

**RACING APPEALS  
TRIBUNAL  
NEW SOUTH WALES**

**TRIBUNAL MR DB ARMATI**

**RESERVED DECISION**

**15 MARCH 2019**

**APPELLANTS DAVID AIKEN and  
MALCOLM LOCKE**

**AUSTRALIAN HARNESS RACING  
RULE 190(1)**

**SEVERITY APPEALS**

**DECISION:**

- 1. Each severity appeal upheld**
- 2. Mr Aiken fined \$400 in each matter**
- 3. Mr Locke disqualified for 19 weeks in each matter, concurrent.**
- 4. Each appeal deposit refunded.**

## **BACKGROUND**

1. Licensed A grade trainer and driver David Aiken appeals against a decision of the stewards of 21 May 2018 to impose upon him a period of disqualification of his licences for a period of four months commencing 21 May 2018 for three breaches of Rule 190.

2. Licensed stablehand Malcolm Locke appeals against a decision of the stewards of 21 May 2018 to impose upon him a period of disqualification of six months, to commence on 21 May 2018, for three breaches of Rule 190.

3. These two appeals were, by consent, heard together.

4. Each appellant now only appeals on the grounds of severity.

5. Rule 190 is in the following terms:

“190. (1) A horse shall be presented for a race free of prohibited substances.

(2) If a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of the horse is guilty of an offence.

(3) If a person is left in charge of a horse and the horse is presented for a race otherwise than in accordance with sub rule (1), the trainer of the horse and the person left in charge is each guilty of an offence.

(4) An offence under sub rule (2) or sub rule (3) is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.”

6. The particulars in respect of appellant Mr Aiken are as follows:

Charge 1 – That you, Mr David Aiken, being the licensed trainer of the horse Maorisfavouritesun, a horse that was left in the charge of Mr Malcolm Locke when it was presented to race at Tabcorp Park Menangle on 7 October 2017 on your behalf, with a prohibited substance in its system, namely, O-desmethylvenlafaxine, as reported by two laboratories approved by Harness Racing New South Wales.

Charge 2 was in the same terms except that it was for a presentation of the same horse on 11 November 2017.

Charge 3 was in the same terms, except that it was for the horse Charlie Macsheen, presented on 14 November 2017.

7. The particulars of the charges in relation to appellant Mr Locke are:

First charge – That you, Mr Malcolm Locke, a licensed stablehand, were the person in charge of the horse Maorisfavouritesun when it was presented to race at Tabcorp Park Menangle on 7 October 2017 with a prohibited substance in its system, namely O-desmethylvenlafaxine, as reported by two laboratories approved by Harness Racing New South Wales.

Charge 2 was in the same terms except it was a presentation on 11 November 2017.

Charge 3 was in the same terms except it was for the horse Charlie Macsheen, presented on 14 November 2017.

8. When confronted with those allegations, each appellant at the stewards' inquiry pleaded "not guilty". In lodging their appeals to this Tribunal, each appellant denied the charges. On 17 July 2018 each appellant indicated that the appeals would proceed on the basis of severity only.

9. On 25 May 2018, the Tribunal had granted a stay to each appellant.

## **EVIDENCE**

10. The evidence has comprised: the transcript of the stewards' inquiry; a very large bundle of documents containing the exhibits before the stewards, photographs, correspondence and various histories for swabbing performance and driving for the appellant Aiken; the stewards' decision; the report of Dr Wainscott of 28 September 2018; a scientific paper by Mérette and others titled Elimination Profile of O-desmethylvenlafaxine Following Oral Administration of Venlafaxine and O-desmethylvenlafaxine, proceedings of the 19th International Conference of Racing Analysts and Veterinarians, USA, 2012; a document setting out the prize money returned and two notices to industry relating to human prescription medications and domestic septic sewer systems issued under the hand of the Integrity Manager on 12 June 2018. In addition, oral evidence was given by Dr Wainscott, cadet steward Mr McCaffrey, and Mr Prentice, Integrity Manager,.

11. As each appellant has admitted a breach, the necessity to more closely analyse the evidence falls away.

12. In respect of each appellant, there were two ingredients to be established on the breaches of the rule and they are not in issue. The two

elements are presentation and prohibited substance. There is no issue that, in their capacities as either trainer or licensed stablehand, the two horses were presented to race in each of the subject races nominated by the stewards and that the prohibited substance O-desmethylvenlafaxine was found on laboratory testing.

## **THE ISSUE**

13. The issue in these appeals is penalty.

14. The issue of penalty turns upon the Tribunal being comfortably satisfied to the requisite Briginshaw standard, as to the cause of the presence of the prohibited substance in each of the horses when they were presented to race.

15. It is not disputed that under the Harness Racing NSW Penalty Guidelines the drug is a category 2 drug. A first offence carries not less than a two-year disqualification and a second offence, not less than a five-year disqualification.

16. The case has been run on the basis that there are possible sources of the contamination.

17. It is the respondent's position that the contamination was caused by Mr Locke urinating in the stables of the horses.

18. It is the case for the appellants that the contamination was caused by greywater used in the paddocks and which itself contained the subject drug.

19. It is not in dispute that the appellant Mr Locke consumed a prescribed medication which could produce the prohibited substance.

## **ANALYSIS OF THE EVIDENCE**

20. Mr Aiken is a licensed trainer with stables in New South Wales and Victoria. He was not present in New South Wales when the presentations occurred. He had been generally absent on and off for 6 months. He arranged for the appellant Mr Locke, as his stablehand, to run the NSW stable whilst Mr Aiken was absent. That is how Mr Locke came to present the horses to race.

21. The NSW stables were located at the Harness Racing NSW training facility known as Menangle Park Training Centre. The areas or points of relevance at that centre are the wash-down bays, stables and paddocks, together with a greywater recycling system.

22. The appellant Mr Aiken had a number of stalls with various horses looked after by the appellant, Mr Locke. Relevant to this matter, the horse Maorisfavouritesun was in stall 5 and Charlie Macsheen was in stall 3.

23. The training centre had a number of wash bays. Those wash bays were set up to enable the water run-off to go into recycle tanks. The evidence is that there were 16 wash-down bays used on a daily basis by between 140 and 160 horses with 30 to 40 humans and two or three veterinarians present on any day.

24. The water from the wash bays would go into a recycling system where it was filtered in various ways. That water was then provided for use in the paddocks. The use of recycled water for watering the paddocks was mandated by the centre operator, Harness Racing NSW. The water was not tested.

