

Non Raceday Inquiry RIU v G M Clarke - Reserved Written Decision Dated 19 December 2017 - Chair, Mr T Utikere

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE OF THE

JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

IN THE MATTER of the Rules of Greyhound Racing

BETWEEN RACING INTEGRITY UNIT (RIU)

Informant

AND GM CLARKE

Respondent

Judicial Committee: Mr T Utikere (Chairman)

Mrs N Moffatt (Member)

Parties: Mssrs A Cruickshank and S Irving (for the RIU)

Mr G Clarke (as the Respondent)

RESERVED WRITTEN DECISION DATED 19 DECEMBER 2017

FACTS

[1] The Respondent has been charged with a breach of Rules 62.1(cc), 62.1(f) and 62.1(o) of the *New Zealand Rules of Greyhound Racing*.

[2] The relevant Rules are as follows:

Rule 62.1 (cc): "Any person (including an Official) commits an offence if he/she: acts in contravention of or fails to comply with any provision of these Rules or any Rules made thereunder, or any policy, notice, direction, instruction, guideline, restriction, requirement or condition given, made or imposed under these Rules;"

Rule 62.1 (f): "Any person (including an Official) commits an offence if he/she: uses improper, insulting or offensive language in either written or spoken form towards, or in relation to:

(i) a Steward;

(ii) the Club Committee, or a member of a Club Committee;

(iii) the Board, or a member of the Board; or

(iv) any other person having official duties in relation to Greyhound racing;"

Rule 62.1 (o): "Any person (including an Official) commits an offence if he/she: has, in relation to a Greyhound or Greyhound racing, done a thing, or omitted to do a thing which is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;

[3] The specific Informations alleged:

Information No A4196

THAT on the 20th September 2017 being a Licensed Owner/Trainer, acted in contravention of the NZGRA Social Media Policy by posting on Greyhound RaceCafé an email sent in confidence by GRNZ CEO Phil Holden to NZGR Club Presidents/Racing Managers. An alleged breach of Rule 62.1(cc) of the Greyhound Racing New Zealand Rules of Racing.

Information No A4199 (Representative)

THAT between the 21st October and the 26th October 2017 being a Licensed Owner/Trainer, used improper and offensive language in several emails sent to two GRNZ Board members and to the CEO and Racing Manager of GRNZ. An alleged breach of Rule 62.1(f) of the Greyhound Racing New Zealand Rules of Racing.

Information A4200

THAT on the 26th October 2017 being a Licensed Owner/Trainer sent an abusive email to Licensed Person [identity withheld] (the Information identified the individual, however the Committee has redacted the name due to privacy conditions) which was improper and constituted misconduct. An alleged breach of Rule 62.1(o) of the Greyhound Racing New Zealand Rules of Racing.

Information A7152 (Representative)

THAT between the 30th October and the 05th November 2017 being a Licensed Owner / Trainer, used improper and offensive language in several emails sent to a Racing Integrity Unit Steward and two Racing Integrity Unit Officials.

[4] The relevant Penalty provisions are contained in Rule 63.1 which states:

“Any Person found guilty of an Offence under these Rules shall be liable to:

a. a fine not exceeding \$10,000 for any one (1) Offence; and/or

b. Suspension; and/or

c. Disqualification; and/or

d. Warning Off.”

PRELIMINARY MATTERS

[5] The Committee had previously issued three (3) Minutes dated 13 November, 24 November and 8 December following teleconferences held on those dates. Those Minutes identified that the Committee was in receipt of the Notice of Appointment, the Charge Rules and Penalty Provisions and an Authority to Charge Letter from the General Manager of the Racing Integrity Unit (RIU), Mr M Godber. The Minutes also covered a number of process related matters and as such, they are attached as Appendices A, B and C to this written Decision.

[6] It is also worth noting that leave for Information A4195, an alleged breach of Rule 62.1(cc), to be withdrawn was granted by the Committee upon application by the RIU at the teleconference held on 8 December.

