JUDICIAL CONTROL AUTHORITY
FOR RACING
TE MANA WHAKAHAERE Ā-TURE MŌ TE PUREI

Appeal L Innes v RIU - Written Decision of Appeals Tribunal dated 30 January 2019 - Chair, Mr T Utikere

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE THE APPEALS TRIBUNAL OF THE

JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

IN THE MATTER of the Rules of Thoroughbred Racing

BETWEEN L INNES

Appellant

AND THE RACING INTEGRITY UNIT (RIU)

Respondent

Appeals Tribunal: Mr T Utikere (Chairman)

Mr A Dooley (Member)

Appearances: Mr L Innes (Appellant)

Mr P Wicks QC (Counsel Representing the Appellant)

Mr J Oatham (for the RIU)

Hearing: 25 January 2019 at Counties Racecourse, Pukekohe

Date of Oral Decision: 25 January 2019

WRITTEN DECISION OF APPEALS TRIBUNAL DATED 30 JANUARY 2019

PRELIMINARY MATTERS

[1] Mr Innes had filed a *Notice of Appeal* in relation to the 'Penalty' imposed by a Raceday Judicial Committee for a breach of Rule 638(1)(d) at the Wellington Racing Club's Meeting on 19 January 2019.

[2] At Mr Innes' request, and with the concurrence of the RIU, this Appeal was set down for an oral hearing prior to racing at Counties on Friday 25 January. The Tribunal had received copies of the Notice of Appeal, the Notice of Appointment of the Appeals Tribunal, the Raceday Judicial Committee's Written Decision and the transcript of the relevant penalty component from the Raceday hearing.

[3] During the afternoon of Thursday 24 January, the Tribunal received a request from recently engaged counsel for the Appellant, Mr Paul Wicks QC, seeking an adjournment of the fixture set down for the following day. An urgent teleconference was convened to hear submissions on the request. The request was ultimately declined, and the Minute detailing reasons for the Tribunal's decision on that matter is appendiced to this Decision for completeness.

[4] At the commencement of the Appeal Hearing, Mr Wicks was present, advising that he had managed to rearrange his commitments in order to appear before the Tribunal. As this was an Appeal against Penalty only, the focus of the Tribunal was three-fold: to determine if the Raceday Committee erred in any matters of law in approaching penalty; to independently assess the level of carelessness; and to consider whether the penalty imposed was inadequate, inappropriate or manifestly excessive (Rule 1007(2)(b), *NZTR Rules of Racing*) in such circumstances. While a brief oral decision was given on the day of the Hearing, the Tribunal advised that a more detailed written decision would follow. We are now in a position to deliver such decision.

THE RESPONDENT'S ASSESSMENT OF THE INCIDENT

[5] Mr Oatham identified that there were four films that were available for viewing. Using the head-on film, he pointed out Mr Innes (EFFERVESCENT), with Mr McKay (WHATSUP) slightly behind and to his inside and Mrs Allpress (ORIGINAL GANGSTER) to Mr McKay's inside, but racing further forward. Other riders affected were Mr Colgan (POPPY STAR), Mr Johnson (TOP OFTHE STRAIGHT) and Ms Spratt (IN SEGRITO).

[6] Mr Oatham described that in the home straight, Mr Innes' mount's head was observed to turn in as the horse was on an inwards angle, and at no point did Mr Innes take any corrective measures. He had struck EFFERVESCENT with the whip when shifting ground, resulting in Mr McKay clipping a heel and falling. He stated there had been consequential interference to three other runners (POPPY STAR, TOP OFTHE STRAIGHT and IN SEGRITO), and that it was fortunate that no other rider was brought down as a result. The rear view confirmed that Mr Innes was on an inwards shift for some distance. The side-on and Back Tower films were also played to the hearing.

[7] In response to a question from the Tribunal, Mr Oatham confirmed that he did not make any submissions at the Raceday hearing as to where the level of carelessness fell. He believed that the films spoke for themselves, and that Mr Innes was less than one length clear when shifting ground. Mr McKay had taken a hold for a few strides as a result, before he clipped a heel.