25. There are a number of paddocks available for use by trainers. Each of the relevant horses was placed in one nominated paddock- Lenny's paddock. It was approximately 30 metres by 40 metres and sloped from an entry gate down to a fenceline.

26. Watering took place every day, or at least every second day, for a period of two hours in the morning and occasionally the watering system was left on overnight.

27. Mr McCaffrey, who was groundskeeping at the training centre, said that because of the slope of Lenny's paddock, the water did not pool in the paddock but just outside. It was, however, acknowledged that the grass was "more lush down there" – that is, at the bottom of the paddock. Mr McCaffrey described that the sprinklers were moved around the paddock and had a circumference of 10 metres.

28. Licensed trainer Mr Darren McCall had been a user of the recycled water but approximately six weeks prior to the first subject presentation wrote to HRNSW advising that he would cease to use it because of his concerns about contamination. No action was taken to stop the Aikens from continuing to water Lenny's paddock.

29. Almost immediately after the positive results to the subject testing of the greywater were received by Harness Racing New South Wales, it published the notice to industry on 12 June 2018 on Domestic Septic Sewer Systems cautioning about possible contamination from the use of septic water. For completeness, it is noted that the second notice called Human Prescription Medications cautioned against the possibility of contamination with human prescription medications during feeding and handling of horses or through human excretion within the stable environment and a need for regular hand washing, wearing of gloves and the use of toilet facilities.

30. Critically, the Aikens continued to water Lenny's paddock with the recycled water until its use was stopped by the operators of the training centre, but after the presentations.

31. Mrs Aiken gave evidence at the stewards' inquiry to the effect that having watered the paddocks, often twice in a day, that they would be usually wet with recycled water. Her staff followed the same routine on every day for every horse, namely, that after breakfast they were put out in the paddock from about 8 am for some three to four hours and able to eat the grass, as she said, "covered in the recycled water". Relevantly the two subject horses were placed in Lenny's paddock in accordance with that usual practice prior to their presentation to race.

32. Mr Locke urinated in the stall of Maorisfavourite sun, stall 5.

33. There is a strong dispute by the appellants on the evidence in respect of any finding that there can be comfortable satisfaction that Mr Locke urinated in the stall of Charlie Macsheen, stall 3. The stewards proceeded on the basis of a finding that he did urinate in both stalls.

34. The conflict in evidence arises because Mr Locke changed his evidence.

35. It is necessary to set out that evidence.

Mr Locke had been interviewed on 14 November 2017 and the following occurred:

“MR PRENTICE: If you need to go to the toilet, do you always go to the toilet or do you use the stables at all?”

MR LOCKE: Oh, sometimes. It depends how desperate I am.

MR PRENTICE: Okay.

MR LOCKE: Yeah.

MR PRENTICE: In where the horses are?

MR LOCKE: Yeah. Every now and again, yeah. Everybody does it.”

Mr Locke was re-interviewed later that day:

“MR PRENTICE: ... you mentioned that you urinate in the stables. Which one? Is there a particular one or -----

MR LOCKE: Any one.

MR PRENTICE: Any of them?

MR LOCKE: Yeah.

MR PRENTICE: Okay. And are there horses in there when you do it?

MR LOCKE: Yeah.

MR PRENTICE: No particular box?

MR LOCKE: No.”

And later:

“MR PRENTICE: Okay. So, anywhere?

MR LOCKE: Yeah.

MR PRENTICE: Even though the toilet's not that far away?

MR LOCKE: Well, if I'm busting, I'm busting.

MR PRENTICE: All right. But you can't remember any particular occasion or which box you've been in or which horse?

MR LOCKE: No.”

36. There is no doubt that that occasioned in minds of the stewards critical evidence to the effect that they could make a finding that Mr Locke urinated in the stalls of each of the subject horses.

37. By the time of the stewards' inquiry on 30 April 2018, Mr Locke had changed his evidence.

38. At the inquiry on 30 April 2018, when first called in, he had the following to say:

“THE CHAIRMAN: You have indicated to us previously that you would urinate in the stable.

MR LOCKE: Yeah.

THE CHAIRMAN: Was there any particular box that you -----

MR LOCKE: Box 5.

THE CHAIRMAN: Always box 5?

MR LOCKE: Always.

THE CHAIRMAN: Were there any other boxes that you would urinate in?

MR LOCKE: No.

THE CHAIRMAN: And in relation to that, is there any reason why you didn't use the toilet within the stable environment?

MR LOCKE: Well, when you've got a go, you've got to go, don't you."

After the breaches had been read to him and he was asked whether he wanted to say anything else, he said this:

"MR LOCKE: Yeah, just about the urine in the box. I was under pressure that day that you questioned me. I was flustered. You know, I can't even remember the conversation that well, just – yeah. I go out there as therapy for my problems that I have and this is the result."

And later:

"MR ADAMS: ----- what pressure were you under? Can you -----

MR LOCKE: There was five horses to go to the races that day. Obviously you guys turned up and, you know, you get worried when people – when you turn up and tell me – and do a stable inspection about a horse having a positive swab. So, as youse would have seen, I was sweating. You know, five horses to get to the races, like, by myself, it's a fair bit of work, you know, like, to try and get everything organised and get them to the races. There's a bit of pressure there."

And later he was questioned about his practice of urinating in the stables. He was asked this:

"MR ADAMS: Would you agree that your answers there would state that you actually urinated in any box, there was no particular -----

MR LOCKE: Well, that's what it says, yes, but, like, I know I don't urinate in any other box, but -----

MR ADAMS: Okay. That's all.

THE CHAIRMAN: Is there any reason why you'd say that on the day?



MR LOCKE: No.”

39. At the inquiry Mr Locke was also asked about urinating elsewhere. Those questions arose because he had just told the stewards of actions he had taken to correct his practices in the stable by wearing gloves, not urinating in the boxes or in the wash-down bays. He was asked the following:

“THE CHAIRMAN: Was that a practice that had occurred before, urinating in the wash down bay?

MR LOCKE: Like I said, if you were really busting to go and you got horses in your hand, well, you know, you’re going to go.

THE CHAIRMAN: No, that’s fine. I’m just asking whether that was a practice that occurred.

MR LOCKE: Yes.”

40. Mrs Aiken, in a telephone interview on 14 November 2017, said the following:

“MRS AIKEN: Yeah. I mean, yeah, I don’t know whether males excreting in boxes could cause that or – I don’t know how – I don’t know how he manages his tablets.

