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### **T.M. Walsh (Trainer), A.P. Heskin (Rider), Conor Bruen and Brendan Brady (Racing Establishment Employee Card Holders), Foxrock Referrals - Punchestown 7<sup>th</sup> December 2014**

The Referrals Committee, Sean Barry (in the Chair), Mr. Justice Tony Hunt and Laurence McFerran met at the Turf Club, The Curragh, Co. Kildare on Saturday, 18<sup>th</sup> April 2015 to consider the referrals of T.M. Walsh, Trainer, A.P. Heskin, Rider, Conor Bruen and Brendan Brady, Racing Establishment Employee Card Holders following the running of the Weatherby's Ireland GSB Handicap Steeplechase at Punchestown on 7<sup>th</sup> December 2014.

The Committee was asked to consider whether or not T.M. Walsh and A.P. Heskin were in breach of any rules as a result of the running and riding of Foxrock in the race. The Stewards on the day held an enquiry into this matter and having viewed a video of the race and also considered the evidence, they noted the explanations offered by both trainer and rider. However subsequent to the enquiry new video evidence became available which was not available to the stewards. This evidence suggested that Foxrock did not lose his shoes during the running of the race as originally thought as it appears that the horse's front shoes were visible on the horse in the parade ring after the race.

The Committee was also asked to consider whether or not T.M. Walsh, Conor Bruen and Brendan Brady were in breach of any Rules as a result of what happened between the times Foxrock left the parade ring and when he was examined by the Turf Club Veterinary Officer. During this period the horse lost his two front shoes and despite interviewing T.M. Walsh, and Conor Bruen and Brendan Brady, both of whom had accompanied the horse at all times and Eamonn Behan, Farrier, it was not possible to ascertain how the shoes were lost.

The Turf Club's case against Mr. Walsh was that with the assistance or support and co-operation of Mr. Bruen and Mr. Brady:

- (i) He removed or secured the removal of the front shoes from Foxrock once he was alerted to the stewards' enquiry into the running and riding of the horse.
- (ii) He concealed from the Turf Club and misled the Turf Club's officers and stewards as to the true consequences in which the shoes were removed, suggesting variously and inaccurately that they came off in the race or on the walk to the veterinary unit.

The Turf Club's case against Mr. Bruen was that with the assistance and support or co-operation of Mr. Walsh and Mr. Brady:

- (i) He removed or secured the removal of the front shoes from Foxrock once Mr. Walsh was alerted to the stewards'enquiry into the running and riding of the horse.
- (i) He concealed from the Turf Club and misled the Turf Club's officers as to the true circumstances in which the shoes were removed.

The Turf Club's case against Mr. Brady was that with the assistance and support or co-operation of Mr. Walsh and Mr. Bruen:

- (i) He removed or secured the removal of the front shoes from Foxrock once Mr. Walsh was alerted to the stewards'enquiry into the running and riding of the horse.
- (ii) He concealed from the Turf Club and misled the Turf Club's officers as to the true circumstances in which the shoes were removed.

T.M. Walsh, Conor Bruen and Brendan Brady denied all the alleged Rule breaches.

The matters had been referred to the Referrals Committee by Denis Egan, Chief Executive of the Turf Club following an investigation carried out by Christopher Gordon, Turf Club head of security and Declan Buckley, Turf Club, deputy head of security.

Evidence was heard from Hugh Hynes, stipendiary steward/acting steward at Punchestown, Peter Matthews, senior stipendiary steward, Noel O'Brien, senior INHS Rules handicapper, William Buckley, Turf Club stable yard security officer, Terry Smith, Turf Club senior veterinary officer, Martin Payne, master farrier, Christopher Gordon, A.P. O'Brien, Trainer, W.P. Mullins, Trainer, T.M. Walsh, Conor Bruen, Brendan Brady, Eamon Behan, master farrier, Robert Halford, master farrier, David Boyne, farrier, Jimmy Kelly, veterinary surgeon, Ned Gowing, veterinary surgeon, Dr. Des Leadon, expert witness (for T.M. Walsh) and A.P. Heskin.