[7] As a result of Mr Clarke's subsequent guilty pleas to the four remaining charges, a further teleconference was convened on 15 December to consider Penalty Submissions from both parties. At the conclusion of that teleconference, the Committee then indicated it would issue a Reserved Decision in writing. We are now in a position to do so.

INFORMANT'S SUBMISSIONS

[8] The RIU submitted a *Summary of Facts* that identified the following points (some of the content of the *Summary of Facts* has been redacted due to the offensive and/or sensitive nature of that content. The complete *Summary of Facts* was, however, placed before the Committee and the Respondent. The redacted copy still provides a context to the charges under consideration):

At the time of the offending the Respondent Graeme Mervin CLARKE was a licenced owner / trainer under the Rules of the New Zealand Greyhound Association (GRNZ). He is 69 years old.

As a condition of renewing a GRNZ trainers licence in 2017/2018 trainers had to acknowledge (by signing their renewal form) that they understood all policies associated with the Rules of GRNZ. Included in these policy documents was the 'Social Media Policy.'

Information A4196: The Respondent was a registered member of the social media racing forum RaceCafé under the name 'clarkie'. On the 20th September the Respondent started a thread on the Greyhound Café forum entitled "What do you think about this?" and posted a copy of an email.

The first line of the email read "Guys, a copy of an email I've sent to the GRNZ board and my team. Keeping you in the loop." The email author was Phil Holden, the CEO of GRNZ and contained sensitive information regarding his conversation with a print journalist who was about to publish a newspaper article on issues in greyhound racing.

Holden sent this version of the email in confidence to 11 recipients, being each GRNZ Club President / Racing Manager. The Respondents post remained on the website for approximately 12 hours until it was removed by the administrators at the request of GRNZ.

The Respondent was interviewed at Hatrick Raceway on the 11th October. He admitted to being the RaceCafe user 'clarkie' and to copying the email onto the thread he created. He initially stated that he could not recall who had sent him the email and thought it was

a press release but later stated that it had been sent to him by suspended greyhound trainer John Goode.

He believed he had done nothing wrong as he was not aware the email was confidential. The Respondent also stated that he was aware of the GRNZ Social Media Policy but he had been "blackmailed by GRNZ into signing it" as a condition of renewing his licence. The Respondent has now been banned from the RaceCafe website by the administrators.

Information A4199 (Representative): At 7.09pm on the 21st October 2017 the Respondent sent an email to Phillip Holden, the CEO of GRNZ. The email contained improper commentary and concluded with inappropriate remarks. At 9.32pm the Respondent sent another email to GRNZ Board Member Graeme Calverley, which also contained inappropriate language. At 6.09pm on the 23rd October the Respondent sent an email to ex GRNZ Board Chairman Craig Rendle which commenced with the words "You are a pxxx of sxxx mate!!!" At 6.09pm on the 24th October the Respondent again sent an email to Phillip Holden which concluded with "Scrum up Mr Holden or fxxx off..... Regards Clarkie." At 6.18pm the Respondent sent another email to Greg Kerr, the Head of Racing at GRNZ, including the words "In all my years of passionately being involved with these beautiful dogs you take the cake. A sxxx Cake that is. Fxxx Off... You are an axxxhole. Regards Clarkie." At 7.45pm on the 26th October the Respondent sent another email to Craig Rendle, copied to Phillip Holden, which concluded with the words "You are in my opinion a xxx... Clarkie."

Information A4200: At 9.21pm the Respondent sent an email to a Licensed Person that contained inappropriate language specifically directed at that Licensed Person.

