

The consequence of marring will be that the greyhound is suspended for a period and the specifics are recorded on the certificate of registration or the weight card of the greyhound. It was not in dispute that HELLO I'M BUGSY had marred another greyhound during the running of race 4 on that day.

5. Following the running of race 4, a deputy Steward Ms Pauline MacDonald advised Mrs MacLean that the stewards were enquiring as to whether HELLO I'M BUGSY had marred another greyhound during the running of the race, and a discussion ensued as to the viewing of the race footage. Mrs MacLean was under the impression following that discussion that she should take HELLO I'M BUGSY to the vet room at the track.
6. Shortly afterwards, Ms MacDonald approached Mrs MacLean again, having been instructed by Mr Martins, the Chief Steward to do so and advised Mrs MacLean to attend the Stewards' room. Mrs MacLean did not in fact attend the Stewards' room at that time.
7. Later, following race 7, Mrs MacLean did attend the stewards' room but was told by Mr Martins to come back to the Stewards' room following race 10, which was the last race on the programme.
8. At that stage, Mrs MacLean had intended to leave the race meeting and go home following race 7, which was the last race in which she had a greyhound running. Part of the reason for this was that she had a sick child who had in fact been in hospital earlier that day.
9. Mrs MacLean attended the Stewards' room after race 10 and a transcript headed "RWWA Steward's Interview held at Greyhound WA Cannington Stewards' Room on Wednesday 1 August 2018" was later tendered at the Stewards' inquiry held on Monday 11 September 2018 and became exhibit 5 in that inquiry. At the conclusion of that interview, Mrs MacLean was advised that she would be contacted "in the coming days".
10. On 7 August 2018, Stewards wrote to Mrs MacLean advising that they were opening an inquiry into an allegation that she had breached 2 rules of greyhound racing, namely GAR 86(o) and GAR 86(f)(i).
11. GAR 86 reads:

"a person (including an official) shall be guilty of an offence if the person (o) has, in relation to a greyhound or greyhound racing, done a thing, or permitted to do a thing, which, in the opinion of the stewards or the controlling body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct".

12. The specifics of the charge were that on 1 August 2018, shortly after the running of race 4, Mrs MacLean, being a registered person with RWWA, when directed to attend the Stewards' room by trainee Steward Ms Pauline MacDonald in the kennelling area, said "when I'm ready" and walked away, which in the opinion of the stewards was improper.
13. GAR 86(f)(i) reads:

"a person (including an official) shall be guilty of an offence if the person (f) engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contentious, unseemly, improper, insulting or offensive language, conduct or behaviour in any manner or form towards, or in relation to [(i) a steward]".
14. The specifics of that charge were that on 1 August 2018, following the running of race 7 and in the vicinity of the Stewards' room doorway Mrs MacLean, being a registered person with RWWA, said "you're a joke" towards Chief Steward Mr Carlos Martins, and in so doing, had engaged in the use of offensive language towards a Steward.
15. At the Stewards' inquiry held at the Ascot stewards' room on Monday 11 September 2018, Mrs MacLean was assisted by Mr Tim Mullany, the President of WAGBOTA. Mrs MacLean did not accept that she was guilty of either charge.
16. In relation to the first charge, Mrs MacLean told the inquiry that she was not aware that she was directed immediately to go to the Stewards' room, and that she felt she should first have her dog vetted and also speak to her husband, who was the trainer of the dog, as she understood that it was to be alleged that the dog had marred.
17. In relation to the second charge, Mrs MacLean gave evidence that she recalled saying to Mr Martins that "this is a joke" and not "you're a joke". She said that she made the former comment out of frustration as it had been her intention to leave the racetrack after race 7 and she believed that Mr Martins was frustrating her attempt to do so, by making her wait at the track to be spoken to after the running of race 10. At that point she also believed that the attendance was simply necessary to have the paperwork associated with her dog having marred another prepared and handed to her.
18. Both Mr Martins and Ms MacDonald gave evidence at the inquiry that the words "you're a joke" were the words that were actually used in relation to the second charge. This mirrored the information that they had provided in the interview that was conducted on 1 August 2018.

Mrs MacLean, during the course of the interview and also again at the inquiry maintained that the words she had used in relation to the second charge were “this is a joke”.

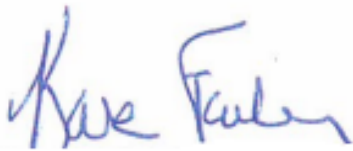
19. Having adjourned to consider the evidence and consider whether the charges were proven, the Stewards’ panel, comprising of Mr Denis Borovica, Mr Graham O’Dea and Mr Chris Jasprizza came to the unanimous conclusion that the charges were proved. In so doing, it is of course evident that the Stewards preferred the evidence of Mr Martins and Ms MacDonald to that of Mrs MacLean.
20. Thereafter, the panel of Stewards moved to discuss penalty.
21. Pursuant to GAR 95, Stewards have the power to reprimand, fine, or to suspend, disqualify or cancel licences or a combination of those penalties. On Mrs MacLean’s behalf, Mr Mullany raised the possibility of a warning or a fine that had a suspension period attached to it. There was some discussion as to previous fines that had been imposed for misconduct, and also to previous matters that had been the subject of disqualification or cancellation of a licence. Mrs MacLean gave some personal information to the Stewards which was also relevant as to the number of greyhounds who were in her care and her family’s circumstances.
22. At the conclusion of the inquiry the Stewards advised Mrs MacLean that they would advise her in writing as to their decision as to penalty.
23. On 12 September 2018 Stewards wrote to Mrs MacLean enclosing their reasons for decision and advising that Mrs MacLean would be fined \$300 for the breach of GAR 86(o) and a fine of \$1500 for the breach of GAR 86(f)(i). In addition, the Stewards suspended \$800 of the total fine imposed for a period of 12 months as of the 12 September 2018 on condition that Mrs MacLean not incur any further conduct or behaviour related offences during that time period. Mrs MacLean was advised of her right to appeal to the Racing Penalties Appeal Tribunal.
24. By notice of appeal dated 21 September 2018, Mrs MacLean appealed to the Racing Penalties Appeals Tribunal, her grounds of appeal being “severity of fine on both charges”.
25. Mrs MacLean advised in the notice of appeal that she wished to be represented by Mr Mullany.
26. The matter came on for hearing before me on Thursday 25 October 2018. Pursuant to section 17(6) of the Racing Penalties Appeals Tribunal Act, I gave permission to Mr Mullany to represent Mrs MacLean. Having heard from both Mr Mullany and Mrs MacLean and from

Mr Borovica for the Stewards, I advised that I would reserve my decision in relation to the matter.

27. At the hearing of the appeal, Mr Mullany and Mrs MacLean clarified that they sought only to appeal against the severity of the penalties imposed and did not seek to challenge the findings of guilt against Mrs MacLean by the Stewards.
28. This means that the Tribunal must look at the penalty that was imposed upon Mrs MacLean in light of the Stewards' findings of fact leading to their unanimous determination that she was guilty of breaching the rules in the manner that the stewards found had been proved to the required standard (referred to in the Stewards' decision as in the "Brigginshaw Standard"). The Tribunal is not in a position to comment on those findings of fact.
29. In short, the Stewards found that Mrs MacLean had refused a valid direction to attend the Stewards' office when approached on the second occasion on 1 August 2018 by Mrs MacDonald and that refusal constituted improper conduct under Rule 86(o) and that Mrs MacLean had directed to Mr Martins the words "you're a joke" that being a use of offensive language towards a Steward.
30. I note that the words as found by the Stewards might also be perceived to be "contemptuous, unseemly, improper or insulting" for the purposes of Rule 86(f). Although it is not clear from the Stewards' findings, the classification of the words used as "offensive language", no doubt were founded from the evidence given during the course of the interview on 1 August 2018 by Mr Martins when he stated "I'm most offended by those comments, I think they are rude and they're offensive and they were totally unnecessary, there's no need to say 'you're a joke'. Language like that towards the Chief Steward is unacceptable, it's rude".
31. As noted above, Mrs MacLean had held a licence in the greyhound industry for 15 years. She did have a record of prior offending against the rules, which was noted during the course of the inquiry as follows:
 - 28 June 2006 - Mrs MacLean pleaded guilty to a breach of Rule 125(1)(o) misconduct and was fined \$100;
 - In January 2007 she pleaded not guilty against offending against the same rule and was fined \$200;
 - On 5 August 2008 she pleaded guilty to a similar charge and was fined \$350;
 - On 2 May 2011 a further charge under the same rule resulted in charge of \$150.

32. There was apparently a further fine on 2 May 2011, however it was not clear in the inquiry what fine was imposed for that offence.
33. It was accepted that Mrs MacLean had not been in breach of any of the Rules of Greyhound Racing since 2011.
34. At all material times Mrs MacLean was financially able to pay a fine, which she confirmed at the hearing of the Tribunal. There was nothing to suggest to the Tribunal at the hearing that a fine was an inappropriate penalty, merely that the fines imposed in this case were excessive. It was also not suggested that the Stewards made any specific error in settling upon the dispositions of the matters as they did so.
35. The suggestion was that when looked at in light of the circumstances, the fines imposed exceeded those required and were therefore excessive.
36. I am not persuaded that the fine of \$300 imposed upon Mrs MacLean in relation to the charge against her of misconduct pursuant to Rule 86(o) is so severe that the Tribunal should interfere and impose a lesser penalty. In fact, I am of the view that the fine clearly reflects the nature of Mrs MacLean's behaviour, whilst taking into account matters personal to her, as found by the Stewards.
37. In their reasons for decision at paragraphs 14-16 and 19, the Stewards discussed penalties imposed upon others for offences involving inappropriate or offensive language toward Stewards. Those penalties ranged from fines between \$1000 and \$5000 and in at least one case resulted in disqualification.
38. Whilst most of those cases could be distinguished from the present, the case of Mr M Purdon was possibly the closest comparator. Mr Purdon said in that matter that the Stewards were "a disgrace". He was fined \$1000, \$500 of which was suspended for two years.
39. Whilst the words used by Mr Purdon were similar to those the Stewards found Mrs MacLean to have used, he had an unblemished record in the harness industry, had pleaded guilty and expressed apologies or remorse.
40. In fining Mrs MacLean \$1500 for the conduct breaching Rule 86(f)(i), Stewards recognised (at para 22) that the total of the fines, being \$1800, was "not insignificant". This led to a suspension of \$800 of the \$1500 fine, for a period of 12 Months. The total fine immediately payable was therefore \$1000.

41. The suspension of part of a fine is a power reasonably regularly used by Stewards. It serves to ameliorate the immediate financial burden of a substantial fine. It also properly acts as an incentive to remind a person charged with offences of this nature to control their behaviour in the future.
42. The greyhound racing industry, and the racing industry as a whole, relies upon preserving its integrity and reputation among the race-going public. Inappropriate language and behaviour at racetracks must be strongly discouraged by the Stewards to preserve the industry.
43. In the circumstances, I am not convinced that the penalties imposed upon Mrs MacLean were too severe. The appeal must be dismissed.



KAREN FARLEY SC, CHAIRPERSON

