

**LEGAL, DISCIPLINARY, ETHICS AND APPEALS COMMITTEE OF THE SOUTH
AFRICAN EQUESTRIAN FEDERATION**

Ref: 002/2020

In the matter between

RENATA VAN RIJSWIJK

Appellant

and

SHOWING ASSOCIATION OF SOUTH AFRICA

Respondent

DECISION

1. In terms of the Constitution of the South Africa Equestrian Federation (“**SAEF**”), read together with the Procedure for Avoidance and Resolution of Disputes and Disciplinary Codes, Broad Framework (“**Disciplinary Code**”) this matter was referred to the Legal, Disciplinary, Ethics and Appeals Committee (“**the Commission**”).
2. The matter was referred to the Commission by Ms Renata van Rijswijk (“**the Appellant**”) on 11 March 2020 in terms of section 22 of the Disciplinary Code and the Commission has accepted jurisdiction of this matter.
3. A Judicial Panel was constituted for the purposes of adjudicating the matter.
4. In terms of section 6.2 of the Disciplinary Code, the Commission is empowered to determine its own rules, procedures and make any decision concerning their rules and procedures, to the extent that such rules and procedures are not already contained in the Disciplinary Code.

5. On 9 June 2020, the Judicial Panel sent a Procedure Document to the Appellant and the Respondent, setting out the procedure that will be followed by the Judicial Panel to bring the matter to a close.

6. The Appeal – submitted by the Appellant on 11 March 2020 – is against the decision by the Respondent which found the Appellant guilty of various charges and suspended the Appellant from holding an official position within the Respondent (**SASA**) for a period of 4 years. This decision was made pursuant to a Disciplinary proceeding held in terms of section 32 of the Constitution of the Showing Association of South Africa (**the SASA Constitution**). The Disciplinary Hearing/Enquiry was held on 20 February 2020.

7. The Judicial Panel finds that:-
 - a. the process followed by the Respondent and its Disciplinary Committee leading up to and including the Disciplinary Hearing were irregular;
 - b. No substantive grounds existed for the finding of fact that the Appellant had committed an offence under the SASA or SAEF constitutions.

8. Accordingly, the appeal is upheld. The Judicial Panel now sets out the reasons for its Decision.

FACTUAL BACKGROUND

9. The following facts are gleaned from the various documents submitted to the Judicial Panel, including from the Transcription of the Disciplinary Hearing.
10. On 12 December 2019 – during the Youth Championship at Kyalami Park Club, the Appellant’s daughter, Mimi Grace, competed – on behalf of the Western Cape – in the Team Event Showing¹. She also competed as an individual in the Small Show Hack on 12 December 2019. The Appellant’s daughter is 13 years of age².
11. During the Small Show Hack class, in which there were 5 horses participating, after the competitors performed their test, the competitors were put in a line-up by the Judge of the class, Ms Nicky Wright. Whilst Mimi Grace was untacking her horse, the Steward or the Judge informed Mimi Grace that it was unnecessary to untack. The Judge then informed Mimi Grace that she does not have time to ride all the horses in the class and that Mimi Grace can leave the arena³. This is the only version of what transpired in the arena during the Small Show Hack class that is presented to the Disciplinary Committee during the Disciplinary Hearing. No other version can be obtained from any of the documents submitted.
12. Mimi Grace left the arena as advised. The Appellant advises the Disciplinary Committee that her daughter was quite shaken after this – as the day before (11 December 2019) during the Team Event, Mimi Grace was busy tacking up her horse while the announcer started announcing the winners of the class – not allowing Mimi

¹ Transcription of Disciplinary Hearing, Page 1, Interview 009, line 17.

² Transcription of Disciplinary Hearing, Page 1, Interview 009, line 16.

³ Transcription of the Disciplinary Hearing, Interview 009, p 1, line 9-15.

Grace to leave the arena before doing so. Mimi Grace queried from her mother (the Appellant) why the announcer could not have waited for her to exit the arena before announcing the placings⁴.

13. After the Small Show Hack class, Mimi Grace again asked her mother, the Appellant, whether she had done something wrong or whether the judges did not like her horse because of the two incidents.⁵ Mimi Grace was notably upset, she returned to the stables with her horse. The horse was untacked and washed down.⁶
14. The Appellant approached the show box – where the Technical Representative, Ms Sue Cook was located - to inform them that she was scratching her daughter from the Show Riding Horse as she was in no state to compete further. On approaching the show box, the Appellant saw Ms Marcus (**the Complainant**), who asked her something about a shoe⁷. This is corroborated by Ms Marcus's testimony.⁸
15. The Appellant entered the show box . She did not look at the Complainant – who was also in the show box – but looked and addressed Ms Cook⁹ (**the Incident**).
16. According to the testimony given by the Complainant at the Disciplinary Hearing¹⁰ and in her letter of complaint¹¹, the Appellant said:

⁴ Transcription of the Disciplinary Hearing, Interview 009, p1, line 16-25.

⁵ Transcription of the Disciplinary Hearing, Interview 009, p5, line 115.

⁶ Transcription of the Disciplinary Hearing, Interview 008, p6, line 124.

⁷ Transcription of the Disciplinary Hearing, Interview 009, p6, line 120.

⁸ Transcription of the Disciplinary Hearing, Interview 006, p2, line 46-52.

⁹ Transcription of the Disciplinary Hearing, Interview 009, p6, line 129-131.

¹⁰ Transcription of the Disciplinary Hearing, Interview 006, p3, line 57-58 and line 68-69.

¹¹ Letter of Complaint, emailed on 18 December 2019 from Ms Clare Marcus Maloney to Ms Sue Cook, Paragraph 3.

“Listen, you people are the reason that Showing is losing numbers. My 13 year old daughter is devastated and in tears as the judge for that class did not ride her horse, and that a vast amount of money has been spent to get the horses and riders to the SA Champs. Scratch my child from the next class as she will not be riding another showing class. Sue, you have got exactly what you wanted.”

17. The Appellant could not recall the words she uttered when she entered the show box to scratch her daughter¹². The other witness statements from Ms Sue Cook (dated 24 December 2019) and Ms Rita Gasser (dated December 2019), which were available at the Disciplinary Hearing and referred to but not presented at the Disciplinary Hearing, do not add anything further to this testimony as Ms Cook’s witness statement merely refers to the procedure followed by the various judges on the day and Ms Gasser’s statement reads:

*“Her complaint was that the Judge Miss Nicky Wright did not ride her daughter’s horse who had been pulled in 4th.
She also complained that she had paid a lot of money in entries and that her daughter’s life had been ruined.
She also shouted at Sue Cook saying that she was ruining showing.”*

18. Unfortunately, neither Ms Gasser nor Ms Cook were called as witnesses at the Disciplinary Hearing and their evidence could not be interrogated regarding what was said. As such – the version provided by the Complainant is accepted.
19. What remains in dispute is whether the verbal utterance by the Appellant was aimed at Ms Cook, the Complainant or both. The Panel finds that, considering that the Appellant entered the show box to scratch her daughter from further showing classes for that day

¹² Transcription of the Disciplinary Hearing, Interview 009, p15, line 352.

and that this would be done with Ms Sue Cook, it is probable that her verbal utterance was directed at Ms Cook and not the Complainant as alleged by the Complainant.

20. A further factual dispute relates to the emotional state of the Appellant when she entered the showbox. The Appellant states that she was very emotional and irrational.¹³ This evidence is supported by the Appellant's witness, Ms Ferreira de Villiers, who is also Mimi Grace's coach.
21. Ms Ferreira de Villiers testified that the Appellant was highly emotional – not in angry manner but in a very vulnerable way.¹⁴ Ms Ferreira de Villiers stated that the Appellant was sobbing.
22. The Complainant's view of the Appellant's state of mind or emotional state on entering the show box is that the Appellant did not come across as a concerned mother – but rather as an accusing mother.¹⁵
23. This Judicial Panel accepts the Appellant's version of her emotional state. It appears that the Prosecutor and the Tribunal also accepts the Appellant's version that she was highly emotional..¹⁶ After the Disciplinary Chair delivered the guilty verdict, the Prosecutor, in arguing for aggravating factors in relation to the sentence, remarked that

“the tribunal feels that your emotional state didn't give you license to behave as you did...”

¹³ Transcription of Disciplinary Hearing, Interview 009, p7, line 146-147, line 148-149, line 151-152, p8 line 185-187, p15 line 352.

¹⁴ Transcription of Disciplinary Hearing, Interview 008, p1, line 22-24.

¹⁵ Transcription of the Disciplinary Hearing, Interview 006, p11, line 260.

¹⁶ Transcription of the Disciplinary Hearing, Interview 11, p2, line 26-27.

24. Pursuant to the Incident, at 7:19 PM on 12 December 2019, the Appellant addressed an email to Ms Cook and Ms Carter. The e-mail was also copied to Bev Williamson, Regina Hobbs and Lindsay Thomas.
25. This email is addressed to Ms Sue Cook – as the President of SASA and is signed by the Appellant – in her capacity as the President of Western Cape Showing.
26. The email refers to various complaints¹⁷ which were made to the Appellant during the Showing classes at the Youth Championship relating to how the Open Showing classes was conducted by the judges at the Youth Championship. The email states that a number of people were unhappy with the lack of feedback from judges to the riders in the showing classes, specifically the Open Junior Hack and Show Riding classes – where it was felt 2 very important elements in the judging process – Conformation and Ride by judge – were not applied to those competitors who were not in contention for a placing¹⁸.
27. The email further states that the riders did not complain about placings but felt that show time in the arena was important – especially at such an event where the classes were small and running on time¹⁹. The view is put forward that the judges should fairly assess and give a word of encouragement instead of just simply dismissing the competitors²⁰.

¹⁷ During the Disciplinary Hearing, the Appellant confirms that 2 complaints were made to her regarding the Showing classes during the Youth Championship. Transcription of the Disciplinary Hearing, Interview 009, page 9, line 208.

¹⁸ Email on 12 December 2019 from Renata van Rijswijk to Sue Cook and Others, paragraphs 1 and 2.

¹⁹ This is also confirmed in the testimony by the Complainant, Transcription of the Disciplinary Hearing, Interview 007, page 2, line 42-43.

²⁰ Email on 12 December 2019 from Renata van Rijswijk to Sue Cook and Others, paragraph 5.

28. The Appellant then requests comments from Ms Cook as she has been requested to provide feedback to the parents who were unhappy about the judging.
29. On 17 December 2019, 5 days after the Incident and the email from the Appellant regarding the judging at the Youth Championship, Ms Cook replied to the Appellant, stating that in terms of the Rules of Showing (rule 54.1.2) the judge may allow competitors who are not in contention to leave the arena. The reply further states that the senior judges, who officiated at the show, are experienced enough to know when they can allow riders to leave the arena without compromising their final placings.
30. To this the Appellant replied that the rules were not applied in that manner at the show and that she still required feedback regarding the Pony classes.
31. On 17 December 2019 Ms Cook addressed an email to Sue Carter, Bev Williamson, Reginal Hobbs, Brian Noach, Nicky Wright, Georgia Diedericks and Michelle Kruger informing them that she would not be conducting any further correspondence with the Appellant on the subject. The email was not sent to the Appellant.
32. On 18 December 2019, a letter of complaint was sent by the Complainant and to Ms Cook. It appears from an email sent to the Appellant on 22 January 2020 (including the Notice of a Disciplinary Hearing) that the letter of complaint was forwarded to the Appellant.
33. The Complainant refers to the Incident and refers to the email (sent by the Appellant to Ms Cook on 12 December 2019). The Complainant states in her letter:

“In the formal complaint that was sent to Sue Cook by Mrs van Rijswijk on the evening of the 12th December 2019, she questioned all the judges integrity at this show namely that of the Show Hack, Show Riding and Pony classes. I was the judge for the Show Riding classes and take great exception to her accusations.”

*“Mrs van Rijswijk’s insistence to continually berate the SASA President is totally unacceptable and extremely upsetting and distasteful. Her conduct as Provincial President and SASA Council Member is unbecoming. **I am therefore asking that SASA step in** to protect its officials and President from further abuse and comments which have not [sic] circumstantial evidence or grounds.”²¹ [own emphasis]*

34. The email from the Appellant seems to be the catalyst for the Disciplinary Enquiry against the Appellant. This is also confirmed in a statement made by Ms Cook during June 2020 which was attached to the Respondent’s Answering Statement (provided to the Judicial Council on 26 June 2020). Ms Cook’s statement provides:

“Although the incident was unpleasant no further action would have been taken if Mrs. Van Rijswijk had not followed up after the show with a defamatory email questioning the actions of the judges while they were officiating at the show.”

35. On 19 December 2019 Ms Cook emails the Respondent’s Exco (Executive Committee) stating that Exco now must decide whether to proceed with disciplinary action.
36. On 24 December 2019 Ms Kruger addressed an email to the Respondent’s Exco asking them to reply with their approval or non-approval to proceed with the Disciplinary Enquiry regarding the complaint received from Ms Marcus-Maloney. Ms Kruger holds the Legal Portfolio on the SASA National Council

²¹ Letter of Complaint, emailed on 18 December 2019 from Ms Clare Marcus Maloney to Ms Sue Cook, last two Paragraphs.

37. In various emails from the Exco members – approval is granted to proceed with the Disciplinary Enquiry.
38. On 30 December 2019 Ms Kruger sends an email to the National Council of the Respondent. The email is also copied to the Appellant. The email requests names for possible candidate to be appointed as Prosecutor and 2 candidates for appointment to the National Disciplinary Committee. No further details are provided and when the Appellant - as the President of Western Cape Showing – requests for which disciplinary hearing it is (email dated 31 December 2019) the response from the Respondent is that it is confidential.
39. On 14 January 2020 Ms Kruger emails the National Council of the Respondent with a list of nominations for the candidates to be appointed to the National Disciplinary Committee and the Prosecutor. The following candidates are appointed to the National Disciplinary Committee: Sue Carter (a senior Judge) and Jani Oelofse (Provincial President). The Prosecutor is listed as Di Peterson. This email is also sent to the Appellant in her capacity as a member of the National Council.
40. On 22 January 2020 (approximately 40 days after the Incident and email from the Appellant and 33 days after the Letter of Complaint) a Notice of Disciplinary Hearing (**the Notice**) was sent to the Appellant. The Notice was accompanied by the Letter of Complaint.
41. The Notice provides that the Appellant is instructed to appear at a formal disciplinary hearing, before the SASA National Disciplinary Committee in terms of Section 32.3 of the SASA Constitution.

42. The Notice states that the purpose of the disciplinary hearing is to establish whether the Appellant contravened one or more Sections of the Respondent's Constitution or its General Rules and Regulations and whether the Appellant had acted in any way that is derogatory or in contrast with the Constitution, with regards to the following:

“2.1 On or during the period of 12 December 2019 in your capacity as Western Cape Showing President acted wrongfully and abusive towards a Judge and Official.

2.2 You failed to ensure a high standard of discipline in your behaviour and remarks to officials and Judges and continuously act derogatory in an unbecoming manner, which has a negative and/or prejudicial effect to the objective of SASA.

2.3 You failed to follow the correct procure when lodging a complaint at an event.

2.4 Your action contravenes Section 30 of the SASA Constitution.”

43. On 28 January 2020, the Appellant emails the Respondent's appointed National Disciplinary Committee, the Prosecutor and Ms Cook. The Appellant places on the record that:

- a. the Prosecutor and National Disciplinary Committee all have an inherent conflict of interest as they all serve on the Respondent's National Council. There is no division of Powers;
- b. the matter came about after a conversation the Appellant had with Ms Cook at the Youth Championship (the Incident). It was not in the public and the Complainant was not the judge and the Appellant was addressing Ms Cook. She also confirmed that her conversation with Ms Cook was in her capacity as a mother and not that of the President of Western Cape Showing;

- c. no formal complaint was lodged by the Appellant at the show – neither was it her intention to lay a formal complaint. If the Incident was viewed as inappropriate it should have been dealt with at the show by the Show Director and not by means of a formal hearing;
- d. concerned about the constant issues with Western Cape Riders as listed in the Complainant’s letter of complaint;
- e. the Appellant had not yet finalised her membership of the Respondent for 2020 and as such, the Respondent had no jurisdiction over her.

44. On 11 February 2020, Elana Hopkins, the Appellant representative, addressed an email to the Respondent’s National Disciplinary Committee and Prosecutor requesting the following information:

- a. The specific sections of the SASA Constitution and/or General Regulations and/or Showing Rules that have been contravened;
- b. A copy of the Complaint that had been lodged incorrectly by the Appellant (as alleged in the Notice of the Disciplinary Hearing);
- c. The names of the official and judge in question (according to the Notice of the Disciplinary Hearing);
- d. A list of all witnesses that the Respondent will be calling at the Disciplinary Hearing; and
- e. The approval of the budget for the expenses of the disciplinary hearing and a resolution / mandate from the Respondent’s National Council approving the hearing.

45. On 17 February 2020, a letter from the Respondent's National Disciplinary Committee is emailed to the Appellant. The letter is titled: Confirmation of the Disciplinary Enquiry in terms of the SASA Constitution (**Confirmation of Enquiry**). The letter sets out the alleged contraventions:
- a. Clause 2.6.0 of the SAEF General Regulations;
 - b. Clause 40.2 and 40.3 of the SAEF Constitution; and
 - c. Parent's Code of Behaviour (SAEF Competitors' Code of Behaviour).
46. The letter further confirms the Prosecutor as Mrs Diane Pieterse (**the Prosecutor**) and that the Respondent will be calling only Mrs Clare Marcus Maloney (**the Complainant**) to testify at the enquiry.
47. On 20 February 2020 a document, titled "**Preliminary matter: rulings requested before hearing starts**" was forwarded to the National Disciplinary Committee and the Prosecutor.
48. The Preliminary matters include:
- a. A ruling that Elana Hopkins may act on behalf of the Appellant;
 - b. Request that the charges in terms of clause 6.3 of the Confirmation of Enquiry be dropped. The Appellant states that the alleged contravention was effected by the Appellant in her capacity as a parent and in terms of clause 32.2 of the SASA Constitution such a matter should have been dealt with at the show by the Show Director 4 hours after the closure of the class with notice of the complaint to be forwarded to the defendant within 5 working days of the complaint. No such notice was received;

- c. Any evidence and prosecution against the Appellant in her capacity as a parent cannot be pursued to do the lack of notice as referred to above;
- d. Ruling on a postponement – the initial charges as stated in the Notice of the Disciplinary Hearing has been altered and new charges were provided in the Confirmation of Disciplinary Enquiry – dated 17 February 2020. More time is required to prepare a defence on the new charges; and
- e. Ruling on the impartiality of the appointed National Disciplinary Committee.

DISCIPLINARY HEARING / ENQUIRY

- 49. The Disciplinary Hearing / Enquiry took place on 20 February 2020. A recording of the hearing was transcribed and provided to the Judicial Panel.
- 50. The Disciplinary Committee, chaired by Ms Kruger, first dealt with some of the preliminary points raised by the Appellant (see above).
- 51. On the issue of a conflict of interest the Chair found there to be no conflict.
- 52. On the issue of representation – the Chair agreed that the Appellant could be represented by Ms E Hopkins.
- 53. On the issue of a mandate – the Chair issued a ruling to say that a mandate was given by the SASA Executive Committee (EXCO) to proceed with the disciplinary enquiry.
- 54. The other preliminary matters which were raised by the Appellant’s representative were not dealt with.

55. The first and only witness on behalf of the Respondent was the Complainant.
56. The Appellant testified and a further witness, Ms Ferreira de Villiers was called by the Appellant.
57. After the last witness (the Appellant) was finished with giving evidence, the Chair asked all the parties, except for the National Disciplinary Committee to leave the room so that they could deliberate the matter²². It appears from the Appellant's appeal submission, Annexure A, Paragraph 2, that the Prosecutor was not asked to leave the room and was included in the deliberations.
58. The Decision – which is the subject of this appeal – was given by the Chair of the Disciplinary Committee. The Appellant is found guilty of all the alleged charges as contained in the Confirmation of Disciplinary Enquiry.²³ The Prosecutor and the Appellant are then given an opportunity to present argument for aggravating and mitigating circumstances.
59. The Prosecutor argues that the Appellant at the start of the proceedings pleaded not guilty – however throughout the Appellant's testimony she continually apologised about her behaviour.
60. The Appellant's representative presented in mitigation a letter from the President of the Western Cape Equestrian Federation. The letter states that the Appellant – since being

²² Transcription of the Disciplinary Hearing, Interview 010, p11, line 257-261.

²³ Transcription of the Disciplinary Hearing, Interview 011, p1, line 1-5.

elected as President of Western Cape Showing, has worked tirelessly to bring the showing discipline back to the days of former glory. The Appellant was well regarded within her discipline and generally in the Western Cape equestrian community by the other heads of disciplines in the Province. The letter states that as far as the author's knowledge – there has never been any incidents at any similar events and the Appellant has an exemplary record in equestrian sport.

61. It appears then that the Chair of the Disciplinary Committee introduced further aggravating circumstances with reference to the email sent by the Appellant to the Respondent on 28 January 2020. Unfortunately, the recording ends and no further information is available.
62. The sentence follows straight after the presentation of the aggravating and mitigating circumstances and the Appellant is suspended for 4 years as a committee member; however, the Appellant is still able to remain a member of the Respondent.²⁴
63. A Report of a Disciplinary Hearing dated 21 January 2020 (**the Report**) (this is potentially an error of the date) confirms the decision made by the National Disciplinary Committee. The Report provides that the Prosecutor's witness' testimony was true and supported by the witness statement of Rita Gasser (which appears not to have been handed up to the Disciplinary Committee).

²⁴ Transcription of the Disciplinary Hearing, Interview 012, p1, line 1-2.

64. The Report states further that the testimony of the Appellant's witness, Ms Ferreira de Villiers was weak and that there were some contradictions. No decision is given regarding the strength of the Appellant's testimony.
65. As aggravating circumstances, the Prosecutor referred to an email sent by the Appellant – which was placed into evidence – regarding threats made by the Appellant. The mitigating statement made by the Appellant included a letter from the President of the Western Cape Equestrian Federation and states that a sad and distraught mother was acting emotionally and not aggressive. This does not appear in the Transcription of the Disciplinary Hearing in the possession of the Judicial Panel.

DECISION OF THE JUDICIAL PANEL

66. The Judicial Panel – in adjudicating this matter - is tasked with answering two questions. The Appellant admits the Incident. As such the questions to be asked and answered is:
- a. Did the Incident constitute an offence (as alleged)?
 - b. Was the Process undertaken by the Respondent to adjudicate the Incident the correct process?

Did the Incident constitute an Offence?

67. During the reading of the Council's Decision, the Chair of the Council merely states that the charges (as stated in the Confirmation of the Disciplinary Enquiry) are proven and that therefore the Appellant is guilty. No reasons are given for this.

68. Throughout the Disciplinary Hearing no mention is made of the offences in detail. The various clauses / sections which are alleged to have been contravened are not read and there seems to be no evidence provided that directly speak to these clauses / sections.
69. Section 2.6.0 of the SAEF General Regulations provide that:
- “No member, athlete, competitor, owner, official or person responsible shall contravene at any event the common principles of behaviour, fairness and standards of sportsmanship which are acceptable to the reasonable horseman; it includes, but is not limited to the following:*
- *Any action resulting in an unfair advantage to the offender.*
 - *Any action resulting in a material disadvantage to any other person or entity involved.*
 - *Any action involving the maltreatment of horses.*
 - *Any action involving the impairment of the dignity or integrity of any person involved in the sport.*
 - *Any action involving fraud, violence or maltreatment or criminal acts at or relating to an event.”*
70. The only provision of this clause that could be relevant to the Incident would be that the Incident caused the impairment of the dignity or integrity of any person involved in the sport.
71. As no evidence is led as to whose dignity was impaired the Judicial Panel must presume that this refers to the Complainant’s dignity and integrity. It is the Complainant’s version that the Incident was aimed at herself and Ms Cook. It is the Appellant’s version that the Incident and the verbal utterance was aimed at Ms Cook.

72. As indicated above, the Judicial Panel’s view is that it seems reasonable to infer that the Appellants comments, when she entered the show box were directed at the Technical Representative, Ms Sue Cook and not the Complainant, who happened to be in the show box at the time of the Incident. The Complainant was not the judge who officiated over the Appellant’s daughter on the day nor was the Complainant the judge who officiated over the Team Event the previous day.
73. No other evidence – other than reference to the witness statement by Ms Gasser was presented in support of the Complainant’s version. Ms Gasser was not present at the hearing and so her evidence could not be interrogated and, accordingly, no weight is given to her statement.
74. Accordingly, we find that this charge is not proven.
75. Section 40.2 and 40.3 of the SAEF Constitution provides that:
- “40.2 No person bound by the Federation’s Constitution may perform any act that brings Equestrian Sport, the Federation, or any of its members, officials or office bearers into disrepute or which injures them in their dignity; or which has the potential of doing so; or which has the effect or is calculated to have the effect of doing so.*
- 40.3 In particular, but without affecting the generality of the a foregoing, such acts include the uttering, authoring or publishing of statements, articles or comments, verbally or in writing, by way of social media or any other medium or method of communication whatsoever, and which are threatening, derogatory, obscene, indecent, seditious, offensive, pornographic, abusive, disparaging, racist, discriminatory, menacing, inflammatory or defamatory.”*

76. Clause 40.2 is like clause 2.6.0 of the SAEF General Regulations. Clause 40.3 puts forward a list of acts and type of communication that would be considered an infringement of a person's dignity.
77. Again, the Prosecutor does not lead specific evidence to show that the verbal utterance of the Appellant falls within the list in 40.3. The list is not exhaustive. The Complainant's evidence suggests that the Appellant acted accusingly. It is interesting to note that Ms Cook's version of the Incident (provided in her statement of June 2020) is that:
- “Although the incident was unpleasant no further action would have been taken if Mrs. Van Rijswijk had not followed up after the show with a defamatory email questioning the actions of the judges while they were officiating at the show.”*
78. Considering that the verbal utterance was directed at Ms Cook and her view of the Incident was that it was 'unpleasant' this charge is not proven.
79. The Parent's Code of Behaviour provides that it is the Parent's responsibility to encourage participation by your children; provide a model of good sportsmanship for your child to copy; be courteous in your communication with athletes, team officials, game officials and sport administrators; encourage honest effort, skilled performance and team loyalty; make any new parents feel welcome on all occasions; do not interfere with the conduct of events; support SAEF policy of a smoke and alcohol free environment.
80. The Incident would – if anything – have triggered this provision, specifically the provision requesting parents to be courteous in communication with game (event)

officials. The Appellant's verbal utterance was not courteous – it was rude. Although the Panel accepts the Appellant's emotional state – her communication with Ms Cook was not courteous.

81. The Judicial Panel finds that the Appellant was guilty of this offence. It is, of course, every parent or competitor's right to approach an official at a show and to seek reasons behind decisions, but that approach must be done courteously, with due regard to the timing of the query. The Judicial Panel rejects the Complainant's aversion that a judge's decisions should never be questioned by competitors. This is clearly absurd.
82. The Judicial Panel furthermore finds that there were factors in mitigation with regards to this offence. The Appellant and her daughter had expended tremendous time, expense and stress to qualify for and travel to Youth Championships. The Appellant was not disputing the results of the class, but rather the fact that there was no ride by judge. The Judicial Panel finds that this was a valid query, although made in a matter which was discourteous.

Was the correct Process followed?

83. In considering whether the National Disciplinary Committee has observed the fundamental principles of fairness at the Enquiry, due regard must be had to the nature of the Committee and from where it derives its powers from. The principles of natural justice require the parties be heard (*audi alteram partem*), be given due and proper opportunity of producing their evidence and or correcting or refuting any allegation made against them and lastly that the Committee discharges its duty impartially and in

good faith. The Committee must be composed of unbiased and impartial persons (*nemo iudex in sua causa*).

84. The National Disciplinary Committee's right to charge and institute disciplinary proceedings against any of its members is contained in its Constitution (the SASA Constitution). The SASA Constitution – like the other equestrian disciplines under the SAEF umbrella – are also bound by the SAEF and SASCOG Constitutions. As such – any matter which is not clear or not dealt with under the SASA Constitution will need to be addressed in terms of the SAEF and/or SASCOG Constitution.²⁵
85. The Disciplinary proceedings of SASA are set out in Section 32 of the SASA Constitution. The relevant sections have been listed below.
86. Section 32.1 of the SASA Constitution provides that any responsible person who contravenes the provision of the SASA Constitution and/or any of the rules and regulations laid down by SASA or SAEF, is guilty of an offence.
87. Section 32.2.1 provides that a complaint must be reported to the Show director of the venue or the Show Holding Body within 4 (four) hours after the closure of the class and accompanied by the appropriate payment.
88. Thereafter a notice informing the Defendant of the complaint and the grounds of the complaint will be forwarded to the accused within 5 (five) working days of receipt of the complaint (section 32.2.3).

²⁵ See the Preamble of the SASA Constitution, read together with Sections 11.11.15(j) and 32.1.

89. The Defendant will be provided with a date and time to state his or her side of the matter (section 32.2.4).
90. Upon receipt of a written complaint, the SASA National Council will appoint a disciplinary Committee to investigate the received complaint (section 32.3.1).
91. The defendant will be advised of the alleged contravention as soon as practically possible after the disciplinary committee has been charged with the adjudication of the alleged contravention (section 32.3.4).
92. The Prosecutor, the accused and the disciplinary Committee may examine all witnesses (section 32.3.15).
93. The first matter to consider is whether the charges against the Appellant were brought in terms of section 32 of the SASA Constitution.
94. The charges brought against the Appellant are contained in the Notice of the Disciplinary Hearing, dated 21 January 2020. The Appellant is charged with contravening one or more sections of the SASA Constitution and the SAEF General Regulations (specifically Section 30 of the SASA Constitution) in that on 12 December 2019 – in her capacity as the President of Western Cape Showing – she acted wrongfully and abusive towards a Judge and Official and that she did not follow the correct procedure in lodging a complaint.

95. This Notice of the Disciplinary Hearing is problematic for the following reasons:
- a. The charge is very vague. Section 30 of the SASA Constitution related to Code of Conduct. Several of the provisions relate to horsemanship and the treatment of horses. The only provisions that could possibly be applicable are sections 30.10, 30.11, 30.13, 30.17 and 30.18. No further information is given regarding the SAEF General Regulations which the Appellant has contravened.
 - b. The Appellant is charged in her capacity as the President of Western Cape Showing. On 12 December 2019, the Appellant – in her capacity as the President of Western Cape Showing – addressed an email to Ms Cook (as the President of the Respondent). The content of the email is discussed above [para 22]. This email provides constructive feedback regarding the judging of the Showing classes at the Youth Championship (particularly on the day in question, 12 December). The content is neither rude nor discourteous and merely suggests that considering the age of the competitors, the importance of the Event that the riders receive more feedback from the judges and that the competitors are given more show time in the arena (considering the size of the classes and running on time). The letter does not constitute a complaint. The Incident – which was the subject of the Disciplinary Enquiry – was perpetrated by the Appellant in her capacity as a mother. Due to the vagueness of the charge it is not clear whether the Appellant is charged because of her conduct in the show box (her verbal utterance to Ms Cook) or the email she later sent as the President of Western Cape Showing or both.
 - c. The Notice is received by the Appellant approximately 40 days after the Incident and/or email. Section 32.2.3 of the SASA Constitution provides that a Defendant is informed of the complaint and the grounds of the complaint within

five (5) working days of receipt of the complaint. The Incident / email occurs on 12 December 2019. The letter of complaint from the Complainant is sent to the President of the Respondent on 18 December 2019. At best the Appellant should have been informed of the complaint by or on 28 December 2019 (taking into consideration weekends and public holidays).

96. On receipt of the Notice of Disciplinary Hearing, the Appellant addressed an email to the National Disciplinary Committee, the President of the Respondent, and the appointed Prosecutor. The email is discussed above. The email informs the National Council of the procedural irregularities, particularly regarding the conflict of interest of the appointed members of the National Disciplinary Committee, the fact that the incident was performed by the Appellant in her capacity as a mother (not as the President of Western Cape Showing) and no formal complaint was lodged at the Event by the Appellant.
97. On 11 February 2020 an email from the Appellant's representative, Ms Elana Hopkins is sent to the National Disciplinary Committee asking for more clarity on the Notice, particularly what sections of the SASA Constitution have been contravened, clarity on which complaint the Notice is referring to, a list of all witnesses and the mandate from SASA's National Council to proceed with a disciplinary enquiry.
98. After this email, a Confirmation of the Disciplinary Enquiry, dated 17 February 2020 is sent to the Appellant. The Confirmation contains specific sections of the SAEF General Regulations and the SAEF Constitution which the Appellant is alleged to have contravened. It is interesting to note that there is no reference to Section 30 of the

SASA Constitution as contained in the Notice. The Confirmation also provides that the Prosecutor will be calling the Complainant, Ms Clare Marcus-Maloney as a witness. No reference is made to witness statements, nor does it appear that any such witness statements are provided to the Appellant.

99. The Confirmation of the Disciplinary Enquiry is problematic for the following reasons:
 - a. The Confirmation refers to the Appellant's actions and conduct as an office bearer, however, the charge contained at paragraph 6.3 refers specifically to the Parent's Code of Behaviour. It is not clear from the Confirmation whether the Appellant is charged in her capacity as an office bearer (as per the earlier Notice) or as a parent or both. It also appears that the charges relating to Section 30 of the SASA Constitution have been dropped.
 - b. The Confirmation is sent to the Appellant 3 days before the date of the Disciplinary Enquiry – providing the Appellant with no time to prepare for the new charges.
 - c. No reference is made to witness statements - which were referred to but not handed up at the Disciplinary Hearing. As the Appellant was not given these witness statements beforehand, there is no way the evidence in such statements could be interrogated and in terms of the process laid out in Section 32 of the SASA Constitution (32.3.15) the accused could not examine the witness (Ms Rita Gasser and Ms Sue Cook).

100. During the Disciplinary Enquiry, the Chair dealt with a few preliminary matters raised by the Appellant prior to the hearing. The Appellant raised five preliminary points.

Some of these points were dealt with by the Chair, save for two which the Judicial Panel will deal with.

101. The Appellant raised as a preliminary point the fact that the charge brought under paragraph 6.3 of the Confirmation of the Disciplinary Enquiry refer to the Parent's Code of Behaviour. This charge relates to the Appellants verbal utterance in the show box towards Ms Cook (the Technical Representative for the Respondent during the Youth Championship²⁶).
102. In terms of section 32.2.1 of the SASA Constitution, a complaint must be reported to the Show director of the venue or the Show Holding Body within 4 (four) hours after the closure of the class and accompanied by the appropriate payment. The Complainant's letter of complaint to the President of the Respondent was sent and received by the Respondent on 18 December 2019. No evidence of any other complaint regarding the Incident is provided.
103. Notwithstanding the clear procedural irregularities in respect of the charges brought against the Appellant, as clearly raised by the Appellant timeously, the Respondent failed to address these irregularities or to seek condonation therefore, nor did the Chair properly and correctly address them, either as points *in limine* or at all.
104. Although the Judicial Panel finds that the Appellant was guilty of an offence under the Parent's Code of Behaviour – the procedure followed was flawed.

²⁶ Witness Statement of Sue Cook, dated 24 December 2019.

105. The Judicial Panel finds in favour of the Appellant in that the charges brought in terms of the Parent's Code of Behaviour should have been dropped and not pursued at the Disciplinary Enquiry.
106. The second preliminary point not dealt with the Chair of the Disciplinary Committee was that the Appellant had asked for a postponement of the Disciplinary Enquiry as the charges contained in the initial Notice are different to the charges listed in the Confirmation.
107. The Judicial Panel is of the view the difference between the charges brought in terms of the Notice and the Confirmation are of such a nature that the Disciplinary Enquiry should have been postponed and that a proper charge sheet should have been drawn up to contain properly constituted charges, clarity in which capacity the Appellant is being charged and clarity on which basis the Appellant is being charged, ie the Incident or the email or both. As discussed above, any charge pertaining to the Incident would need to have been initiated 4 hours after the closure of the class. As no evidence is presented to show that a complaint was received within this timeframe (including the required payment) no charge on this basis can be validly instituted against the Appellant.
108. Based on the above the Judicial Panel finds that the only offence committed by the Appellant was that her verbal utterance to Ms Cook in the show box was not courteous. At worst this should have resulted in a yellow card warning or verbal warning at the event itself. Despite this the Respondent sought to proceed with a disciplinary enquiry against the Appellant – first based on the email sent by the Appellant to Ms Cook on 12 December 2019 and thereafter – based on the Incident at the Youth Championship. The complaint was never properly before the Disciplinary Committee as the complaint

did not comply with the provision of section 32 of the SASA Constitution. The charges against the Appellant were never properly formulated nor were they clear and unambiguously set out. The referral to witness statements during the Disciplinary Enquiry – which were never presented to the Appellant to examine or interrogate - is procedurally unfair. Lastly, the Disciplinary Enquiry itself is flawed in terms of the constituents of the Disciplinary Committee and its actions during the Disciplinary Enquiry.

OBITER DICTUM

109. Although not necessary for the purposes of the Decision, the Judicial Panel would like to take the opportunity to make a number of comments which will hopefully be able to guide the Respondent – and other discipline associations – when dealing with disciplinary proceedings in the future.
110. The Appellant on at least two occasions prior to the Disciplinary Enquiry raised the partiality of the Disciplinary Committee with the Chair of the Disciplinary Committee and the President of the Respondent²⁷. This was dealt with by the Chair of the Disciplinary Committee at the beginning of the Enquiry but was dismissed by the Chair on the basis that the member of the Disciplinary Committee did not receive remuneration and as such there was no conflict of interest.
111. Section 32.3.1 of the SASA Constitution provides that upon receipt of a written complaint, the SASA National Council will appoint a disciplinary Committee to

²⁷ Email of 28 January 2020 from the Appellant to the Chair of the Disciplinary Committee, the President of SASA, the Disciplinary Committee members and the Prosecutor; Email of Appellant's Representative to the Chair of Disciplinary Committee on 20 February 2020 including preliminary matters to consider at the hearing.

investigate the received complaint. The facts support that this happened during December 2019 and January 2020 when the SASA National Council were asked to send nominations for members of the Disciplinary Committee and a Prosecutor.

112. The Judicial Panel accepts that this Process was followed. The Judicial Panel does, however, agree that the members of the Disciplinary Committee and the Prosecutor were not impartial and were conflicted.
113. One of the principles of natural justice – *nemo iudex in sua causa* (no-one is judge in his own cause) – provides that an adjudicator in a matter needs to be impartial and without bias.
114. The Chair of the Disciplinary Committee holds the portfolio of Legal on the SASA National Council (in effect she would advise the National Council on legal matters). She would be pivotal in deciding whether to proceed with any action against any member of SASA. She would also have prior information regarding the complaint and was involved in the correspondence on this matter since its inception. As such, she is unable to chair a Disciplinary Enquiry or even be a member of such a Disciplinary Committee. Sue Carter (who also sits on the National Council and the National Executive Committee) is a Showing Judge. From the Complainant's letter of complaint, the Complainant felt that the Appellant had attacked the dignity of all the showing judges in her email of 12 December 2019. This is also clear in Ms Cook's Statement (June 2020). Ms Carter also received the initial letter of complaint (as part of the SASA Executive Committee) and was instrumental in giving permission to proceed to call for a disciplinary enquiry. As such Ms Carter could not be a member

of the appointed Disciplinary Committee. Lastly, Ms Oelofse is also a National Council member and, again, should not be a member of the Disciplinary Committee.

115. The impartiality of the Disciplinary Committee is vitally important in attaching any value to any of its decisions. The Judicial Panel would like to recommend that, in future, all discipline associations, appoint members to their Disciplinary Committee who are objective and have no connection to the parties; Disciplinary Committees should be comprised of, or at least Chaired by, trained legal professionals; and Prosecutors need to be trained legal professionals.
116. Although the Judicial Panel accepts that the Disciplinary Committee follows a more inquisitorial process in adjudicating a matter - of concern to the Judicial Panel is that the Chair argued several points whilst presiding over the Enquiry (particularly regarding the preliminary points raised by the Appellant). At times, the Chair led evidence and asked leading questions²⁸.
117. The Chair also allowed the Prosecutor to be a part of the deliberation of the matter. In the Respondent's response to this statement in the Appellant's appeal – the Respondent noted that the presence of the Prosecutor was merely to provide the Disciplinary Committee with the necessary documents.²⁹

²⁸ Transcription of the Disciplinary Hearing, Interview 002, p1 – 4, Interview 003, p1 – 2, Interview 004, p1-8, Interview 006, p8, line 185, p9, line 198-199, Interview 007, p4, line 74-81, Interview 010, p3, line 69 – 71, p5, line 111-112, p6, line 133-134, p8, line 167-173, p8, line 181-186, p9, line 192-195 and 212-213, p10 line 219-221, Interview 011, p3, line 56-58, 60-61, 66-68.

²⁹ Respondent's Answering Statement, p4, paragraph 3.

118. This is highly irregular. All documents should already have been in possession of the Disciplinary Committee. In fact, most correspondence, from the letter of complaint to the last email of 20 February 2020 were emailed to all the members of the Disciplinary Committee. It would be the responsibility of the Prosecutor and the Appellant to ensure that all documents for the Hearing were in a file and presented to the Disciplinary Committee prior to the Hearing.
119. To add to this, the Judicial Panel noted that the Prosecutor at times gave evidence and/or her opinion³⁰. Despite the inquisitorial nature of these proceedings, this is irregular, and it would be the Chair's responsibility to ensure that the Prosecutor did not offer opinion or evidence and that no leading questions were asked and that evidence presented or referred to by either party were correctly presented and that each party would have an opportunity to test the veracity of such evidence.
120. To end – it appears that the sanction was already predetermined before the Disciplinary Committee had heard argument for mitigating and aggravating circumstances. The Prosecutor presented aggravating circumstances first. The Prosecutor – after leading argument for aggravating circumstances states:
- “I think that’s it, and the sentence that’s been proposed, what [sic] me to go there now?”³¹*
121. There appears to be little time between the Appellant providing mitigating circumstances and the Chair giving her finding on an appropriate sentence. From this

³⁰ Transcription of the Disciplinary Hearing, Interview, 008, p7, line 152-167, p8, line 183-188, p10, line 213-216, Interview 009, p3, line 56, p11, line 241-246, p13, line 295 – 303.

³¹ Transcription of the Disciplinary Hearing, Interview 011, p2, line 31.

it can be deduced that no weight was given to the Appellant's argument for mitigating circumstances.

122. On consideration of:

- a. The clear lack of impartiality in respect of the Disciplinary Committee;
- b. The failure of SASA (the Respondent) to comply with their own disciplinary procedures in pursuing the disciplinary process against the Appellant;
- c. The vague and inaccurate charges set out for the Appellant to answer in the Disciplinary Hearing / Enquiry;
- d. The procedural irregularities in respect of the actual conduct of the Disciplinary Hearing / Enquiry;
- e. The fact that the Prosecutor clearly failed to prove the charges against the Appellant, even based on a balance of probabilities, based on the Transcription of the Disciplinary Hearing; and
- f. The outcome of the Disciplinary Hearing was clearly predetermined, as was the sanction to be imposed, which entirely fails to properly consider the evidence led during the enquiry or indeed the mitigating factors presented.

123. It is of concern to this Judicial Panel that disciplinary processes such as this, pursued in such a procedurally flawed manner, undermine the fair and proper administration of the sport, to the significant detriment of the sport. It has the effect of discouraging members of the sport from raising valid issues and problems within the sport for the due and proper attention of Administrators to improve the sport, overall, for its members.

124. It is important for justice to be done, but it is equally important for justice to be seen to be done. The transcript of this Disciplinary Enquiry showed several gross miscarriages

of justice, and this Judicial Panel is of the view that these injustices should be set to rights. In the circumstances, SASA should publish the findings of this Judicial Panel on its website and on its newsletter so that its members are informed of the setting aside of the Disciplinary Committee's ruling, and the reinstatement of the Appellant in her position with Western Cape Showing.

Dated: 20 July 2020


Appointed Chair of the Judicial Panel

J Turner



T Lomax



S Copeland