Information A7152 (Representative) At 6.06pm on the 30th October the Respondent sent an inappropriate email to RIU Investigator Simon Irving. At 6.37pm the Respondent sent an inappropriate email to Chief Greyhound Steward Gavin Whiterod: At 6.44pm the Respondent, in response to an email from Simon Irving containing Charge Documents and a recommendation to desist from sending further inappropriate emails, replied with an email containing inappropriate content. At 7.25pm the Respondent sent an email to the RIU Manager of Integrity Assurance Neil Grimstone containing inappropriate content. At 7.12pm on the 31st October the Respondent sent another email to Simon Irving containing inappropriate content. At 7.13pm on the 02nd November the Respondent sent another email to Neil Grimstone, copied to Gavin Whiterod, ending with "Fxxx you, and the Rotten Eggs .. Regards Clarkie" At 6.04pm on the 05th November the Respondent sent another email to Gavin Whiterod that contained inappropriate language in the subject title. At 6.07pm the Respondent sent another email to Gavin Whiterod, that contained inappropriate language.

The Respondent has been involved in the greyhound industry for 50 years. He has had one previous charge for posting disparaging comments on social media in 2009.

[9] When invited by the Committee to elaborate on any matters pertaining to the Summary, Mr Irving advised he had nothing further to add.

RESPONDENT'S SUBMISSIONS

[10] Mr Clarke advised the Committee that he accepted most of the Summary, but did want to provide some clarity around the breach of the Social Media Policy. While he accepted that he had circulated the email content in question, he submitted that he had no ill-intent or deceit in doing so. He had thought that what he had received was a Press Release from Greyhound Racing New Zealand and had not read through the whole document before 'copying and pasting' it onto the RaceCafe site. He stated that when he looked back on his actions, he believed it to be an honest mistake.

DECISION

[11] As the charges were admitted, the Committee deem the charges proved.

PENALTY SUBMISSIONS

The Informant's Submissions on Penalty

[12] At the direction of the Committee, the RIU submitted Written Penalty Submissions (some of the details from the RIU's Written Penalty Submissions have been redacted due to the sensitive nature of the content) that were made available to Mr Clarke ahead of the teleconference on 15 December. Their Submissions covered the following points:

At the time of the offending the respondent Graeme Mervin CLARKE was a licensed Owner Trainer under the New Zealand Greyhound Rules of Racing. He has now relinquished his licence and transferred ownership of his racing dogs into his wife's name who also holds an Owner Trainer licence. CLARKE has been involved in the greyhound industry for 50 years.

The four charges, including two representative charges, against CLARKE have now been admitted. The circumstances are detailed in the attached combined Summary of Facts. The penalties which may be imposed are detailed in the Charge Rule and Penalty Provisions Documents.

PENALTY SUBMISSIONS

It is expected that licence holders will at all times act professionally and properly. Good character is one of the conditions upon which a licence is granted. Failing to comply with GRNZ Rules and Policies must be viewed seriously and any penalty must act as a deterrent

for others.

It is submitted that the abusive, personal and persistent nature of CLARKE'S emails is an affront to not only the recipients but also to the greyhound industry. His posting of confidential information on social media is also contrary to the standards expected of a licence holder.

It is clear from his behaviour that CLARKE takes issue with the administrators and officialdom within the greyhound industry. He has chosen the wrong forums to vent his displeasure and he should be well conversant with the proper grievance processes given his experience in the industry.

It is the Informant's position that, having regard to all factors and that CLARKE has made it clear he is in no position to pay a fine, that a disqualification of one year is an appropriate penalty.

PREVIOUS CASES

RIU v J Goode (31.05.2017) – GRNZ trainer misconducted himself by abusing and using foul language to a Racing Investigator and a Steward. He received an eight month suspension.

RIU v McPhee (06.12.2011) — GRNZ trainer charged with abusing / threatening a Racing Investigator. He received a six month disqualification.

NZTR v R Mcanulty (17.03.2011) – TR owner left several abusive telephone messages and sent several abusive emails to the NZTR Chairman of the Board and the Chief Steward. He received an 11 month disqualification and a \$6000 fine.

AGGRAVATING FACTORS

CLARKE has one previous serious racing offence proved in 2009 for engaging in conduct detrimental to the interest of GR in that he posted disparaging remarks regarding a GRNZ employee on a greyhound social media site. He was disqualified for three months.