[8] When invited to make an assessment of the carelessness, Mr Oatham believed it was placed at the mid to high range and that the assessment of the Raceday Committee was entirely appropriate. He believed that with the consequences that followed, the assessment would only increase towards the high end.

THE APPELLANT'S ASSESSMENT OF THE INCIDENT

[9] Mr Wicks believed the level of carelessness sat closer to the mid-range, rather than the upper-range.

[10] Using the head-on film, Mr Innes explained that he was four to five wide the whole race and that his horse was on one rein, it had been lugging outwards and had a tough run. As it had been lugging out, he had given it a couple of reminders with his whip on the shoulder to try and get it to straighten. He accepted that on this occasion he had let it roll in.

[11] He pointed out a walking strip on the track at the 200m, and using the head-on, submitted that his horse had moved inwards at the same time that Mrs Allpress' horse had stepped in a stride, as both horses had seen the walking strip and reacted to it. He said he had heard Mr McKay clip heels, and that it all happened so quickly that he had tried to immediately relieve the pressure. He agreed that there was no question that he had been careless.

[12] When questioned by the Chairman, Mr Innes said that he had come from behind Mr McKay, so he did not realise he was to his inside. Mr Wicks observed that the incident occurred over four strides at real time. Mr Innes had thought that Mr McKay's horse was tiring, and he did not expect his own horse to move in as quickly as it did.

THE APPELLANT'S SUBMISSIONS ON PENALTY

[13] Mr Wicks submitted a written Synopsis of Submissions as follows:

1. INTRODUCTION

1.1 Mr Innes appeals the penalty imposed by the Judicial Control Authority (JCA) on 19 January 2019 of a 5 weeks suspension of his jockey's licence from the close of racing on Saturday January 26th up to and including racing on Saturday March 2nd.

1.2 On 19 January 2019 Mr Innes before the JCA admitted immediately to the charge under Rule 638(1)(d) of careless riding. He continues to acknowledge his guilt and as demonstrated before the JCA he is extremely remorseful and remains so.

1.3 The appeal is solely therefore in relation to the severity of the penalty imposed.

1.4 These written submissions set out an outline of the submissions to be made on appeal and will be expanded upon as necessary in oral submissions.

2. Relevant Penalty Case

2.1 The charge faced by Mr Innes was only the second time since the revised JCA Penalty Guide came into effect on 1 November 2017 involving careless riding resulting in a fall.

2.2 The only previous penalty decision is that of RIU v G Cooksley – Written Decision dated 17 December 2018 – Chair, Mr A Dooley. It is instructive with respect to this appeal.

2.3 In that matter the following facts arose:

· The careless riding which occurred on 16 November 2018 resulted in two riders falling heavily with both being taken to hospital.
· Danielle Johnson has not ridden since the incident.
· One horse, Boundtobehonoured, fell heavily and has not raced since.

2.4 In accordance with the Penalty Guide a starting point of 4 weeks was adopted in the Cooksley case. Mitigating factors then reduced the penalty to a 3 weeks suspension.

2.5 In relation to mitigating factors the JCA noted:

· The breach was admitted (although that occurred at the hearing after a not guilty plea);
· A good record as in the preceding 12 months during which Mr Cooksley had 110 rides he had just 1 previous breach for careless riding;
· That the penalty would encompass a busy period of racing over the Christmas/New Year period which included Premier and Iconic race meetings.

3. SUBMISSIONS

3.1 It is well established that consistency of penalty setting is of considerable importance.

3.2 The Cooksley decision is a comparable charge and penalty case to that of Mr Innes' case.

3.3 In the Cooksley case the careless riding caused two horses to fall and with riders dislodged and injured. As in this case Mr Cooksley had continued to ride his mount forward after it shifted inwards when not clear.

3.4 The JCA deemed the level of careless riding in the Cooksley case to be "mid-range". That same level of carelessness arises in this instance (The JCA deemed Mr Innes' carelessness in the upper-mid range. That places it higher than it should be deemed to be but not materially so.).

3.5 The JCA in this case considered the severe interference to three other runners was an aggravating factor. That is not consistent with the fact there was more than one faller and two jockeys were dislodged and injured in the Cooksley case without there being any finding of aggravating factors arising from the carelessness.

3.6 Mr Innes' recent record was considered an aggravating factor. In comparison to Mr Cooksley he has had in the past 12 months approximately 340 rides resulting in a greater exposure to the risk of breaching the rules. The number of breaches as between the two when taken across the number of rides is not materially different.

3.7 The amount of the uplift for Mr Innes' recent record as an aggravating factor is not identified. The penalty decision refers to the mitigating factor of Mr Innes admitting the breach (which contrary to Mr Cooksley came at the first opportunity), and therefore the uplift appears to have been two weeks.

3.8 In comparison to Mr Cooksley the record of Mr Innes' did not justify such a significant uplift. A two weeks uplift on a starting point of four weeks is a 50% increase on the starting point. An overall uplift of no more than a week ought to have been applied.

3.9 The consequence of the imposition of a 5 weeks penalty is that Mr Innes has received a penalty that is two weeks longer than that imposed on Mr Cooksley for a comparable incident. The penalty imposed on Mr Innes being 67% higher by time period.

3.10 With respect, an end penalty of the magnitude of two weeks more or 67% higher when the relevant factors in two cases are compared offends against the fundamental principle that penalty's need to be consistent.

3.11 In all the circumstances an uplift from the starting point ought to have been no more than one week and then a reduction of one week to take into account the mitigating factor of an immediate acceptance of the breach and genuine remorse as expressed to the JCA. An end penalty of four weeks suspension ought to have been imposed.

3.12 A four weeks penalty would also recognise the fact that if a five weeks penalty is to stand Mr Innes will be suspended for New Zealand's most iconic race day, being NZ Derby day at Ellerslie.

3.13 That increases the impact of the penalty to a degree that it is wholly out of proportion to that which would have arisen if it were imposed during a period that did not include the number of Group Races and NZ Derby Day that arise here.

3.14 It is notable that the United Kingdom currently excludes Group 1 racedays from careless riding infringements. Group 1 racedays are the showcase of the industry with the key components being the best horses and jockeys competing on those days. Group 1 bookings of jockeys are made months in advance. Accordingly, a lengthy ban will also penalise unknowing participants.

3.15 Mr Innes on the current penalty will miss four Group 1 races – WRC International, Waikato Sprint, Otaki WFA and the New Zealand Derby. Further, he will miss vitally important final lead up races for the following Group 1's – the New Zealand Oaks, Sistema Stakes, New Zealand Stakes and the Auckland Cup.

3.16 A five weeks suspension also results in Mr Innes being unable to ride at $3.6 million dollars of Premier racing.

3.17 It is submitted that given the importance of overall fairness and the need for consistency in penalty decisions the appropriate outcome is the granting of the appeal and imposition of a suspension of four weeks.

[14] As referred to in para 1.4 of counsel's Submissions, in addition Mr Wicks also submitted that the Raceday Judicial Committee did not identify any methodology in how they arrived at the uplift quantum of two weeks, and believed that an uplift of no more than a week should have been applied.

[15] He also stated that since the Raceday, Mr Innes had been in contact with Mr McKay and had offered to meet the full cost of replacing his damaged vest, which Mr Oatham presented to the Tribunal, at a cost of some $500 to $700. He was also intending to reimburse Mr McKay for any medical costs that he incurred.

[16] Counsel accepted that while an uplift of one week for Mr Innes' record was justified, an adjustment for his guilty plea was also appropriate. He submitted the level of carelessness was also at issue, as it was at a lower level than that identified in the *Cooksley* decision. He also confirmed that from the Raceday Decision it could be inferred that the aggravating factors identified by the Committee were the impact on three other runners in addition to Mr McKay, and Mr Innes' record under the rule.

[17] Having taken into account the mitigation factors of the Appellant's remorse, admission of the breach and offer to make amends with Mr McKay into account, Mr Wicks believed that should equate to a one week reduction in penalty.

[18] Mr Innes also told the Tribunal that he did not have the chance to explain his full views on penalty during the Raceday Hearing. He would have liked to refer the Committee to significant Group 1 races that were coming up, and that he would have sought a four week suspension. In response, Mr Oatham said that during the hearing Mr Innes was very remorseful and in the aftermath of what had happened he was not making any excuses and was not giving fulsome submissions. Mr Oatham also commented that Mr Innes was well aware of how raceday hearings functioned and that he had the opportunity to raise any matters regarding penalty at the time.

[19] Counsel stated that the current five week penalty had a significant impact upon Mr Innes as he had a 'significant booking' to ride a horse in the country's most iconic race for some time, and the final day of his suspension excluded him to ride in that race (the New Zealand Derby). He accepted that the Committee had regard to that fact, but did not believe that the significant impact of the penalty was before the Committee at the time.

[20] Mr Wicks advised that the JCA Penalty Guide expressed penalties in this context in weeks and that his analysis of the Rules around whether the penalty had to be framed in weeks only, did not identify any reason why a penalty could be expressed so that Mr Innes could ride at NZ Derby Day on the last day of the five week period. In order to provide clarity for the Chairman, Mr Wicks confirmed that a penalty expressed as four weeks and six days would achieve this.

[21] Mr Innes said he was disappointed in his actions, and that on the day in question he had taken eight rides after not riding for two weeks. He had ridden at 55 kgs which was at his bottom-end, and had an impact on his judgement. He had let his horse roll in half a stride and once he felt his own horse's backend, he knew there had been a fall and was sickened when he re-watched the race. Mr Innes also confirmed that he was managing his own book of rides.

THE RESPONDENT'S SUBMISSIONS ON PENALTY

[22] Mr Oatham agreed that there was only one previous case under this rule since the new Penalty Guide came into effect, and that was *RIU v G Cooksley.*

[23] In relation to *Cooksley*, he identified that there were a number of mitigating factors. These included Mr Cooksley's record and the fact that he had less rides over the 12 month period than Mr Innes. Mr Cooksley was also only a few days shy of having a clear record under the rule. A further point of difference was the delay having the matter heard, which Mr Oatham attributed to deficiencies on the RIU's part. Mr Cooksley had also not been given a proper opportunity to view the head-on film, before entering an appropriate plea.

[24] In relation to Mr Innes' breach, on the day the Raceday Committee adopted a four week starting point, which Mr Oatham considered was within an appropriate sentencing band. The Committee had identified aggravating factors such as Mr Innes' record, which included three relatively recent charges, and the fact that the breach occurred on his first day back after being suspended for a careless riding charge.

[25] The Committee also placed the level of carelessness at a level higher than *Cooksley*, which the RIU had no contention with. While the Committee had seen largely aggravating features, Mr Oatham believed it was not surprising that Mr Innes had admitted the breach, for which mitigation was applied. The position of the RIU was that it was appropriate for the Committee to apply an uplift, but the RIU left it to the Tribunal to determine if the penalty was deemed to be manifestly excessive.

[26] With regard to the actual number of riding days that the term of suspension covered, with Mr Innes it equated to 22 National Riding days, whereas in Mr Cooksley's case the figure was 16 National Riding days. If a four week suspension was to be imposed on Mr Innes, that would equate to 17 National Riding days. With reference to upcoming Group 1 races, Mr Oatham submitted that it was clear that the Committee had taken that into account.

[27] Mr McKay had not been able to ride since the fall, and stewards were not sure when he was to resume riding (The Tribunal is aware that Mr McKay has since resumed raceday riding with two rides on Saturday 26 January). It had also occurred on Wellington Cup Day, which meant it was also a significant race for the class of horse competing. Mr Oatham believed the experienced Raceday

Committee had covered all points in their decision and that the one week uplift was appropriate. He also referred to a previous case involving Craig Grylls, where the chances of four runners were extinguished, and the Raceday Committee on that occasion considered that an aggravating feature.

[28] Mr Oatham also presented a copy of Mr Innes' record under the rule and that he had 334 rides prior to the Wellington Racing Club's meeting on 19 January. These records were reviewed and confirmed by the Appellant.

[29] In conclusion , Mr Wicks reiterated that the consequences in *Cooksley* were more serious and had more significant consequences than in the current case. The mitigation to be applied in favour of the Appellant was three-fold; his admission of the breach, his remorse, and the steps taken to offer amends to the injured jockey. Counsel invited the Tribunal to uphold the appeal and substitute the Raceday Committee's penalty with a four week period of suspension.

REASONS FOR THE TRIBUNAL'S DECISION

[30] The Tribunal has reviewed all the information that has been made available to it, and is now in a position to issue a decision with reasons. The first finding we make, is that we have no reason to believe that the Raceday Committee had erred in any matters of law in approaching the question of penalty.

[31] We have had the opportunity to review all of the available films from the race. Our independent analysis of the films allows us to make a number of observations. It is apparent that Mr Innes is the widest horse as the field enters the final straight. Mr Innes was pushing his mount forward with EFFERVESCENT's head clearly turned inwards.

[32] At the point where Mr Innes is shifting inwards, Mr McKay is observed to be ¾ length to his inside. In such close quarters, it would be expected that a rider of Mr Innes' calibre would be aware that Mr McKay was positioned where he was. Mr Innes then draws his whip and slaps his mount on the shoulder whilst moving inwards. WHATSUP then clips a heel and falls, dislodging Mr McKay.

[33] The rear-view is compelling in that at that point, there were only three horses racing behind Mr Innes (POPPY STAR, TOP OFTHE STRAIGHT and IN SEGRETO), and all three runners suffered severe degrees of interference; with all three having their chances diminished.

[34] Our observations indicate that Mr Innes was racing free of interference at the time, and that the consequences to Mr McKay and the three other horses are solely attributable to Mr Innes' actions.

[35] Like the Raceday Committee, we also place no weight on the worn grass crossing near the 200m. We cannot see, as Mr Innes had submitted, any discernible reaction, from the head-on film, of Mrs Allpress' horse at the same time of approaching the crossing strip. We also observed that Mrs Allpress' mount was wearing blinkers and a shadow roll. While only Mr McKay's horse fell, it was by mere chance that others did not hit the deck as well.

[36] Taking into account the totality of the carelessness, the Tribunal independently assesses the level of the Appellant's carelessness to fall within the mid to high range.

[37] With regard to the submission that Mr Innes did not have a chance to appropriately address the Committee on penalty; based on our review of the Raceday transcript, the Tribunal rejects that assertion. Mr Innes is experienced in raceday judicial proceedings and he could have raised any concerns regarding additional submissions he wished to make regarding penalty with the Committee on the day.

[38] The Tribunal notes that when Mr Innes was suspended on 5 January 2019, and subsequent to the penalty being relayed to him, the Written Decision of the Raceday Committee indicates that Mr Innes contacted Mr Oatham requesting the Raceday Committee consider changing his dates. Due to their being no objection this request was granted which included a Premier race meeting on 12 January.

[39] *The JCA Penalty Guidelines* identify a four week period of suspension for a breach of Rule 638(1)(d) where a fall results; we consider it appropriate to adopt this starting point.

[40] Mr Wicks contends that there was no rationale or methodology behind the Committee's application of a two week uplift. We reject that contention. Conversely, Mr Wicks has submitted the uplift should have been one week, with a one week reduction for mitigation, yet provides no comparative methodology except to indicate that it encompasses the Appellant's admission of the breach, remorse, and offers of financial assistance to Mr McKay. We note that the application of uplifts cannot necessarily be a pure statistical analysis, as each breach must be assessed according to the specific circumstances of the breach.

[41] In mitigation we apply Mr Innes' early admission of the breach. His remorse and offers of recompense to Mr McKay are a consequence of the Appellant owning up to his own actions. We also note this in the context of the offers of recompense not being made available to the Committee on the day.

[42] This offending also occurred on Mr Innes' first day back from a period of suspension for careless riding. This was of concern to the Raceday Committee and is of concern to the Tribunal. We deem Mr Innes' record for careless riding to be substandard. It is

appropriate that this is given some weight as an aggravating factor.

[43] While the Tribunal does not take warnings into account when assessing penalty, we note that the record produced by Mr Oatham, and accepted by the Appellant, shows that Mr Innes had received 12 warnings, with 11 of those for careless riding in the 12 months prior to the Trentham Meeting. This is a high number of warnings for an experienced Senior Jockey riding in a careless manner.

[44] In assessing penalty, like the Raceday Committee, we have also had regard to the specific black type races encompassed in any upcoming period of suspension that Mr Innes may face. The *JCA Penalty Guideline* Starting Points are framed as 'weeks', and Mr Wicks is accurate in suggesting that the Rules do not explicitly require a penalty to be expressed as weeks.

[45] If the Tribunal was to express a penalty in the way he seeks; i.e. one of four weeks and six days, that would be nothing but a penalty of convenience. With regard to upcoming Premier and Iconic meetings, their importance should have been in the forefront of the Appellant's mind, to ensure he rode within the rules to ensure he did not place any future engagements for such meetings in jeopardy.

[46] Both parties accept that the *Cooksley* decision is the only previous case of relevance since the changes to the Penalty Guide took effect. It is clear to us that there are distinct differences between that breach and the one currently before us.

[47] While Mr Cooksley had initially denied the breach, this plea was entered before he had been able to view all the available films. Once he had the opportunity to view the head-on film, he immediately entered a guilty plea. This plea, like the Appellant's, must therefore be viewed as being made at the earliest, appropriate, opportunity.

[48] Mr Wicks refers to Mr Cooksley's 'good record', whereas the written decision describes it as a "very good" record. This may on face value seem like semantics, but it is an important point of difference that is consistently applied by Raceday Committees to determine a sense of scale across mitigating and aggravating factors.

[49] Mr Oatham rightly indicated that the current breach occurred in a Rating 65 $40,000 race on a Premier Raceday, whereas Mr Cooksley's breach was in a $10,000 maiden race. It is fortunate that Mr McKay did not have any further rides, from which he may have been stood down from, in subsequent black type races on the day.

[50] While Mr Cooksley's suspension was expressed in weeks, it translated into 16 National Riding days, whereas Mr Innes' equated to 22 National Riding days. This was in essence approximately a one week difference.

[51] The other distinction was that a discount was applied in the case of *Cooksley*, due to the lengthy delay in having the matter heard, which Mr Oatham described as due to deficiencies on the part of the RIU. That Committee also accepted that the delay in having the matter heard, due to no fault of the respondent, meant that they exercised their discretion to consider the inclusion of the upcoming busy period of racing over the Christmas/New Year calendar as a mitigating factor. We infer that this was because if the matter was heard, without delay, then any period of suspension would have commenced much sooner in the calendar.

[52] At the time of his hearing, Mr Cooksley had one careless charge for 110 rides within the previous 12 months period (this being 19 December 2017); whereas Mr Innes had four careless charges for 334 rides prior to Trentham. Counsel submits that there is no material difference between both of these records on a proportionality basis. We do not accept that. The majority of Mr Innes' careless riding charges in the 12 months prior to this offending occurred within a four month period (23 September 2018, 3 November 2018 and 5 January 2019). This must be considered an aggravating feature.

[53] Having taken into account all of these factors, the Appeals Tribunal is of the opinion that there are sufficient aggravating factors to justify an uplift in excess of one week. After applying a reduction for Mr Innes' admission of the breach, we arrive at a penalty of a term of suspension of five weeks, and potentially one that is in excess of five weeks.

[54] Therefore, as per the provision of Rule 1007(2), the Tribunal does not consider the Raceday Judicial Committee's penalty of five weeks suspension to be either inadequate, inappropriate or manifestly excessive.

DECISION

[55] The Appeal is dismissed. The Raceday Judicial Committee's penalty is confirmed.

[56] Mr Innes' licence to ride is suspended from the conclusion of racing on Saturday 26 January 2019 until the conclusion of racing on Saturday 2 March 2019.

COSTS

[57] The RIU do not seek any costs. As the hearing was heard on a raceday, there will be no order for costs in favour of the JCA.

Signed at Palmerston North this 30th day of January 2019.

Mr Tangi Utikere

Chairman

BEFORE THE APPEALS TRIBUNAL OF THE

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UNDER THE RACING ACT 2003

IN THE MATTER of the Rules of Thoroughbred Racing

BETWEEN L INNES

Appellant

AND THE RACING INTEGRITY UNIT (RIU)

Respondent

Appeals Tribunal: Mr T Utikere (Chairman)

Mr A Dooley (Member)

Parties: Mr L Innes (Appellant)

Mr P Wicks QC (Counsel Representing the Appellant)

Mr J Oatham (for the RIU)

Registrar: Ms C Hutton

MINUTE OF APPEALS TRIBUNAL DATED 24 JANUARY 2019

[1] Mr Innes has filed a *Notice of Appeal* in relation to the 'Penalty' imposed by a Raceday Judicial Committee for a breach of Rule 638(1)(d) at the Wellington Racing Club's Meeting on 19 January 2019.

[2] This Appeal was set down for hearing prior to racing at Counties Racecourse tomorrow, Friday 25 January.

[3] This afternoon, the Tribunal received a request from Mr Wicks, indicating that he had been engaged by the Appellant, and that the timing surrounding tomorrow's fixture was unsuitable for him. He sought an adjournment of the hearing to allow counsel to appear and provide assistance to Mr Innes.

[4] Late this afternoon, the Tribunal convened an urgent teleconference with all parties to consider the adjournment request.

[5] Mr Wicks indicated that the Appellant had taken an initial position of being self-represented, but that circumstances had now changed, and he wished to be assisted by counsel. Mr Wicks also confirmed that the first he became aware that he was to be engaged was earlier in the day.

[6] Counsel advised that he had "good availability" over the next two weeks, but that Mr Innes might be away. Mr Innes also identified that he would be unavailable 3-7 and 9-15 February inclusive. It was suggested that 8 February or 16 February would be convenient.

[7] Mr Wicks also submitted that Mr Innes had the right to be represented by legal counsel, and that while he had only recently made that decision, it was something that should fall in favour of the Tribunal granting the adjournment request. He also stated that in the event the Appeal was successful, the Appellant would be focussing on a short reduction in the term of suspension imposed.

[8] Mr Oatham identified that the arrangements for the fixture had been set down for prior to racing tomorrow at Mr Innes' request. The RIU had arranged for a transcript of the raceday hearing to be made at short notice, that he had made efforts to get to Pukekohe as he had not been scheduled to be at that meeting, and the relevant films and TAB equipment arrangements had also been confirmed and put in place. He submitted that an adjournment would cause an inconvenience alongside some future unavailability on his part. There would also then be the question of an appropriate venue for the hearing to take place.

[9] The Tribunal has considered the adjournment request. When Mr Innes filed his *Notice of Appeal* he indicated that "given that I'm only appealing the severity of the suspension, would it be possible to have the hearing at Counties race meeting this Friday to save costs for both parties?" (email from Mr Innes with *Notice of Appeal* form attached, dated 22 January 2019). Accordingly, arrangements have been made, by all parties, for the hearing to take place in line with Mr Innes' request. To receive an adjournment request less than 24 hours out from that fixture is far from ideal. In the event that the request was granted, future availability was canvassed. It is clear that there are collective limitations on the availability of those required for a hearing to be set down for a future date. The proposed 8th and 16th February dates are not satisfactory.

[10] Mr Wicks is correct in that the Appellant has the right to be represented by legal counsel, and to seek advice, if he wishes. In the Tribunal's view, Mr Innes has had the time to seek and engage such assistance. The fact that he has chosen to leave it to this late stage is not a sufficient reason to displace the fixture set down for tomorrow.

[11] The Appellant's request for an adjournment is declined. The Appeal will commence as scheduled at 10.30am on Friday 25 January at the Counties Racecourse.

Signed at Auckland this 24th day of January 2019.

Mr Tangi Utikere

Chairman

Penalty: