purposive construction must be found. The law to support that need not be stated, it is a common fact in these proceedings.

7. And, absent any definitions, that purposive interpretation must be driven by an ordinary meaning of the word in the context of the sub-rule, the rule, the part, in particular, of animal welfare, the rules generally and the provisions about this code. It is, therefore, that in finding a purposive interpretation, the

Tribunal is driven by the necessity to find a meaning of the word “kennels” which is directed to animal welfare.

8. The words “constructed and of a standard approved by a Controlling Body” raise two issues. Firstly, that at the time of the registration of this appellant, or at subsequent times if there is a change of premises, it is necessary to have the premises inspected to ensure that they comply with the Code of Practice. The premises themselves become what is called registered, they are not licensed as such.

9. Secondly, that then provides a meaning to the expression “constructed and of a standard approved” rather than incorporate into it directly the Code of Practice, because it is brought in indirectly through that registration of premises as a registered address system.

10. The Code of Practice does provide some guidance to the Tribunal, and the Tribunal relies upon the extracts which have been orally given to it in the proceedings, the Code of Practice not having been put in evidence.

11. The respondent relies upon the code as providing that pens designed to house a greyhound fall within the definition of a kennel. The appellant took the Tribunal to various other parts which deal with standards which focus upon kennels and yards and other housing and also make specific provision for outdoor yards to be mandated to have shelter from weather provided to the greyhound and for other purposes. There is no doubt the code goes on to distinguish sleeping areas, pens, kennels and the like. The aim of the Code of Practice is to ensure the welfare of the greyhound.

12. The need here is to find whether that which was inspected by the inspectors falls within the meaning of a kennel as a question of fact in this case. This is not a case for the Tribunal to set down a definitive definition of the word “kennels”, as found in the sub-rule sufficient to bind all factual scenarios in the future. The Tribunal focuses upon the facts of this case. It is not necessary to come to a positive meaning, or limited meaning, of the word “kennels” as found in the sub-rule.

13. The Tribunal is comforted in that conclusion because it is not satisfied it currently has a sufficient series of submissions – and no disrespect is intended – nor broader definitions which would assist it. Definitions have not been put before the Tribunal other than through the Code of Practice, but it is apparent that kennels can have an ordinary meaning in the absence of any definition and it could be that it is simply a small shelter or just a shelter generally, or it could be that there is a broader meaning, that it is a collection of buildings on a property which would extend, therefore, to any shelter.

14. It is important to note what the rule actually requires. The rule itself requires adequate in size, clean and sanitary. That does not assist in any sense in finding what is a kennel generally, so that is put out of mind.

15. Limiting the finding to the facts of this case, it is clear that there are at least six or nine more than adequate and of proper standard areas for greyhounds to be appropriately housed in accordance with the Code of Practice. That is – and the photos and the evidence is uncertain – whether there are six appropriate pens, each of which is clean, hygienic, properly constructed and of a proper standard.

16. There are then some yards. In those yards, there is a particular shed. In that shed is bedding. That shed is enclosed by a wire enclosure. In that wire enclosure are greyhounds. That shed, as the Tribunal will describe it, is separate to the six, or whatever number it is, kennels to which reference has just been made. It is within the curtilage of the appellant's property. It is designed in a way that enables a greyhound not only to take shelter but to be housed, because it has bedding in it, and it can then be housed in a discrete area.

17. The Tribunal notes the submission for the respondent that it is necessary under the Code of Practice for greyhounds to be separately housed in the sense that they have their own enclosed area, pen or kennel, depending on what definition has been applied.

18. Here, there appears not to be sufficient room, on the evidence, a factual matter, to house all 15 greyhounds – there is no dispute that number is available on the property at the time of the inspection – within the internal enclosed area. It is, therefore, that as a matter of fact this area of contest, the shed in the yard, the retreat, is in fact an area in which greyhounds are housed.

19. It is, therefore, that it is upon a factual finding that the Tribunal is satisfied that is, within the meaning of the Code of Practice, a pen, that it is within the Code of Practice a kennel area, and that whilst it may be a yard in which there is a shelter, it is nevertheless, for the purposes of the maintaining of the greyhounds at the property – certainly two in question – a kennel.

20. It is, therefore, that it falls within 21(1)(c) and that it is a kennel.

21. It is necessary then to have regard to whether the respondent establishes the particulars. The particulars plead several points.

22. A build-up of faecal matter – and the Tribunal is satisfied that the photographs clearly depict that, supported by the evidence of the two inspectors as to that which they recorded on the tape and that which they observed and referred to in their statements.

23. Secondly, that the photographs, and again the evidence of the inspectors, indicate that the bedding was neither clean nor hygienic, and it is noted that the word “dry” has been abandoned.

24. As to the reference to “all” greyhounds, that part of the particular cannot be established because the respondent cannot satisfy the Tribunal that all of the greyhounds had access to the subject area. However, that does not prevent the finding that is to be made that there was a lack of clean, hygienic bedding, certainly for some of the greyhounds.

25. And also t that there was a build-up of rubbish throughout that particular yard area.

26. It is noted that on the return inspection on 30 June – particulars (c) and (d) –the same findings are made, with the exception of the word “dry” in relation to bedding and with the exception of the word “all” in relation to greyhounds.

27. It is, therefore, that sufficient of the particulars are established – not all of the particulars – to found the breach in that the registered kennel premises did not comply with rule 21(1)(c).

28. The Tribunal dismisses the appeal against the adverse finding by the stewards.

PENALTY DEPERMINATION

29. The issue now for determination is penalty in respect of charges 1 and 3 to 8 inclusive, charge 2 having been withdrawn at the commencement of the appeal.

30. The Tribunal notes that earlier today it made a finding on a plea of not guilty that charge 7 was established. Therefore, it now becomes another matter for penalty determination, the appellant having indicated by an amended notice in recent days that he maintained his pleas of guilty to charges 1, 3, 4, 5, 6 and 8.

31. The Tribunal notes in passing that before the stewards’ inquiry, the appellant had only pleaded guilty to charges 1 and 6, having pleaded not guilty to the remaining matters.

32. The evidence is, not surprisingly with seven charges for penalty determination, quite substantial. The submissions have been lengthy. The Tribunal notes it is required to find an appropriate penalty in respect of each of the seven matters and in doing so to find a civil disciplinary penalty which provides the appropriate message of specific and general deterrence in the

public interest of greyhound racing. That penalty in each matter and in totality must not be more than the facts and circumstances of the case warrant, otherwise it would be oppressive.

33. Because of the combination of pleas and changes of plea, the Tribunal will not embark upon an exercise of calculating specific discounts in respect of plea-related matters, it being put in this context, that generally an early plea of guilty with cooperation with the stewards will lead to a 25 percent discount and sometimes less.

34. Here, there have been pleas of not guilty which became pleas of guilty; pleas of not guilty which were maintained as pleas of not guilty and pleas of guilty which have remained pleas of guilty. Thus, the complication in each matter of precise calculations.

35. Of course, as is now the norm, the use of mathematical formulae is now frowned upon. However, it is necessary to indicate, out of fairness to the parties, how a decision-maker, such as this Tribunal, determines discounts.

36. The Tribunal is further guided in respect of some of these matters by the existence of the GWIC Penalty Guidelines of July 2022, which postdate these matters but generally provide some form of guidance of current thinking. The earlier guidelines related to some matters, but not in great detail, in relation to non-prohibited substance matters. It might be said, therefore, that the general penalties are extant.

37. The Tribunal proposes to approach the matter by looking at each of the charges as to the issues of objective seriousness and then turn to subjectives because, not surprisingly, the subjectives colour each of the ultimate determinations on the question of reduction, if any and, where appropriate, for the subjectives.

38. The charges are:

> **Charge 1 – Rule 156(f)(i)**
>
> On 1 June 2022 Mr Robinson dishonestly reported to multiple GWIC staff that the greyhound ‘Gagan Stacey Lee’ as deceased by snake bite, when the greyhound was neither deceased and remained in his care and control.
>
> **Charge 3 – Rule 156(g)(iv)**
>
> On 2 June 2022, Mr Robinson did wilfully obstruct, impede and interfere with officials of the Controlling Body by refusing entry to, and preventing the inspection of, his registered kennels by two GWIC Inspectors.

Charge 4 – Rule 156(h)

On 2 June 2022 Mr Robinson failed to reply to a lawful order from a GWIC Inspector by refusing to answer questions regarding the alleged death of the greyhound 'Gagan Stacey Lee'.

Charge 5 – Rule 156(g)(iv)

On 30 June 2022 Mr Robinson did threaten and abuse a GWIC Inspector by calling him a 'grub' and a 'little fuckwit terrorist' and saying words to the effect of "you'll get turned upside down if you come in here'.

Charge 6 – Rule 156(g)(iv)

On 30 June 2022 Mr Robinson did threaten and abuse a second GWIC Inspector by calling him words to the effect of 'fucking grub' and 'simpleton' and by saying 'You scared…what a bunch of fuckin' poofters''.

Charge 7 – Rule 21(1)(c)

On 2 June 2022 Mr Robinson's kennels were not kept in a clean and sanitary condition. On 30 June 2022, Mr Robinson had failed to rectify the deficiencies identified on 2 June 2022 and his kennels were again not kept in a clean and sanitary condition.

Charge 8 – Rule 151(2)

On 30 June 2022 Mr Robinson failed to produce treatment records for the greyhounds in his care and control when requested to do so by a GWIC Inspector.

39. The Tribunal will not, as it is not been the subject of submissions in this case, enter upon a greater dissertation on the approach to penalty in these matters other than that which it has expressed.

CHARGE 1

40. Charge 1, an aspect of dishonesty by telling two different stewards that the particular greyhound was deceased when it was not and that it was deceased as a result of a snake bite when it had not suffered such an injury.

41. The aspects of why the appellant engaged in that conduct in respect of this matter, whilst they colour some of his subsequent conduct, are required to be expressed.

42. The appellant has been at great pains to point out throughout his submissions and when spoken to the affection with which the subject greyhound was held in the family and also the fact that it in fact was deregistered because it had got itself out of the subject property into a public area as a result of which council had told the appellant that he had to effectively kennel the dog for the rest of its life. The Tribunal accepts that that advice and the consequential requirement to comply with it had occasioned upon the appellant some not insubstantial stress and disappointment. There is also colouring it, as will be touched upon in greater detail later, the appellant's mental state at the time.

43. The appellant has always admitted that he engaged in this conduct but it is not necessary to examine it in greater detail. The stewards thought a starting point of 6 months' disqualification was appropriate and, as set out, gave a 3-month disqualification. It is submitted on appeal that is appropriate, on behalf of the respondent.

44. The objective seriousness of dishonesty with stewards has been expressed in many cases and it is quite apparent that those with the privilege of a licence are required to be honest at all times with the regulator and its officers and that the failure to do so has the capacity to substantially undermine the regulatory function and the potential for welfare failures that might follow, not the least of which is that a privilege of a licence carries with it an obligation to be honest. That has been expressed, as said, many times.

45. The appellant emphasises the facts just outlined in favour of the appellant that the objective seriousness is much reduced by the fact that there was no affectation on racing, there were no welfare concerns and that the honesty or dishonesty in which he engaged is at the lower end of the scale.

46. He has expressed remorse for his conduct here and in respect of all of the other matters. The Tribunal will return to that.

47. The respondent relies on parity cases of Francis where a 12-month disqualification starting point was considered appropriate and then ultimately 6 months' disqualification, and Boyd, where a 12-month disqualification was seen to be appropriate and a 5-month disqualification was imposed, and Mabbott, where a 6-month disqualification starting point was considered appropriate.

48. On behalf of the appellant it is said that those cases can each be distinguished. Francis, in particular, because it was a licence-related application, where there was a substantial burden to be truthful, and that the

Tribunal there emphasised the privilege matters, to which reference has been taken, that flow from the grant of a licence and the trust that is necessary. And in that case, a photograph of other facilities was given to show that they were meeting the appropriate standards to ensure a licence was granted.

49. Boyd, it is said, was a race-related matter and has no similarity.

50. And Mabbott had substantial integrity-related matters to it. And there is, again, no aspect of similarity to the dishonesty where there, there had been a lie to the stewards on his past history which raised a substantial integrity matter.

51. The Tribunal is comforted in this matter that it must strongly send a specific message to this appellant, diluted by the subjective matters to which it will return, but more importantly, a message of general deterrence to the effect that dishonesty with stewards of any type cannot be accepted for the reasons that have been outlined.

52. The Tribunal agrees with the submission for the respondent that a starting point of 6 months is appropriate and within a matter of dishonesty and the breach of a privilege of a licence, notwithstanding the factors in favour of the appellant that have been outlined, a 6-month disqualification is an appropriate starting point.

CHARGE 3

53. Charge 3 has to be put in the context of the Tribunal having the benefit of viewing the body-worn camera images from the inspectors' visit.

54. Contrary to the submissions for the appellant, the appellant from the time he arrived at the property embarked upon a refusal of entry and prevention of the inspectors carrying out their duties. It was not an isolated act but a continuing act over a substantial period of time where, quite bluntly, the appellant's appalling behaviour prevented the inspectors from carrying out their properly vested functions, which the Tribunal has to say, having viewed the video images of that day and 30 June, considers that each of the inspectors on each of the occasions acted with the utmost understanding, compassion, reserve and consideration of the interests of the appellant.

55. The appellant, as it were, turned his back on that considerate approach by the stewards and engaged in his conduct, which also is reflected in 5 and 6, in a disgraceful fashion.

56. Stewards exercising their functions, as expressed, are entitled to expect honesty, they are entitled to expect cooperation, they are entitled to expect a person with the privilege of a licence would allow them to go about their functions, whether they be Prevention of Cruelty to Animals Act-related or

greyhound racing stewards' functions, without the obstruction which was inflicted upon them.

57. On 2 June, which was reflected in the matters 3 and 4, it was necessary for them to leave. There can be no beating about the bush, as it were, that this appellant was not going to cooperate. He was going to do all he could to obstruct them.

58. He was driven by an entirely misguided belief, in the Tribunal's opinion, about what his mother had been subjected to. His mother may well have reported to him that she was terrified, but the basis of that subsequent report totally escapes the Tribunal on the quite obvious inspection by uniformed officers, in premises, standing well away from his mother, who was in an elevated position, having had quite clearly explained to her why they were there and what it was about, and in the Tribunal's opinion, his mother was quite understanding of what was said and asked of her and able to answer the questions without any type of concern.

59. The Tribunal does not accept the part of the 2 April 2023 letter of the mother to the effect that it has caused the appellant to act in the way that he has as justifying his conduct. She may have been very upset. There was no justification for doing so, and it is unfortunate that she may have conveyed that impression to her son, because he reacted in several ways, just described, driven by a belief that the inspectors were only entitled to exercise their functions as Prevention of Cruelty to Animals Act inspectors, and some inconceivably misplaced belief that they could not also exercise their functions as greyhound racing inspectors, that being the person who full well knew there were inspectors there, they were wearing body camera equipment, or one of them was, on the first occasion, and that they were there on a duty basis, firstly as Prevention of Cruelty inspectors, and then, unambiguously, turned to conduct, as they were entitled to do, a kennel inspection on advice they were doing so.

60. Notwithstanding that, a door was shut in their face, they were prevented from entering, there was a refusal to answer questions, there was a denial of a right of entry to inspect premises, there was an ongoing refusal and prevention of them carrying out their functions.

61. There is no doubt that, unambiguously, the appellant refused to answer their questions, and did so on numerous occasions, despite quite fairly him being advised of his duties and his obligations, and he just ignored them.

62. For the respondent, it is said that a starting point of a 4-month disqualification is appropriate. There was no plea before the stewards. It is said, therefore, there should be no discount. There was a direct welfare affectation put into place by the appellant's conduct.

63. Reliance is placed upon parity of matters of Gordon and Jennifer Lee, where the necessity to call police led to them gaining entry. There were pleas of guilty there, and they received 9 months' disqualification, despite some 50 and 40 years, respectively, in the industry, and no prior equivalent matters.

64. The matter of Ballantyne, where there was a 9 months' disqualification, as an end result.

65. The respondent accepts that the appellant – and the Tribunal will return to it – has expressed remorse for his conduct and is unlikely to re-offend. However, it is said that this is a serious matter, and the plea of guilty now made has little utility.

66. For the respondent, it is suggested there was some argy-bargy between them. The Tribunal rejects that submission. There was no argy-bargy. The only bargy came from the appellant in his obstructive conduct.

67. It is said there was no blanket refusal. Yes, it is accepted by the Tribunal that, upon indication of a kennel inspection, they were told they could come on and do it, but that is far as the cooperation went. From then on, he was just plainly unhelpful.

68. As to the parity cases, it is said that the police were not required to be called, and there was not a blanket refusal. To some extent, that does enable a distinguishing from the cases of Lee and Ballantyne. Ballantyne incorporated a considerable additional amount of material.

CHARGE 4

69. In respect of matter 4, it was said to be the same course of conduct as occurred for matter 3.

70. In those matters, the objective seriousness, again, is the prevention of inspectors by a person with the privilege of a licence and full knowledge, in fact, of their powers and rights, driven now by remorse and by medical issues, again to which the Tribunal will return, has prevented them and caused them to actually have to leave his premises without fulfilling their functions on 2 June, as particularised.

71. The Tribunal determines, consistent with the guideline, that matter 4 has a starting point, if it was to occur after July 2022, of 9 months' disqualification, which does not apply to these matters, which provides some measure of guidance of the decisions in Lee and Ballantyne, has not been disproportionate in any event, and the Tribunal adopts in respect of each of those matters for its own reasons, not bound by the penalty guideline, a 9 months' disqualification starting point.

CHARGES 5 AND 6

72. Matters 5 and 6 can best be summarised by the Tribunal as indicating that this conduct was just plain disgraceful. There can be no other consideration of it. To call an inspector the following things by a person with the privilege of a licence, in full knowledge they were carrying out their functions, a “grub”, a “little fuckwit terrorist”, someone who will “get turned upside down if you come in here”, and someone who is a “fucking grub” and a “simpleton” and “what a bunch of fuckin’ poofters”, is just conduct which cannot be, in any way, justified by a medical condition or ameliorated by remorse.

73. These officers, in respect of those words uttered at them, continued to exercise their functions with the utmost civility and propriety and in accordance with their duties. Many a person would not have reacted as favourably towards the appellant as those two officers did. The appellant’s conduct requires condemnation.

74. The guidelines, if they were to be applied today, would mandate a 9-month disqualification starting point, but there must be a turning to parity to find out what was appropriate at the time. It is said that the disqualifications of 8 months for charge 5 and 5 months for charge 6 were appropriate penalties. It is not set out why 6 should be treated so leniently as it is for 5.

75. It is also in the context, it is emphasised for the respondent, that the appellant was very aggressive. He was. He was, in fact, accompanied on 30 June by his brother, who was there as some form of advocate on his behalf and spent a considerable period of time trying to calm the appellant down, it must be said, for the majority of the time without success, although it is to be conceded he subsequently calmed down and cooperated. He is entitled to the benefit of that as lessening the gravity of his appalling conduct leading up to that cessation of it.

76. It was necessary for him to be physically pushed away by his brother and told on numerous occasions to “shut up”. All this in the presence of inspectors who had just been abused in that most appalling fashion.

77. The inspectors are entitled to feel entirely safe when they attend upon licensed premises. Here, it is quite apparent from what was said, particularly by Inspector Acker, that he was feeling threatened. There is no doubt that the handling of the padlock occasioned to Inspector Turner some not inconsiderable concern. That was ameliorated and nothing came of it. And whilst nothing may have been intended by it, the handling of that padlock, which is not the subject of particulars but is part of the res gestae, puts in context the threats that had been uttered by the appellant towards them. They were on duty. They should not have been treated the way they were.

78. The respondent now accepts the sincerity of the appellant's apologies, to which the Tribunal will return.

79. In relation to cases of parity, there is the Tribunal decision of Gatt, where a 9-month starting point was seen to be appropriate, and the GWIC decision of Allan, where the end result was a 9-month disqualification for language. There is the GWIC decision of Ballantyne, where there were threats to kill, where a 2-year disqualification was considered. The GWIC decision of Carter, again, threatened to kill, where it appears there may have been an 18-month disqualification, on the submissions made.

80. For the appellant, it is said that the plea of guilty entitles him to a discount, and the remorse to which reference has been made, and it is said that the ultimate result of 8 months' disqualification in respect of 5 is too great.

81. In each matter, for their objective seriousness, the Tribunal has determined there be a starting point of 9 months' disqualification.

CHARGE 7

82. In respect of matter 7, the matter to which the Tribunal made an adverse finding earlier, it is that the guidelines today, which were not extant at the time, in fact provide a 3-year starting point disqualification. It has to be said that that must be put in the context of aspects of severity of welfare caused by the failure of clean and sanitary conditions.

83. The most telling fact here is not just the condition of the yard in which the adverse finding in relation to faecal matter and rubbish and the standard of the bedding was referred to, but put in context of the balance of the appellant's premises. The respondent fairly concedes, as was accepted by the inspectors, that the rest of the area was in first-class condition. The other kennels were clean, they had appropriate bedding, they had appropriate provisions, all in compliance with the code.

84. The Tribunal's decision was that the greyhounds, having been allowed into this extra shed area, were also entitled while there to receive the same level of cleanliness and hygiene. So the assessment of objective seriousness is not solely driven by the fact that there were substantial volumes of faecal matter about where those greyhounds were, but that was just in that limited area, on the evidence. And as to the bedding, yes, it was not clean and hygienic. And as to the rubbish, it was quite consistent with pups ripping bedding to pieces, as apparently pups are wont to do, and it was a failure to clean up.

85. No direct welfare issue was therefore identified in respect of the operation as a whole.

86. It is said on behalf of the respondent that there is a necessity for a suspension, notwithstanding what would now be required as a disqualification, and it should have a starting point of 4 months.

87. As to issues of parity, cases of Lee, Azzopardi and Verhagen have been referred to, where suspensions of 3 months, 4 months and 6 months were imposed. The balance of those matters need not be considered. Firstly, it is noted they were all suspensions and not disqualifications, and no other outcome is sought on this penalty hearing, and that they were all of a relatively limited span, some with pleas of guilty, one not.

88. The balance of the submissions for the appellant have been canvassed already.

89. The Tribunal agrees with the respondent on a starting point of 4 months suspension.

CHARGE 8

90. Matter 8 relates to the failure to produce the treatment records. That has to be put in this context, that it is sub-rule (2) of 151, and sub-rule (1), which is the more serious matter, relates to the failure to keep the records. Here, the records were kept, and they were kept at alternate premises. They should have been produced when required. They were not. The answer appears to be now that the appellant – or attempts were made on the appellant's behalf to do it, and there was some computer glitch – was unable to send them.

91. For the respondent, it is pointed out that this kennel inspection on 30 June was prearranged. A licensed person should reasonably anticipate it. He was asked to produce his treatment records and should have had them available. He did not.

92. The current penalty guidelines provide for a first offence such as this a starting point, even under sub-rule (1), a $200 penalty, there being no differentiation in the current guideline in respect of the difference between sub-rule (1) and sub-rule (2).

93. The Tribunal is satisfied that sub-rule (2) is much less serious than sub-rule (1), so that any starting point which would be considered today must be in fact less than $200. The Tribunal notes it is a minimum, of course, but does not consider the failure here would warrant any acceleration over and above that amount.

94. The Tribunal determines also that there are parity cases of Lee, Azzopardi, Galway and Verhagen, where penalties respectively of $500, $200, $500 and $225 were imposed, and therefore the respondent submits it should not be less than $200.

95. On behalf of the appellant, it is pointed out the records are otherwise well kept and there were email problems, to which reference has been made, therefore, it is submitted that $200 should be the maximum considered.

96. The Tribunal considers a starting point of $200 in respect of that matter.

SUBJECTIVES

97. It is necessary then to turn to subjectives.

98. Firstly, as the Tribunal has said, it will not analyse in great detail, for the reasons expressed, the discounts that are going to apply for the plea-related issues on each of the seven matters.

99. The Tribunal has the benefit of the expressions in his favour and an explanation of the circumstances given by his mother. Those matters are certainly accepted, the appellant repeats them himself.

100. The Tribunal particularly has regard to the written apologies of 3 May 2022 by the appellant to each of Inspectors Turner and Acker. In there are sincere apologies, very strong remorse and wrongful conduct is accepted for officers carrying out their duties and it is accepted he acted extremely poorly. And he says, however, that, whilst not excusing it, he was under significant stress.

101. He sets out in his statement of 3 May 2023 his reasons at that time for his conduct. He apologised to the stewards, he accepted his conduct was appalling, he asked, however, that his surrounding circumstances be taken into account: hysterical nature of his mother, more importantly, his ADHD, which will be referred to in more detail, coupled with the fact that at the time his 28-year relationship was the subject of disintegration, because he has used the word he was trying to salvage it.

102. He accepts the inspectors were patient with him and were otherwise respectful towards his mother. He accepts his conduct was appalling, but did genuinely believe, he states, they were overstepping their marks, although simply doing their job. He refers to the fact he shook Inspector Acker’s hand on the second occasion, with an apology.

103. He also refers to his love of greyhounds, their importance to him, and his volunteer work at Redhead Trial Track.

104. He says that he struggles with depression as a result of workplace incidents and has been undergoing treatment.

105. He calls in aid Mark Wilson in an undated note, who is President of the Cardiff Greyhound Social Club. He describes him as an honest, reliable and compassionate person, an assistant at the trial track, and always presents his dogs in a clean, well-groomed manner.

106. He calls in aid the letter of Dr Raghavendra of 3 July 2023, which sets out all the ongoing management of anxiety and ADHD, and also all of his injuries.

107. He puts in evidence his uncontested workers' compensation entitlement.

108. He puts in evidence an undated reference of Dale Millard, who has been a 40-year associate with the industry and a director of the NCA and Newcastle Greyhounds. He says the appellant is genuine and friendly and a volunteer at Redhead Trial Track, a person who is not afraid to help whenever he is needed, and who is seen as valuable and greatly appreciated.

109. He puts in evidence, without contest to its contents being referred to, psychologist's report of Rebecca Russell of 9 August 2023. She refers to her diagnosis of ADHD and major depressive disorder, on foot since at least September 2019, where he underwent treatment and was working hard to overcome his symptoms, and reconnected with her on 29 June 2023, and continues to attend upon her up until the date of that reference, subject to what he has said in his statement, to which the Tribunal will return.

110. He was making great improvements, taking his medication, and how important greyhounds are to him for his mental health. When he re-engaged, his mental health had deteriorated. He had ceased taking his medication. He was depressed, frustrated and angry, and experienced conflict in his social circle, and substantial personal stress.

111. He says he stopped taking his medication because he was feeling well, but became emotionally impulsive and reactive when he stopped doing so, and had difficulty controlling his anger and frustrations, and was constantly depressed. Ms Russell referred him to re-engage with a psychiatrist, Dr Saker.

112. He now understands his symptoms, and he is taking day-to-day measures to address it. He is scheduled to see her on a fortnightly basis for various types of treatment which do not need to be set out. He is now aware of the early warning signs and what he must do.

113. Ms Russell refers to the depression-exacerbated impact of a disqualification on him, and the personal concerns it has for him.

114. For this appeal, the appellant has made a statement of 6 September 2023. He refers to his love of greyhounds and the industry, and it is a great

motivator for him to address his illnesses. He accepts responsibility. He accepts the appalling nature of his conduct, expresses his embarrassment, and the fact he suffered a good wake-up call. He has now, as he said, re-engaged with his psychologist and psychiatrist, which will be ongoing.

115. He describes that he suffered a workplace injury which led to his depression, and he is now receiving financial assistance for his ongoing treatment.

116. He says he has worked on his various techniques to stop him from impulse behaviour. Medication, understanding how to deal with grief, what causes him stress, what his early warning signs are, and how to deal with persons in authority. He now says he will not do what he did in the past, and he is taking his medication, he will explain he has health conditions, he will contact his solicitor if he needs to, and he will undertake breathing exercises and the like.

117. He describes the effect of any disqualification upon him as to being a great affectation, because greyhounds are his life and, as the Tribunal notes is so often the case, his social life as well. He has a family history in the industry, particularly in relation to his father's position, as it used to be. He provides no excuse for his conduct.

118. In respect of subjectives, the appellant has a number of priors which led to fines. Nothing is made of that in respect of the submissions, and that shall not be further examined.

119. The Tribunal again is confronted by an appellant who expresses a love for the industry and for the greyhound, the fact that it is their life, that it is, in essence, their social life, that without greyhounds they have a substantial vacuum in their life. The Tribunal intends no disrespect to the appellant, nor a lack of compassion, by saying it hears that in virtually every appeal in this industry.

120. In this case, it is not disregarded. The Tribunal accepts, because psychologist Ms Russell has certainly reflected upon the deep impact that those matters have, and they shall not be set out for confidentiality reasons, the deep impact that that loss has.

121. The Tribunal therefore accepts it is a strong subjective factor in favour of this appellant on the facts and circumstances of this case, in particular his personal facts and circumstances.

122. The Tribunal accepts the expressions of remorse as being immediate on 30 June, ongoing in the letters of 3 May, repeated in the submissions to the stewards and to the Tribunal, and reported upon by his referees and by the psychologist Ms Russell.

123. The Tribunal accepts that this appellant is, provided he continues to take his medication and completes his course of treatment, not likely to re-offend.

124. The Tribunal is satisfied that the appellant is entitled to some discounts in respect of plea matters, both before the stewards and now before the Tribunal.

125. The Tribunal will not express mathematical calculations. The Tribunal is satisfied that there are to be discounts for his subjective circumstances in respect of each matter, in particular in respect of matter 5, where an express starting point of 9 months was given, but only a 1-month discount was given, that the Tribunal is of the opinion that that is not an adequate discount for the facts and circumstances now available to the Tribunal. The Tribunal, without being expressly bound by mathematical formulae, considers something like a one-quarter discount as appropriate.

DETERMINATION

126. In respect of matter 1, the Tribunal determines that there be a 3-month disqualification.

127. In respect of matters 3 and 4, consistent with the submissions for the respondent, the Tribunal determines a disqualification of 4 months.

128. In matter 5, the Tribunal does not accept the facts and circumstances as now available to it support the submission that an 8-month disqualification is appropriate. The Tribunal determines that there be a 7-month disqualification.

129. In respect of matter 6, the Tribunal would otherwise have been of the opinion that a 7-month disqualification was appropriate. The stewards imposed a 5-month disqualification. It is submitted that that is an appropriate outcome on appeal. No Parker direction was given. The Tribunal is of the opinion, therefore, that it should not go beyond that which was 5 months' disqualification imposed by the stewards.

130. In respect of matter 7, the Tribunal is of the opinion that a suspension is in fact appropriate, as expressed, and considers that the facts and circumstances of this matter justify a 3-month suspension.

131. In respect of matter 8, the starting point to which the Tribunal made reference is, on all the facts and circumstances, reduced and a monetary penalty of $100 is imposed.

132. The next matter is cumulative and/or concurrent. It is trite to say the rule requires it to be cumulative unless the Tribunal otherwise orders.

133. The Tribunal has regard to totality.

134. Throughout the time of this conduct, the appellant's stress is accepted and his medical condition upon which he now has taken treatment was such that he was not at that time appropriately medicated and able to control the impulsiveness and the conduct in which he engaged, without summarising it again. That is not an excuse. He has not suggested otherwise.

135. There is the further fact of the strength of the remorse that he has expressed. These are new facts which were not available, in the main, in particular in relation to the detail the Tribunal now has, of his medical conditions. The Tribunal accepts those medical conditions have very much driven his conduct.

136. There was a gap between 2 June and 30 June and there was the fact 30 June involved a pre-arranged inspection. He was under stress on 2 June and it should reasonably be anticipated when the inspectors returned on a pre-arranged visit that he would have his stress under control.

137. He should also have, it is apparent, in the Tribunal's opinion, reflected upon why he engaged in such poor conduct on 2 June, such that he did not do it again on 30 June. But that is to ask, in the Tribunal's opinion, for the appellant to have, as it were, become a psychologist and a psychiatrist to diagnose himself such that he would go back on his medication. He should have done that because he knew he was well when he took his medication, but he did not do it. The Tribunal, in the circumstances, however, considers that would be too harsh an approach.

138. The point of that summary is that the Tribunal considers, in essence, this was one course of conduct. There was a gap of 28 days, but in essence what occurred on 2 June and what occurred on 30 June are interrelated. They are interrelated to such an extent that the Tribunal comes to the conclusion that it should order that those matters of individual penalty should all be served concurrently and not cumulatively in part.

139. Whilst the stewards made various matters concurrent and then cumulated them, the Tribunal is not of the opinion, on the evidence now available to it, that that is an appropriate outcome.

140. The Tribunal has this also to say, that when it considers the gravity of the appellant's conduct, that it does consider at the end of the day, on the facts and circumstances of the case, an overall 7-month period of disqualification is an appropriate outcome.

141. The appeal relates to severity in respect of the matters individually and then collectively. Suffice it to say that it is best described as a severity appeal.

It might be said in respect of charge 1, the severity part of it has been unsuccessful and in respect of charges 3 and 4, has been unsuccessful, and in respect of charges 6 and 7 has been unsuccessful, but in respect of charge 8, it has been successful. In any event, overriding all of that, he has succeeded in respect of the concurrency being imposed and not cumulative. Whilst it is not a formal requirement in a Tribunal such as this, the impact of that is in fact the severity appeal is upheld because at the end of the day a lesser penalty is imposed.

142.The effect of the orders of the Tribunal, therefore, is this, that the appellant is disqualified for a period of 7 months, to commence on 19 May 2023, and to pay a fine of $100.

143. Application is made for a refund of the appeal deposit.

144. In essence, the majority of this matter dealt with the issue of severity. There was a plea of not guilty in respect of one of the extant seven charges. Whilst that did take some time, the Tribunal does not intend to unravel the matter by trying to find six-sevenths of the matter.

145. The Tribunal orders the appeal deposit refunded.