RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR D B ARMATI

RESERVED DECISION

7 OCTOBER 2020

APPELLANT DANNY GALLAGHER

RESPONDENT HARNESS RACING NSW

AHRR 259(1)(j) and AHRR 259A

DECISION:

1. Appeal dismissed.
2. Penalty under AHRR 259A of 3 months' disqualification recommenced from 30 July 2020 to 29 October 2020.
3. Penalty under AHRR 259(1)(j) disqualification of 3 months and 3 weeks from 30 October 2020 to 20 February 2021
4. Orders made in respect of appeal deposit.

1. The appellant appeals against a decision of the Integrity Manager of Harness Racing New South Wales of 25 August 2020 to find him in breach of AHRR 259(1)(j) and to impose upon him a period of disqualification of three months and three weeks to commence 30 October 2020 and expire 20 February 2021, and to recommence an earlier disqualification under AHR 259A of three months to commence on 30 July 2020 and conclude on 29 October 2020.

2. Relevantly, AHR 259(1)(j) and (7) read as follows:

> "AHRR 259(1) A disqualified person or a person whose name appears in the current list of disqualifications published or adopted by a recognised harness racing authority or a person warned off cannot do any of the following –
>
> > (j) place, or have placed on their behalf, or have any other interest in, a bet on any Australian harness racing race.
> >
> > (7) A disqualified person who fails to comply with this Rule is guilty of an offence and is liable to a penalty"

3. The Integrity Manager particularised the breach as follows:

> "..You did between 16 June 2020 and 30 July 2020 place and/or had placed on your behalf and/ or had an interest in fifty eight (58) bets on Australian harness races in you BlueBet account whilst you were a disqualified person."

4. AHRR 259A, introduced in December 2015, is in the following terms:

> "In addition to any penalty imposed pursuant to Rule 259(7) the original period of disqualification shall unless otherwise ordered by the Stewards automatically recommence in full.

5. At the present time the Tribunal also notes Local Rule 259, introduced on 1 September 2012, in the following terms:

> "NSWLR259 (1)The period of disqualification or warning off of any person, who is disqualified or warned off, who contravenes AHRR 259 (1) shall automatically be deemed to recommence as from the most recent date of such contravention and may also be subject to further penalty.
>
> (2) The provisions of sub-rule (1) shall apply to any person to which AHRR 259 (1) applies, regardless of when such penalty that gives rise to the application of the rule that was imposed."

6. By his appeal the appellant seeks to have the penalty for the betting offence reduced and the recommencement of the original disqualification reduced or dispensed with.

7. The respondent has taken a jurisdictional point that Local Rule 259 when applied is not one from which there is an appeal to the Tribunal.

8. The appellant admitted the betting offences to the Integrity Manager and has maintained that admission on this appeal. A plea is not required in respect of the application of AHRR 259A or NSWLR 259.

9. The evidence has comprised the bundle of material before the Integrity Manager which essentially comprised the usual type of correspondence, betting records, emails making admissions and submissions, together with the decision appealed against. No fresh evidence was given on appeal.

10. In summary terms, the grounds of appeal are that the penalty was too severe, the penalties do not match precedent, it is not the preferable decision to invoke AHRR 259A, and totality.

THE JURISDICTIONAL POINT

11. The appellant, of course, has a right of appeal in respect of the penalty imposed for the breach of 259(1)(j). He seeks to alter the penalty imposed for AHRR 259A.

12. The respondent in submissions advances the position that the Tribunal does not have jurisdiction to hear an appeal from a recommencement of penalty under 259A. That is submitted on the basis that such a recommencement is not a decision and/or a disqualification within the meaning of clause 9 of the Racing Appeals Tribunal Regulation 2015.

13. The Racing Appeals Tribunal Act provides for rights of appeal, but the Racing Appeals Tribunal Regulation 2015 limits the matters against which an appeal can be lodged. Relevantly to this matter, it states:

> "Cl 9 (1) An appeal may be made to the Tribunal under section 15A or 15B of the Act only in respect of a decision–
>
> (a) to disqualify … a person."

14. The remainder of clause 9 is not relevant.

15. The submission is supported by other provisions in the NSWLR, in particular, Rule 1, which states:

> "Definitions
> 'AHRR' means Australian Harness Racing Rule; and 'NSWLR' means Local Rule of Harness Racing New South Wales including the Rules of Betting:
>
> Application
> NSWLR 1 The Australian Harness Racing Rules and the Local Rules of Harness Racing New South Wales (including the Rules of Betting) shall be read, interpreted and construed together and as so combined shall be and be known as 'The Rules of Harness Racing New South Wales' and such rules apply to the administration, supervision and control of Harness racing throughout New South Wales.
>
> NSWLR 1A Any person who takes part in any matter coming within the Rules of Harness Racing New South Wales shall be held thereby to consent to be bound by them."

16. Reliance was placed upon Day v Sanders; Day v Harness Racing New South Wales [2015] 90 NSWLR 764 at [22] to the effect that NSWLR 1 is a rule that has "effectively incorporated" the AHRR as rules to be applied by HRNSW.

17. There is no submission from the appellant to the contrary in respect of the above matters.

18. The submission for the respondent continues that the AHRR and the NSWLR are to be read together and it is clear that HRNSW has expressly adopted a more restrictive version of AHRR 259A. Therefore, it is submitted that for a a breach of AHRR 259 in New South Wales there is therefore the automatic recommencement of the disqualification period. Therefore, there is no decision for the purposes of clause 9 of the regulation.

19. Various cases are cited in support and for the reasons set out below do not require examination. Those cases are re Nelson and Repatriation Commissions [2007] AATA 1069; (2007) 44 AAR 540, RTA v Sharp Towing Pty Ltd and Ors (GD) [2008] NSWADTAP 49. In addition, this Tribunal's decisions in Reese v Harness Racing New South Wales, RAT NSW, 15 August 2013, and Day and McDowell v Harness Racing NSW, RAT NSW, 6 July 2016, are called in aid.

20. The submission continues to the effect that as there had been no decision to disqualify it means that being automatic it does not extend restrictions to those already imposed upon a disqualified person by the rules.

21. The submission continues that even if the Tribunal does have jurisdiction, it does not have power to vary the recommencement.

22. That submission is made on the basis that no other decision could have been made by the stewards because it is an automatic operation of the recommencement. Therefore, there is no decision to be varied.

23. The appellant in reply says that AHRR 259A ousts the jurisdiction of the stewards to impose an automatic penalty under NSWLR 259.

24. The appellant relies upon the decision of Justice Haylen of 14 December 2010 in the NSW RAT where he said at 19:

> "The penalty has to reflect the relative seriousness of the breach and should not be set by reference to some automatic or mathematical approach."

25. Reliance is also placed upon the decision of Acting Tribunal Member Selwyn in the NSW RAT, 23 July 2018, where he said at page 7:

> "It is the Tribunal's view that the rule allows the stewards to have a discretion. And once they have found that Mr Wonson, the appellant, had transgressed the rule in 259, it was in their discretion to either record a conviction or not or impose a penalty or not."

And later:

> "Once a conviction is recorded under Rule 259, that automatically brings into play Rule 259A, which says: …
>
> The Tribunal finds those words 'shall unless otherwise ordered by the Stewards' allows or gives to the stewards a discretion that can be exercised, and in this instance the Tribunal will exercise that discretion in favour of the appellant and order that the operation of 259A will not in this instance be applied against the appellant."

26. The appellant also relies upon the Tasmanian Racing Appeal Board decision, Appeal No 3 of 2018/19, where at 14 the Members adopted the determination in Wonson on the basis that that interpretation is:

> "That is quite clear from the rule itself and needs no authority to clarify it."

And later at 18:

> "The Board does not accept that it is a necessary precondition of the operation of AHRR 259A that a separate penalty have been imposed

> for the breach. AHRR 259 operates to extend the power of Stewards and set up an expectation that the disqualification period will recommence unless Stewards determine otherwise. The ground …"

27. The appellant also relies upon Simiana v Harness Racing New South Wales [2019] NSWSC 11 paragraphs 77 to 85. That case was dealing with an appeal against a decision of the regulator to impose conditions upon the issuing of a licence. It was sought to impose a condition providing for an automatic revocation of licence if certain things happened. The court rejected that approach, saying that such a provision for an automatic revocation of a licence would potentially deny entitlement to be heard. The court continued that imposing such a condition would require an agreement to forfeit a right to a proper hearing, whether before the Controlling Body stewards or the appeal tribunal.

28. The appellant says that the decisions in Reese and Day and McDowell were made before Simiana.

29. In reply, the respondent says that Wonson is not a binding decision and that the other cases can be distinguished because they are on different facts and background.

Determination

30. Essentially, the majority of these submissions and arguments are irrelevant.

31. It is not necessary to determine the interrelationship between NSWLR 259 and AHRR 259A and whether the latter displaces the former or whether they can be dealt with together and the like.

32. One thing is certain, the local rule could have been numbered in a way that distinguished it from the Australasian rule.

33. The reason for that determination is that the Tribunal is limited by its Act to determine the decision appealed against.

34. In his decision of 25 August 2020, the Integrity Manager dealt with the imposition of a penalty for AHRR 259(1)(j) and then went on to state:

> "In addition, AHRR 259A states the following: …"

And the next sentence:

> "Consequently, the stewards order that the original period of three months disqualification imposed by the NSW Racing Appeals Tribunal recommence in full from 30 July 2020 …"

35. It is quite apparent, therefore, that the Integrity Manager used AHRR 259A. There was no reference to NSWLR 259.

36. Accordingly, the Tribunal determines that the arguments in relation to the application of NSWLR 259 are irrelevant.

37. The determination of this part of the appeal must be upon the application of AHRR 259A.

38. It is accepted that as this Tribunal determined in Reese, supra, and confirmed in Day and McDowell, supra, NSWLR 259 does not raise any discretion and there is therefore no jurisdiction to entertain an appeal.

39. On the other hand, under AHRR 259A, as clearly stated in Wonson, adopted in Slater, a discretion is enlivened. The Tribunal accepts those reflections and findings are correct.

40. The Tribunal does not find any comfort or assistance from the determination in Simiana. That was dealing with different facts and tests and merely confirmed that procedural fairness needs to be considered when it is sought to displace an entitlement to a fair hearing.

41. Once a discretion is enlivened, then it cannot be fettered and must be exercised on the facts and circumstances of the particular case having regard to the regulatory regime by which that discretion is created.

42. It is necessary, therefore for the Tribunal to determine whether it should recommence the original period of disqualification or otherwise order. The otherwise order could embrace no recommencement or partial recommencement. It could embrace full recommencement.

43. Accordingly, the Tribunal rejects the submission of the respondent that AHRR 259A and NSWLR 259 can be read together. The submission that NSW has adopted expressly a more restrictive version than that contained in AHRR 259A is obvious, but that need only be considered if that is what is being determined.

44. The Tribunal does not have to determine whether AHRR 259A being later in time is taken to have replaced NSWLR 259 it being noted that NSWLR1 requires them both to be NSW rules. The inherent tension need not be resolved for the above reasons. Rule amendments to provide clarity and certainty are a matter for the respondent's officers.

45. In making that determination, as a discretion is being exercised, it is necessary to have regard to the evidence and submissions for both parties. Procedural fairness has not been displaced.

46. The submission that the Tribunal does not have power to vary the recommencement is therefore rejected.

47. The submission that the Tribunal does not have jurisdiction to hear that part of the appeal is rejected.

THE APPEAL AGAINST THE PENALTY IMPOSED FOR BREACH OF AHRR 259(1)(j)

48. This is a de novo hearing and it is the duty of the Tribunal to determine penalty for itself. In doing so, it has regard to the fact it is considering a civil disciplinary penalty in a regulatory regime upon which integrity is paramount. The Tribunal must determine what message, if any, is to be given to this individual appellant and the message to be given to the industry at large.

49. There is no penalty guideline nor fixed penalty for this breach and the general penalties contained within the rules are enlivened.

50. As always, it is necessary to first determine objective seriousness and then consider any reductions for mitigating factors and subjective factors.

51. The respondent submits that the decision of the Integrity Manager is appropriate. Noting the appellant's grounds of appeal set out earlier, the appellant advances no precise figure but says a 50 percent discount should be given.

52. The respondent has given written submissions and the appellant essentially relies upon the written submissions made to the Integrity Manager and both have supplemented those orally.

53. In his determination, the Integrity Manager said that any involvement of a disqualified person in the industry is conduct that should be denounced. He determined a starting point for objective seriousness of a disqualification of six months.

54. In this appeal, in written submissions, the respondent submits that this was a serious breach and, having regard to parity, a fine is inappropriate.

55. As the respondent's submissions essentially follow the appellant's submissions to the Integrity Manager, the latter will be dealt with first.

56. In supporting a submission that the offending here was at the lower end of the scale, the appellant points out that more serious matters generally involve a person subsequently undertaking training activities. That is, an activity normally requiring a licence. Here, the conduct of betting did not

require a licence. He was not training and did not undertake any licensed activity.

57. The appellant relies upon the fact that the penalty has to reflect the relative seriousness of the breach and should not be set by reference to some automatic or mathematical approach.

58. Each party analysed a number of parity cases.

59. To put those in context, it is necessary to revisit precisely that which the appellant has admitted.

60. On 12 June 2020 this Tribunal disqualified the appellant for three months. Between 16 June 2020 and 30 July 2020, contrary to the rules, the appellant placed 58 bets with an account operator called BlueBet. Those bets ranged from a minimum of $8 to a maximum of $300. Without analysing them in detail, there were many at $10, $20, $50, $100 and some at $200 up to $300. It is submitted on appeal that the totality of his betting was that he lost money. On objective seriousness, the appellant submits that he has not breached the betting rules in the past – this is not correct. He also submits that he was ignorant of the rule and did not act in intentional breach of it.

61. Reliance is placed upon similar or dissimilar parity cases. Some of these occurred some years ago and at a time prior to the green light scandal of 2011, the introduction of penalty guidelines and the adoption by regulatory authorities of more severe penalties for breaches of rules. The loss of a privilege of a licence, the integrity of the industry is brought into question and is now accompanied by more severe penalties than in the past.

62. In the case of Bigeni, a disqualified person engaged in training activities and the Tribunal imposed a disqualification of 12 months.

63. In the case of Clement, there was again training whilst disqualified and the Tribunal imposed a period of disqualification of two years.

64. In the case of Jackson in 2010, he was engaged in the transporting of a horse and the Tribunal imposed a period of disqualification of one month.

65. In the 2013 case of Reese, again a training while disqualified, the Tribunal imposed a period of disqualification of nine months.

66. In the 2017 case of Slater, the Victorian HRA Disciplinary Board imposed a six-month disqualification for conveying an empty horse float to a training facility.

67. In 2017, the Victorian disciplinary body in the matter of Douglas imposed a two-month disqualification for training whilst disqualified.

68. In 2018, the Tribunal imposed a period of disqualification of 16 months and 23 days on the appellant Wonson for training whilst disqualified.

69. In 2018, the Tasmanian Racing Board in the matter of Slater imposed no further penalty for gambling whilst disqualified but recommenced the mandatory disqualification.

70. In those above cases, the mandatory disqualification was not recommenced in Slater or Douglas but was in Reese. In the earlier cases it was not applicable.

71. Accordingly, in the submissions, the appellant says that his conduct was not comparable to the Bigeni, Reese or Wonson and was far less serious than Slater and Douglas. He says he is comparable to Jackson. It is said that this appellant's conduct was not involving training or exercising a horse and not entering licensed premises.

72. The respondent says that reliance upon Jackson is misconceived because it involved unique conduct of a one-off nature and well into the period of disqualification and, in any event, predated the mandatory rules in the local rule and the Australasian rule.

73. The Integrity Manager analysed the stewards decision of 30 October 2019 in the matter of Schembri. He pleaded guilty to 25 betting breaches whilst licensed and two 259(1)(j) betting breaches. His penalty was recommenced and disqualification of two and a half months for the 259 breaches imposed in addition to disqualification for betting breaches. He has appealed and that appeal is to be heard on 6 November 2020. There a starting point of 9 months was adopted and 50% discounts given. The mathematics of the various breaches requires consideration but need no be analysed as it is the staring point that is relevant here. Neither party submitted on this case .

74. The respondent continued in the submission on objective seriousness that this is the appellant's second breach of AHRR 259(1) for betting, although conceding that the previous breach was in August 2010.

75. It is emphasised the offending began just four days after the disqualification commenced and that there were a total of 58 bets placed over a period of one-and-a-half months and he was only serving a three-month disqualification.

76. The submission continues that this cannot be viewed at the lower end of the scale because it was not conduct involving a training activity because

that is not relevant as the appellant only had a conditional driver's licence and not a trainer's licence.

77. Regardless of that, the respondent concedes that a betting activity in these circumstances is less serious than driving horses and the like while disqualified. In those circumstances, lesser periods of disqualification are warranted. The respondent notes that in the case of Reese a starting point of two years and in Wonson, where no starting point was specified, a disqualification of over 16 months was imposed.

78. Therefore, the submission continues that a higher end starting point might be two years, a middle range 12 months and a less serious breach occasioning a starting point of six months.

79. Accordingly, it is submitted that such a starting point would be consistent with the other cases to which reference has been made. In any event, the respondent says it does not understand why this conduct is far less serious than some other betting-related conduct.

80. Accordingly, the respondent submits a starting point of six months is appropriate.

81. In oral submissions, the appellant strongly again emphasises that this conduct did not involve many that might be engaged in by a licensed person involving horses and their training and handling and the like. Therefore, it is submitted it is a lowest level of gravity.

82. The Tribunal determines that the starting point of six months' disqualification is appropriate.

83. That is, a disqualification is warranted in respect of the objective seriousness of these facts having regard to the message to be given to this appellant.

84. That message arises by reason of the fact that he should have known the rule prohibited this conduct. That is, he should have informed himself of the limitations that would fall upon him once he lost the privilege of a licence. The number of bets and the period of time over which they occurred during the relatively short period of disqualification is also a factor requiring a message be given to this appellant.

85. Objective seriousness also requires consideration of the message to be given to other licensed persons who might be tempted to engage in this type of activity and, of course, the message to be sent out on the integrity of the industry to the public at large.

86. Having regard to all of the cases to which Tribunal has been taken and assessing the facts and circumstances of this case, the Tribunal also considers that that disqualification should have a starting point of six months. Whilst there is no direct precedent in New South Wales for that to form the starting point, having regard to the range of matters that might otherwise have been in operation on the months or years of disqualification, that period of six months is considered intuitively to be appropriate.

Subjective and mitigating factors

87. The parties are in agreement that the appellant is entitled to a 25 percent discount for his early plea of guilty and cooperation with the stewards. The Tribunal, consistent with numerous decisions, agrees.

88. The appellant submits that he has no priors, especially for betting matters. This is not correct, as set out above. The appellant's submission that a further 25 percent discount for this is rejected.

89. The appellant then submits that he did not know he was breaching the rules, now accepts the breach and is sincerely remorseful for his conduct and indicates it will not occur again.

90. The appellant also sets out that he has closed the relevant account and this is supported by documentary evidence.

91. The appellant then relies upon the circumstances that confronted him at the time of the disqualification and the commencement of his illegal activity. It is that the COVID restrictions applied, he was not employed, he was bored and recently estranged from his wife. He is now employed.

92. The appellant's submission touches very much upon his personal psychological circumstances and the treatment he has received from Dr Kirton over many years and continuing. As Dr Kirton previously opined that his continuation in the industry was in his best interests, it is submitted that if he is to be kept out of the industry it will be counter-productive to his recovery.

93. The appellant submits that his treatment has to be the most genuine and long-standing commitment to professional psychological treatment that has been seen in the industry.

94. The Tribunal notes that the appellant has not given evidence before it to support any of the above contentions but they are not disputed by the respondent.

95. The respondent, having referred to the prior breach, also refers to his "unenviable disciplinary record".

96. In numerous decisions to date the Tribunal has summarised his past record in this and other jurisdictions and agrees with the respondent's submission that it is appalling.

97. That does not make his conduct more serious but means that his past good history is not available to him to enliven further discounts.

98. The respondent particularly emphasises that for all the disqualifications the appellant has had in the past, he cannot now raise ignorance of the rule.

99. The respondent submits that the treatment he is receiving is not made relevant.

100. The appellant in his written submission to the Integrity Manager indicated that the discount should be 25 percent for the admission of the breach, 25 percent for no prior record and a further 40 percent for subjective matters. In oral submissions on appeal, a total of 50 percent is said to be more appropriate.

101. The respondent says that the 12½ percent discount given in addition to the 25 percent for the admission of the breach is more than adequate.

102. The Tribunal concludes that it cannot lose sight of the fact of this appellant's history, both in the industry and outside it, but also, critically, before the Tribunal. This is the fourth occasion on which the Tribunal has been asked to deal with this appellant.

103. On the prior occasions the Tribunal has dealt with the appellant it has extended to him the hand of leniency by reason of various subjective factors, including in particular the treatment he was undertaking and, in some cases, but not all, his evidence that he would change his ways.

104. This appellant has not changed his ways.

105. The Tribunal rejects the submission that he should receive a total of 50 percent in discounts comprising, relevantly to this part of the determination, a further 25 percent discount for the subjective factors over and above that for the plea.

106. The Tribunal considers the subjective factors to be of little persuasive weight. They have effectively all been canvassed before.

107. On the other hand, the Integrity Manager determined a 12½ percent discount for those other matters and that is submitted in the written submissions by the respondent to be appropriate.

108. In all of the circumstances of this case, including the above determinations and the submissions, the Tribunal determines that there will be a 12.5 percent discount for the other subjective factors.

109. That means the discounts are the same as those considered to be appropriate by the Integrity Manager.

Determination

110. The Tribunal determines that there be a starting point of a six-month disqualification for which there will be a discount of 37.5 percent.

111. That means that the approximate calculation embarked upon by the Integrity Manager to determine a period of disqualification of three months and three weeks is appropriate.

112. Accordingly, the appeal in respect of this part of the matter as to the penalty being too severe, inconsistent with precedent and the like, is dismissed.

113. The Tribunal dismisses the appeal against severity of penalty in respect of the breach of AHRR 259(1)(j).

THE APPLICATION OF AHRR 259A

114. As set out above, the Tribunal has determined that it has to consider what, if any, order should be made under this rule. That may involve no penalty, a partial recommencement or a full recommencement of the earlier disqualification.

115. It is for the Tribunal to determine the exercise of this discretion having regard to the facts and circumstances of this case and the policy behind the rule.

116. The Integrity Manager did not set out in his decision the reasons for his determining that the penalty would automatically recommence in full and did not make an order to the contrary.

117. The appellant in the grounds of appeal and oral submissions invites the application of the totality principle. That is that the Tribunal should look to the total penalty that might be applied and ensure it is appropriate and will not be disproportional to the conduct in which the appellant engaged.

118. The appellant submits that the total penalty should be two months or less. The Tribunal has already determined that the breach of 259(1)(j) must lead to a penalty that is greater than that in any event. The issue then

becomes whether anything further should be imposed by the application of this relevant provision.

119. The respondent submits that regard must be had to the fact that of the original three-month disqualification, he was engaged in a breach of it for some one-and-a-half months. Therefore, it is submitted that any application of an increase under this rule would not be manifestly excessive.

120. The respondent submits that the regime in New South Wales is harsher than that in the other jurisdictions, particularly those decisions quoted in this case from Tasmania and Victoria. The Tribunal agrees.

121. The Tribunal has set out the fact that in this jurisdiction, for various reasons penalties are harsher than elsewhere. In particular, the Tribunal cannot lose sight of the fact that the subject rule under consideration was introduced as a reflection of a harsher regime in New South Wales. Although, of course, it is not applying NSWLR 259, it is considering AHRR 259A. Nevertheless, the policy is apt to displace cases i n other jurisdictions on parity and totality.

122. The Tribunal gleans from the submissions made to the Integrity Manager and to it that each of the factors advanced on objective seriousness and subjective and mitigating matters need to be considered when looking to whether this discretion should be exercised in the appellant's favour.

123. The Tribunal has effectively rejected those submissions.

124. No other factors are advanced in respect of the exercise of this discrete discretion.

125. The Tribunal therefore cannot determine that in the exercise of its unfettered discretion to consider all the facts and circumstances of this case it can, having regard to the policy behind AHRR 259A and integrity of the industry generally, determine that it should exercise its discretion in favour of the appellant.

126. The Tribunal is particularly comforted in that conclusion by reason of the number of times it has had to deal with this appellant, his past history of a disciplinary type, the occasions on which he has been given opportunities to participate in the industry and has failed to meet the requirements of the rules are such that the discretion cannot be exercised in his favour.

127. The Tribunal determines that it will not use its power, namely, , "unless otherwise ordered", to order that that there be some lesser period of disqualification.

128. Accordingly, under AHRR 259A the Tribunal determines that the previous disqualification should recommence in full.

129. The Tribunal is satisfied that the application of the totality principle is not infringed by such a determination for the reasons expressed.

130. The appeal against the application of that determination under AHRR 259A is dismissed.

STARTING AND ENDING POINTS OF DISQUALIFICATIONS

131. The Tribunal set out above the starting and ending points for these two periods of disqualification now to be effected.

132. The Tribunal has had no submission to the contrary from either party and determines that the finding of the Integrity Manager on this point is correct.

ORDERS

133. That pursuant to AHRR 259A, the period of disqualification of three months imposed on 12 June 2020 will recommence on 30 July 2020 and conclude on 29 October 2020.

134. In respect of the breach of AHRR 259(1)(j), the period of disqualification of three months and three weeks will commence on 30 October 2020 and conclude on 20 February 2021.

APPEAL DEPOSIT

135. The Tribunal notes that it has not invited the parties to make any submission in respect of the Tribunal's requirement to determine whether the appeal deposit is to be forfeited or repaid in whole or in part.

136. The Tribunal will consider an order that, unless the appellant makes an application for refund of the appeal deposit within seven days of receiving this decision, that the appeal deposit be forfeited.