MR PRENTICE: Yeah. We have had that in the past.

MRS AIKEN: Yes.

MR PRENTICE: Mmm.

MRS AIKEN: Well, because that’s what the men do.

MR PRENTICE: Yeah.

MRS AIKEN: They urinate in whatever stable they’re in.

MR PRENTICE: Yep.”

And later in that same interview Mrs Aiken said the following:

“MRS AIKEN: And I do know that he – I mean, I do know all the boys do, they urinate in the stables.”

41. And later at the stewards' inquiry on 30 April 2018, after explaining how she had instructed the staff to change their practices post the positive results, the following took place:

“THE CHAIRMAN: In relation to the urinating in the stables, Mr Aiken, is that something that – well, certainly in the interview with Mrs Aiken, she indicates that the males do that.

MR AIKEN: Yeah.

THE CHAIRMAN: And is that something that all the males within your stable do.

MR AIKEN: Um, yeah.

MRS AIKEN: Yes.

MR AIKEN: Probably, yeah.

MRS AIKEN: Yes. And in the wash bays.

MR AIKEN: Yeah.”

And later:

“THE CHAIRMAN: Is there any reason why people would urinate in the box as opposed to using the toilet?

MR AIKEN: I think it's just a male thing, I think.”

42. When all of that evidence is considered, the Tribunal concludes that Mr Locke was telling the truth when he advised in his first interview that he urinated in more than box 5. There is comfort in that finding by reason of the fact that if he was “busting” then he would go whether it be in any particular stall or a wash-down bay. It was said to be a common practice and therefore not unique to Mr Locke. There is no reason advanced why Mr Locke used stall 5 only and not any of the other stalls that he managed. It being noted that he did not give evidence to this Tribunal to contradict the availability of any such finding. It was a conclusion reached by the stewards. There is the coincidence that both horses were contaminated ( although this factor also goes to the greywater as the source)

43. The Tribunal does not accept that he was under such pressure at the interview, and pressure of the type and for the reason he described, that he would have given such erroneous evidence to the stewards. The subsequent time available to realise the gravamen of what he said leads to the conclusion that he was not telling the truth at the stewards' inquiry. That

is particularly so as the evidence is extremely critical because if it is only established by the respondent that Mr Locke urinated in stall 5, then there can be no reason to accept the theory, yet to be examined, that urinating in the stables was the more likely source of contamination in both horses. If stall 3 is eliminated for Charlie Macsheen as a possible source of contamination for it, then it must mean that that horse's contamination only came from the contaminated paddock.

44. The correction in the evidence is rejected. The Tribunal is comfortably satisfied that on the totality of the evidence Mr Locke urinated in the stalls of both horses. It is acknowledged that there is no direct evidence to the effect that Mr Locke made a statement that he actually urinated in stall 3. The inferences are irresistible that he did. The respondent satisfies the Tribunal that the alternative hypothesis, that he did not, is eliminated.

45. Neither party examined the issue as to why other horses did not return positives. However the evidence on other horses, the paddock used, whether grey water was used in those paddocks and the fact whether the other horses were presented to race or were swabbed where not examined. That therefore does not lead to a rejection of the fact that Mr Locke urinated in stalls 5 and 3.

46. There are some other areas of importance in relation to the presence of the prohibited substance.

47. Mr Locke wore a cap. That cap was contaminated with the subject prohibited substance and other matters.

48. Mr Locke used a tongue-tie on the horses. That tongue-tie was contaminated with the subject prohibited substance and other matters.

49. Shavings in the stalls were also contaminated.

50. There is also the question of whether a particular tablet containing the subject drug used by Mr Locke was also possibly to blame. That, however, can be eliminated as the only evidence is that Mr Locke did not take the drugs to the stable. In any event, the possibility of him having dropped a drug in the stable and it was consumed by either or both horses proximate to their presentation is so remote that it can be otherwise disregarded.

51. For medical reasons, Mr Locke was prescribed and took the drug Efexor- XR. That drug contains the human antidepressant venlafaxine. O-desmethylvenlafaxine is a metabolite of venlafaxine. It is known as ODV. It is not a veterinary product and not registered for use in the horse. A standard dose of Efexor-XR contains 150 milligrams of venlafaxine.

52. Dr Wainscott said that about 55 percent of the dose of venlafaxine is excreted as ODV. Therefore, a 150 milligram daily dose of venlafaxine would produce between 75 and 80 milligrams as ODV. Dr Wainscott said that ODV is known to survive in the environment for a number of months. The drug is otherwise stable in the environment and orally absorbed. It is not endogenous in the horse. It is also noted that Dr Wainscott said that on excretion through urine, there can be up to 5 percent of the parent drug present. That is, it can be excreted partially unchanged.

### **Testing.**

53. Each of the three race day urine samples was analysed by two laboratories. Each laboratory in each case found the presence of O-desmethylvenlafaxine (ODV).

54. The levels were quantified as follows – 7 October 2017, 8 nanograms per millilitre; 11 November 2017, 5 nanograms per millilitre; and 14 November 2017, 4 nanograms per millilitre.

55. On 16 November 2017 investigators and stewards took samples of the greywater, stable water, and soil and grass in Lenny's paddock. Each of those on analysis returned no results with the exception of the two greywater samples which respectively contained the following:

Water sample 1 – procaine, trace level, venlafaxine – 0.1 grams per millilitre, ODV – 1 nanogram per millilitre.

Water sample 2 – trace level venlafaxine – 0.1 nanogram per millilitre, ODV – 1 nanogram per millilitre.

56. Procaine is an anaesthetic.

57. The soil and grass samples were taken by an HRNSW investigator in the presence of Mr Prentice. They were taken in Lenny's paddock where the horses were grazed and the greywater used. They were taken from two sites, one about 10 metres from the gate at the top of the paddock and the other about 15 metres down from that point. It being remembered that the paddock was 30 by 40 metres approximately.

58. Samples were also taken from Mr Locke, of items of equipment and by tissue-wiping on box 5, in which Maorisfavouritesun was stabled. No testing was done in box 3 where Charlie Macsheen was stabled. The results reported were as follows:

Tongue-tie – venlafaxine (medium), ODV (medium), cocaine (low), mirtazapine (medium), nicotine (medium).

Saliva – venlafaxine (high), ODV (high), nicotine (high).

Human urine – venlafaxine (high), ODV (high), mirtazapine (medium).

Cap – venlafaxine (high), ODV (high), cocaine (medium), benzoylecgonine (low), methylamphetamine (medium), nicotine (medium).