CLARKE was advised by the Committee in Minute No 2 dated 24 November - [9] Mr Clarke has confirmed that he also understands that he is not to communicate with any of the RIU witnesses, unless expressly permitted by this Committee, whilst these proceedings are underway. At 7.11pm on 02 December CLARKE made an abusive telephone call to Simon Irving (a Prosecution witness) followed up shortly after by another abusive email.

Some of the abusive emails sent by CLARKE were of a very personal nature. In particular the comment he made to a Licensed person stating: [details withheld from publication]. Two of the recipients have drafted 'Victim Statements' detailing not only the impact that CLARKE's unsavoury comments have had on them but on their families as well.

CONCLUSION

Based on previous decisions, the aggravating factors as listed and the overall circumstances considered in this case, the RIU position believe one year's disqualification is an appropriate penalty.

[13] As identified, the Committee was also in receipt of two *Victim Impact Statements* from Greg Kerr and Craig Rendle. The Committee was also furnished with a copy of the written Decision for Mr Clarke's previous breach in 2009 as referred to in the RIU's Written Penalty Submissions.

[14] In response to questions from the Committee, Mr Irving confirmed that Mr Clarke was no longer a licensed person. He advised that Mr Clarke had emailed GRNZ to relinquish his licence and at the same time had transferred ownership of his dogs to another person. Upon receipt of that email, GRNZ had accepted the relinquishing of Mr Clarke's licence and had also actioned the transfer of his dogs' ownership.

[15] Mr Irving also accepted that there was some concern expressed by the Committee that one of the *Victim Impact Statements* seemed to overstep the mark in providing specific direction on what the penalty should be. Mr Irving informed the Committee that he would advise that industry participant of the inappropriateness of that level of involvement in the prosecution phase.

[16] Mr Irving confirmed the position of the RIU that due to Mr Clarke's inability to pay a fine, disqualification was the only suitable option, even though the Respondent did not currently hold a licence. He advised that the RIU would wait until the penalty had been imposed before checking what the implications, if any, would be for any subsequent involvement Mr Clarke may have with the person to whom his dogs had been transferred. However, Mr Clarke advised that no implications arose as the person whom he transferred ownership to resides at a different property than him.

[17] On the question of costs, Mr Irving confirmed that the RIU were not seeking any cost orders.

The Respondent's Submissions on Penalty

[18] In presenting his submissions, Mr Clarke advised the Committee that he was very comfortable with how the RIU and the JCA had dealt with the charges he was facing. He stated that if GRNZ had 'handled' these matters correctly, then he did not believe the Committee would be required to deal with the current charges, and that a complete waste of time and resources would have been

avoided.

[19] He re-iterated his belief that the email content he had posted in breach of the *Social Media Policy* was a genuine mistake. He accepted his wrong-doing and apologised for his actions, describing them as being 'out of character' for him. He was also apologetic for the various emails that he had sent, as he did not wish to cause offence to anyone.

[20] He had been involved in the Greyhound industry since 1965 and had trained 40 dogs at one stage, going to the races one to two times per week. He explained his belief that he had simply been forced out of greyhound racing over recent years as things started to appear more competitive and he was unable to secure many raceday starts.

[21] Mr Clarke simply wanted to put these matters behind him and move on. He identified a level of comfort with the penalty of 12 months disqualification as he was not in a position to pay a monetary fine. He was on a pension, had current vet bills to cover, and was in a "go nowhere situation". He advised that he could provide financial proof to the Committee if required.

REASONS FOR PENALTY

[22] In reserving its decision, the Committee has taken the time to consider all of the submissions that have been placed before it. While both parties submit that a period of disqualification is the appropriate penalty, that discretion lies ultimately with the Committee.

[23] This Committee takes the view that any period of disqualification is an extremely severe sanction; and in that circumstance, a reluctance to determine such a penalty *on the papers* exists. The ideal context would have been for the Respondent to attend a hearing, but circumstances have not made that an easy possibility. While the Committee may have opted to proceed in that manner nonetheless; by allowing the RIU and Mr Clarke to address Penalty Submissions via teleconference, while not wholly ideal, in our view this has met the needs of all parties.

[24] It is clear that Mr Clarke has been involved in the Greyhound industry over many years. He was a licensed person at the time that these offences took place, so he was subject to the *New Zealand Greyhound Rules of Racing*.

[25] There were a number of emails sent from him to many industry participants. While they were directed towards specific individuals, upon review by the Committee, there is no doubt that their content was offensive and inappropriate. Mr Clarke by his own admission has described that content as "locker room language".

[26] He explained this further by expressing his concern that there was a female member of the Judicial Committee, and he was mortified that she had read what had been written in those emails. As part of this process, he had apologised to Mrs Moffatt for placing her in a situation where she was required to read the "locker room talk".

[27] In all our interactions with Mr Clarke, he has been polite and respectful. This perhaps goes some way to suggest that he has the capacity to demonstrate what is an appropriate and professional level of behaviour and conduct.

[28] The inappropriate emails that he had sent were over a three month period. While someone may have a lapse of judgement on a singular occasion, we note the sustained nature of these emails, to different individuals, over that length of time. The nature of Mr Clarke's actions is also evident by the disregard shown towards an expectation of the Committee that he would not make contact with any prosecution witness without the express consent of this Committee; as identified in the RIU's Penalty Submissions.

[29] It is apparent to us that the Respondent's actions have been borne out of a sense of frustration. It is clear that he did not like the approach of GRNZ to some industry matters, but licensed persons simply cannot behave in that manner. To do so displays a lack of awareness and a lack of self-control. Put quite simply, Mr Clarke was being a nuisance and communicating some rather repugnant stuff.

[30] Mr Clarke has let himself down more than anything. At his age and with his longevity in the industry, he should have directed any concerns that he had in a different manner. To his credit, in hindsight he now understands, and accepts, that a different avenue would have been more appropriate.

[31] The greyhound industry is at times subject to much public criticism and concerns around animal welfare. The sort of behaviour displayed by Mr Clarke does little to improve that negative perception.

[32] We accept that the offending would have been worse if the nature of the emails were disclosed in a public forum. While these were private emails, this still does not make such action justified.

[33] While the breach of the *Social Media Policy* has been admitted, the point of difference for that breach is that it does not contain the personal element that exists with the other charges. While Mr Clarke has given an explanation for circulating the confidential email content, his actions remain in breach of the conditions of being a licensed person at the time.

[34] We have reviewed the cases that the RIU have presented in their Penalty Submissions. We consider the circumstances of the current breaches, noting that two are Representative charges, to be more serious than the three cases identified by the RIU. In light of this, we consider that a period of disqualification is an appropriate penalty.

[35] The issue of whether this Committee can impose such a penalty has been identified through our discourse with Mr Irving. This is due to the fact that GRNZ has accepted the Respondent's request to relinquish his licence, and as such Mr Clarke is no longer a licensed person.

[36] We have taken the time to explore this further. The *New Zealand Greyhound Rules of Racing* provide the following definition for "Disqualify" (Clause 1 (Definitions), *New Zealand Greyhound Racing Rules of Racing*):

"...means in relation to a **Person** (Emphasis added) or a Greyhound means the loss of all rights, licences or registrations under these Rules and Disqualification shall have a corresponding meaning."

[37] The subsequent definition of "PERSON" in the *Rules* is: "has the meaning given to that term in the Constitution." (Clause 1 (Definitions), *New Zealand Greyhound Racing Rules of Racing*.)

[38] Following on from this, we are then required to look at the Constitution (*Constitution of New Zealand Greyhound Racing Association Incorporated*) referred to above which defines a "person" as: "... any persons whether natural or corporate and includes without limitation Clubs, Companies and Trusts."

[39] As such, we are satisfied that a period of disqualification can be imposed as there is no requirement for such a person to be licensed at the time of imposing such a penalty.