The Committee also considered written statements from Simon Curtis, master farrier and John Anthony Welsh, BHA veterinary officer and transcripts of interviews with T.M. Walsh, A.P. Heskin, Conor Bruen, Brendan Brady and Eamon Behan which were taken as part of the investigation. Film of the race and the post-race parade ring footage was viewed. The Committee also viewed a film of Foxrock at Punchestown on a subsequent day for the purpose of demonstrating the movements of Foxrock from the time he left the parade ring on 7<sup>th</sup> December 2014 until he was examined by the vet.

The Committee considered closing submissions from Michael McDowell S.C. and Eugene Gleeson S.C. Judgment was reserved at the conclusion of the hearing.

Having considered the evidence and submissions, the Committee decided as follows:-

### **The law to be applied:-**

As in reaching previous decisions, the Committee applied the approach that the standard of proof to be applied in deciding whether any allegation was substantiated by evidence, either directly or by inference in this enquiry was that of the 'balance of probabilities', as explained and applied in this

jurisdiction by the Supreme Court (in *Georgopoulos v Beaumont Hospital Health Board*, 1997) as follows:-

“The standard of proving a case beyond reasonable doubt is confined to criminal trials and has no application in proceedings of a civil nature. It is true that the complaints against the plaintiff involved charges of great seriousness and with serious implications for the plaintiff’s reputation. This does not, however, require that the facts upon which the allegations are based should be established beyond all reasonable doubt. They can be dealt with on “the balance of probabilities” bearing in mind that the degree of probability required should always be proportionate to the nature and gravity of the issue to be investigated. . . . I am satisfied that in inquiries, such as that conducted in this case, the standard of proof to be applied is not that required in a criminal case but is that applicable to all proceedings of a civil nature, namely, “the balance of probabilities” a standard which takes into account the nature and gravity of the issue to be investigated and decided. ”

**The issues to be decided:-**

1. Whether Foxrock wore two front shoes after the race and before the veterinary inspection by Terry Smith.
2. If so, how the front shoes became dislodged between Foxrock leaving the parade ring and the time of the said inspection.
3. Whether the conclusions of the stewards’ enquiry on the day of the race were affected by any findings of fact made on this referral and, if so, what consequences should follow from such findings.

**Findings of fact**

The evidence in this matter lasted approximately nine hours. Rather than providing an extensive recital of the lengthy evidence, which was fully recorded contemporaneously, the Committee decided to set out findings of fact based on the evidence, indicating the witnesses relied on to establish each fact, and where appropriate, to refer to and comment upon areas where evidence was not accepted. The Committee found and commented as follows:-

**Post race footage**

1. The video evidence showing the parade ring after the race confirmed beyond any doubt that Foxrock was wearing two front shoes at that time.
2. Consequently, the subsequent stewards enquiry was conducted and concluded on a fundamental premise that was incorrect.
3. When it emerged subsequently that this was so, the Turf Club was both entitled and obliged to conduct an investigation into the reasons underlying this unsatisfactory situation.

4. The necessity for an investigation increased when further information emerged from Terry Smith, the Turf Club veterinary officer on the day and William Buckley, the Turf Club security officer on duty in the secure stabling area. This information is referred to below. Furthermore, the Committee was satisfied the concerns of the Turf Club were not properly allayed by the responses of Mr Walsh, Mr Bruen and Mr Brady when they were subsequently interviewed by Mr Gordon.
5. In the circumstances, the Chief Executive of the Turf Club was fully justified in referring these matters to the committee for independent assessment and adjudication.

### **The aftermath of the race**

6. The race went off at 3:01 PM. Allowing for the time taken to run the race, to pull up and return to the parade ring, the horses would have returned to the enclosure at approximately 3:10 PM. The post-race footage shows Mr Walsh speaking to Mr Heskin at this time, as Foxrock was led around the area reserved for the second placed horse, clearly wearing his front shoes. The horse was then led away in the direction of the stabling area, and the weigh-in was completed and the winner all right announced by 3:13 PM.
7. It was decided to hold an enquiry when the stewards returned to their room after the race. The trainer, jockey and veterinary officer were notified in the usual way. It is probable that this process was put in train at around the time of the winner all right, although given time constraints, the enquiry was not held until after the next race, which went off at 3:30 PM.
8. Mr Buckley was under the arch between the pre-parade ring and the stable yard when a message came through from Mr Smith that he wished to examine Foxrock. Mr Buckley met Mr Walsh in this area very shortly after he had received that message and estimated the time of this meeting as being between 3:15 PM and 3:20 PM. On being informed of this requirement by Mr Buckley, Mr Walsh returned to the stable yard. Shortly thereafter, Mr Buckley received a further message that Mr Walsh was required by the stewards. On leaving his office, he met Mr Walsh running by the door towards the horsebox area. He informed Mr Walsh of this, and Mr Walsh continued to towards the horsebox parking area. Mr Walsh accepted that he met Mr Buckley in this general vicinity, but was unable to recollect going to the parking area, or his reason for leaving the stable area at that time. The committee accepted Mr Buckley's evidence as establishing the facts of this incident.

### **The handling of Foxrock**

9. The time period in question is the interval between Foxrock being led from the parade ring at approximately 3:13 PM, and the commencement of the veterinary examination by Mr Smith at approximately 3:20 PM. It was during the latter part of his examination that Mr Smith noted that the two front shoes were missing and, accordingly, if the Turf Club case as to deliberate removal was correct, it was during this time period that this removal was effected.

10. Foxrock is a gelding by Flemensfirth, described by Mr Walsh as being fussy, a worrier and fidgety. Mr Bruen also described him as being fussy and awkward, particularly during the removal of head gear and during washing.
11. The horse was led away by Mr Bruen, assisted by Mr Brady. The evidence of both of these men was that the animal was then led from the parade ring to box number 21, where the racing bridle was removed and replaced by a head collar. The animal was then taken to the wash bay where it was hosed down, prior to being taken back to the veterinary area for the commencement of the examination. The evidence of Mr Walsh to the Committee was that he next encountered Foxrock in the wash bay area wearing a cooler, after returning to the stable area.
12. Whilst there was some dispute as to the details, the Committee accepted that replacement of the bridle and the washing of the horse both took place during this time and would have required a number of minutes, with further time needed to walk the horse over approximately 380m from the parade ring to the wash bay, together with the return distance from that bay to the veterinary examination area.

### **The veterinary examination**

13. Mr Smith received a communication from stipendiary steward Paul Murtagh at approximately 3:15 PM, requesting an examination of Foxrock. Mr Smith contacted Mr Buckley to ask him to inform Mr Walsh of this. Mr Smith gave evidence that there was some delay before the horse arrived, and as he walked out of the door of the veterinary unit, he met Mr Walsh and the horse coming towards him.
14. Mr Smith estimated that it was after 3:20 PM when he commenced his examination. He noted that both front shoes were missing, and that the horse trotted up a bit lame. Nothing was said to Mr Smith by Mr Walsh, Mr Bruen or Mr Brady about any knowledge on their part as to the loss of the front shoes prior to the examination, and when Mr Smith expressed the opinion that they had been lost during the race, he was not contradicted on this by them.
15. Mr Smith attributed the lameness observed by him to Foxrock trotting on unforgiving ground in the examination area without front shoes. However, if the shoes had been lost in the race, Mr Smith would also have expected minor damage to the hoof wall (the periopal). He did not observe any such damage. There was no other obvious abnormality on examination, and the examination was completed and the findings transmitted to the stewards by approximately 3:30 PM.
16. The loss of two front shoes clearly troubled Mr Smith. This caused him to make a private note in his book in this regard. The Committee was satisfied that this note was made shortly after he concluded his veterinary examination. This note stated 'unusual? not taken off!?' This was not communicated to the stewards by Mr Smith, as he believed that there was no evidence available at the time to support any allegation of impropriety in this respect. The likely effect of any suspicions being raised by Mr Smith on the day would have been that the stewards would have referred the matter to this Committee for further investigation in any event.

### **The stewards enquiry**

17. From the transcript supplied, it appears that Mr Walsh was not happy with the ride given to the horse by Mr Heskin. In this respect, he informed the stewards 'I just said to him, I said maybe you should have given him a couple at the back of the third last and he said he didn't feel. He said he felt he was going as quick as he could and he said he was spinning in the ground. At the time when he came back again, he was on the grass, I didn't notice anything and when I went down onto the tarmac, or the gravel, I noticed his two front shoes were gone. So I kind of have to retract on my abuse to him for not getting stuck in but I mean the man on their back usually knows best. However, he was happy when I saw the two front shoes missing off the horse. He also stated instantly I was saying to myself maybe he should have given him a couple but when he walked away and his two front shoes were missing and he was slightly lame I had to eat humble pie.
18. Understandably, further details of what Mr Walsh meant by his evidence to the stewards about noticing that the shoes were gone on a tarmac or gravel area was not explored during the enquiry, as there was no reason to pursue the matter on the day. When interviewed subsequently by Mr Gordon, Mr Walsh suggested that he noticed that the shoes were gone in the stabling area prior to the horse being brought for a veterinary examination. He repeated this account in evidence to the Committee. He stated that he did not inform Mr Smith of his observations prior to the examination, as he did not want to interfere with or influence any conclusions reached during that examination. He said that he also presumed that the shoes had been lost during the race.

### **Loss of shoes**

19. The loss of two shoes otherwise than in running is sufficiently rare that it was entirely reasonable that Mr Smith would not have encountered an instance of this, even during a lengthy career. His evidence was that he had never come across a situation where two front shoes were lost between the times a horse left the parade ring and subsequent presentation for a veterinary examination. This was the reason why he had decided to make a private note shortly after his inspection. The Committee accepted Mr Smith's evidence on these matters.
20. The knowledge of the other expert witnesses of such incidents may be summarised as follows. Mr Payne gave evidence that loss of two shoes post race was unlikely unless the horse was fractious, and there was no evidence of that on the video footage. Mr Curtis stated that whilst the probability of a horse losing a shoe without outside assistance or incident whilst walking between an unsaddling enclosure and racecourse stables after racing was not impossible, it was highly improbable, and the likelihood of losing both front shoes even more remote. He felt that for a horse to lose a shoe at walk there would need to be some sort of trip, stumble or on unruly behaviour, which would be evident to a competent handler. In over 40 years experience, he had not seen or heard of such an incident. Likewise, Mr Welsh was of the opinion that loss of two shoes would be highly unlikely in such circumstances, unless they had already been loosened in the unsaddling area. He would not expect any horse to lose both shoes in the post race cooling-off period unless the animal had demonstrated marked un-coordination due to fatigue,

overheating or unruly behaviour. His personal experience over 40 years did not include direct or indirect knowledge of such an incident.

21. Mr Aidan O'Brien suggested in evidence that such incidents had occurred to his horses ~~öumpteen timesö~~, and that a wash bay area was most dangerous in this respect, in that shoes would move quickly during that time on a hard surface. Mr Mullins stated that loss of two shoes in a race happened regularly, and referred to a particular horse trained by him where this happened twice within six months. It was not out of the ordinary for a horse to lose shoes in a washing area. However, he also estimated that the loss of two shoes by a chaser post race would occur only once per one hundred horses. Mr Halford stated that the loss of two shoes was unusual in his experience, and agreed that aluminium plates dislodged more easily. It was more difficult to remove shoes from a horse that had just raced. Mr Behan stated that he had seen examples of this over the years, but it should be noted that he had declined to give Mr Gordon particulars of such examples, on the basis that it was ~~öinappropriateö~~. Mr Boyne gave evidence that it was quite likely that two shoes could be lost after a race, particularly due to the traction generated by a sharp turn on rubber matting.
22. Mr Kelly gave evidence that although it was possible for a horse to lose two shoes after a race, he did not understand that such incidents were common in his 50 years experience, until he heard the evidence at the hearing. He personally had never come across such an incident in his long career. Likewise, Mr Gowing in his long experience had not come across such a case, and agreed that it was a strange incident. Mr Leadon had heard of a single instance of a horse losing two shoes in a race in Switzerland. He stated that it was possible that the two shoes could have been lost in the wash area without the loss being observed.
23. The Committee concluded on the basis of this evidence that two shoes could be lost by a horse during handling and movement after a race, but that such incidents, whilst not impossible, were extremely rare. It was specifically noted that the evidence and experience of Mr Kelly and Mr Gowing corroborated the evidence of Mr Smith by demonstrating that it was perfectly possible to go through a lengthy veterinary career dealing with racehorses without ever coming across such an incident. On this aspect of the enquiry, the committee preferred the evidence of these three experienced veterinary surgeons and accordingly, it totally rejected Mr Aidan O'Brien's description of Mr Smith's evidence as ~~önonsenseö~~, and therefore approached the balance of his evidence on this issue with circumspection.
24. The evidence emanating from the BHA suggested that loss of two shoes in running was reported to have occurred in only four occasions out of all of the races run under BHA auspices in 2014. However, such an incident was also reported to the stewards after a race run at Gowran Park in February 2015. The rate of reported incidents of this type represented a very minor proportion of the number of runners in such races, and supported an inference that the incidence of loss of two shoes in post race circumstances would be equally rare.

### **Removal of shoes**

25. In order to remove shoes from a horse, it was common case that access to the necessary implements would be required. There was some dispute between the various witnesses as to the

time that would be required for the removal of a shoe, ranging from approximately 30 seconds according to Mr Smith, up to a number of minutes according to Mr Walsh. The Committee concluded that removal in the shorter time period was possible, but would require skill, experience, the necessary tools and the absence of complications or difficulty caused by any behaviour on the part of the horse. Swift removal would also be assisted if the shoes had become loosened. The Committee noted that the hooves of Foxrock were observed to be undamaged by Mr Smith.

### **Conclusions**

26. On the evidence, the Committee was faced with a choice between two rare scenarios, namely the loss of two front shoes by a horse during a short period after the completion of a steeplechase, or the deliberate removal by a racehorse trainer and his assistants of the same shoes in the same period, for the express purpose of subsequently misleading a stewards enquiry. To establish the latter proposition as a matter of probability, the supporting evidence produced by the Turf Club was required to have cogency commensurate with the scale of such wrongdoing.
27. The rarity of either of these scenarios, the obvious tenderness of the ride in the closing stages, the incorrect premise of the stewards enquiry and the manner in which it emerged that Foxrock was wearing front shoes post-race clearly called for close further investigation and scrutiny by the Turf Club authorities.
28. In considering which scenario was more probable, the timing of the relevant events was the most important factor in deciding the outcome. The evidence suggested that the formation and execution of a plan to deliberately remove the shoes had to have taken place within a time period of approximately 7 to 8 minutes, from around 3:13 PM, when Foxrock left the parade ring, to around 3:20 PM, when he was first observed by Mr Smith.
29. On this view of the facts, Mr Walsh would have had a relatively limited window of opportunity to determine on this course of action, obtain the necessary implements and remove the two shoes from the horse, all in the context of a stable yard on a race-day. Although it was clearly possible that the Turf Club case could be correct, the Committee was not satisfied that the evidence in support of a guilty inference carried the degree of cogency necessary to find that it was more probable than the alternative innocent scenario.
30. The Committee was not able to reach any firm conclusion as to the security with which the front shoes were attached to Foxrock from the post race footage, save to that they were not obviously or apparently loose. If they were secured tightly, it would have been more difficult and time-consuming to remove them. On the other hand, if they had been somewhat loosened during the course of the race, both advertent and inadvertent removal would have been easier.
31. It did not appear to be disputed that the horse was washed down during the relevant period. The movement of the animal during this process was cited as the most likely cause for the reason for the inadvertent loss of the front shoes. If the shoes were deliberately removed, this was more likely to be towards the end of the available time period than the start, on the assumption that



tools needed to be acquired for this purpose. However, if this were so, then unless the person removing the shoes wore an apron, it would be unlikely that the removal of two shoes could be accomplished without a significant soiling of clothes from close physical contact with a wet animal. In this respect, Mr Smith did not notice anything unusual about the clothing of Mr Walsh or his assistants.

32. The animal was moved over a significant distance during this limited period of time. The Committee had difficulty in reconciling a period of approximately seven or eight minutes with the distance over which the animal was moved from the parade ring to box number 21, the removal the racing bridle and the fitting of a head collar, the bringing of the horse to the wash bay, the washing down of the horse, the removal of two racing plates (presumably in private) and finally the moving of the horse down to the veterinary examination area, even if both racing plates could be removed in the shorter timescale suggested by Mr Smith.
33. The speedy removal of two racing plates by a person without formal farriery skills would carry with it significant risks to the health and well-being of a valuable and able animal. The removal of a single plate would be less risky and less time-consuming, whilst also sufficient for the purpose of providing a potential excuse for use before the stewards in justifying a tender ride in the race. The absence of any damage to the hooves was more likely to suggest some type of inadvertent loss than skilful and speedy removal of the shoes by all or any of the three handlers in question. The Committee also noted Mr Walsh's assertion that he could have prevented any sanction being applied to himself or the horse under the Rules during the stewards' enquiry by the simple expedient of blaming the jockey for an inadequate ride.
34. The Committee noted that the conclusion of the inquiry rested more on an overall view of the facts than on the absolute credibility of any of the various contributions of Messrs Walsh, Bruen or Brady. Both the prior interview and the evidence of Mr Walsh were coloured by a clearly expressed and long-standing antipathy to the Turf Club and its officials, especially Mr Gordon, and contained much unnecessary and excessive assertion. In particular, the Committee rejected his allegation that he had been intimidated by Mr Gordon in the course of his interview. The Committee considered that Mr Walsh displayed a forthright and articulate personality, and would not be intimidated easily by anyone, including officials of the Turf Club, or Mr Gordon.
35. For his part, Mr Bruen persisted in denying the obvious to investigators when he was shown the post race footage, by asserting that he was unable to clearly identify from material shown to him that the horse had front shoes after the race, which raised obvious suspicions about the truthfulness of his account at interview, and thereby strengthened the reasonable concerns of the Turf Club that something was amiss in this case. Mr Brady displayed a contemptuous and unhelpful attitude to reasonable questions asked by Mr Gleeson on behalf of the Turf Club at the enquiry. However, on the evidence presented, the Committee did not find any breach of rule by Mr Walsh, Mr Bruen or Mr Brady.
36. In the case of Mr Heskin, the Committee agreed with the evidence of Mr Matthews and Mr Noel O'Brien that with a more forceful ride in the closing stages it was probable that Foxrock could have achieved second place in the race. In the absence of any valid excuse or reason, the Committee found that Mr Heskin was in breach of Rule 212 by failing to take all reasonable and

permissible measures in the latter part of the race to achieve the best possible placing, but was not guilty of any other breach of rule. In this regard, the Committee was satisfied on the evidence of Mr Walsh and on the footage of the race that Foxrock showed no signs of being lame as he passed the post at the end of the race, or at any time thereafter. Any lameness observed by Mr Smith at the time of his examination related to the intervening loss of shoes and to trotting on uneven ground without front shoes. The Committee was of the opinion that the stumble by Foxrock in the earlier part of the race was entirely irrelevant to all subsequent matters. If Mr Heskin genuinely felt that there was an issue with the welfare of the horse during the race, he should have pulled up. When he elected to continue, he was obliged to comply with the provisions of Rule 212.

37. Therefore, it was ordered that the finding of the stewards on the day of the race be set aside and replaced by this finding. Penalty will be considered at a separate and subsequent hearing, which will take into account the penalty imposed in relation to the original finding of the stewards. The Committee took no further action against the trainer or horse, having regard to the dissatisfaction expressed by Mr Walsh in evidence in relation to Mr Heskin's riding in the latter part of the race, which could no longer be justified by reference to the absence of two front shoes, or any other valid excuse.

The case was presented by Eugene Gleeson S.C. instructed by Conal Boyce, solicitor, Naas, Co. Kildare. T.M. Walsh, A.P. Heskin, Conor Bruen and Brendan Brady were represented Michael McDowell S.C. instructed by Frank Ward, Frank Ward & Co. Solicitors, Dublin 7.

**For further information, please contact: -**

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Date: 7<sup>th</sup> May 2015