Shavings – venlafaxine (high), ODV (high), nicotine (medium).

Tissues – horse box – venlafaxine (medium), ODV (high).

59. At the stewards' inquiry, Dr Wainscott advised that in Mr Locke's urine there was a reading of 587 nanograms per ml of venlafaxine and 1050 of ODV. These figures came from a handwritten note Mr Prentice made when he had a conversation with Mr Cawley at ARFL and in the presence of Dr Wainscott. Mr Prentice made written notes and it was those figures that Dr Wainscott was referring to. It is a quantification and not a certification figure. At the appeal, Dr Wainscott had overlooked the existence of those figures until right at the end of the first day's hearing and the availability of that material as evidence was not the subject of detailed questioning on day two. Re-examination and Tribunal questions established that those figures had no comparators.

### **Further Evidence**

60. The evidence establishes that, obviously, Mr Locke was aware of the fact that he was taking the subject drug and that it caused him to sweat profusely. It is apparent that he did not know that the drug he was taking could be excreted in the way that it is. He had made no inquiries. He was questioned about cocaine, mirtazapine, benzoylecgonine and methylamphetamine and indicated he had no idea why those would have been returned as positive on the various samples with which he was associated. He vehemently denied he took cocaine. There was no issue about nicotine. He stated at the inquiry that he had no way of knowing that the horse was going to have the drug in its system without he himself arranging swabbing. He gave evidence that he did not wear gloves when treating the horses but usually washed his hands with some frequency. He said that he did not take the subject Effexor drug to the stables. He described how he would mix the feeds by hand. He described the use of the tongue-tie and that he was the only person who ever handled it. He said that the cap that was the subject of testing was his and he was the only person who ever wore it.

61. Mr and Mrs Aiken's evidence will be considered together as they generally were questioned and/or spoke in each other's presence.

62. Mr Aiken described that he was aware that Mr Locke is on antidepressants because Mr Locke had explained that was the reason he sweated a lot. They described how they had employed Mr Locke as a volunteer because he was on workers' compensation and being around horses would assist Mr Locke in his recovery.

63. At various stages in this process, Mr and Mrs Aiken have made submissions to the stewards. Without identifying particular submissions the following are relevant.

64. They have at all times maintained that they did not administer or contribute in any way to the administration of the particular prohibited substance. They rely upon their years in the industry to demonstrate how seriously they take these issues. They have sought to explain the possibility for the positive results through contamination from excretion from bodily fluids of a human or from contamination of the grass feed in the horses' paddock. They have set out detailed reasons why they say those are the matters for consideration. They say there are no security issues about the operation of their stables. They set out all of the steps taken by them to prevent further contamination by instructing Mr Locke not to urinate in the stable, remove shavings, wash his hands and face regularly, especially before feeding or handling, not to use recycled water and not to put any horses in the particular paddocks in question.

65. At the stewards' inquiry they gave detailed evidence about the irrigation of the subject paddock and the fact that the horses were in there feeding. Mrs Aiken did say that the tongue-tie was always rinsed in a bucket before its application. She described how the grass would always be very wet because of its irrigation with greywater. Mr Aiken confirmed knowledge of the fact Mr Locke was on antidepressants. Critically, Mr Aiken says that that fact did not concern him as a trainer but accepts it has been a wake-up call. He was at pains to point out that he cannot manage everything that takes place in the stable. Mrs Aiken had referred to some knowledge from her reading of other cases of contamination in stables and that it may have been by one horse urinating in the stable contaminating another horse going into that stable and another case of a vet castrating a horse and another horse went into that stable and returned a positive. They believed that there was nothing they should have done prior to these positive results to have improved their practices.

66. Critically, at the stewards' inquiry, Mr Aiken accepted that he was guilty of presenting the horse with a positive substance but said that in relation to Charlie Macsheen there was no evidence at all that there was stable contamination. He then explained that he was pleading "not guilty" because the contamination was caused by the training centre contaminated water and not by him.

## **THE OPINIONS.**

67. The appellant Mr Aiken's veterinary surgeon, Dr Robinson, provided a report of 16 November 2017, which is in evidence. He also provided two reports for the purposes of this appeal, but at the end of the case for the appellants, these reports were not tendered. Dr Wainscott was cross-examined in respect of them and had made certain remarks in his report. On 28 September 2018 Dr Wainscott provided a report essentially in reply to Dr Robinson's report of 9 August 2018.

68. Dr Wainscott gave evidence to the stewards' inquiry and on appeal. Dr Robinson was not called.

69. As set out earlier, Dr Wainscott informed the stewards about the subject drug and the results of the testing. He confirmed the subject drug was a prohibited substance and class 2 in the Penalty Guidelines.

70. Dr Wainscott referred to three studies, which were put in evidence, and he was cross-examined at some length in respect of these before the Tribunal. As the addresses did not take the Tribunal to these studies, it is not necessary to analyse them in detail, particularly when the facts cover an agreed contamination case and the issue is the source.

71. It is sufficient to say that the three studies, details of which need not be set out, establish that a horse can receive contaminants from its stable environment.

72. The Mérette report (supra) was referred to by Dr Wainscott before the stewards and he summarised it as saying that 100 milligrams of venlafaxine was given to horses and this resulted in peak urine concentrations of around 2200 nanograms per ml. In comparison, the levels that are here are very, very low at 8, 5 and 4. He noted that the 100 milligram dose was equivalent to a human dose. Therefore, he opined that perhaps seven or eight times greater a dose should have been given to the horses to give a similar effect in a human.

73. Dr Wainscott stated to the stewards as follows:

“Yes. I think here that I'm very comfortably satisfied that it is the result of a contamination as opposed to an administration, if you like. The reasons for that opinion are that all three samples, the ODV was found at very low concentrations, in the single figure nanograms per ml amounts.”

74. Having noted that neither Mr and Mrs Aiken used the product and there is no record of it having been used in horses, the only other reason for the contamination is that Mr Locke has had the medication prescribed for him

and in addition, he noted that Mr Locke had stated that he urinated in the boxes on frequent occasions. Then, having noted that venlafaxine is a drug which is excreted largely through the urine, he came to his conclusion on the balance of probabilities. He stated:

“ ... it points very strongly to the point that the contamination has occurred in the stables as opposed to the paddocks. Now, the reasons I say this are we've got – it's been freely admitted that urinate – you know, stable employees were urinating in the stable and in fact the results on Mr Locke's urine sample, it was 587, I think it was -----

THE CHAIRMAN: Venlafaxine?

DR WAINSCOTT: Nanograms per ml of venlafaxine and 1050 of O-desmethylvenlafaxine that's present in the urine. Now, if you compare this to the levels that were found in the water going down to the paddocks, the recycled water, that level was – O-desmethylvenlafaxine – was 1 nanogram per ml, and you've got 1500 times as much going out in Mr Locke's urine, on a concentration basis, as you have going through the water system.”

75. He then continued that allowing for the daily dose of 150 milligrams for Mr Locke, that to get the same amount in the recycled water as his daily dose you would need 150,000 litres. However, to get to the three race day urine samples of 8, 5 and 4, he could not say how much water they would have had to ingest to get to those levels, but he wouldn't imagine it would be a lot of water. Dr Wainscott then continued that as both the soil samples and the grass samples taken from the paddocks were negative, there would need to be some constant accumulation “problem” and that there would be some sort of evidence of it being in the soil.

76. He then relied upon the fact that the ODV levels about the stable were high in everything tested e.g. tongue-tie etc, and high and medium on the equipment which was about the stable. He therefore reinforced his opinion as stable contamination, as opposed to trace levels in the water. He continued that the concentration of the parent substance venlafaxine in the tongue-tie at a medium level, and it could have come through the saliva, concerned him as accepting the explanation that it would have come through the horse. The issue being the difference between saliva and excretion through urine. However, he said excretion through saliva would not explain such high levels of venlafaxine.

77. Dr Wainscott conceded that if the new evidence was that Mr Locke did not urinate in Charlie Macsheen's box there had to be another source of contamination other than through the stable. He then discussed issues relating to shavings and tongue-ties, possible horse-to-horse contact, but



simply didn't know. He said, "It's in that grey zone where we just don't know".

78. It is apparent that the stewards in their decision accepted the evidence of Dr Wainscott as providing an opinion that the contamination was caused by urination in the stables and not by contamination from recycled water.

79. It might be noted that prior to the stewards' inquiry, as set out above, Dr Robinson, veterinarian to Mr Aiken, provided a report on 16 November 2017. Having set out various introductory matters, he said:

"It is not at all a stretch of the imagination to conclude that the presence of O-desmethylvenlafaxine, the metabolite of venlafaxine, in the urine, sweat and saliva of Mr Locke, is the most likely source of contamination of the sample taken from Maorisfavouritesun, either via contamination of feed, water, other administered supplements or medications or direct contact with the horse prior to or on the day the horse raced."

80. As stated, Dr Wainscott's report of 28 September 2018 was in response to the report of Dr Robinson of 9 August 2018 and the latter is not in evidence. Accordingly, Dr Wainscott's report is analysed for the material that he has added.

81. He confirmed from the studies that he had looked at that they confirmed the theory of contamination within the stable environment and the relative ease with which it can occur. He referred to the possibility of ingesting bedding as a source of a prohibited substance.

82. He noted that the walls of box 5 had returned medium and high levels of venlafaxine and ODV and therefore concluded that licking the walls of the box would give access to the substances in question.

83. He also noted an earlier HRNSW case in which ODV was found in a horse where a trainer had been urinating in the horse's box.

84. He continued about the differences in the amount of the substance in Mr Locke compared to the amount of the substance in the recycled water.

85. He would not concede that there was evidence that the recycled water was the most likely source of contamination. He was concerned that the water samples were only analysed at one point in time and because of the environmental persistence of venlafaxine and ODV he would have expected levels in the grass and soil, but this was not the case.

86. As has been Dr Wainscott's position at all times, he did not exclude the recycled water as a source of contamination. However, he concluded that

the very low levels in the recycled water were less likely than the stable environment to be the source of contamination. That is, he opined there was a stronger case of stable environment being the source of the contamination than the recycled water. Therefore, he said the horses would have presented with ODV regardless of whether the contaminated recycled water was a contributing cause or not. He then concluded as follows:

“The possibility that recycled water was the source of contamination has not been excluded. However, because of:

- (i) the high and medium levels of venlafaxine and ODV found in the stable;
- (ii) the numerous studies that support contamination in a stable environment;
- (iii) a previous Harness Racing NSW case where a trainer urinating in the stable resulted in a positive to ODV;
- (iv) the low levels of venlafaxine and ODV in this recycled water and no soil or grass contamination –

on the balance of probabilities the stable environment is the likely source of contamination.”

87. In evidence-in-chief before the Tribunal, Dr Wainscott concluded that he could not exclude the potential avenues of stable environment or the wastewater system. However, he remained of the opinion that stable contamination was more likely to have been the mode or avenue of contamination.

88. He confirmed his opinion was based on the fact Mr Locke was urinating in the stables in which the horses were located and these produced medium and high levels from the wipes taken of “those stables” ( The Tribunal finds that the wipes were only taken in stable 5). He again stated that the level found in the water was at 1 nanogram per ml and again referred to the fact that the dose Mr Locke was on would require 150,000 litres of water to contain the same amount of substance as he had been prescribed. Noting there were no confirmatory certificates, he relied on the evidence of the laboratory that the levels were high, medium and low. He also noted that the soil and grass samples were negative.

89. He also noted that the source of the prohibited substance could only be from a human product.

90. He also noted that Mr Locke urinating in the wash bay stalls could be a possible source of ODV in the greywater system if the stalls drained into the greywater system – it is noted that they did.

91. Dr Wainscott was cross-examined at length and only key points are set out.

92. Dr Wainscott conceded that he did not know how many people worked at the training centre, how many of them were on antidepressants or how many of them urinated in the stalls. He conceded he did not know when Mr Locke last urinated in the stall, but that would be relevant.

93. There was a great deal of cross-examination about the use of the words “high”, “medium” and “low” used by the laboratory in the assessment of levels of venlafaxine and ODV on the tongue-tie, saliva, human urine, cap, shavings and tissues from the horse box. It is not necessary to analyse that as Dr Wainscott conceded that his reliance upon those three words, both in his oral evidence, in his report and in his opinions could not be substantiated. This arose principally because there was nothing to compare a meaning of high, medium or low with any other level which could provide anything of meaning.

94. Dr Wainscott was not consulted in respect of the sampling of the paddock. He conceded at best that those samples provided a snapshot in time and did not necessarily relate to what happened when the presentations took place. He conceded the possibilities were endless as to contamination or recontamination because of that. Any extrapolation from the date of the first presentation to the date of the sampling would be speculative.

95. In relation to the stable environment, he referred to the fact that horses will have contact with shavings and they would lick the walls. He said it was uncommon for a horse to consume shavings, but if it did, it would not be in significant amounts.

96. He conceded that he did not know when watering last took place in the areas where the samples were taken.

97. He did, however, again confirm his opinion that ODV being known to exist in the environment for a number of months, it would be expected that there would have been some contamination found in the samples of grass and soil if that was a source.

98. Dr Wainscott agreed that if the tongue-tie was contaminated and that caused the substance to go into the horse’s system and the horse then urinated in its own stall, that would create environmental contamination. He conceded that as a possible scenario but he could not put probabilities on it.

99. There was then detailed cross-examination on Dr Robinson's reports. The difficulty that the Tribunal has is that as they are not in evidence, the agreements that Dr Wainscott made become less clear.

100. Dr Wainscott continued out of fairness to concede that in this case the opinion of Dr Robinson was one he was entitled to, but that, simply put, Dr Wainscott had a different opinion to that of Dr Robinson as to the source of contamination.

101. There was cross-examination upon an apparent theory of Dr Robinson that because of his experience in treating many thousands of horses it would be expected there would be more positive results from commonly administered veterinary medications. Dr Wainscott's answer to that was that there are screening limits for products and that might be a reason why there are not more positives.

102. Dr Wainscott, having agreed to removal of the words high, medium and low, proposed to deal with the matters on the basis that venlafaxine and ODV were found in the stable. He said that even taking out those terms of high, medium, low, his conclusion was still the same, that "on the balance of probabilities the stable environment is the likely source of contamination".

103. Again, Dr Wainscott conceded that Mr Locke urinating may not be the only source of the contamination.

104. Dr Wainscott conceded that he did not know what amounts of venlafaxine or ODV, or over what duration, the horses may have been exposed to from the recycled water prior to presentation to race.

105. Dr Wainscott conceded that the absence of contemporaneous analysis of the recycled water as against the times of presentation meant you could not exclude the recycled water as a likely source of contamination.

106. Dr Wainscott continued to disagree with the proposition that the lack of contemporaneous environmental testing in the paddocks as against the date of presentation would mean that no conclusions could be drawn about subsequent testing.

107. Dr Wainscott then agreed that the fact that the drug was on the cap and tongue-tie provided a possible source of contamination of the horses.

108. Various reports were referred to and it became an uncontested fact that antidepressants are very difficult to remove from the environment.

109. Having agreed that in relation to the difference between the drug consumed by Mr Locke and the quantities found in the water, that you would

need 150,000 litres of water to give the same concentration as one tablet. It was, however, conceded that that was an irrelevant fact. This was because it was not known how much contaminated water a horse would need to drink to produce a detection level. To get to a level of 3, which was one of the readings, a horse would need to ingest 3000 nanograms in the urine and to do that it would need to consume three litres of water. Accordingly, it was reasonable that if the horse drank three litres of water in the morning leading up to a race it could have produced a reading of 3.

110. In relation to the conditions that varied from the days of presentation to the day of sampling, Dr Wainscott conceded he did not know the different temperatures, the amount of rainfall, the state of the pasture, the state of the watering, the level of contamination in the water that was put on the pasture, whether the water had pooled, or pooled generally or not. In addition, he did not know how much water would have been likely to have been consumed by the horses.

111. These concessions were part of the reason why Dr Wainscott would not exclude the alternative theory of contamination by the recycled water.

112. He also agreed that as the subject horses were in the paddocks in an appropriate timeframe, that the contaminated water could have been a contributor.

## **SUBMISSIONS**

113. In written submissions the respondent maintained that its case was established. The evidence to support that submission was set out. Emphasis was placed upon the knowledge in Mr Aiken of the fact that Mr Locke took antidepressants, sweated a lot, urinated in the stables, and these were established facts.

114. It was submitted that Mr Aiken did not take any steps to prevent the horses from being exposed to contamination by the actions of Mr Locke.

115. The two possible avenues of contamination were accepted and analysed. The absence of positives in the soil samples and grass samples, the absence of rainfall and the trace findings in the greywater supported Dr Wainscott's opinion.

116. In any event, it was submitted that regardless of which source of contamination is established, the horses would have presented with ODV regardless of the source.

117. In oral submissions it was pointed out again that there are a number of different ways the contamination could have occurred. But the issue was raised as to why only those horses which the case covered were positive

when others in adjacent paddocks were also exposed to the contaminated water. Reliance was placed upon Dr Robinson's letter of concession.

118. Accordingly, the case for the respondent is that the source of contamination is Mr Locke.

119. The submissions for the appellants were based upon the fact that the respondent could only establish that Mr Locke urinated in one stall, that being the stall number 5 of Maorisfavouritesun. It was said there was no evidence to establish urination in stall 3 of Charlie Macsheen. In particular, it was submitted that there was no evidence of when Mr Locke might have urinated in either stall. Therefore, it was submitted that an absence of evidence could not be used to found a case. The Tribunal dealt with this issue earlier-see paragraph 44.

120. It was submitted that urinating on stable walls was a common practice and there should be a greater number of positives to human medication.

121. It was also noted that after these facts came to light that warnings were issued by the regulator.

122. It was therefore submitted that the source of the contamination was irrigation and the effect of untreated greywater. It was submitted no one foresaw such a possible outcome, except Mr McCall, who took action six weeks before the first presentation.

123. It was submitted there was too much of a coincidence between the circumstances of urinating and the presence of the greywater. It was pointed out that the horses were all in the paddock on race days and exposed to the greywater. It was submitted that a horse could drink three litres of water and that would give the reading of 3 nanograms, to choose one of the readings.

124. It was pointed out that Dr Wainscott did not have sufficient facts upon which he could exclude the contaminated water.

125. In essence, the submission was that the consumption of the greywater was within a horse's normal consumption and was at such a level that it would produce the readings that were subsequently found.

126. It was submitted there would be no difference between the three different dates of race day sampling based on those facts.

127. It was pointed out that people have been urinating in stables for years and there were limited positives. Therefore, the coincidence between the fact that Mr Locke was urinating in the stables and the finding of the contaminated water was relied upon.

128. It was submitted that shavings could be entirely disregarded.

129. The inadequacy of testing was relied upon to undermine the foundations of Dr Wainscott's conclusions.

130. It was also submitted that his conclusion should fall away once he was unable to use the comparator of high, medium or low in the readings.

131. It was then submitted that as there were two opinions and Dr Wainscott would not exclude Dr Robinson's theory, that it should not be excluded.

132. In reply submission, the appellants pointed out that the respondent had failed to exclude irrigation as Dr Wainscott would not do so.

133. It was again re-emphasised that people urinate and spit about horses and stables all the time but positives are not produced and there was this coincidence here, extraordinarily, of irrigation.

## **CONCLUSION.**

134. The Tribunal is comfortably satisfied that one of the sources of the contamination was Mr Locke urinating in stalls three and five in which the two subject horses were located.

135. The Tribunal is comfortably satisfied that, consistent with the concession by Dr Waincott, that another source of the contamination was the greywater consumed in Lenny's paddock.

136. The Tribunal is more than comfortably satisfied that the more likely source for the contamination was to be found in stalls three and five. Contamination of the same drug and its metabolite from a trainer urinating in a stall has been established in an earlier case. The ease with which stable contamination can occur is established by research.

137. The contamination of the horses in the stables was caused by Mr Locke urinating in the stalls confirmed by the earlier findings and admissions. The presence of the parent drug and its metabolite on the equipment, being the tongue tie and cap provided an additional source of contamination. The readings of 570 and 1050 respectively in the urine of Mr Locke are levels which indicate a concentration of the substances compared to that found in the greywater. The greywater level was 1.

138. Notwithstanding the concession by Dr Wainscott that he could no longer use references to high, medium and low in relation to the readings he remained of his opinion that the more likely source was the stable.

139. It is also found that, as Dr Wainscott stated, that the horses would have been presented with a prohibited substance regardless of whether the source was urinating in the stables or contaminated recycled water.

140. There is no doubt that Mr Locke urinated in the wash bays. It is an irresistible inference that that urine contaminated with the prohibited substance travelled with the wash bay water into the recycling system and then into Lenny's paddock. It is acknowledged that many other people, including veterinarians, used the wash bays and there is no evidence of the precise numbers, the times at which they may have used the wash bays and whether they consumed the subject drug. It is open to find that other users also urinated in the wash bays. However that lack of evidence is of less importance because the source in any event was partially, or wholly, Mr Locke.

141. The respondent cannot eliminate, and does not seek to, the contaminated greywater but the weight to be given to that contamination must be greater because of the concessions made by Dr Wainscott.

142. Those concessions can be summarised as follows: paucity of sampling locations; lack of samples from the more likely locations where pooling of the greywater occurred; sampling at one point of time only; the remoteness of the sampling from the presentations; lack of knowledge of when watering of the paddock last took place as against the time of sampling; the period of time over which the two horses were exposed to the contaminated greywater as against the presentation days; the absence of contemporaneous analysis of the greywater as against the times of presentation; the different temperatures that applied at relevant times; the amount of rainfall at relevant times; the state of the pasture; the state of the watering; the level of contamination in the water that was put on the pasture; whether the water had pooled or not; a lack of precise knowledge as to the amount of water consumed by the subject courses on the days of presentation.

143. Dr Wainscott agreed that a race day presentation level of 3 could have arisen by the consumption of 3 litres of contaminated groundwater from Lenny's paddock. It is open to conclude that for the readings of eight, five and four which were the raceday presentation levels could have arisen with the consumption of 8, 5 and 4 litres of water each of which were within a horse's capacity. Accordingly if the horses were in the subject paddock, and the evidence is that they were, and within the appropriate timeframe, and the evidence is that they were, then the contamination could have been caused by the consumption of contaminated greywater.

144. Accordingly while the Tribunal is satisfied that the more likely source was the stables the grey water cannot be eliminated.



145. It a most telling fact the the contaminated water was that of the respondent. The fact that the regulator was partially involved in the contamination is highly relevant on the seriousness of the actual conduct of the appellants and the message that might be necessary for the public.

146. Those conclusions are relevant on the objective seriousness of the conduct of each appellant.

Mr Aiken

147. He was not present at the time of the breaches nor proximate to them. He had a licensed person in charge.

148. His failure is the fact that he knew Mr Locke urinated in the stables and that he was on a drug. An experienced trainer should know, as a matter of husbandry practice, that those two facts needed management. With hindsight that management is obvious and was attended to once the positives and a cause were identified. An experienced trainer must be expected to know that those two facts in a stable about to present horses to race could lead to problems. The publication of determinations of breaches by other licensed persons should be something an experienced trainer should keep abreast of. It is more than appropriate as Mrs Aiken was aware of contamination cases as set out earlier- so should this appellant have been. This does not place an unnecessary management burden, or a micromanagement burden, on a trainer. His explanation that he was not aware of a possible issue is not accepted as exculpating him from the duty he had.

149. That said, as submitted on his behalf, persons urinating in stables is common and does not necessarily lead to a contamination of a horse to be presented to race. But it is the combination of the knowledge of drugs and the need for husbandry practices of the appropriate level at presentation time that provide the objective seriousness against which penalty must be assessed.

Mr Locke

150. He was in charge. He was to present the horses. He knew he urinated in stables and the wash bay at a time he knew he was on prescription medication.

151. While only a stablehand he was responsible for the stable and is expected to have a reasonable knowledge of the need for caution on his actions about the horses at the time of presentation, more so on raceday. No lesser a standard is appropriate on the facts of this case.

Both appellants.

152. Despite those objective failures there is less of a need for a strong message to them and the industry and betting public because of the finding that the regulator's own greywater was involved.

153. The public perception that a presentation with a prohibited substance, whether misplaced or not, remains an issue for the message to be given on a level playing field test. Integrity of the industry must be to the forefront.

154. The Penalty Guidelines have a starting point of disqualification of not less than 5 years for Mr Aiken as a second offender and not less than 2 years for Mr Locke as a first offender.

## **PARITY**

155. The stewards set out a number of cases with which they had regard on these substances.

12 April 2017, Bell, fined \$2000.

23 November 2016, Eaton, fined \$750.

24 December 2015, Garrett, disqualification eight weeks.

8 January 2015, Sciberras, disqualified five weeks.

19 June 2014, Hewitt, disqualification six months, with one prior.

In South Australia, 1 February 2017, Knight, 12 months' suspension.

Victoria, 26 November 2014, Hunter, fined \$1000.

156. The stewards relied upon the RAT decision of Carroll, 2015, which stated that, if there is a prior matter, despite its age, it must be given some weight, but it was a question of fact in each case.

157. The appellants relied upon Harpley, a stewards' decision of 9 July 2018, a detection of oxazepam with a plea of guilty and a recording of a conviction but no penalty as there was satisfaction that there was environmental contamination from a septic sewer system and the presence of a human prescription medication from an occupant of the property.

158. The next matter relied upon by the appellants was Davies, 19 August 2016, with the detection of lamotrigine, with a plea of guilty but no penalty as there was satisfaction the detection resulted from environmental

contamination from a septic system and the use of a prescription medication by an occupant of the property.

159. Reliance by the appellants was placed upon the Racing Victoria stewards' decision of Smerdon of 4 September 2013 where the substance Sotalol was detected, and this was used by the trainer to manage heart arrhythmia, but the trainer regularly urinated in the stables. No action was taken on the case.

160. The recent Supreme Court decision of Justice Fagan in *Kavanagh v Racing NSW* [2019] NSWSC 40, which was said to provide comfort for the fact in this case that the appellants had remedied their conduct and the industry had been put on notice of the matters of concern to the stewards. Therefore, it supported a conclusion that no penalty was necessary.

161. As is so often the case parity cases do not meet the facts upon which penalty must be decided in a particular case.

162. A number can be distinguished because while contamination or urination was involved there was not the husbandry failure seen here.

163. The range on parity is no penalty, to fine to suspension to disqualification for various amounts or times.

164. The stewards very generously determined that the Guideline starting points were not appropriate. The Tribunal agrees.

## **SUBJECTIVES.**

Mr Aiken.

165. It is submitted that he is a successful trainer and driver with six metropolitan trainer premierships, two State trainer premierships, one Victorian State trainers' premiership and been a successful winner of major races such as the Miracle Mile and the Victoria Cup. He has successfully won dozens of Group races. It is submitted he is fourth on Victorian State trainers' premiership and equal second on the Victorian metropolitan trainers' premiership.

166. It is submitted he has had 13,604 starters since commencing his professional career in 1982.

167. He is a full-time professional horseman with business in both Victoria and NSW.

168. He has obligations to third parties and will suffer financial loss from any limitation on his right to be a professional horseman.

169. In submissions to the stewards he pointed out that was then 59 years of age and been involved in the industry since he was 15. In addition, he said he has driven two and a half thousand winners, with the first winner in 1978.

170. He had some 35 horses in work at the time of the detection of these matters.

171. He points out the large number of swabs that have been taken of his horses over the years.

172. He concedes a prior prohibited substance matter for ketoprofen on 5 April 2001. He was disqualified for 8 months on appeal. It was submitted to the stewards that that prior occurred at a time when new testing had come in and many trainers were caught. Mrs Aiken still considers that he was “stitched up big time” in relation to that matter.

173. Prize money has been lost.

Mr Locke.

174. He is 39 years of age and been involved in the industry his whole life, having been first licensed when he was 15 or 16.

175. As pointed out, he works as a volunteer for the Aikens and has done so for something like two years. He explains that he is on workers' compensation, with various expenses. He emphasises that being with horses is important for his recuperation.

Both appellants

175. There is no evidence of any financial or other loss during the 3 days between the disqualifications commencing and the stays being granted.

## **SUBMISSIONS ON PENALTY.**

176. The respondent relied upon Turnbull, which adopted the new three categories of culpability from the decision of McDonough v HRV

177. It was said that principles of deterrence should be applied consistent with other cases and that criminal law principles can be relevant in a civil disciplinary proceeding. It was said that the appellant Mr Aiken, as a well-known and longstanding member of the industry, is an appropriate and effective vehicle for deterrence.

178. It is said that the stewards had already given a substantial discount.

179. It was said that the appropriate weight was given to his subjective circumstances and the facts of the case generally and that the stewards' decision should be maintained in respect of each appellant.

180. The appellant submits that it would be unjustifiable to take away the livelihood of professional people because a stablehand urinated in a stable.

181. It was also submitted for Mr Locke that because of his medical disabilities and the fact it was a mere urination in a stable it would be unfair to take him away from this source of remediation.

182. Loss of prize money was relied upon as a financial hardship issue.

### **CONCLUSION ON PENALTY**

183. This is a civil disciplinary penalty case where the Tribunal must look to the future having regard to the established facts.

184. The message to be given to the appellants and the industry must respect the findings of fact on severity.

#### **Mr Aiken**

185. It is determined that the objective seriousness warrants a penalty. He was not blameless.

186. A disqualification is the norm for a presentation.

187. These facts do not warrant a disqualification because his actual husbandry failure was not serious. A loss of the privilege of a licence is not seen to be necessary in the fashion of a suspension. These findings despite the prior breach.

188. Weight is given to the fact of the time, trouble and cost associated with his preparation for the inquiry and this appeal. Those matters reinforce the need for reformed practices, which he had undertaken as soon as he could, and therefore a lesser need for penalty when the future is considered. The subjective message falls away. The general message is lessened.

189. It is determined that a no penalty finding would not give an appropriate message generally on the failures identified. This notwithstanding the fact that the greywater was a source and it was that of the appellant.

190. A monetary penalty is considered appropriate. It is acknowledged that neither party submitted this as an outcome. However this is a hearing de

novo and all available penalties can be considered. it is a lesser penalty than was given by the stewards.

191. That penalty on objective seriousness is \$2000.

192. Against that there will be a 15% reduction for the admission of the breach to the Tribunal and 25% for his other subjective facts.

193. The severity appeal is upheld.

194. Having regard to the principle of totality that is found to be appropriate for his conduct, as there are three matters, that penalty will be \$400 in each matter.

195. A monetary penalty of \$400 is imposed in each matter.

### **Mr Locke**

196. It is determined that the objective seriousness warrants a penalty.

197. A disqualification is the norm for a presentation.

198. The husbandry failures require a disqualification.

199. A disqualification of 6 months is the starting point having regard to the need for a message to him generally but more particularly to the industry generally that on racedays, and approaching them, a person presenting a horse to race must exercise appropriate husbandry practices. He did not on these occasions.

200. It is accepted that a likely reoffending has been removed.

201. Against that there will be 15% reduction for the admission of the breach to the Tribunal and 10% for his other subjective facts.

202. The severity appeal is upheld.

203. A disqualification of 19 weeks is imposed, allowing for a rounding down of the period to avoid days in the calculation.

204. Having regard to the similarity of the conduct for each matter, no intervening factor, and the totality principle the three penalties are to be served concurrently.

## **Appeal Deposit**

205. As each severity appeal has been successful the Tribunal orders each of the appeal deposits refunded.

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