[40] A disqualification penalty will bring limitations upon Mr Clarke's potential involvement within the industry, but it also brings a specific restriction upon holding or obtaining a Licence. Considering the collective nature of all four breaches, and the fact that two are Representative charges, we adopt a starting point of a 16 months period of disqualification.

[41] The RIU submit that Mr Clarke's previous racing offence in 2009 is an aggravating factor. Whilst there are similarities between that historical breach and the current ones, given the passage of time, we disagree and apply little weight to its consideration.

[42] In mitigation we have considered Mr Clarke's long standing involvement within the industry over more than 50 years. While he did not admit the breach at the earliest opportunity, once he became aware that this process was not the forum with which he could have some of his concerns addressed, he has eventually admitted the breach. For these factors we are prepared to afford him a 3 months discount.

PENALTY

[43] Mr Clarke is disqualified under the provision of Rule 63.1 for a period of 13 months from the date of this Decision.

COSTS

[44] There have been no fewer than four (4) teleconferences to progress these charges and a substantial amount of time from all participants has been required. *Briefs of Evidence* from at least eight (8) witnesses have been directed and full disclosure from the RIU has occurred. The position of the RIU in not seeking costs could in these circumstances be described as generous.

[45] Mr Clarke has identified his current financial position, and we will not require him to provide the evidence he says he has in that regard. While there have been costs incurred by the JCA, no order for costs will be made.

Signed at Palmerston North this 19th day of December 2017.

Mr Tangi Utikere

Chairman

APPENDIX A

MINUTE OF JUDICIAL COMMITTEE DATED 13 NOVEMBER 2017

[1] The Respondent is a Licensed Greyhound Trainer who faces five charges. A teleconference was convened today with Mr Irving and Mr Clarke to progress these matters.

[2] The charges are detailed in Informations A4195, A4196, A4199, A4200 and A7152. They collectively allege a breach of Rules 62.1(cc), 62.1(f) and 62.1(o) of the New Zealand Rules of Greyhound Racing. Informations A4199 and A7152 relate to an alleged breach of Rule 62.1(f) and are Representative charges.

[3] The Racing Integrity Unit (RIU) have circulated an alleged *Summary of Facts* for each of the charges, which Mr Clarke has confirmed he is in receipt of.

[4] During today's teleconference, the respondent advised the Committee that he was self-represented and that he enters Not Guilty pleas to each of the charges he is facing.

[5] Mr Irving has identified that in light of these Not Guilty pleas, the RIU will rely on seven or eight witnesses. He has advised that he will be in a position to provide *Briefs of Evidence* for each of the witnesses by week's end.

[6] If witnesses will be required to attend the hearing they will be required to travel from Auckland, Tauranga, north of Hamilton, Wellington and Wairarapa regions. Mr Clarke lives in the National Park area. Full attendance of witnesses at a hearing will come at some expense, so Mr Clarke is aware that he will be required to review the *Briefs of Evidence* to ascertain which RIU witnesses he will require at the hearing.

[7] The Committee also notes that Mr Irving is the subject of one of the charges (A7152) Mr Clarke is facing. Depending on Mr Clarke's response to the *Briefs of Evidence*, will determine what course of action is taken in relation to Mr Irving's prosecutorial involvement.

[8] Mr Clarke told the committee that he will be required to make arrangements for someone to look after his dogs and arrange transportation assistance to attend a hearing. The Committee has advised all parties that a hearing set down for Tuesday 5 December will provide ample opportunity for any arrangements to be made.

[9] We make the following directions:

(a) Mr Irving is to provide RIU witness *Briefs of Evidence* to the Executive Officer of the JCA for dissemination to Mr Clarke **by 4.00pm this Friday 17 November**.

(b) Upon receipt of the RIU's *Briefs of Evidence*, Mr Clarke is directed to advise the Executive Officer of the JCA via email **no later than 4.00pm on Wednesday 22 November** of:

(i) **His confirmed pleas to each of the five charges;**

(ii) **Which RIU witnesses (if any) he will require to attend the hearing in order to challenge the evidence they will be giving.**

(c) These charges are set down for a Hearing on **Tuesday 5 December at Awapuni Racecourse, Palmerston North commencing at 9.00am**. The Executive Officer of the JCA is to make the necessary arrangements for the hearing to take place.

[10] Either party may apply to the Committee for leave to have any variation to these directions made. The Committee may also direct that a further teleconference is held if it considers it desirable to do so.

Signed at Palmerston North this 13th day of November 2017.

Tangi Utikere

Judicial Chairman

APPENDIX B

MINUTE No. 2 OF JUDICIAL COMMITTEE DATED 24 NOVEMBER 2017

[1] Both parties have complied with previous directions issued in a Minute dated 13 November, for which the Committee is grateful. As a result of the responses received, a further teleconference has been held today.

[2] In his written response, Mr Clarke has confirmed 'Not Guilty' pleas to all charges, and that he requires the attendance of the following RIU witnesses for the purpose of cross-examination: Phil HOLDEN, [identity withheld], Gavin WHITEROD, Neil GRIMSTONE, Simon IRVING, Gregory KERR and Craig RENDLE.

[3] Upon review of the disclosed *Briefs of Evidence* for each of the RIU witnesses, it is clear that the full extent of some of the witnesses' evidence will be that they have an identified email address; that an email was received from the address of clarkie@farmside.co.nz; and that the copy of the said email is attached as an exhibit. In light of this, Mr Clarke has been asked to further consider whether he requires those witnesses for the purposes of cross-examination.

[4] In the lead up to today's teleconference, the respondent has advised the JCA that he wishes to seek clarity and further understanding of the process that will be used by the Committee in hearing the charges against him. The general process has been explained to Mr Clarke on the teleconference today, but for absolute clarity, the tentative process that will be used for a defended hearing will be as follows:

A. The RIU will make some opening statements regarding the charge(s);

B. The RIU will then call their witnesses, one by one;

C. The RIU will pose questions to their witness to be answered ('evidence-in chief');

D. Mr Clarke will then 'cross-examine' the RIU witness, restricted to the evidence the witness has given;

E. The RIU witness will answer any questions from members of the Committee;

F. The RIU will then pose any final questions ('re-examination') to their witness before they are excused and the next witness is called.

G. Once the RIU has called all their witnesses, Mr Clarke will then have an opportunity to present his case, if he wishes to. This may involve giving evidence himself and calling witnesses. He and they will go through the same 'evidence-in-chief', 'cross-examination' and 're-examination' process as outlined above.

H. Once Mr Clarke has completed presenting his evidence to the hearing, the RIU will have an opportunity to make any concluding submissions;

I. Mr Clarke will then have the final opportunity to make any concluding submissions;

J. The Committee will then adjourn to consider the evidence and make a determination as to whether the charge(s) against Mr Clarke has been proved.

[5] It has been indicated to Mr Clarke during today's teleconference, that the primary consideration of the Committee in determining whether he is found guilty of the charge(s) against him is:

a) whether he sent the alleged email messages; and

b) whether the Committee considers the content of the email messages to be improper or offensive, or that the content of such messages constitutes misconduct.

[6] Mr Clarke has told us that he now understands the narrow focus that the Committee is required to consider. He has also stated today that it was his intention to call witnesses who would touch on some of the wider issues within the industry. He now understands that any evidence must relate to the specific charge(s) he is facing; and that any attempt to introduce evidence that falls outside of that narrow focus will be ruled inadmissible and will not be permitted. He has confirmed that he understands this.

[7] As a result of today's clarity from the Committee, Mr Clarke wishes to have some time to consider his current position. The Committee will afford him that opportunity.

