

**IN THE RACING APPEALS TRIBUNAL**

**BRENT BERRY**  
Appellant

v

**HARNESS RACING NEW SOUTH WALES**  
RESPONDENT

**REASONS FOR DETERMINATION**

**DATE OF HEARING:** 13 May 2024

**APPEARANCES:** The Appellant in person

**RESPONDENT:** Ms C Chua

**DATE OF DETERMINATION:** 4 June 2024

**DETERMINATION:**

1. The Appeal is dismissed.
2. Any appeal deposit is forfeited.

## **INTRODUCTION**

1. On 27 May 2021, Brent Berry (the Appellant) was disqualified for a period of 2 years and 9 months in respect of four charges brought against him pursuant to the Australian Harness Racing Rules (the Rules). That penalty followed pleas of not guilty being entered by the Appellant to those charges, following an Inquiry.
2. By a Notice of Appeal dated 5 January 2024,<sup>1</sup> the Appellant brought an appeal against that determination. The hearing of that appeal came before me on 13 May 2024. At the conclusion of that hearing, judgment was reserved.

## **THE APPELLANT'S PLEAS**

3. Before proceeding any further, it is necessary to address the issue of the Appellant's pleas to the charges against him.
4. As previously noted, the Appellant had pleaded not guilty following an Inquiry before the Stewards. In the period leading up to the present appeal, he adhered to those pleas. However, at the commencement of the hearing of the appeal, the following exchange took place between myself, the Appellant and the solicitor for the Respondent:<sup>2</sup>

*TRIBUNAL: ... Now, Mr Berry, there's just a few matters that I wanted to deal with before we start. And this is to try and assist you to understand the process a little better. You can assume that I have received all of the written documentation that you have provided to the Appeals Secretary. And I have read that documentation. And so I'm familiar with the background to your case.*

*You previously were charged with these offences and you pleaded, as I understand it, not guilty. You were found guilty and there were penalties imposed.*

*You've brought an appeal to this Tribunal, which is constituted by me and me alone. And the nature of this appeal is such that we effectively start again. It's a fresh hearing in which I look at all of the evidence that I have in addition to any evidence that you want to produce today. And I hear any submissions that you want to make, I hear what Ms Chua wishes to say, and then I go away and I make a decision.*

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<sup>1</sup> AB 1 – 3.

<sup>2</sup> T 2.33 – 3.38.

So can I ask you firstly, are you still entering a plea of not guilty to all of these offences, or alleged offences?

MR BERRY: Well, yes – yes, sir.

TRIBUNAL: All right.

MR BERRY: Well, I could plead guilty with mitigating circumstances or not guilty, but, you know, it's hard to understand, you know, what ----

TRIBUNAL: Well, look, I want to be very careful because you're appearing for yourself and that's fine. A lot of people appear before this Tribunal by themselves. But I just want to make sure that you understand the process, to be fair to you. But, in doing that, I can't give you advice.

MR BERRY: I understand, yes.

TRIBUNAL: So I just have to be clear. Are you still pleading not guilty or are you, to use the vernacular, do you want to plead guilty, as it were, with an explanation and put forward extenuating circumstances? I'm not suggesting you should do one or the other. I'm just trying to find out what your position is so I'll know how to proceed.

MR BERRY: **Well, I am probably guilty, sir, with – you know, with circumstances, you know, like the reason behind it, yes.**

TRIBUNAL: **Okay, all right. All right, well, I'm going to proceed on the basis then that you're pleading guilty to the charges, but you want to put some evidence before me in relation to some of the circumstances surrounding those charges. Let me just pause for a moment.**

**Ms Chua, you've heard those exchanges. Do you have anything you wanted to say about proceeding on that basis?**

**MS CHUA: No, Your Honour.**

5. In light of what was said by the Appellant in that exchange, I have proceeded on the basis that he has entered pleas of guilty to all charges. Accordingly, the only issue for determination is that of penalty.

### **THE APPEAL HEARING**

6. For the purposes of the hearing of the Appeal, I was provided with an Appeal Book (AB) containing all documentary evidence and submissions. In the course of the hearing, I heard oral evidence from:

- (i) Michael Prentice, the Respondent's Chief Integrity Officer;
- (ii) Shaun Snudden, a Steward employed by the Respondent; and
- (iii) Grant Adams, the Deputy Chief Steward of Harness Racing Victoria, and a former Steward employed by the Respondent.

7. Each of those witnesses was made available by the Respondent for the purposes of the hearing, at the express request of the Appellant. The Appellant was given the opportunity to cross-examine each of them. I intend no disrespect to the Appellant when I say that the questions he asked of those witnesses were, generally speaking, not probative of the issue of penalty which I am now required to determine. Accordingly, it is not necessary for me to canvass that evidence for the purposes of determining the present appeal and I have not done so.

8. Excerpts of CCTV footage of events on 31 March 202 were also played in the course of the hearing. Generally speaking, that evidence consistent with, and corroborative of, other evidence which is before me and for that reason, I do not propose to refer in any detail to that CCTV footage.

9. At the conclusion of the hearing, both parties were given the opportunity to make oral submissions, in addition to the written submissions which had been included in the Appeal Book.

## **THE CHARGES**

10. As noted, there are four charges against the Appellant. It appropriate to set out the terms of each of those charges at this point.

### **The first charge**

11. The first charge is contrary to r 231(1)(a) and (d) of the Rules which provides:

**231 Assault and interference**

*231(1) A person shall not:*

*(a) threaten; or*

*(b) ...*

*(c) ...*

*(d) abuse  
anyone employed, engaged or participating in the harness racing industry, or otherwise having a connection with it.*

12. The first charge is in the following terms:<sup>3</sup>

*That [the Appellant], a person licenced as a trainer by [the Respondent] did abuse and/or threaten Mr Michael Prentice at the Wagga Harness Racing Club on Wednesday 31 March 2021. At the time of that abuse and/or threats, Mr Prentice who is employed as the Integrity Manager with Harness Racing New South Wales and [sic] was performing the duties of a Steward at the time.*

### **The second charge**

13. The second charge is contrary to r 187(5) of the Rules which is in the following terms:

**187 Offences**

*187(5) A person shall not abuse, intimidate or be deliberately obstructive of the Stewards.*

14. The second charge is in the following terms:<sup>4</sup>

*That [the Appellant], a person licenced as a trainer by Harness Racing New South Wales, did abuse Mr Michael Prentice, a HRNSW Steward, and/or you were deliberately obstructive of the HRNSW during a Stewards' Inquiry conducted at the Wagga Harness Racing Club on Wednesday 31 March 2021.*

### **The third charge**

15. The third charge is contrary to r 248 of the Rules which is in the following terms:

**248 Publications and related matters**

*A person shall not say, publish or write, or cause to be said, published or written, anything malicious, intimidatory, obscene, offensive, defamatory, racist, threatening, harassing, discriminatory, abusive or otherwise improper about HRA, their members and employees, or the Stewards or anyone else associated with the Harness Racing Industry.*

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<sup>3</sup> AB 37 – 38.

<sup>4</sup> AB 38.

16. The third charge is in the following terms:<sup>5</sup>

*That [the Appellant], a person licensed as a trainer with [the Respondent] did say obscene, offensive, threatening and abusive comments about Mr Michael Prentice, who is employed as the Integrity Manager with [the Respondent] was [sic] performing duties of a Steward at the time.*

#### **The fourth charge**

17. The fourth charge is contrary to r 238 of the Rules which is in the following terms:

**238 Orders and related matters**

*A person shall not fail to comply with any order, direction or requirement of HRA, the Controlling Body or the Stewards relating to harness racing or to the harness racing industry.*

18. The fourth charge is in the following terms:<sup>6</sup>

*That [the Appellant], a person licensed as a trainer by Harness Racing NSW, on Wednesday 31<sup>st</sup> March 2021, did fail to comply with a direction of [the Respondent's] Stewards to leave the Stewards room at the Wagga Harness Racing Club and/or you did fail to comply with a direction to leave the racecourse at the Wagga Harness Racing Club.*

19. I should note in passing that each of the rules under which the respective charges were brought provides a number of alternatives in terms of an offence. When a charge is brought under a provision of that kind, it is important to elect the alternative which is to be relied upon. Absent that, the charge may be open to a complaint of duplicity, and thus procedural unfairness, in response to which those bringing it are likely to be put to an election as to which alternative is to be relied upon. I should make it clear that in making that observation, I intend no criticism of anyone. Nothing specific turns on the issue in this particular case. I simply raise it for the assistance of the Respondent in respect of any future matters.

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<sup>5</sup> AB 38.

<sup>6</sup> AB 39.

## **THE PENALTIES IMPOSED ON THE APPELLANT**

20. The penalties imposed on the Appellant following the Inquiry were as follows:

- (i) the first charge – disqualification for 2 years and 6 months;
- (ii) the second charge – disqualification for 12 months;
- (iii) the third charge – disqualification for 2 years and 6 months; and
- (iv) the fourth charge – disqualification for 3 months.

21. It was ordered that the penalties in (i), (ii) and (iii) above be served concurrently, and that the total disqualification, being one of 2 years and 9 months, be backdated to commence on 31 March 2021. It follows that the disqualification has now expired.

22. In those circumstances, bearing in mind the Appellant's pleas of guilty at the commencement of the hearing of this appeal, I might otherwise have simply dismissed the appeal without proceeding any further. There is an obvious lack of utility in hearing and determining an appeal in respect of which the penalty has been served, and where there is no longer an issue of guilt. However, in light of the factual circumstances which underpin the Appellant's offending, I have come to the view that this is a case in which the circumstances of that offending need to be canvassed in full. In particular, and for the reasons I have set out further below, a strong message needs to be sent to industry participants that behaviour of the kind exhibited by the Appellant in this case is fundamentally unacceptable and, if established, can be expected to lead to the imposition of significant penalties. That message can only be sent by examining that behaviour, and explaining (to the extent that an explanation is needed) why it cannot be tolerated.

## **THE CIRCUMSTANCES OF THE OFFENDING**

23. Before coming to the circumstances of each individual offence, it is necessary, to put the offending in context, to set out some matters of background.

## The statement of Mr Prentice

24. The evidence before me includes a statement of Mr Prentice in relation to the Appellant's offending. That statement is in the following terms:<sup>7</sup>

1. *I am currently employed by HRNSW, the respondent in this matter, in the role of Chief Integrity Officer. This position has undergone title changes, however, I have held the same position since 1 December 2016.*
2. *As is typical in the course of my duties as a Steward, I acted as chairman at an Inquiry held over two days on 3 July 2020 and 31 March 2021 (Inquiry) into the conduct of Mr Brent Berry. That conduct related to allegations which were ultimately found to be proven, that Mr Berry had abused and/or threatened members of the harness racing industry on 3 and 4 May 2020 and 2 June 2020.*
3. *At the conclusion of the Inquiry, Mr Berry, who had been aggressive throughout the entire Inquiry process, moved from where he had been seated in the room and approached the table where Stewards were sitting. Mr Berry put both hands on the table and leaned over towards me in a menacing way. Mr Berry is a very tall and imposing man and I felt that this action was threatening towards me. Consequently, I directed Mr Berry to leave the Stewards Room multiple times. Mr Berry did not comply with those directions.*
4. *As a result of Mr Berry failing to comply with my directions, I continued to repeat the direction for Mr Berry to leave the Stewards room and moved out of my seat at that point in an attempt to reassert authority in the room. Mr Berry did start to move towards the exit at that point, but stopped in the doorway and placed his left foot in the doorway and right arm or hand on the door, to prevent it being closed. I noticed that Mr Berry was wearing steel cap boots and he had placed his left boot in the doorway to prevent the door from being closed.*
5. *Due to Mr Berry's behaviour and the threats of violence that he had spoken about throughout the Inquiry, I was concerned that the situation was going to continue to escalate and was not going to resolve with Mr Berry standing in the doorway with the Stewards inside the room.*
6. *As a result of Mr Berry refusing to move out of the doorway so that the door could be closed, I considered that the only other option was for me to leave the Steward's Room to deescalate the situation. I approached the doorway and intended to pass Mr Berry with my right arm bent in front of my body, however, Mr Berry maintained his position. Consequently, my right arm came into contact with the lower part of his torso. At that time, I felt resistance from Mr Berry and as a result I pushed against Mr Berry and he moved away. I closed the door of the Steward's Room.*
7. *The interaction between Mr Berry and myself is pictured in the CCTV footage from the day. At no point did I use any excessive force, nor did I ever "elbow" Mr Berry as he alleges.*
8. *Immediately after closing the door to the Steward's Room, I could hear Mr Berry yelling and it appeared as though he was having a very loud telephone conversation outside the Steward's Room. Initially, I had hoped that Mr Berry would eventually leave, but when it became clear that he was not leaving and I heard him yell, " He's a fucking flea. He's supposed to be in charge of Integrity. I'll smash the cunt" I exited the room followed by Mr Adams and Mr Snudden. I was aware that there were two people working in the*

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<sup>7</sup> Commencing at AB 198.



stable area, and at least one of them was hosing the stable area. I approached Mr Berry and said words to the effect of “Your conduct is not what would be expected by a licensed person”. I then directed Mr Berry to leave the racecourse on a number of occasions.

9. It was at that point that Mr Berry advanced towards me and said words to the effect of “I’ll fucken bash you” and “fucken cunt I’ll smash you”. I continued to stand my ground and again directed Mr Berry to leave the racecourse.
10. When that did not appear to be working, I began walking towards the exit of the stable area. Mr Berry followed me as did Mr Adams and Mr Snudden. I continued to repeat the direction for Mr Berry to leave the racecourse and pointed towards the exit. I walked out into the car park area and while Mr Berry was walking on my right hand side, he held out his mobile phone and I could see love hearts on the screen where the name is recorded for the other person engaged in the call. I assumed that it was Mr Berry’s wife on the phone. I continued Mr Berry to walk further into the carpark. Mr Berry walked in front of me and stood extremely close to me, so much so that I could feel his spittle on my face. He was yelling loudly, “If you ever touch me again I’ll fucken smash you”. Mr Berry’s behaviour was extremely threatening to the extent that I thought he would assault me. I continued to direct Mr Berry to leave the racecourse.
11. Eventually Mr Berry walked away towards a red ute. Mr Berry got into that vehicle and drove quickly out of the racecourse carpark. I returned to the Steward’s room with Mr Adams and Mr Snudden.
12. A short time later, Mr Quick advised that Mr Berry was parked on the side of the road, down from the racecourse. Mr Adams, Mr Snudden and I continued to pack our belongings into our vehicle and we left the racecourse, driving past Mr Berry in his vehicle, which was parked facing us on the opposite side of the road.

### **The Inquiry held on 31 March 2021**

25. The Appellant was involved in a series of incidents in May and June of 2020. An Inquiry into those incidents (the Inquiry) was conducted on 3 July, 2020 and 31 March, 2021. The second day of the Inquiry assumes considerable focus in terms of the Appellant’s behaviour which led to the charges against him.
26. It would be fair to say that at the outset of the Inquiry on 3 July 2020, the Appellant behaved towards the Stewards in a manner which was belligerent, offensive, abusive, disrespectful, and generally unco-operative. That behaviour, amongst other things, unjustifiably called into question the integrity of the Inquiry itself, as well as the integrity of those who had the responsibility of conducting it. Although much of the Appellant’s behaviour on that occasion is not the subject of any of the charges with which I am dealing, aspects of it are nevertheless relevant because they set the background of what was to come. By way of example (but by no means an exhaustive statement) of what took place, the Appellant:

- (i) referred to the Inquiry as a “joke”,<sup>8</sup> and as a “Kangaroo Court”<sup>9</sup>
- (ii) indicated that, contrary to his obligation, he would refuse to answer questions;<sup>10</sup>
- (iii) asserted that he had been “called in for something that [wasn’t] worth calling [him] in for”.<sup>11</sup>

27. After a significant period of time, the Chairman of the Inquiry, who had no doubt become increasingly (and justifiably) irritated by the Appellant’s behaviour, attempted to prevent the Appellant from asking what were clearly irrelevant questions, and raising what were clearly irrelevant issues.<sup>12</sup> That promoted the following exchange:<sup>13</sup>

*THE CHAIRMAN: Mr Berry.*

*MR BERRY: I’ve got a right – I*

*MR BERRY: I’ve got a right – I’ve got a right to say what I’m saying to you. You just let me speak for myself.*

*THE CHAIRMAN: No, I’m running the show here, Mr Berry.*

*MR BERRY: You run the show. You run the show. I’ve had enough of your running the show because the simple reason is ----*

*THE CHAIRMAN: Excuse me. Let me say this right now.*

*MR BERRY: Yeah, give me time. I don’t care.*

*THE CHAIRMAN: I’m not going to – it’s not about giving you time, Mr Berry. But I’m going to speak to you about your manner in which you’re addressing me, and you’ll do it with respect. And you’ll do it to each member of this panel.*

*MR BERRY: Speak to people. You speak like an ex-Victorian police officer. Very good.*

*THE CHAIRMAN: Do you hear me, Mr Berry?*

*MR BERRY: Yeah. Is that right, you’re an ex-Victorian police officer?*

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<sup>8</sup> AB 46.24.

<sup>9</sup> AB 48.40; AB 50.6.

<sup>10</sup> AB 49.10.

<sup>11</sup> AB 51.1.

<sup>12</sup> AB 129.35.

<sup>13</sup> Commencing at AB 47.

*THE CHAIRMAN: No, it's not, actually.*

*MR BERRY: Right. Maybe you might have worked with a cousin of mine in Victoria if you were.*

*THE CHAIRMAN: I think you're wrong, Mr Berry. Very wrong.*

*MR BERRY: You were a police officer somewhere, weren't you?*

*THE CHAIRMAN: Mr Berry, it's not about -----*

*MR BERRY: Were you a police officer somewhere?*

*THE CHAIRMAN: It's not about my past, Mr Berry. I'm asking the questions here and I'm speaking to you about your manner.*

*MR BERRY: I don't like your manner.*

*THE CHAIRMAN: Well, you don't have to like my manner.*

*MR BERRY: Well don't -----*

*THE CHAIRMAN: I'm telling you -----*

*MR BERRY: I know.*

*THE CHAIRMAN: I'm telling you that as a licensed person, there is an appropriate way for you to conduct yourself.*

*MR BERRY: There is an appropriate way for you to speak to me, too. If you speak to me appropriate, I'm going to speak to you appropriate.*

*THE CHAIRMAN: I think -----*

*MR BERRY: Respect – earn respect!*

*THE CHAIRMAN: Don't yell at me, Mr Berry.*

*MR BERRY: I'm not yelling at you. You haven't seen me yell. Don't – don't look at me -----*

*THE CHAIRMAN: Is that – is that a threat?*

*MR BERRY: ----- through your copper eyes.*

*THE CHAIRMAN: Is that a threat, Mr Berry?*

*MR BERRY: It's a promise. I said you haven't seen me yell.*

*THE CHAIRMAN: So it's not a threat, it's a promise?*

*MR BERRY: Yep. If I want to yell, I'll yell. There's no law against yelling. Is there a law against it? You show me in your rulebook where there's a law against yelling. You show me in your rulebook where there's a law against swearing.*

*THE CHAIRMAN: Mr Berry, as I said to you, I'm asking the questions here.*

*MR BERRY: Yeah.*

*THE CHAIRMAN: Don't speak over the top of me, please. Mr Quick's travelling at the speed limit and you zoom up behind him. So you're obviously travelling well in excess of the speed limit, which I'm not concerned about. But why do you need to zoom up behind Mr Quick?*

*MR BERRY: Why does Mr Quick need to zoom away from me?*

*THE CHAIRMAN: I'm asking you a question.*

*MR BERRY: I'm asking you!*

*THE CHAIRMAN: No. It doesn't work like that.*

*MR BERRY: I don't know why he wants to zoom away from me and why -----*

*THE CHAIRMAN: No. That's not my question. Why did you have to zoom up behind Mr Quick?*

*MR BERRY: Well, why did Mr Quick have to zoom away from me?*

*THE CHAIRMAN: Answer my question.*

*MR BERRY: Same question.*

*THE CHAIRMAN: Mr Berry -----*

*MR BERRY: I'm answering your question.*

*THE CHAIRMAN: ----- are you refusing to answer my question?*

*MR BERRY: I've answered your question. Why did Mr Quick zoom up – zoom away from me? If he reckons I was zooming him -----*

*THE CHAIRMAN: Why did you zoom up behind Mr Quick?*

*MR BERRY: Because that's how I drive. I drive any way I want to bloody drive. I'm on the road and the police pull me over, they give you a speeding ticket. It's my business. It's not your business how I drive or what I do. It's the police business. They want to arrest me for speeding, they arrest me for speeding.*

*THE CHAIRMAN: So you can't understand the fact that Mr Quick would be concerned by your conduct on that night?*

*MR BERRY: Oh, what? That someone zoomed up behind him and zoomed past him?*

*THE CHAIRMAN: Oh, that you're waiting in the car park for him to leave.*

*MR BERRY: I didn't wait in the car park for him to leave. I just told you, I was on a video call to someone, my nephew in Queensland.*

*THE CHAIRMAN: That you follow him from the track.*

*MR BERRY: Followed him from the track? Because I bloody go that way to go to Wagga.*

*THE CHAIRMAN: From the track?*

*MR BERRY: Well, how else would you go to Wagga from here?*

*THE CHAIRMAN: Keep your voice down, Mr Berry.*

*MR BERRY: Oh, you're – you're just being – all right, Mr – sorry, Mr Prentice. How else would you go to Wagga to the shops from the trotting track?*

*THE CHAIRMAN: I don't know. I'm asking you a question.*

*MR BERRY: Well, I just told you. You go to the shops from the trotting – if I was going to the shops from the trotting track, I would turn right, follow the road to Wagga, go over the bridge, take the second exit to the left, which I could do, Mr Quick, right?*

*THE CHAIRMAN: Speak to me, Mr Berry.*

*MR BERRY: Oh, Mr Pren – Mr Prentice. You take the second exit to the left. You drive down, you take the third exit to the left. And there's Woolworths.*

*THE CHAIRMAN: Lower your voice, please.*

*MR BERRY: And then you drive up there and then you take the next exit to the right, left, and then you drive up and Kentucky Fried Chicken's on the left-hand side.*

28. At the conclusion of proceedings on 3 July 2020, the Inquiry was adjourned. It resumed on 31 March 2021, some 9 months later. That gap in time is significant. Amongst other things, it gave the Appellant a significant period of time in which to reflect on the unacceptability of his behaviour during the first day of the Inquiry. It would not have been unreasonable to have expected that, with the benefit of that opportunity, the Appellant's behaviour would have improved upon the resumption of the Inquiry. That did not occur. Indeed, much of the Appellant's conduct on the resumption of the Inquiry gives rise to the four charges which are the subject of

the present appeal. It is therefore convenient to turn to the factual basis of each of those charges. For ease of reference, I have dealt with the charges in chronological sequence.

### **The facts of the second charge**

29. The second charge is that the Appellant was deliberately obstructive of Stewards at the Inquiry. Part of the factual basis of that charge is the Appellant's conduct in the passage of transcript at [27] above.

30. In addition, on the resumption of the Inquiry, a Steward, Mr Travis Quick, was called to give evidence. The following exchange took place when he did so:<sup>14</sup>

*MR BERRY: That's correct. Well, you got something right. That's the first argument. Where other people gave evidence that they said that was the second argument. But I believe you're right, that was the first argument. And did a trainer actually say to you, "Are you going to go and intervene, Mr Quick?"*

*MR QUICK: I don't believe so.*

*MR BERRY: You don't believe so? So you're telling – you're lying to me, deliberately lying to me -----*

*THE CHAIRMAN: Mr Berry.*

*MR BERRY: No, I'm going to put -----*

*THE CHAIRMAN: No. No, no. Please.*

*MR BERRY: I'm going to put to Mr Quick.*

*THE CHAIRMAN: No. Please stop.*

*MR BERRY: And then I'll mention the -----*

*THE CHAIRMAN: Mr Berry!*

*MR BERRY: I'll mention the trainer's name and I'll probably -----*

*THE CHAIRMAN: Mr Berry!*

*MR BERRY: ----- get the trainer in trouble because Mr Quick's telling just a big lie.*

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<sup>14</sup> Commencing at AB 172.1

*THE CHAIRMAN: Mr Berry. There's a way to ask a question.*

*MR BERRY: I asked him a question.*

*THE CHAIRMAN: No. Please let me finish. You've asked Mr Quick a question and he's entitled to finish it.*

*MR BERRY: Yep. All right.*

*THE CHAIRMAN: The fact that you may not agree with the answer that Mr Quick gives doesn't give you the right to sit there -----*

*MR BERRY: Okay. No problem.*

*THE CHAIRMAN: ----- and call him -----*

*MR BERRY: Okay.*

*THE CHAIRMAN: Let me finish, please. Doesn't give you the right to sit there and call him a liar because you don't agree with his – with his answer.*

*MR BERRY: Excuse me, sir.*

*THE CHAIRMAN: What -----*

*MR BERRY: Excuse me, sir.*

*THE CHAIRMAN: What will happen -----*

*MR BERRY: Excuse me, sir. Excuse me, sir.*

*THE CHAIRMAN: No.*

*MR BERRY: I have a right to call him a liar.*

*THE CHAIRMAN: You have – I'm -----*

*MR BERRY: I have the right to call anyone a liar.*

*THE CHAIRMAN: Mr Berry.*

*MR BERRY: If I believe he's a liar, I have the right to call anyone a liar. I have the right to ask him questions and if he doesn't answer the questions – maybe I should use him as a hostile witness -----*

*THE CHAIRMAN: Mr Berry -----*

*MR BERRY: ----- and get him to answer yes or no, all right?*

*THE CHAIRMAN: Mr Berry, let me finish, please.*

*MR BERRY: Okay, you finish.*

*THE CHAIRMAN: Mr Quick, can you wait outside, thank you?*

31. When Mr Quick withdrew from the hearing at the Chairman's request, the following further exchange immediately ensued:<sup>15</sup>

*MR BERRY: I told you, we'll just go to court. I don't care.*

*THE CHAIRMAN: Mr Berry.*

*MR BERRY: I've had enough.*

*THE CHAIRMAN: Mr Berry.*

*MR BERRY: I've had enough.*

*THE CHAIRMAN: I'm warning you now in relation to your conduct towards me and the stewards' panel, that your conduct is inappropriate, and if you continue, then I'll consider taking further action against you in relation to that.*

*MR BERRY: Maybe I need more medication. Maybe I need more medication.*

*THE CHAIRMAN: Mr Berry, do you understand what I'm saying?*

*MR BERRY: I object -----*

*THE CHAIRMAN: I'm not going to -----*

*MR BERRY: I'm just going to say -----*

*THE CHAIRMAN: No. Let me finish. I'm not going to have you sit there and abuse this panel of stewards and treat these proceedings like a joke. Now, if you let me finish what I was saying, you may not agree with what Mr Quick is saying to you, and that's fine. You will have an opportunity to present those discrepancies to the stewards' panel for us to consider in your defence of the charges. You can say later on to the stewards' panel, "I don't agree with what Mr Quick said here", because of whatever reason. It's not for you to call Mr Quick a liar. It's for you to demonstrate to the stewards' panel why the evidence that he's given may not be correct in your eyes.*

*MR BERRY: Not only in my eyes.*

*THE CHAIRMAN: Do you understand that -----*

*MR BERRY: No worry.*

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<sup>15</sup> Commencing at AB 173.43.



*THE CHAIRMAN: ----- Mr Berry?*

*MR BERRY: I understand.*

*THE CHAIRMAN: So, I'm not going to have this turned into a circus. And if it does -  
-----*

*MR BERRY: Excuse me, sir. Excuse me, sir. I'd like to make a point. It already is a circus.*

*THE CHAIRMAN: Okay. Thanks for your input. But I'm telling you now that you're on notice about your conduct -----*

*MR BERRY: Yep.*

*THE CHAIRMAN: ----- and if it continues out of line, then, as I said, consideration will be given to taking further action against you.*

*MR BERRY: Take – take further action against me, sir.*

*THE CHAIRMAN: Thank you. We'll have Mr Quick in the room, thank you.*

*MR BERRY: You know what I said? I said we'll go to court if we have to. Because I don't care.*

*THE CHAIRMAN: That's fine, Mr Berry.*

*MR BERRY: Because -----*

*THE CHAIRMAN: We're not at that stage.*

*MR BERRY: ----- I've been to – I've been to court a lot of times. I've been to court a lot of times. And when you get in front of a judge, it's not like being in front of you, sir.*

*THE CHAIRMAN: That's fine, Mr Berry.*

*MR BERRY: He has – he – I get to cross-examine you, I get to cross-examine him.*

*THE CHAIRMAN: That's fine, Mr Berry.*

*MR BERRY: I get to cross-examine everyone. It's a good one.*

*THE CHAIRMAN: That's fine. We're not at -----*

*MR BERRY: It's a good one.*

*THE CHAIRMAN: We're not at -----*

*MR BERRY: I know it's not a court. That's the problem. You people – it's a kangaroo court.*

*THE CHAIRMAN: Can you let me finish?*

*MR BERRY: You're kangaroo-ing me.*

*THE CHAIRMAN: Can you let me finish? We're certainly not at any stage where action's been taken against you to go to a court or any other jurisdiction.*

*MR BERRY: But I shouldn't even be here.*

*THE CHAIRMAN: You are presenting a defence to the charges.*

*MR BERRY: I shouldn't even be here.*

*THE CHAIRMAN: I'm not going to argue any further with you. Do you have further questions for Mr Quick or not?*

*MR BERRY: Yes, I do.*

*THE CHAIRMAN: Can you bring Mr Quick into the room, please.*

32. Mr Quick's evidence then resumed, as did the Appellant's generally unacceptable behaviour:<sup>16</sup>

*MR BERRY: Can you remember who you did actually talk to on that day? Which trainers you actually talked to?*

*MR QUICK: I would have talked to a number of them. I didn't make a list of them.*

*MR BERRY: Don't you have certain trainers you talk to and certain trainers you don't talk to?*

*MR QUICK: No.*

*MR BERRY: You don't? Are you sure about that, Mr Quick?*

*MR QUICK: Yep.*

*MR BERRY: Oh, well. Okay. I must – I must be dreaming then.*

*THE CHAIRMAN: Mr Berry, it's not about whether you're dreaming or not. You've asked Mr Quick a question and he's answered it. Do you have any other questions for him, please?*

*MR BERRY: I don't have any questions for a bloke that can't remember anything, sir.*

*THE CHAIRMAN: Do you have any more questions for Mr Quick?*

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<sup>16</sup> Commencing at AB 138.1.

*MR BERRY: I just said I don't have – I don't have any more questions for a bloke that can't remember anything, sir.*

*THE CHAIRMAN: That's your opinion that he can't remember anything.*

*MR BERRY: Well, that's my opinion.*

*THE CHAIRMAN: Okay.*

*MR BERRY: I'm entitled to my opinion. I'm in the inquiry. I've made my statement. I don't have any more questions for a man that can't remember anything.*

*THE CHAIRMAN: So you have no more questions for Mr Quick?*

*MR BERRY: No. That's right.*

*THE CHAIRMAN: Thank you. Mr Quick, you're excused from the inquiry. Thanks for your attendance.*

33. Following the conclusion of the enquiry, the Appellant engaged in further conduct which is relied upon for the purposes of the second charge and which is evident from the following exchange, which took place after Mr Prentice had explained the charges to the Appellant, and had given him the opportunity to make submissions:<sup>17</sup>

*THE CHAIRMAN: Mr Berry, I'm asking you -----*

*MR BERRY: I'm asking you a question, sir.*

*THE CHAIRMAN: Of course they're bound by the rules.*

*MR BERRY: Are they bound by the same – bound by the same rules as me? I'm being singled out here. I'm saying I shouldn't have a penalty. But you make up your own decision, sir, because what I say doesn't matter, because Mr Edyvean and Mr what do you call it have been threatening and smirk at me and all that.*

*From now on, sir, we'll deal with this in a different way. We'll just go to the coppers. The next time they smirk at me or do something wrong, I'll just hand my licence in, because I'll just bash the bastards.*

*THE CHAIRMAN: Mr Berry -----*

*MR BERRY: Like I used to do when I was younger.*

*THE CHAIRMAN: Mr Berry -----*

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<sup>17</sup> Commencing at AB 186.32.

*MR BERRY: Because I've got ADHD! I've got autism spectrum! And I don't care about people! Because I don't put up with people talking bullshit to me!*

*THE CHAIRMAN: So, Mr Berry, are you saying that you're unable to participate in the industry because of those conditions, is that what you're saying?*

*MR BERRY: No, I'll be able to participate in the industry. But if someone threatens me and has a go at me, I'm gonna have a go back!*

*THE CHAIRMAN: Well -----*

*MR BERRY: But if you're only going to take one side of the story -----*

*THE CHAIRMAN: Mr Berry.*

*MR BERRY: No, no. Now, Mr Prentice, just give me – give me whatever, I'll appeal it and I'll (inaudible) us both out the gate. Because I don't believe that I should be the one singled out. If someone else is yelling at me and I retaliate, someone pulls me in here or someone tells me they want to fight me and I seen you climb around the back, well, do it. Don't tell me you're going to do it, do it!*

*THE CHAIRMAN: Mr Berry -----*

*MR BERRY: So I'm the one taking all the blame?*

*THE CHAIRMAN: As I said earlier -----*

*MR BERRY: I – I – I – I don't think I should have a penalty.*

*THE CHAIRMAN: Okay.*

*MR BERRY: So you make a decision.*

*THE CHAIRMAN: Okay. Thank you.*

*MR BERRY: Because you're the stewards. I don't have any say.*

*THE CHAIRMAN: Thank you. I note that you believe that you shouldn't have a penalty, and I just reiterate what I said to you before. I understand that you're upset.*

*MR BERRY: I'm upset for the simple reason -----*

*THE CHAIRMAN: But -----*

*MR BERRY: ----- I'm the one singled out.*

*THE CHAIRMAN: No.*

*MR BERRY: I'm the one singled out! Who's singled out here?*

*THE CHAIRMAN: Mr Berry. But I'm not going to have you sitting there and yelling and pointing your finger at me. I've spoken to you in relation to your conduct before and I expect it to be more appropriate than what it is at the moment.*

*MR BERRY: Right.*

### **The facts of the fourth charge**

34. The fourth charge is that the Appellant failed to comply with a direction of the Stewards. The factual basis of that charge is the conduct of the Appellant in the following exchange with Mr Prentice at the conclusion of the Inquiry (which followed that set out at [33] above) in which the Appellant was informed of the penalties which had been imposed:<sup>18</sup>

*THE CHAIRMAN: Thank you. In relation to these matters, you have a right of appeal.*

*MR BERRY: I will appeal. I'll appeal the fine and I'll appeal everything, and I'll bring more evidence next time. Because -----*

*THE CHAIRMAN: Mr Berry -----*

*MR BERRY: ----- like I said, sir – no. This is a kangaroo court.*

*THE CHAIRMAN: No. Hang on. Let me finish, because it's important that I advise you of your appeal right.*

*MR BERRY: I know my appeal rights.*

*THE CHAIRMAN: Well, I just want to -----*

*MR BERRY: I know my appeal.*

*THE CHAIRMAN: I just want to make sure -----*

*MR BERRY: Like I said, you -----*

*THE CHAIRMAN: Thanks, Mr Berry. I'm going to finish.*

*MR BERRY: No, you're -----*

*THE CHAIRMAN: In relation to your appeal rights, Mr Berry, you need to lodge a notice of appeal within seven days of today's decision, together with an appeal deposit fee of \$250 with the Appeals Secretary. Thank you for your attendance at the inquiry. You're now free to go. Thank you.*

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<sup>18</sup> Commencing at AB 193.6

*MR BERRY: You might as well just give me the two years then, because I'm not putting up with this bullshit. I'm not paying \$500 for something that – that a licensed trainer abused me and I'm the only one that gets blamed for it.*

*THE CHAIRMAN: Thanks, Mr Berry.*

*MR BERRY: And I've got a formal complaint to make against Mr Travis Quick, too.*

*THE CHAIRMAN: You can put your complaint in -----*

*MR BERRY: No, I can't write. I don't write.*

*THE CHAIRMAN: That's all right.*

*MR BERRY: So I'm going to make a formal complaint.*

*THE CHAIRMAN: You can send emails. Because you've sent emails, so you can put it on an email.*

*MR BERRY: No, my wife's using the (inaudible).*

*THE CHAIRMAN: Well (inaudible) -----*

*MR BERRY: This is a verbal complaint.*

*THE CHAIRMAN: Mr Berry, she can assist you with it.*

*MR BERRY: You have to accept it. You have to accept a verbal complaint.*

*THE CHAIRMAN: Mr Berry -----*

*MR BERRY: By law you have to accept a verbal complaint.*

*THE CHAIRMAN: Your wife can assist you with it.*

*MR BERRY: My wife's not going to assist me with this.*

*THE CHAIRMAN: Okay.*

*MR BERRY: This is a verbal – this is a verbal complaint.*

*THE CHAIRMAN: Don't stand over the top of me like that, I'm telling you right now.*

*MR BERRY: Oh, well -----*

*THE CHAIRMAN: Sit down if you want to talk to me.*

*MR BERRY: By law, I can make a verbal complaint.*

*THE CHAIRMAN: Sit down if you want to talk to me. I'm not going to have you standing over the top staring me down, I'll tell you right now.*

*MR BERRY: Don't – don't -----*

*THE CHAIRMAN: You don't intim -----*

*MR BERRY: Don't try to intimidate me, either.*

*THE CHAIRMAN: Outside. Go outside the room, Mr Berry. Go home. See you later.*

*MR BERRY: I make a complaint about Mr Travis Quick.*

*THE CHAIRMAN: Leave the room. I'm directing you -----*

*MR BERRY: I want to make a complaint -----*

*THE CHAIRMAN: I'm now directing you to leave the stewards' room.*

*MR BERRY: I'm not -----*

*THE CHAIRMAN: If you don't leave the steward -----*

*MR BERRY: I want to make an official complaint. So you've got to take my official complaint.*

*THE CHAIRMAN: I'm directing you to leave the stewards' room.*

*MR BERRY: Otherwise, if you don't take my official complaint, just another one of (inaudible).*

*THE CHAIRMAN: Go home, Mr Berry.*

*MR BERRY: Record it. Record it.*

*THE CHAIRMAN: Go home.*

*MR BERRY: (Inaudible).*

*THE CHAIRMAN: Go home.*

*MR BERRY: I want to make an official complaint and you don't – don't stand up ---  
--*

*THE CHAIRMAN: Outside, Mr Berry.*

*MR BERRY: You push the door (inaudible) Mr Quick, me and you are going to have a real problem.*

*THE CHAIRMAN: Mr Berry, just go home.*

*MR BERRY: You go home.*

*THE CHAIRMAN: Just leave.*

*MR ADAMS: Mr Berry, just back off.*

*THE CHAIRMAN: No. I want to make an official complaint.*

*MR ADAMS: No. I'm happy to speak to you on the phone, not today. You go home, cool off, and we'll speak to you early next week. I'm happy to take that phone call.*

*THE CHAIRMAN: Leave the room, Mr Berry.*

*MR ADAMS: I'm happy to take that phone call. Leave now. Thank you.*

*THE CHAIRMAN: Thank you. Go home. Move your foot and go home, Mr Berry. You're being childish. Can you go home.*

*MR BERRY: (Inaudible).*

*THE CHAIRMAN: Mr Berry, I'm directing -----*

*MR BERRY: Jam the door on my broken leg and I'll sue you -----*

*THE CHAIRMAN: I'm directing you to leave the stewards' room.*

*MR BERRY: Mr Prentice, I'm not happy with your performance.*

*THE CHAIRMAN: I don't care whether you're happy or not. Leave the stewards' room immediately.*

*MR BERRY: You (inaudible).*

*THE CHAIRMAN: Move your foot from the doorjamb so I can close the door.*

*MR BERRY: You're getting aggressive with me, well, I'm getting aggressive with ----  
-*

*THE CHAIRMAN: I'm not getting aggressive.*

*MR BERRY: You are getting aggressive.*

*THE CHAIRMAN: Can you move it, please.*

*MR BERRY: Now, now you've put – now you've laid your hand on me. That's assault. Righto. I'll ring the police.*

35. In relation to this charge, CCTV footage was played during the course of the hearing. I need only say that this footage is entirely consistent with the statement



of Mr Prentice, and entirely consistent with the extracts from the transcript which have been set out.

### **The facts of the third charge**

36. The third charge is that the Appellant made obscene statements about Stewards. Those statements appear in paragraph [8] of the statement of Mr Prentice. Any further comment about them generally, and the fundamental unacceptability of them in particular, would be superfluous.

### **The facts of the first charge**

37. The first charge is that the Appellant abused or threatened Mr Prentice. That abuse appears in paragraph [9] of the statement of Mr Prentice, and is specifically constituted by threats made by the Appellant to “bash” and “smash” Mr Prentice. That conduct is generally corroborated by movements seen on the CCTV footage. Once again, no further comment about the unacceptability of conduct of that kind is necessary.

## **SUBMISSIONS OF THE PARTIES**

### **Submissions of the Appellant**

38. The Appellant provided written submissions<sup>19</sup> in which he set out the details of his background, and his upbringing. Without going into detail, it would be fair to say that his upbringing was not without its difficulties. The Appellant also pointed to his voluntary work in Gymkhanas and Mini Trotting Clubs, and relied upon character references from Ms Patricia Lavett and Ms Christine Clement.

39. In terms of the offending, the Appellant submitted that he had felt “*disrespected*” as a consequence of the manner in which he was treated at the Inquiry, and that he had been “*abused, belittled and threatened*”.<sup>20</sup> He also made a number of submissions in which he criticised the conduct of Mr Prentice<sup>21</sup>, including an

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<sup>19</sup> Commencing at AB 5.

<sup>20</sup> AB 7.

<sup>21</sup> AB 8.

allegation Mr Prentice had taken no steps to “*de-escalate*” what had arisen.<sup>22</sup> The Appellant also asserted that he had been the subject of “*deliberate provocation*”<sup>23</sup>, although he did acknowledge that he “*could have handled things better and .... in many respects [had] not acted in [his] own best interests*”.<sup>24</sup>

40. The Appellant submitted that he was genuinely remorseful for his conduct.<sup>25</sup> However, having expressed that remorse, he went on to assert, in effect, that part of the responsibility for his conduct lay with the Respondent for not dealing with him “*in a more appropriate manner*”. How that might have been achieved was not explained.

### **Submissions of the Respondent**

41. In written submissions,<sup>26</sup> the Respondent emphasised the need for both personal and general deterrence in assessing the penalty for offending of this kind.<sup>27</sup> Further, and in terms of the objective seriousness of the Appellant’s offending overall, the Respondent submitted that his conduct was:<sup>28</sup>

- (i) not isolated;
- (ii) directed towards Stewards exercising their functions;
- (iii) entirely unprovoked;
- (iv) persistent;
- (v) committed in face of repeated warnings;
- (vi) of a kind which incorporated verbal abuse as well as threats of physical violence;
- (vii) demonstrative of a lack of insight; and
- (viii) unaccompanied by any real expression of remorse or contrition.

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<sup>22</sup> AB 11.

<sup>23</sup> AB 12.

<sup>24</sup> AB 12.

<sup>25</sup> AB 12.

<sup>26</sup> AB 30.

<sup>27</sup> AB 29.

<sup>28</sup> AB 29.

42. With these matters in mind, the Respondent pointed to the obviously difficult task performed by Stewards in the regulation of the harness racing industry, and the need to impose a penalty which would operate as a clear deterrent to any industry participant who might be minded to act in a similar way.

43. The Solicitor for the Respondent reiterated, and expanded upon, all of these matters in oral submissions.<sup>29</sup>

### **CONSIDERATION**

44. The matters set out at [41] above conveniently encapsulate the essential characteristics of the Appellant's offending. I would only add that the seriousness of at least some aspects of that offending can be best gauged by the fact it may be capable of constituting offences contrary to the provisions of the *Crimes Act 1900* (NSW).

45. The Appellant initially pleaded not guilty to the offences. I acknowledge that, in all likelihood, he took that course without the benefit of any advice. However, the fact remains that the evidence against him was overwhelming, and was constituted largely by direct, objective evidence in the form of recordings and CCTV footage of what had occurred.

46. I accept that in some circumstances, a plea of guilty can, of itself, be evidence of a person's remorse. I also acknowledge that the Appellant asserted in his written submissions that he was "*genuinely remorseful*" for his conduct. However, I have some cause to doubt the genuineness of the Appellant's expressed remorse. Leaving aside the fact that the general tenor of his written submissions (which, I note, were prepared with legal assistance) was to ascribe a degree of blame on the Respondent generally (and Mr Prentice in particular) for what had occurred, it is significant that even when given the opportunity to say anything he wished to say at the conclusion of the hearing before me, the Appellant seemed to want to

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<sup>29</sup> Commencing at T 35.22.

take issue with the objective circumstances of his offending, and the asserted contribution by Mr Prentice to that offending, rather than unreservedly apologise for the manner in which he had behaved.<sup>30</sup> For all of these reasons, I cannot be satisfied that the Appellant is genuinely remorseful. Further, to the extent that his pleas of guilty might be indicative of remorse, they obviously came at a very late stage, and are deserving of limited weight.

47. Moreover, having read the transcript of the Inquiry carefully, I can find no evidence of the Appellant being provoked, subjected to unprofessional conduct, or unfairly targeted, as he has alleged. On the contrary, it seems to me that Mr Prentice, and those who appeared at the Inquiry, acted entirely professionally towards the Appellant at all times. Importantly, I am satisfied that they did so in circumstances in which their patience must have been sorely tested in light of the Appellant's unacceptable behaviour, in which he engaged virtually from the outset.

48. I am mindful of the references in the Appellant's written submissions,<sup>31</sup> and in the hearing<sup>32</sup> to the fact that he suffers from some form of mental illness for which he is now medicated. I do not have any other information about that issue. I have taken it into account, but the absence of some further evidence of it necessarily means that the weight I am able to attach to it is limited. In any event, whilst it might *explain* (at least to a degree) the Appellant's behaviour, it cannot *excuse* it. There remains a clear need for any penalty to deter the Appellant from behaving in a similar manner again.

49. Further, I accept the Respondent's submission that the penalty to be imposed in this must reflect considerations of general deterrence. Putting it simply, and whilst each case which comes before the Tribunal will, as a matter of fairness, always be assessed and determined according to its own facts and circumstances, it is necessary to send a clear message to industry participants

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<sup>30</sup> T 34.34 and following.

<sup>31</sup> AB 12.

<sup>32</sup> T 66.29 and following

that any conduct towards Stewards which is (amongst other things) abusive, offensive, threatening, obstructive, intimidatory, defamatory, racist or harassing, any conduct which constitutes an assault, and any conduct which constitutes a failure to comply with a reasonable direction by Stewards, is likely to meet with a substantial penalty.

50. That approach stems from the fundamental fact that the tasks and responsibilities of Stewards are difficult enough to begin with. Further, and at the risk of stating the obvious, their role is essential to the proper conduct and regulation of the harness racing industry. The discharge by Stewards of what are, by their inherent nature, onerous duties and responsibilities, should not be rendered even more difficult by behaviour of the kind exhibited by the Appellant in the present case. Moreover, Stewards are entitled to assume that they will be able to carry out their functions in circumstances where they are not subjected to personal abuse, and where their personal safety is not threatened or otherwise placed in jeopardy.

51. What must also be emphasised is that industry participants who find themselves affected by a decision of Stewards with which they disagree have rights of appeal. It is not without significance that in the present case, when the Appellant was advised of such rights, he engaged in additional unacceptable behaviour which gave rise to a further charge. It goes without saying that what the Appellant did is not an appropriate response to a decision which is unfavourable to a participant, and with which that participant disagrees. The appropriate response, is for the participant to exercise the rights of appeal which are available.

52. In my view, the Appellant's behaviour in this case was so egregious that it is arguable that an even more substantial penalty than that which was imposed may have been justified. However, in view of the manner in which the appeal has proceeded, that is not an issue I need to determine.

**ORDERS**

53. For the reasons given, I make the following orders:

1. The appeal is dismissed.
2. Any appeal deposit is forfeited.

**THE HONOURABLE G J BELLEW SC**

**4 June 2023**