IN THE RACING APPEALS TRIBUNAL

ETHAN ENSBY
Appellant

v

RACING NEW SOUTH WALES
Respondent

REASONS FOR DETERMINATION

Date of hearing	**10 December 2025**
Date of determination	**23 December 2025**
APPEARANCES:	**Mr J Bryant for the Appellant**
	Mr O Jones SC for the Respondent

ORDERS

1. **The appeal is dismissed.**
2. **The order of the Appeal Panel imposing a suspension of 3 months is set aside.**
3. **In lieu thereof a disqualification of 3 months is imposed.**
4. **The disqualification in order [3] shall commence at midnight on 30 December 2025 and shall expire at midnight on 30 March 2026.**

INTRODUCTION

1. The following charges brought against Ethan Ensby (the Appellant) are before the Tribunal on this appeal:

Charge 1
The Appellant engaged in improper conduct towards licenced trainer Ms Tracy Timbery on 15 December 2021 in that, while in the vicinity of his registered stables at Ballina Racecourse, he approached Ms Timbery and yelled at her, calling her a "*fucking cunt"* and a "*fucking idiot"*.

Plea: Not guilty

Charge 2
The Appellant engaged in workplace harassment of a person acting in the course of her duties while employed, engaged in or participating in the racing industry on 15 December 2021 when, in the vicinity of his stables at Ballina Racecourse, he approached licenced trainer Ms Tracy Timbery, a person with whom he had a workplace connection as both trained horses at Ballina Racecourse, and yelled at her, calling her a "*fucking cunt*" and a "*fucking idiot*" while she was acting in the course of her duties while employed, engaged in or participating in the racing industry. Such behaviour amounted to workplace harassment as:

1. it was unwelcomed and unsolicited by Ms Timbery.
2. it was considered by Ms Timbery to be offensive and/or humiliating and/or intimidating.
3. a reasonable person would consider it to be offensive and/or humiliating and/or intimidating.

Plea – Not guilty

Charge 3
The Appellant engaged in improper behaviour towards Ballina Jockey Club Official and employee Mr Lachlan Metcalfe, in relation to his duties as the Club's racecourse manager, on 6 July 2022 when he engaged in a conversation with Mr Metcalfe as he was supervising trackwork and as the Appellant walked away he yelled "*you and everyone here are a bunch of spastic cunts"*.

Plea - Guilty

Charge 4
The Appellant engaged in improper behaviour towards Ballina Jockey Club Official and employee Mr Lachlan Metcalfe, in relation to his duties as the Club's racecourse manager on Wednesday 6 July 2022 when he engaged in a conversation with Mr Metcalfe while he was carrying out his duties supervising trackwork by yelling words to the effect "*you and everyone here are a bunch of spastic cunts"*. Such behaviour amounted to workplace harassment as:

1. it was unwelcomed and unsolicited by Mr Metcalfe;

2. it was considered by Mr Metcalfe to be offensive and/or humiliating and/or intimidating.
3. a reasonable person would consider it to be offensive and/or humiliating and/or intimidating.

Plea – Guilty

Charge 7

On 27 July 2023, whilst in the vicinity of his registered stables at Ballina Racecourse, the Appellant became involved in a verbal exchange with Stephen Phelps using words to the effect "*Righto cunt, let's go, let's go, Do you want to mouth off? … Well fuck you, you're a piss weak piece of shit. I'll meet you out the front. …. Come on, out on the fucking road. Let's go. Come on. Do you want to? Do you want to have a go? Let's go. Get out here"*.

Plea – Guilty.

Charge 8

On 29 August 2023, while in the vicinity of the entrance to the training track at Ballina Racecourse, the Appellant yelled towards his licenced track work rider, Ms Jayde Cole, as she was exiting the training track on the horse Majestic Thunder and said words to the effect "*I'll put a fucking bit in your mouth and pull on your fucking head and kick you in the guts, you're getting just as bad as the rest of the fucking riders in this place, I tell ya"*.

Plea – Guilty.

2. Before the Stewards, a 3 month suspension was imposed, and an appeal to the Appeal Panel of the Respondent was dismissed. It is the Respondent's position before me that the Appellant should be found guilty of charges 1 and 2 and that a *disqualification* of 3 months , as opposed to a suspension, should be imposed in respect of the totality of the charges.

THE CASE AGAINST THE APPELLANT
Charges 1 and 2

3. It is appropriate to commence by addressing charges 1 and 2, to each of which the Appellant has pleaded not guilty. The background to those charges is as follows.

4. On 16 March 2023, Tracy Timbury sent an email to the General Manager of the Ballina Jockey Club complaining about the conduct of the Appellant towards her.[1]

[1] Commencing at TB 133.

The content of that email is somewhat discursive, but to the extent that it is relevant to charges 1 and 2 it records the following:

> *When I relocated to Ballina racetrack to train I was renting stables off the Livingstones at 32 Racecourse Road. In this area two other trainers were renting off said person.*
>
> *For the first few months there were no issues than (sic) [the Appellant] started abusing me for no reason in that I had not said or did anything to him.*
>
> *An example one morning Jayde came over to say Ethan said to tell you we will be having Lachlan bring the barriers up here and put them in that yard to jump our horses out. I stated that was dangerous (sic) would upset my horses and said no.*
>
> *I texted Lachlan to say that he should not do that for the reasons above and I doubted if Many and Pet the owners would know and allow that.*
>
> ***The barriers did not come up and when [the Appellant] came up he raised his voice and abuse (sic) me calling me a fucking cunt and a fucking idiot and I hat (sic) right to I have and I should not have moved here and on it went.***
>
> ***Abuse like this was a regular occurrence*** (emphasis added).

5. An commenced before Stewards on 21 April 2023 at which Ms Timbery admitted to being the author of the email.[2] The following exchange then occurred in relation to events which took place on 15 December 2021:

> *Chairman:* *Right, so he's walking up the laneway?*
> *Timbery:* *Yeah, so and I would hear him from there. He was really angry and he was yelling out like "cunt" and "What right has she got? I'm sick of her". So then I approached him and just said that "I'm not trying to be a problem and I'm willing to take my horses down to the track and put them in the boxes at the track", if he wants to jump out, but with my horses there in the yard it would be dangerous practice to have barriers right there, that they would hurt themselves pull shoes off and run. So he just then continued in his abuse and I walked off.*

6. MsTimbery's evidence[3] continued

> *He just said "I don't care what you fucking have to say. You're just a fucking cunt and you should have been here. You should fucking never have moved here" ya de ya de ya so I could just – on that*

[2] TB 47.2965.
[3] TB 51.3140 – 3144.

> *occasion I said to him "You've got a mental health problem and should be medicated" and he said "I don't have a mental health problem any more. Stop." So I just left it at that.*

7. Ms Timbery also gave evidence[4] that the Appellant was in the habit of calling her a "*hillbilly cunt",* and identified a diary note relating to her interactions with the Appellant in which she had recorded:[5]

> *Ethan went off like rat.*

8. The Appellant was given an opportunity to respond to Mr Timbery's allegations. In the course of that response, the following exchange took place:[6]

Chairman:	*So her recollection that you refer to her as a "fucking cunt" could have happened?*
Appellant:	*Oh,* ***it could of****, yeah.*
Chairman:	*What about "a fucking idiot"?*
Appellant:	***Could of*** (emphasis added in each case).

9. Evidence was given by Jayde Cole, the Appellant's partner, that the Appellant had at one stage said "*Oh you're fucking idiots*." However, she said that she did not hear the Appellant use the word "*cunt".*[7] Ms Timbery's husband gave evidence that the Appellant's "*favourite word is C".*[8]

10. The inquiry continued on 12 September 2023 at which Ms Timbery confirmed[9] the evidence she had previously given as to the Appellant's use of the terms *"fucking cunt".* The Appellant also confirmed[10] the concessions he had previously made

[4] TB 52.3165.
[5] TB 49.3057.
[6] TB 136.
[7] TB 63.3670 – 63.3785.
[8] TB 75.4249.
[9] TB 91.140 – 91.153.
[10] TB 91.161.

that he "*could*" have called Ms Timbery a "*fucking cunt*" and a "*fucking idiot*". That was followed by the following exchange:[11]

> *CHAIRMAN:* *..... [B]ut does that give you rise (sic) to say the words that you're alleged to have said?*
> *APPELLANT:* *Well, probably not.*
>
> *CHAIRMAN:* *Is that a professional manner for a licenced person or a licensed trainer to conduct themselves?*
> *APPELLANT:* *No.*
>
> *CHAIRMAN:* *No. So you agree that your conduct, setting aside your allegations or the allegations of Mrs Timbery's conduct towards Jade Cole, you agree that that conduct is highly inappropriate, would you agree with that?*
> *APPELLANT:* *I would say that it was unprofessional, yes.*
>
> *CHAIRMAN:* *Well, is that a way that you would normally speak to people using those sorts of words, "fucking" and calling people "a cunt", is that your normal manner that you conduct yourself?*
> *APPELLANT:* *Oh, everybody in racing on our side of the fence does swear. So yes, but in that instance it was through shear (sic) frustration.*

11. Ms Timbery appeared before the Appeal Panel to give evidence. When asked questions by the Appellant's Solicitor, she repeatedly referred to her "*statement*" which she said would be "*the most accurate recollection*" of events.[12]

12. As to his use of certain language, particularly the word "*cunt*", the Appellant accepted that he used the word "*fairly often",*[13] that he continued to use it,[14] and that he used it when he was angry.[15] When asked whether he considered the use of such language was consistent with appropriate standards, the Appellant said that he thought that it was, because "*everybody does it"*[16] and that the

[11] Commencing at TB 91.178.
[12] TB 195.1708 and following.
[13] TB 182.1135.
[14] TB 182.1141.
[15] TB 182.1149.
[16] TB 183.1191.

acceptability of its use in the workplace *"depends on the context"*.[17] I am compelled to observe that those statements of the Appellant, without more, reflect what is an almost complete lack of insight into the gravity of his conduct.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

13. The written submissions of the Appellant advanced the following propositions:

    1. The evidence of Ms Timbery was untested, unsworn and internally inconsistent.[18]
    2. The principles in *Briginshaw v Briginshaw* (1938) 60 CLR 336 were applicable, and were not satisfied in the circumstances because the evidence of Ms Timbery was unclear and inexact.[19]
    3. Specifically in relation to charge 2, and even if the evidence of Ms Timbery were accepted, the Appellant's conduct did not constitute workplace harassment because there was no evidence from Ms Timbery that the Appellant's conduct (if established) was threatening, offensive or humiliating, nor was there any evidence that it was unwelcome or unsolicited.[20]

14. In the course of the hearing of the appeal, it was submitted that the Appellant had been unable to "*test*" the evidence of Ms Timbery before the Appeal Panel, and that as a consequence her evidence should be rejected.[21] It was further submitted that when the evidence was viewed as a whole, it fell short of establishing charge 1 or charge 2.[22] As to the first of those propositions, I would simply observe that the Appellant *was* given the opportunity to question Ms Timbery, who adopted the position of simply referring back to her statement. That

[17] TB 183.1204.
[18] At [19].
[19] At [21].
[20] At [30] – [32].
[21] Transcript 3.75 – 3.84.
[22] Transcript 3.90.

does not lead to the conclusion that the entirety of Ms Timbery's evidence should be rejected.

15. As to the concessions made by the Appellant that he *"could"* have said the words attributed to him, it was submitted that he was "*not denying he said it*", that he "*possibly could have chosen his words better*", but that "*he doesn't accept that he said it*".[23] Despite those submissions, it was ultimately accepted by the Appellant's Solicitor that however it might be categorised, what the Appellant had said to Stewards, namely that he *"could"* have used the words attributed to him, was not a denial that he had done so.[24]

Submissions of the Respondent

16. The written submissions of senior counsel for the Respondent advanced the following propositions:

    1. The evidence when taken as a whole established both offences.[25]
    2. The Appellant's conduct was clearly improper upon the application of the relevant tests.[26]
    3. The Appellant was questioned about her evidence on a number of occasions, such that it was wrong to suggest that it was "untested".[27]
    4. The Appellant's conduct clearly met the test of workplace harassment for the purposes of charge 2.[28]

17. In the course of the hearing, senior counsel for the Respondent submitted, in effect, that there was no reason to reject the evidence of Ms Timbery.[29] He

[23] Transcript 7.240 – 8.253.
[24] Transcript 8.255.
[25] At [21].
[26] At [28].
[27] At [31].
[28] At [33] and following.
[29] Transcript 11.395 – 11.418.

submitted, in particular, that it was not correct to assert that Ms Timbery's evidence had not been "*tested*" in the relevant sense.[30]

CONSIDERATION

18. The first issue for determination in respect of charges 1 and 2 is whether I am satisfied that the words attributed to the Appellant – namely, *"fucking cunt"* and *"fucking idiot"* – were in fact said by him to Ms Timbery. If I am not satisfied that this is the case, then charges 1 and 2 must be dismissed.

19. In light of a number of the submissions advanced on behalf of the Appellant, it is necessary to emphasise at the outset that this Tribunal is not a Court, and I am not bound by the rules of evidence. I may inform myself in relation to any matter as I think fit, subject to observing the rules of natural justice.[31] The weight to be attached to any evidence which is accepted remains a determination for me.

20. With those matters in mind, I am satisfied to the requisite standard that the words attributed to the Appellant, namely *"fucking cunt"* and *"fucking idiot* were in fact said by him to Ms Timbery. My reasons for coming to that view are as follows.

21. First, in her original email Ms Timbery clearly and unequivocally attributed those words to the Appellant. That email forms part of the evidence which I am obviously entitled to take into account. The fact that the email is not signed, something to which the Appellant's Solicitor seemed to attach some significance, is immaterial. There is no reason not to accept, at face value, what Ms Timbery said. Moreover, it is not correct to suggest that Ms Timbery's evidence was "*untested*". She was asked questions by the Appellant's representative, and repeatedly referred back to, and confirmed, what was in her statement. It is also not correct to categorise Ms Timbery's evidence as *"unclear and inexact"*. Her email, which forms part of the evidence before me, states, in terms, that the

[30] Transcript 12.457 – 13.475.
[31] *Racing Appeals Tribunal Regulation 2024* (NSW) cl. 17.

Appellant *"raised his voice and abuse (sic) me calling me a fucking cunt and a fucking idiot"*. It is difficult to envisage a clearer articulation of what the Appellant said.

22. Secondly, support for the conclusion that the words were said comes from the evidence of the Appellant himself that he was in the habit of using terminology of that general kind, as well as partly from the evidence of Jayde Cole.

23. Thirdly, a conclusion that the Appellant used the words attributed to him is fortified by the concession he made that he "*could*" have done so. However one might view that evidence, the Appellant did not deny the allegations which were put to him. Whilst the Appellant bears no onus of proof in these proceedings, his concessions form part of the evidence which I am entitled to take into account in determining whether I am satisfied that charges 1 and 2 have been made out.

24. No substantive submission was made on the Appellant's behalf that the use of such language was not improper. It follows that charge 1 is made out.

25. For the purposes of charge 2, I must be satisfied that the Appellant's conduct amounted to workplace harassment, in that:

    1. it was unwelcomed and unsolicited by Ms Timbery.
    2. it was considered by Ms Timbery to be offensive and/or humiliating and/or intimidating.
    3. a reasonable person would consider it to be offensive and/or humiliating and/or intimidating.

26. In her email, Ms Timbery stated:[32]

> *All racing people talk and when people ask me about training at Ballina have nothing but praise for the club. And how helpful they are with trainers and their horses needs. But I tell them about the abuse I have received from Ethan and how I worry about my horse's safety and the stress I am under from him being near my horses. Most times people say they know what he is like. And people as far as Sydney talk about him*.

[32] TB 134.

...
I have worked as a registered nurse and midwife for Gold Coast University Hospital and this would never be tolerated and would be grounds for termination. Ballina is a licensed venue. In a place where many people work and have clients visit to watch their horses work and have to worry about being verbally attacked by this person or listen to their foul language is just not acceptable.

27. In my view, the overwhelming inferences to be drawn from those passages are that Ms Timbery:

    1. did not solicit the Appellant's abuse;
    2. regarded it as unwelcome; and
    3. considered it to be offensive and/or intimidating and/or humiliating.

28. The inference that a reasonable person would consider the Appellant's behavior towards Ms Timbery to be, at the very least, offensive, is equally overwhelming.[33] To suggest otherwise would border on nonsensical.

29. For these reasons, I am satisfied that charges 1 and 2 are made out.

30. The Appellant has pleaded guilty to charges 3, 4, 7 and 8. The circumstances of that offending will be self-evident from the particulars in each case, and accordingly I move to the question of penalty.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

31. The submissions of the Appellant encompassed the following propositions in respect of penalty:

[33] See for example *Construction, Forestry, Maritime, Mining and Energy Union v BHP Coal* [2022] FWC 1699 at [100].

1. The Appellant's conduct in respect of charges 1 and 2 fell at the lowest level of objective seriousness and was *"lacking the hallmarks of serious workplace harassment"*.[34]
2. Charges 3 and 4 arose from the same factual circumstances, the Appellant pleaded guilty, he unequivocally accepts his responsibility and has shown genuine remorse. [35]
3. The Appellant pleaded guilty to charge 7 and accepts that his conduct fell below the requisite standard.[36]
4. The offending in charge 7 was committed in the face of severe and degrading abuse.[37]
5. The Appellant pleaded guilty to charge 8, in circumstances where the victim of the offending, Ms Cole, is the offender's partner and where the conversation was intended to be private.[38]
6. The offending in charge 8 falls at the lowest end of the scale for a number of reasons, including the fact that it was of a "*private and domestic character*".[39]
7. A comparison of this case to a number of others leads to the conclusion that the imposition of a suspension in the present case would be "*manifestly disproportionate*".
8. Subjectively, the Appellant is 30 years old, the father of a 13 month old child, and in a relationship with his partner who is pregnant with their second child. He would be placed in significant financial hardship in the event of any suspension, and suffers from a number of significant and chronic medical conditions. He has held a trainer's licence for 10 years and has had a range of roles in the racing industry for some 16 years.[40]

[34] Submissions at [9]; [11].
[35] Submissions at [12] – [13]; [20].
[36] Submissions at [25] – [26].
[37] Submissions at [33].
[38] Submissions at [36] – [39].
[39] Submissions at [38] – [39].
[40] Submissions at [50] – [58].

9. There has been a considerable delay in finalizing the present proceedings which should be taken into account on penalty.[41]
10. A period of disqualification is not appropriate in light of all of those factors, as well as the strong body of character evidence adduced on the Appellant's behalf.[42]
11. Any suspension imposed should be wholly suspended.[43]

Submissions of the Respondent

32. The submissions of the Respondent encompassed the following propositions in respect of penalty:

1. The language used by the Appellant to Ms Timbery was obviously a personal insult, and any suggestion to the contrary does little more than demonstrate the Appellant's lack of insight into his offending.[44]
2. It was obvious that Ms Timbery felt both threatened and humiliated.[45]
3. However the offending in charges 3 and 4 might be viewed, it was of a high degree of objective seriousness, given that the conduct was directed towards an official.[46]
4. The plea of guilty to charge 4 came at the last possible moment.[47]
5. The conduct the subject of charge 7 remained serious notwithstanding the use of offensive language by the other person involved, and the Appellant's attempt to categorize it in some less serious way was again demonstrative of his lack of insight.[48]
6. The plea of guilty to charge 8 was not forthcoming until the commencement of the hearing before the Tribunal[49] and given that the

[41] Submissions at [59] – [67].
[42] Submissions at [78] – [88].
[43] Submissions at [96].
[44] Submissions at [3](c).
[45] Submissions at [3](d).
[46] Submissions at [4](d).
[47] Submissions at [4](a).
[48] Submissions at [5](b).
[49] Submissions at [6](a).

conversation was overheard by a third party, it was obviously not private as the Appellant had suggested.[50]

7. Each of the decisions relied upon by the Appellant for the purposes of parity were distinguishable in some way, rendering any comparative exercise of limited value.[51]
8. The fact that any penalty would have an adverse impact on the Appellant did not justify the imposition of a lesser penalty than might otherwise be appropriate.[52]
9. The character evidence was of limited value, firstly because much of it was dated, and secondly because the Appellant had demonstrated a continuing failure to act appropriately.[53]
10. Any delay was largely driven by the Appellant's pleas of not guilty, and the consequent necessity for the issue of his guilt to be determined. Whilst a plea of not guilty is the lawful exercise of a fundamental procedural right, that does not mean that those who plead not guilty but who are found guilty may not suffer adverse consequences as a result.[54]
11. The entirety of the circumstances warranted the imposition of a 3 month disqualification. In the alternative, a 3 month suspension should be imposed.[55]

CONSIDERATION

33. The submissions advanced on behalf of the Appellant had a tendency to complicate what is a straightforward case. The Appellant used language which was offensive, aggressive in its terms, degrading, and insulting towards a number of industry participants. He did so on several occasions. His behavior was

[50] Submissions at [6](b).
[51] Submissions at [7] – [11].
[52] Submissions at [12].
[53] Submissions at [13].
[54] Submissions at [15].
[55] Submissions at [20].

unacceptable, not just in a work environment, but generally. It has no place in the thoroughbred racing industry.

34. I commented in the determination in *Dixon v Racing New South Wales*[56] that conduct of this kind speaks for itself. Notwithstanding that to be the case, it is necessary for me to specifically address a number of the individual propositions advanced on the Appellant's behalf.

35. First, the proposition that the offending in charges 1 and 2 *"lacked the hallmarks of serious workplace harassment"* should be rejected out of hand. Such a proposition is contrary to both common sense, and authority.[57]

36. Secondly, the submission that the Appellant unequivocally accepts responsibility runs entirely contrary to his statements at [10] and [12] above. I do not accept that he accepts responsibility for his conduct, or that he has any real degree of insight at all. On each and every occasion on which it has been open to him to demonstrate such acceptance and insight, he has acted to the contrary.

37. Thirdly, even if it is the case that the offending in charge 7 was committed in the face of abuse, the Appellant's conduct was both aggressive, and well in excess of the level of any response which might be considered reasonable.

38. Fourthly, it was submitted on the Appellant's behalf that the offending in charge 8 was intended to be private, was of a *"domestic character,"* and was directed towards the Appellant's partner rather than someone else. The essence of what was put was that those factors lessened the objective seriousness. I do not accept that to be the case. If that line of reasoning were applied,[58] it would follow that instances of domestic violence were somehow to be regarded as being less

[56] 25 August 2025 at [33].
[57] See *Construction, Forestry, Maritime, Mining and Energy Union v BHP Coal* [2022] FWC 1699 at [180], cited with approval in *Woods v Jetstar Airways Pty Limited* [2023] FWC 501 at [208]-[209]
[58] See [31](5) and (6) above.

serious than other forms of violent offending because they occur in a private setting, and often involve the domestic partner of the protagonist. Such a proposition would be properly regarded as both offensive and absurd. Moreover, what the Appellant did was, arguably, a form of domestic abuse, notwithstanding the absence of any physical conduct on his part towards Ms Cole. It is, to say the least, somewhat remarkable that in the exchange set out at [10] above, the Appellant appeared reluctant to accept that his conduct towards Ms Cole was inappropriate, preferring to categorize it as *"unprofessional"*. The use of that term to describe the Appellant's conduct towards Ms Cole grossly understates the gravity of what he did.

39. In all of these circumstances, general deterrence assumes considerable importance on the question of penalty. A clear message must be sent to industry participants that conduct of this kind will simply not be tolerated and, if established, will inevitably lead to the imposition of a significant penalty. In the present case, personal deterrence is also important for the simple reason that, as I have observed, the Appellant clearly lacks insight into the seriousness of his conduct.

40. Annexed to the Appellant's submissions on penalty were three decisions of the Appeals Panel of the Respondent which were relied on for what were said to be "*parity*" purposes. It is important to understand that whilst the operation of the parity principle requires that like offenders should be treated in a like manner, its operation also allows for *different* penalties to be imposed on *like* offenders in order to reflect *different* degrees of culpability, and/or *different* circumstances.[59]

41. In *Price,* which was the first of the decisions relied upon, there was one charge. That was also the case in the second decision relied upon, namely *Schmetzer*. The Appellant faces six charges, not one. The two decisions relied upon by the Appellant are therefore immediately distinguishable at a fundamental level.

[59] See *R v Medich (No. 43)* [2018] NSWSC 886 at [144] and the authorities cited therein.

42. The offending in *Drury,* which was the third case relied upon, was of a completely different nature to the offending in the present case. It involved a jockey dragging another jockey from her horse. It was put on behalf of the Appellant that *"the present matter is materially less serious than Drury"*. The "*present matter*", of course, encompasses the Appellant having engaged in a multiplicity of offending, as opposed to one isolated instance. *Drury,* like the other two decisions relied upon, is distinguishable on that basis.

43. Moreover, it is evident from the decision of the Appeal Panel in *Drury* that it took the course that it did and suspended the suspension having regard to the fact that:

    (i) the damage done to the racing industry was minimal;[60]

    (ii) having had the benefit of a stay for 3 months, the Appellant had not engaged in any further incidents of a similar kind[61] (a fact which inferentially supported a conclusion that she had a tangible degree of insight).

44. Neither of those circumstances are present in the Appellant's case. As to the first, conduct of the kind in which the Appellant engaged has the clear capacity to erode public confidence in the thoroughbred racing industry. Such a consequence is not properly described as minimal. As to the second, I have already commented on the Appellant's lack of insight, which is frankly palpable.

45. It follows that the three decisions relied upon by the Appellant provide no support whatsoever for the proposition that a fully suspended penalty is appropriate. The Appellant's reliance on them demonstrates, yet again, that comparative exercises of this kind are often unproductive, particularly when the decisions relied upon are immediately distinguishable.

[60] Reasons at [9].
[61] Reasons at [10].

46. I accept that there has been some delay in the charges against the Appellant being finalized. Precisely why that is so is not entirely clear, but I have taken it into account. I have also had regard to the various aspects of the Appellant's subjective case, including his generally good character. I accept that any penalty, unless wholly suspended, will cause him some hardship, including that of a financial kind. However, any such hardship is an inevitable consequence of offending of this kind. I am also conscious of the fundamental principle that a subjective case, irrespective of how strong it might be, cannot be permitted to result in the imposition of a penalty which does not properly reflect the seriousness of the offending.

47. The entirely inappropriate and offensive nature of the Appellant's offending, its objective seriousness, and the fact that it was sustained over a period of time, all support the conclusion that some actual penalty must be imposed. Whilst I may have imposed a penalty greater than that sought by the Respondent, a disqualification of 3 months is certainly within the range of a sound exercise of discretion, and takes into account all of the factors to which I have referred, along with the principle of totality.

ORDERS

48. I make the following orders:

1. The appeal is dismissed.
2. The order of the Appeal Panel imposing a suspension of 3 months is set aside.
3. In lieu thereof a disqualification of 3 months is imposed.
4. The disqualification in order [3] shall commence at midnight on 30 December 2025 and shall expire at midnight on 30 March 2026.

THE HONOURABLE G J BELLEW SC

23 December 2025