[8] Mr Irving has identified that if a significant number of witnesses are required to be in attendance by the Respondent in a defended hearing, specifically those witnesses who fall within the category identified in para [3] above, and the RIU is successful with its prosecution, then they will be seeking a costs award that covers the entirety of the RIU's expenses. It is understood this may be substantial and he has cited *RIU v Gommans, Poutama and Jenkins* as a greyhound code example that the Respondent may wish to familiarise himself with. Mr Clarke has stated that he understands this and as a counteractive suggestion has cited *Goode v RIU*.

[9] Mr Clarke has confirmed that he also understands that he is not to communicate with any of the RIU witnesses, unless expressly permitted by this Committee, whilst these proceedings are underway.

[10] We make the following directions:

(a) Mr Clarke is to consider the charges against him, and is to advise the Executive Officer of the JCA **no later than 4.00pm on Thursday 30 November** of:

(i) His confirmed pleas to each of the five charges;

(ii) If he maintains his plea(s) of Not Guilty, then which RIU witnesses (if any) he will require to attend the hearing in order to challenge the evidence they will be giving.

(iii) In the event that he continues to defend all/any of the charges, the names of the witnesses he intends to call for his defence.

(c) These charges were set down for a Hearing on **Tuesday 5 December at Awapuni Racecourse, Palmerston North commencing at 9.00am**. This date is now vacated. The Executive Officer of the JCA is to cancel the arrangements that were in place.

(d) Mr Clarke has been advised that he may find it beneficial to seek some advice/guidance from a legal representative or alternatively, someone who is familiar with JCA proceedings.

(d) After these directions have been complied with, the Committee will then determine what next steps will be taken.

Signed at New Plymouth this 24th day of November 2017.

Tangi Utikere

Judicial Chairman

[1] The Judicial Committee was in receipt of an email from RIU Investigator Mr A Cruickshank earlier this week indicating that he had been in discussions with the Respondent. The email identified that: *"In good faith and to avoid the cost involved in conducting a defended hearing Mr Clarke indicated that he is prepared to plead guilty to four of the five charges and have the matter dealt with on the papers. The RIU would seek to withdraw Information A4195 - Breach of Social Media Policy"*.

[2] As a result of this indication, the Committee convened a teleconference of all parties today. Mr Clarke has confirmed that he now enters guilty pleas to the charges as detailed in Informations A4196, A4199, A4200 and A7152.

[3] As a result of those discussions between both parties, the RIU have sought leave to have Information A4195 withdrawn.

[4] In regard to Penalty, the RIU have indicated that they will be seeking a period of Disqualification. Mr Clarke seems to accept that that is a likely outcome. While both parties might have mutual agreement amongst themselves as to the potential penalty; the imposition of a period of disqualification is an extremely serious sanction, and one that the Committee is reluctant to deal with *on the papers*.

[5] In our interactions with Mr Clarke to date, he also appears better able to articulate himself in oral rather than written form. In this instance, he may disadvantage himself if this matter is to be dealt with in writing.

[6] Mr Clarke confirmed that the intention to have matters dealt with *on the papers* is related to costs. Our preference would be for this matter to be heard on a raceday, however Mr Clarke stated that his current situation would make that difficult for him.

[7] A happy medium to meet our desire to hear from the Respondent verbally is to hold a further teleconference for him to present his submissions of Penalty. Both parties are comfortable with that approach.

[8] We make the following directions:

(a) Guilty pleas are now entered against the charges as detailed in Informations A4196, A4199, A4200 and A7152.

(b) Leave is granted for Information A4195 to be withdrawn.

(c) For completeness, Mr Cruickshank is to email the alleged *Summary of Facts* for each charge to the Executive Officer of the JCA.

(d) Mr Cruickshank is to also email the RIU's written Penalty Submissions to the Executive Officer of the JCA by 4.00pm on Wednesday 13 December 2017.

(e) Upon receipt of those emails, the Executive Office of the JCA will forward them to the Respondent and the Judicial Committee.

(f) The Committee will then issue directions for a teleconference to be held so that Mr Clarke can present his Penalty Submissions in response verbally to the Committee.

Signed at Palmerston North this 8th day of December 2017.

Tangi Utikere

Judicial Chairman

Penalty: