RACING APPEALS TRIBUNAL
NSW
Mr D B Armati

18 JUNE 2021

RESERVED PENALTY DECISION

APPEAL BY RACING NSW AGAINST A DECISION BY THE APPEAL PANEL OF RACING NSW TO DISMISS 5 CHARGES AGAINST DR ADAM MATHEWS

ARR175(l), ARR175(k), ARR177B(6), ARR175(k), ARR175(a)

DECISION:

1. **On charges 2 to 6 inclusive in each matter a period of disqualification of 1 year each to be served concurrently and concurrent with the penalty for charge 1 as to 6 months.**
2. **Noting that 6 months of that period has been served because of partial concurrency for the penalty of 6 months for charge 1 the balance of the disqualification for charges 2 to 6 inclusive shall commence on 18 June 2021 and expire on 17 December 2021.**

INTRODUCTION

1. The issue for determination is penalty to be imposed on the respondent, Dr Mathews ("Mathews"), as a result of the findings by the Tribunal on 20 July 2020 of 5 breaches of the rules.

2. The appellant, Racing NSW ("RN"), appealed against a decision of the Appeal Panel to dismiss those 5 charges on 6 May 2016. The appeal was upheld on 20 July 2020, the adverse findings made and directions issued for submissions on penalty.

3. RN submitted on 24 July 2020, Mathews on 10 May 2021 and RN replied on 13 May 2021.

4. The fresh evidence is the report by Dr Wehbe on Mathews of 30 October 2020 and three references.

5. For context the breaches are summarised as: charge 2 being a party to in-competition breach for cobalt administration; charge 3 conduct for in- competition breach for cobalt presentation; charge 4 being a party to out -of -competition breach for cobalt administration; charge 5 conduct for out- of- competition breach for cobalt possession; charge 6 improper practices.

6. The Australian Rules of Racing ("ARR") in force at the relevant times provided for the general penalty for breaches 2, 3, 5 and 6 which in ARR 196 (1) provides for disqualification, suspension, reprimand, fine up to $100000 and combinations of those and power to suspend some penalties. Rules are set for cumulative penalties unless otherwise ordered concurrent (3). In some circumstances Local Rule ("LR") 108 provides for backdating.

7. For breach 4 ARR 196 provides in (5) for a mandatory minimum penalty of 2 years disqualification. That is a disqualification penalty no less than 2 years unless special circumstances exist. That rule provides for an LR to stipulate special circumstances.

8. LR 108, relevant to the Mathews, submissions provides in 108(2)(b)(i) a special circumstance if Mathews proves on the balance of probabilities that at the time of the commission of the "offence" he had impaired mental functioning and that is causally linked to the breach of the rule and substantially reduces his culpability.

9. Submissions have been made on some of the principles that are to be applied in the penalty determination and they will be referred to later.

10. In the related decision of Sam Kavanagh on 13 August 2018 the Tribunal set out in paragraphs 11 to 16 the general tests to be applied in determining penalty. As there have been no detailed submissions on the tests the Tribunal will not repeat those paragraphs in this decision. They are adopted and applied. Findings were set out from McDonald v RN 10 April 2017 on the mandatory minimum and special circumstances tests. Some legal principles on a protective penalty consideration for complicity conduct will be set out later.

11. In very general terms the submissions have touched upon: parity with co-offenders; objective seriousness; applying mandatory minimums and special circumstances; cumulative or concurrent; discounts for subjectives; the facts on those issues.

12. RN submit that the total penalty should be 4 years disqualification when individual penalties and concurrency are taken into account. Mathews submits lower starting points with discounts and concurrency are appropriate but does not specify exact individual penalties or a total when made concurrent.

13. The Tribunal notes that charge 1 was for ARR 175(l) being a party to a race day medication on which the stewards found him guilty and the Appeal Panel subsequently imposed a 6 month disqualification that commenced on 27 May 2016 and expired on 26 November 2016. There was no appeal on this charge or penalty to the Tribunal. The penalty was served.

KEY FACTS

14. The Tribunal decision of 20 July 2020 was of 56 pages and 483 paragraphs. The brief for the start of the hearing was 3216 pages. Accordingly this decision is made on the totality of the findings and a repeat of all the facts is not undertaken - they are all taken in to account.

15. The particulars of the 5 charges set out in detail the wrong conduct. Each of the established particulars provide a clear picture for objective seriousness.

16. The key facts on objective seriousness are: supply took place on more than one occasion; the labelling on the bottles was a patent indicator that mischief was at hand; the concentration of the cobalt was extremely high; the price charged for

each bottle at $1000 was high; he lied on numerous occasions about his actions; he engaged in recent invention; he tailored his evidence to meet allegations and harmful facts; he has shown no remorse or acceptance of wrongdoing; Mathews was an equine vet working with the industry and more than fully informed about regulatory matters and cobalt in particular; he operated in full knowledge that the complex would be used by trainers in racehorses and that was against the rules both for racing and out of competition; his initial actions led to others being involved- he was the instigator.

17. Some factors that lessen objective seriousness are: his medical condition at the time and this will be dealt with later; the fact he was working 7 days a week for very long hours; he was not present when the wrongful administrations and presentations took place; there was an intermediary (Brennan) between Mathews and the trainers; he was an employee and one of the practice vets (Brennan) failed in his duties to Mathews as a junior employee. The fact he had a gambling problem provides an explanation for some of his actions but is not an excuse.

New Evidence

18. The respondent relies upon a report by Dr Wehbe, treating psychiatrist of Mathews, dated 31 October 2020 and updated 1 February 2021.

19. The key parts are referred to below on the issue of special circumstances. These parts are set out below as they must be to enable an understanding of the special circumstances issues and no claim for confidentiality has been made.

20. In addition the report refers to the aggravating effect upon him of the legal proceedings and concerns they may cause a relapse of a range of conditions. These are not summarised for privacy purposes.

21. Three references are lodged.

22. The first is by Trent Busuttin dated 10 May 2021. It appears that he races horses as Mathews provides veterinary services to his stable on a daily basis. They are close personally and professionally. Mathews demonstrates knowledge and experience. His conduct has always been professional and he would recommend Mathews.

23. The second is by Lisa Enright, racehorse trainer, dated 10 May 2021, who has known and used him for 12 years. He demonstrates highest skill levels, is honest, professional and ethical. He has unsupervised access to her horses.

24. The third is by Troy Corstens, of Malua Racing, undated, who has known Mathews professionally and socially for 12 years. Mathews does his yearling sale work, x-rays, physical examinations, diagnostic work and is extremely professional and works to a high standard. Mathews demonstrates a love and care for animals. He will continue to use Mathews.

SUBMISSIONS

RN

25. RN submits that parity should be found in the related Kavanagh decisions by the Tribunal of 13 August 2018 and 17 May 2019.

26. RN group the 5 charges in to: in-competition-2 and 3; out-of-competition- 4 and 5; then the improper practices- 6.

27. The submission is that the mandatory minimum be applied or the starting points of Kavanagh, but not more. That is submitted because the objective seriousness is the same as for Kavanagh and the related Brennan. It is submitted Mathews conduct is more serious because he instigated the conduct and without him it would not have occurred.

28. It is then submitted there should be no discounts for special circumstances or subjective factors.

29. On in-competition -2 and 3, the submission is for a starting point of 2 years disqualification concurrent. That to flow from Kavanagh's 2 years for the administration (2) and 18 months for the presentation (3).

30. On out-of-competition- 4 and 5, the submission is for a starting point of 2 years disqualification in each matter to be concurrent. For charge 4 that be the mandatory minimum and for 5 that to flow from Kavanagh charges 13-15 and 24.

31. Then it is submitted that the 4 and 5 penalties should be accumulated as to 50 %, as in Kavanagh, to 2 and 3.

32. This would give total penalty for 2,3,4 and 5 of 3 years disqualification.

33. On improper practices -6, the parity is said to be Brennan's Appeal Panel penalty where the equivalent of a 4 years disqualification was the starting point reduced by 25% for a plea of guilty which is not available to Mathews.

34. It is finally submitted that for 6 there be concurrency with 2-5 because that conduct resulted in 2-5.

35. The effect of those submissions is that a penalty of 4 years disqualification should be the outcome.

MATHEWS

36. The submissions for Mathews touch upon a detailed history of related breach penalties, related case decisions, error in the Appeal Panel reasoning, special circumstances and the appropriate penalties.

37. It is submitted that parity with Kavanagh and Brennan is wrong if reliance is placed on stewards' decisions, Appeal Panel decisions or the Tribunal's first Kavanagh decision because the 175(h)(i) issues were removed.

38. On charge 2 the Appeal Panel imposed 2 years disqualification on the equivalent Kavanagh and Brennan charges.

39. On charge 3 the Appeal Panel imposed 12 months disqualification on the equivalent Kavanagh charge and 2 years disqualification on the equivalent Brennan charge (it appears incorrectly submitted as 1 year).

40. In each of these there was full concurrency.

41. On charge 4 for Kavanagh the equivalent was dealt with by the Tribunal imposing a 1 month disqualification after a mandatory minimum of 2 years was considered.

42. On charge 4 the Appeal Panel imposed a mandatory minimum 2 year disqualification for Brennan on his equivalent charge 7 and made that concurrent with a number of other penalties including those relating to Mathew's charges.

43. On charge 5 the same submissions are made on parity.

44. It is noted the Mathews submission states that for 3 and 5 the act is said to be "conduct negligently" giving rise.

45. On charge 6 it is submitted that the RN submission that this is the most serious is misconceived.

46. It is said the equivalent Kavanagh penalties were 6 months 2 weeks disqualification for possession of cobalt after a staring point of 12 months and $1000 for the vitamin complex and others.

47. For Brennan the equivalent was charge 10 and he received a 3 year disqualification, stating reasons which are now challenged, concurrent.

48. Submissions are made that the penalty decisions of the stewards and the Appeal Panel should not be followed because of subsequent Tribunal and Supreme Court decisions. They are Kavanagh v RVL [2017] VCAT 386 and Kavanagh v RN [2019] NSWSC 40.

49. The effect of the decisions was the removal of 175(h)(i) and therefore less culpability and this led to amended charges here. In addition the Mathews charges carry only one mandatory minimum (now one of 2 years, previously 3) whereas Kavanagh had 10 and Brennan 3. That makes the administration less culpable and the element of knowledge of the cobalt in the complex disappears.

50. Therefore equating conduct with Brennan on charge 10 and Kavanagh on charges 23 and 24 it is submitted fall away and the Kavanagh charge 24 was found by the Tribunal not to be the most serious.

51. The submission then addresses charge 4 and the mandatory minimum considerations. The 2 year starting point is acknowledged. Reliance is placed upon special circumstances.

52. The facts to support special circumstances are in two categories. Mental impairment and Tribunal findings of fact.

53. Dr Wehbe reported on 30 October 2020. The parts relied upon are:

> "i. Suffering depression in 2014 – 15 which resulted in him seeking psychiatric treatment and being medicated for that condition;
> ii. Gambling (amongst other symptoms) being symptoms consistent

with hypomanic episodes and are indicative of bipolar affective disorder, type II;
iii. That the severity of Dr. Matthews mental conditions resulted in him being admitted twice as an inpatient at the Melbourne Clinic in 2016;
iv. “at the time of the alleged conduct, assuming it was a period throughout 2014, Dr Matthews suffered pre-existing Bipolar Affective Disorder, type II, with predominantly depressive presentation - which at the time was interpreted by his treating doctors as Major Depressive Disorder”.”

54. Next reliance is placed on the following Tribunal findings of fact that:

> “i. Dr. Matthews was a heavy gambler at the time and was under considerable stress;
> ii. As at 15 March 2015 when he was spoken to by the partners of FE Dr. Matthews was suffering from a medical condition and went on stress leave;
> iii. The serious misconduct was by a vet with a gambling problem;
> iv. As at 18 March 2015 when Matthews went on stress leave from FE “there is no doubt that he was not well and subsequently undertook treatment, which will not be set out in this decision for privacy reasons”;
> v. Dr. Matthews attended Brennan’s place on the Thursday night to receive his cash in circumstances where no one else would see that transaction taking place and that in all probability he used it for gambling;
> vi. Dr. Matthews’s gambling problem at the time was a key point in rejecting his evidence.”

55. It is then submitted that:

> “Gambling addiction is a mental health disorder often associated with the mental illness of depression. Bipolar Affective Disorder is also a mental health disorder often associated with the mental illness of depression.”

56. It is then submitted that Mathews was suffering impaired mental functioning because those matters establish that, adopting Victorian statutory definitions in unrelated legislation, there is a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

57. The necessary causal link to the rule breach is, it is submitted, established on the Tribunal finding of liability supported by Dr Wehbe's findings.

58. His reduction in culpability, it is submitted, is established again by the findings set out above. That is Mathews evidence was rejected, was not credible, had a motive and he gambled the money received.

59. It is submitted that mental impairment is well recognised in sentencing to mitigate objective seriousness.

60. It is then submitted that the starting point of 2 years for Kavanagh should mean a lower starting point for Mathews. The discounts for Kavanagh are set out and in summary the starting points and final penalties were: charge 2 -24 months then 13 months; charge 3- 18 months then 10 months; charge 13- 2 years then 1 month; charge 24 -12 months then 6 months 2 weeks. Cumulation of 50% for 13 and 14 was imposed.

61. The next topic submitted is on involvement. That is that he was a lessor actor.

62. The submission of RN on the breach issues identified that the appellant now viewed the acts of Mathews as those of a secondary actor and the others principal offenders. Mathews submits he was an actor twice removed and the others completed the breaches. Therefore the starting points should be lower is said to follow.

63. Reliance is placed on the submission that Brennan was egregious in his breaches of a fiduciary nature because Mathews was an employee and Brennan did not exercise ethical conduct, falsely accused others and Brennan was the vet responsible for Kavanagh's horses.

64. An analogy of use of a gun by three participants was given, said by RN in reply to be irrelevant, is not seen as helpful and is not further examined.

65. The submission then touches upon each of the 5 charges.

66. On charge 3 it is said the Brennan penalty is irrelevant because it was imposed by the Appeal Panel on a now different fact basis. On the Kavanagh penalty it is said that the penalty should be 50% lower than 12 months because Mathews was a secondary offender, that removes circumstances of aggravation and their conduct disparate.

67. From a starting point of 12 months discounts should be applied for; mental impairment at the time; no priors; the conduct occurred 7 years ago and there have been no further breaches; otherwise of good character; less breaches than Kavanagh.

68. On charge 3 it is said that culpability for negligence is less than being a party and reflected in the related Brennan breaches attracting 50% less than the being a party breach.

69. Therefore the charge 3 penalty should be 50% of the charge 2 penalty.

70. In addition each of the penalties for 2 and 3 should be concurrent.

71. For charge 4 the submission for charges 2 and 3 is repeated.

72. In addition the fact out-of-competition breaches are said to be less serious than race-day administrations.

73. For charge 4 a starting point of 8 months is suggested.

74. For charge 5 a starting point of 50% of 4 is suggested.

75. It is submitted that the penalties for 4 and 5 should be concurrent.

76. It is submitted that the penalties for 2,3,4 and 5 should all be concurrent.

77. For charge 6 the above submissions are adopted.

78. A starting point of 12 months is submitted as it was for Kavanagh charge 24 noting that it was accumulated 50% on charge 2 and 3.

79. The submission is that the Brennan penalty should be of no assistance and the conduct of Mathews in the fact of the finding of the complex at the Kavanagh stables does not make Mathews conduct more serious than Brennan.

80. It is submitted that there be concurrency with charges 2, 3, 4 and 5 and that the Kavanagh concurrency is distinguishable as; he was the possessor; Mathews did not know Kavanagh still possessed it; Kavanagh did not throw it out to end the conduct.

81. It is submitted concurrency with the other charges is correct because the conduct for 6 is subsumed by 2,3,4 and 5 in their entirety. In addition the fact of supply by Mathews to Brennan underpins 6 as it does the other charges.

RN In Reply

82. The previously advanced penalties are still sought.

83. Mathews is criticised because: he has never admitted his involvement; never explained the circumstances; never explained his reasons; expressed no contrition.

84. it is submitted that his referees do not refer to the offending conduct and may not be aware of the findings.

85. It is said that he has not explained his involvement, motivation or other mitigating facts and these cannot be inferred. Therefore he was not a less culpable participant.

86. It is submitted that Dr Wehbe does not attribute Mathews' wrongdoing to any illness or medical condition and therefore no opinion or diagnosis on those facts.

87. On objective seriousness reliance is placed upon the fact that Mathews' conduct was causative and Kavanagh and Brennan would not have offended except for Mathews' conduct. Further that he was not an innocent supplier but in awareness that the complex would be used for a nefarious purpose.

88. Each of the facts in paragraphs 317 to 332 of the decision on breach of 20 July 2020 are relied upon. The Tribunal notes those and does not set them out here.

89. The next submission is that the charges 3 and 5 deal with conduct not negligence.

90. On charge 6 it is submitted that there were multiple breaches in awareness that administration of cobalt was of concern.

91. The submission then dealt with subjectives.

92. It is submitted the report of Dr Wehbe does not assist on special circumstances and does not mitigate the level of offending.

93. There is to be no discount for a plea of guilty or for disavowing involvement.

94. It is submitted the breach for charge 1 is a prior.

95. There should be no discount for the referees' opinions because they do not demonstrate awareness of offending.

96. The Tribunal's adverse findings on Mathews' credit in paragraphs 322 to 325 of the breach decision (not set out here) are called in aid.

97. Therefore it is submitted there be no discount for subjectives.

98. As set out earlier RN maintains the final penalty should be a 4 year disqualification.

DISCUSSION

99. At the outset is is noted RN seek disqualification and Mathews has not demurred. The Tribunal will adopt that approach.

100. The determination of objective seriousness of Matthew's conduct is the first step in determining a protective civil disciplinary penalty.

101. That requires a determination based upon his own conduct and the circumstances of the case.

102. There are strong submissions on parity but his precise actions must be considered noting that each of Kavanagh and Brennan engaged in other subsequent conduct.

103. Matthews was not the mastermind or puppet master in relation to the whole of the conduct. The submissions are that he was a secondary player and not the principal offender. The facts support those submissions.

104. He did not participate directly in the subsequent conduct of on-supply, administration, presentation and possession which involved Kavanagh and Brennan.

105. However he was the instigator and without his conduct the subsequent events would not have transpired.

106. He was involved in initial planning and benefitted from his actions.

107. He engaged in his conduct in the full knowledge of his wrongdoing as particularised. In particular the fact he worked in a regulated industry full knowing the constraints in respect of substances and that cobalt was of concern to regulators

108. The Tribunal again returns to the determination that his conduct started and ended with the supply and on more than one occasion.

109. The remaining facts in paragraph 16 above are taken in to account.

110. RN has not submitted that a supplier is very difficult to detect and therefore a salutary penalty should be given when one is caught. Accordingly the Tribunal puts that point out of consideration.

111. Objective seriousness requires consideration of the message to be given to Mathews and that must be greater as he has shown in related conduct that he will engage in race day drenching- charge 1. That is not taken as a prior penalty but reflective of his approach to regulation generally.

112. That is also relevant because he has not advanced anything to provide comfort on his subsequent conduct by an expression of remorse, of any explanation for his conduct or motivation, of a demonstration that he will not lie or create recent fabrications.

113. It is accepted that the message can be lessened by his mental impairment, to which the Tribunal will return, the fact he has not reoffended in 7 years and that the impact upon him professionally and mentally may well mean a lesson has been learnt not to offend.

114. Each charge must be assessed for individual penalties but the Tribunal is much persuaded that the 5 charges all flow from the fact of supply and not other conduct. The two party charges (2 and 4) and the two conduct charges (3 and 5) and improper practices (charge 6) all flow from the supply. On more than one occasion but one type of act.

115. On objective seriousness the submission of RN is that no greater penalty than the mandatory minimum or the parity with Kavanagh apply. Accordingly the Tribunal will not consider penalties greater than those.

116. Important as that submission is the penalties must be for Mathews' conduct.

117. The Kavanagh and Brennan final penalties reflect their actions and subjectives and cannot be the sole benchmark for Mathews. The starting points on their penalties are more important but again their conduct was individually, on each charge, different.

118. A scale of gravity of conduct could descend from in- competition administration then presentation then out-of-competition administration then possession. That was applicable to Kavanagh and Brennan but Mathews was not directly involved in that conduct. He had knowledge and had facilitated them by supply but did not do those things. Again therefore Kavanagh and Brennan are distinguished.

119. Mathews conduct on all the charges was the act of supply, albeit with knowledge of subsequent use.

120. The Tribunal agrees with the Mathews' submission that cases, after the stewards and Appeal Panel penalised the others, change the gravity of the conduct here. That is the removal of the aggravation that motivated in the prior penalty considerations and intent to affect performance has gone.

121. Having regard to all those matters the starting point for objective seriousness is set at 2 years for each of charges 2 to 5. Essentially one type of breach for a series of supply but charged in different ways because of the co-offenders', not Mathew's, conduct.

122. Charge 4 requires separate consideration because of the mandatory minimum 2 year penalty.

123. As set out above the application of the principles in Mc Donald is activated.

124. As the considered penalty is two years and no more sought by RN that penalty is the starting point.

125. Special circumstances under LR 108(2)(b)(i) are to be considered.

126. The Tribunal finds special circumstances established.

127. Factually Mathews has maintained throughout that he was unwell at relevant times. While sometimes he expressed it as stress, whatever he thought it was he

was made an in-patient twice at the times approximating his conduct. This was not a fabrication or recent invention.

128. Mathews is now corroborated by Dr Wehbe. In paragraph 53 above the submission for Mathews was set out and is accepted. He had depression and Bipolar Affective Disorder, type II, and was treated for Major Depressive Disorder at the time of the conduct.

129. RN submit that the report does not attribute his wrongdoing to the illness. That is not accepted as a reading of the whole report and the established facts, especially his admissions, prove the link. The report sets out the effects upon him.

130. Each of the pieces of evidence establish each of the tests that is, impaired mental functioning, causally linked to the breach and substantially reduced his culpability.

131. The Local Rule does not specify how a discount for special circumstances is to be calculated. Recent cases where it was considered, Kavanagh and McDonald, were on different sub- paragraphs and facts.

132. Subjectives as they otherwise must be considered do not form part of that discount unless they directly relate to the impairment found.

133. The findings here do not lead to a conclusion Mathews was blameless because of his impairment. There is no evidence he could not rationally weigh up his actions or not proceed with them. He still acted in knowledge of wrongdoing. He was not impaired from otherwise engaging in other particularised facts.

134. The facts do however establish some explanation.

135. RN submitted there should be no discount for special circumstances, or indeed for any subjectives.

136. A 100% or proximate discount is not appropriate on the facts. Weight is given to the fact he was made an in-patient twice and was otherwise deeply affected mentally by his impairment and the proceedings.

137. On those findings a 50% discount is given for special circumstances.

138. On charge 4 a staring point of 2 years was adopted and now reduced by special circumstances to 1 year disqualification.

139. Charge 6 arises on its own.

140. The additional facts particularised are; he knew of Brennan's actions in supplying to trainers; an equine vet with awareness of cobalt concerns; knew that finding the complex at a stable or in possession would breach rules and offend legislation on drugs; lead to deeming of charges.

141. Each of these matters are inextricably bound up in the factual findings and objective seriousness for charges 2 to 5. They are a further example of the charges raising different breaches but for Mathews conduct all related to the act of supply.

142. Therefore the Tribunal does not find 6 to be the most serious.

143. The Brennan penalty of 4 years can be distinguished because of the reasoning set out above on different facts and after subsequent cases.

144. The Tribunal finds 6 is another way of expressing the other charges and therefore should have the same penalty.

145. The starting point for charge 6 is 2 years disqualification.

146. The next step is whether there is to be a further discount for subjectives for charges 2,3,5 and 6.

147. RN says none and Mathews says there should be.

148. Mathews has not given evidence on penalty.

149. The referees establish he is knowledgeable, experienced and professional. There references must be read down as they do not express awareness of these breaches. They establish some grounds for finding he is otherwise of good character but not any any great level and in the absence of such specific evidence good character is given little weight.

150. He has no priors. His charge 1 was relevant on objective seriousness but is related and he does not lose any applicable discount because of it.

151. There has been no plea of guilty to which a discount up to 25% may have been considered.

152. Substantial weight is given to the fact of impaired mental functioning as set out above.

153. There is no discount for remorse or contrition or evidence that there will not be reoffending.

154. The fact of a 7 year gap between conduct and penalty is a factor in favour of a finding he will not reoffend. Allowance for that was made in the objective seriousness consideration.

155. The weightiest fact is the impaired mental functioning.

156. An allowance for subjectives is given at 50%. Again emphasising on impaired mental functioning, not the other subjectives.

157. As set out above for charges 2, 3, 5 and 6 a starting point of 2 years disqualification was found and they are each reduced by 50% to 1 year.

158. The next issue is cumulative or concurrent.

159. ARR 196(3) provides for cumulative unless otherwise ordered.

160. RN seek concurrent for 2 and 3 then concurrent for 4 and 5 then 4 and 5 be 50% cumulated to 2 and 3 - that is on the findings above a penalty in total for 2 to 5 of 18 months. RN accept that 6 should be concurrent for 2 to 5 but of course that travelled with a submission that the penalty for 6 be greater.

161. Mathews seeks total concurrency.

162. The Tribunal has found commonality of the facts of Mathews' conduct being the issue of supply with knowledge. It is the same for all 5 charges. That conduct underpins each of the charges.

163. There has been no intervening act or finding that would have stopped his actions from being repeated.

164. No greater message is required that would mandate accumulation.

165. The totality of his conduct does not change because of the breaches of particular rules, the particulars alleged and found in each separate charge.

166. On a totality of penalty there is no further reduction but likewise no need for reconsideration of greater penalties.

167. A total of 1 year is seen as just and appropriate and not wrong or likely to be seen as giving Mathews leniency for multiple breaches or not being penalised for breaches.

168. The Tribunal “otherwise orders” that the penalties for charges 2 to 6 be served concurrently.

169. There will be a disqualification in effect of 1 year.

SUBSEQUENT SUBMISSIONS AT REQUEST OF TRIBUNAL

170. On 26 May 2021 the Tribunal invited RN to submit on the commencement date of the above penalties in view of the fact that on charge 1 a 6 month disqualification commenced on 27 May 2016 and expired on 26 November 2016 and was served.

171. Mathews was invited to reply but despite follow up requests no submission was made in reply by the Tribunal’s deadline of 17 June 2021 to do so.

172. RN submitted on 26 May 2021 that there should be no concurrency for the charge 1 penalty. This because different facts and circumstances were present for the race day administration (1) and the vitamin complex supply (2-6). It is conceded it was the same horse in the same race on the same date. It is submitted that separate offending should be penalised accordingly.

173. RN submit if there is to be concurrency then that period has been effectively served by the penalty under charge 1.

174. RN rely upon the determinations in Kavanagh of 13 August 2018 and 17 May 2019 that unrelated breaches, where there is a different substance at different times, despite the fact it was the same horse and date, warrant cumulation.

175. The Tribunal distinguishes the Kavanagh caffeine matter but accepts the principle that unrelated breaches warrant cumulation.

176. Here the charge 1 being a party to the race day administration was part of the overall conduct in which Mathews engaged with the key players. Those other participants in charge 1 are merely the in -between people. The drench was to the same horse for the events on the same day as the supply of the complex related.

177. However different steps were required on the drench events. The charges 2 to 6 all arise from the act of supply not telephoning another to do wrong as in charge1. There is the additional fact of the seriousness of charge 1 conduct.

178. Accordingly it is determined that there is a need for cumulation of charges 2 to 6 on charge 1 but only partial because of the common facts identified.

179. The effect is that there must be an allowance for the fact the charge 1 penalty has been fully served.

180. The cumulation is as to 50%, that is 6 months of the penalties for each of charges 2 to 6 of a 1 year disqualification, concurrent, are to be concurrent with the disqualification of 6 months for charge 1.

181. That leaves a period of disqualification for charges 2 to 6 of 6 months unserved. It is not backdated.

ORDER

182. The Tribunal determines that for charges 2 to 6 there be concurrent periods of disqualification of 1 year of which 6 months has been served. The balance of the 6 months will commence on 18 June 2021 and expire on 17 December 2021.