

Case number: NST-E22-15681

Case Title: Stephen Culley v Nick Petz (with AusCycling)

Determination

National Sports Tribunal

General Division

sitting in the following composition:

Member

Mr Marcus Charles Katter

in the arbitration between

Mr Stephen Culley

(Applicant)

And

Mr Nick Petz

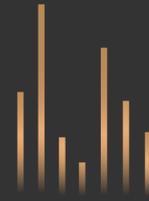
(Respondent)

And

AusCycling

(Applicant Sporting Body)

Represented by Brooke Stevenson



PARTIES

1. Mr Stephen Culley is the Applicant (“**the Applicant**”). The Applicant made a complaint to AusCycling on 11 January 2022 regarding occurrences at the Cross Keys BMX Club grounds on Monday, 10 January 2022.
2. Mr. Nick Petz is the Respondent (“**the Respondent**”). The Respondent is the President of Cross Keys BMX Club (“**Cross Keys**”).
3. AusCycling is the National Sporting Organisation in accordance with the definition set out in section 5 of the *National Sports Tribunal Act 2019* (Cth) (“**the Act**”). AusCycling applied to the National Sports Tribunal (“**the Tribunal**”) for resolution of the dispute by application dated 17 January 2022.

INTRODUCTION

4. The complaint of the Applicant relates to the conduct of the Respondent in ejecting the Applicant from the premises of Cross Keys during an event on 10 January 2022. The Applicant submits¹ that the Respondent’s conduct on 10 January 2022 was in breach of provisions of the AusCycling - Code of Conduct (Including Officials) and provision of the AusCycling – Child Safe Sport Policy & Code of Behaviour.
5. The Respondent submits that the ejection of the Applicant from the Cross Keys premises was in accordance with a lifetime ban (described as a 10-year ban) previously imposed by a subcommittee of Cross Keys.²
6. The Parties entered into an Arbitration Agreement³ wherein the issues in dispute were identified. Pursuant to the Agreement, the Tribunal is to consider the validity of the lifetime ban and whether the conduct of the Applicant and the Respondent at (and in relation to) the event at the Cross Keys premises on 10 January 2022 requires sanction.

NST JURISDICTION

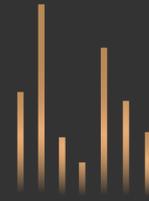
7. Clause 2.1 of the Arbitration Agreement sets out that the “Parties have agreed to refer the dispute to the General Division of the NST for arbitration and agree that the NST’s jurisdiction is engaged by sections 24(1)(b)(i) and 24(1)(c)(i) of the *National Sports Tribunal Act 2019* and permitted within Step 4 of the AusCycling Complaints Handling Procedures”.
8. Step 4 of the AusCycling Complaints Handling Procedure confirms that after receiving a formal complaint the CEO (or nominee) from AusCycling may refer the matter to the National Sports Tribunal.
9. The parties agreed at clause 9.3 of the Arbitration agreement that the determination issued by the Tribunal will represent full, final, and binding settlement of all matters in dispute.

FACTUAL BACKGROUND

¹ Exhibit 3, email from Applicant to NST, written submissions from Applicant, 24 Feb 22.

² Exhibit 23, written submissions from Respondent, 1 Mar 22.

³ Arbitration Agreement signed by Applicant on 16 Feb 22, signed by Respondent on 23 Feb 22 and signed by the Representative for AusCycling on 4 Mar 22.



10. On 10 January 2022, the Applicant attended the Cross Keys premises with his wife and children for an event⁴ conducted by Cross Keys.
11. After entering the premises, the Applicant was directed by the Respondent to leave the premises. The Respondent states that “I was only acting on the decision that the committee made back in Feb/March 2021” to enforce a lifetime ban from Cross Keys that was imposed on the Applicant.⁵ The lifetime ban was imposed by Cross Keys on the Applicant as a sanction in response to an incident involving the Applicant that occurred in early 2021 (whether or not Cross Keys has authority to impose such a sanction is considered in detail below). The Respondent states that after he had made multiple requests to the Applicant to leave, the Respondent contacted Police.⁶
12. In relation to the ejection from the Club premises, the Applicant states that the Respondent was “... aggressive, abusive and swearing at me...” and that “...the behaviour went on for about 15mins...”.⁷
13. Whilst the Tribunal has considered all documentation filed, the evidence presented at the hearing and the submissions made by the parties, these reasons refer only to the evidence and submissions necessary to explain the reasoning of the Tribunal in arriving at the determinations in this matter.

PROCEEDINGS BEFORE THE NST

14. The Arbitration Agreement sets out a timeline for the filing of documentation by the parties prior to the hearing. Pursuant to the agreement, the Applicant was to file materials (written submissions, witness statements and other documentary evidence) prior to 5pm on Monday, 21 February 2022. The Respondent was to file materials prior to 5pm on Monday, 7 March 2022. Any materials AusCycling wished to rely upon were to be filed prior to 4pm on Monday, 14 March 2022. The Applicant was permitted to file materials in reply prior to 4pm on Monday, 14 March 2022.
15. The hearing of the Application occurred by videoconference on Monday, 28 March 2022 at 6pm (Australian Eastern Daylight Time).
16. No objection was made by any party to the composition of the Tribunal. At the conclusion of the hearing there was no complaint raised nor concern noted by any party in relation to the conduct of the hearing.

APPLICABLE RULES

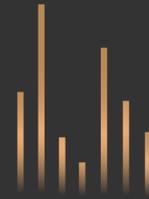
17. It was non-controversial that the policy documentation promulgated by AusCycling applied to both the Applicant and to the Respondent as Members of the National Sporting Organisation. The following AusCycling documentation has been considered:
 - a. AusCycling National Member Protection Policy Part D: Complaint Handling Procedures
 - b. AusCycling Code of Conduct (Including Officials)
 - c. AusCycling Child Safe Sport Commitment
 - d. AusCycling Child Safe Sport Policy & Code of Behaviour
 - e. AusCycling Disciplinary Policy

⁴ A “gate session” was conducted on 10 January 2022. See Exhibit 27, statement of Michael Hutchens dated 6 February 2022.

⁵ Exhibit 23, written submissions from Respondent, 1 Mar 22.

⁶ Ibid.

⁷ Exhibit 1, Complaint by Applicant to AusCycling, 11 Jan 22.



18. The Tribunal also considered the Constitution of Cross Keys in relation to the power of the Cross Keys to impose a lifetime ban on the Respondent.

MAIN SUBMISSIONS OF THE PARTIES

Applicant submissions

19. The Applicant submitted in writing⁸ that the Respondent has breached AusCycling policy as follows:

“1. Respondent in Breach of Code of Conduct (Including Officials)

- I. 4.3 That is free from harassments*
- II. 5.1 Act in a manner that is compatible with the interests of Auscycling*
- III. 6.2 Sledging’ other athletes, officials or event organisers. Sledging is defined as a statement that is deemed to denigrate and/or intimidate another person, or behaviour likely to constitute emotional abuse.*
- IV. 7.7 Be courteous, respectful and open to discussion and interaction.*
- V. 7.8 Respect the decisions of fellow officials, coaches and administrations in the conduct of the sport.*
- VI. 7.11 Be a positive role model in behaviour and personal appearance.*
- VII. 7.13 Ensure your decisions and actions contribute to a harassment free environment*

2. Respondent breached the Child safe sport commitment

3. Respondent in Breach of child safe sport policy and code of behaviour

- I. 3.5 Use of language and tone or voice – Language and tone of voice in the presence of children and young people should*

Provide clear direction, boost their confidence, encourage or affirm them

Not be harmful to children – in this respect, avoid language that is:

Discriminatory, racist or sexist

Derogatory, belittling or negative, for example, by calling a child a ‘loser’ or telling them they are ‘too fat’

Intended to threaten or frighten

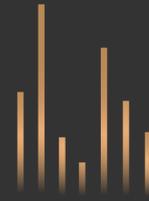
Profane or sexual.”

20. The Applicant submits that “in the safety of all children and members it is only fair that the Respondent Mr Nick Petz’s membership is revoked and stood down from all positions”.⁹

Respondent submissions

⁸ Exhibit 3 Written Submission, 24 February 2022.

⁹ Ibid.



21. The Respondent submitted in closing at the conclusion of the hearing that the Applicant should not be permitted to work with children (within Auscycling). The Respondent further submitted that the lifetime ban imposed by Cross Keys should remain. The Respondent re-iterated in closing submissions the concern that the Respondent had for the welfare of a minor that was present during the interchange between the Applicant and the Respondent at the Cross Keys event on 10 January 2022.

Auscycling submissions

22. By email of 25 March 2022 to the Tribunal, AusCycling provided the following submissions:

“Should there be a case of bullying and harassment from Mr. Petz determined by the Arbitrator, AusCycling would view this a breach a multiple AC policies, and due to the position Mr. Petz holds as Club President, we would like to reserve a sanction recommendation, until the findings are presented by the Arbitrator, as the severity of the sanction would be determined by this. AusCycling would also recommend the Club Committee undertake education and refreshment on the AusCycling Member Protection Policies and Code of Conduct, and a written apology to the complainant. Should there be a breach of policy from Mr. Culley, AusCycling would impose a further 6-8-wk sanction with an official warning that should there be a third issue of involvement of disruptive/disorderly behaviour, then a 4-6 month sanction could be placed, subjective to the incident.”

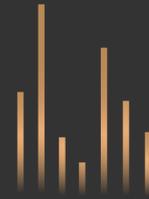
MERITS

The lifetime ban

23. Does Cross Keys have the authority to impose a lifetime ban on the Applicant? The *Associations Incorporation Act 1985 (SA)* provides at section 23 that “The rules of an incorporated association bind the association and all members of the association”. The rules of Cross Keys are set out in a document titled “Cross Keys BMX Club Incorporated Constitution”. There was no evidence before the Tribunal to suggest that Applicant has ever been a member of Cross Keys. Therefore, in accordance with section 23 of the *Associations Incorporation Act* the Applicant is not bound by the Constitution or any rules of Cross Keys.
24. Irrespective of any rules or any provisions in the Constitution, an occupier of land may refuse to permit a person to enter or remain on the land of the occupier.¹⁰ The right of Cross Keys to refuse entry or to eject a person from their premises is not reliant upon the subject person holding membership of the Club. It might be suggested that payment of entry fees grants a participant a contractual right to enter the land. It might also be suggested that a parent or guardian of a minor participating at a “gate session” has an implied licence to remain at the premises for the event in the capacity of a spectator or supervisor of the minor. Despite any such contractual right or implied licence, the High Court in *Cowell v Rosehill Racecourse Co Ltd*¹¹ held that the right or licence can be revoked at any time by the occupier.
25. Therefore, whilst it is open for an occupier of land to revoke the right or licence of any person to remain on the occupier’s land, the imposition of a lifetime ban that purports to permanently deny (or deny for a period of 10 years) the right or licence to enter the Club premises raises a separate consideration as to the legitimacy and lawfulness of what is effectively the imposition of an administrative sanction. It must be emphasised here that the effectiveness of a purported administrative sanction is a separate consideration from whether an occupier of land can refuse entry or eject a person from premises. Therefore, a finding regarding the legitimacy of a “lifetime ban” does not preclude an occupier of land from exercising rights as to ejection of persons from premises.

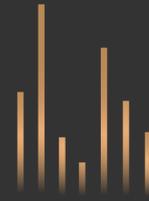
¹⁰ See section 17A *Summary Offences Act 1953 (SA)*.

¹¹ (1937) 56 CLR 305.



26. Prior to imposing any administrative sanction, a person adversely affected by the proposed sanction must be afforded a reasonable opportunity to be heard regarding any such proposed sanction. The failure of a decision maker to provide a reasonable opportunity to be heard gives rise to a denial of procedural fairness or natural justice. A decision to impose a sanction made in the absence of procedural fairness is impugned and the decision may be deemed *void ab initio*.¹² The right of an affected person to be heard in relation to a proposed sanction might, in some instances, be abridged or even denied if the urgency of the situation requires immediate action. In circumstances of extreme urgency, the opportunity to be heard should still be provided *ex post facto* and reconsideration of any actions taken might then be appropriate. There was no evidence before the Tribunal to indicate that the Applicant was afforded a right to be heard in relation to the lifetime ban at any stage prior to, or after, the imposition of the ban.
27. Further, the details of what constitutes a lifetime ban (or any other sanction) is not specified nor particularised in any regulations, rules, or policy documentation of Cross Keys. The Constitution of Cross Keys does set out at clause 10 that disciplinary proceedings may be commenced against a Member and "... That Member, will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and the appeal mechanisms of the Club set out in the Regulations". Even if the Applicant were a Member (the applicant was not a Member of Cross Keys), the Tribunal would need to consider whether the imposition of a lifetime ban was imposed in accordance with requirements set out in Regulations. However, it was not clear from any written documentation what a lifetime ban actually entails. It was put to the Tribunal by the Respondent that a lifetime ban meant a ten year ban.
28. The Respondent did not produce any written documentation relevant to the lifetime ban. During the hearing the Respondent was asked by the Tribunal Member whether there "was any written documentation that the Tribunal can refer to that does set up procedures or disciplinary procedures within the Club". The Respondent did not refer to any such written documentation. The Respondent did answer that "... the Committee will make a decision and go over everything". In response to a question from the Tribunal Member during the hearing regarding whether there was any written documentation generated regarding the actual lifetime ban that was imposed on the Applicant, the Respondent did state that the committee is a volunteer committee and that "... the secretary I believe sent it all out". However, no documentation was produced. There was no written confirmation such as a "banning notice" that particularised what the ban was, why it was imposed, and how long it would last. Even considering the lifetime ban as simply an occupier exercising the right of ejection, it is still not sufficiently clear, on the evidence provided, as to how long the revocation of the implied consent (that a spectator might ordinarily hold to enter the premises to watch a family member compete) would last.
29. The Tribunal cannot be satisfied as to the existence of any regulation that sets out penalties (more appropriately described as administrative sanctions). Nor was there any documentation or written correspondence produced in relation to the lifetime ban. Whilst the Constitution of Cross Keys provides for the establishment of sanctions, no record was produced that set out any such sanction. To impose a sanction or ban without having a recorded document that establishes the availability of the sanction would permit such imposition to be appropriately described as arbitrary.
30. To summarise the above commentary in relation to the lifetime ban, the right of an occupier to eject a person from the occupier's land is a separate consideration from whether a "lifetime ban" can be imposed. In relation to a lifetime ban, there was no opportunity afforded to the Applicant to be heard in relation to the sanction prior to imposition. There was no recorded regulation, policy or procedure that established the sanction of a lifetime ban. There was no recorded regulation, policy or procedure that established mechanisms required to impose such a sanction. There was no documentation before the Tribunal that provided any details as to what the lifetime

¹² See *Ridge v Baldwin* [1964] AC 40; [1963] 2 All ER 66 per Lords Reid, Hodson and Morris; *Calvin v Carr* [1979] 1 NSWLR 1; [1980] AC 574 at 589, 590; (1979) 22 ALR 417; 53 ALJR 471; *Forbes v New South Wales Trotting Club Ltd* (1979) 143 CLR 242 at 277; 25 ALR 1; per Aickin J.)



ban entailed or how long it would last. Having regard to these matters, the Tribunal determines that the lifetime ban, as purportedly imposed, is void.

The ejection on 10 January 2022

31. The matter before the Tribunal arose from a complaint lodged by the Applicant with AusCycling that specifically related to the behaviour of the Respondent towards the Applicant at a Cross Keys event on 10 January 2022.¹³
32. The issues in dispute identified in the Arbitration Agreement address the veracity of the lifetime ban. The purported ban requires consideration because the dispute that occurred on 10 January 2022 was premised, to at least some extent, on whether or not the lifetime ban was effective. The behaviour of the Applicant and Respondent in relation to the 10 January 2022 dispute is addressed as follows:

“5.5 Do the subsequent behaviours of both the Applicant and the Respondent require further sanction under the Applicant Sporting Body’s National Member Protection Policy? Specifically, among other things, in relation to:

5.5.1 Bullying and harassment on the part of the Respondent

5.5.2 Slandering and defamation on the part of the Respondent

5.5.3 Misleading statements on the part of the Applicant

5.5.4 Refusal to leave a venue after being told to leave on the part of the Applicant”

33. It is therefore appropriate for the Tribunal to consider the evidence before the Tribunal relevant to any behaviour or conduct by the Applicant and Respondent relating to the ejection on 10 January 2022. Consideration will be given as to whether any behaviour contravenes AusCycling Policy and whether any sanction should be imposed.

Conduct of the Respondent

34. The Applicant provided evidence in relation to the 10 January 2022 incident as follows:
35. In an email from the Applicant to AusCycling dated 11 January 2022¹⁴, the Applicant stated that the Respondent was “aggressive, abusive and swearing at me to get the fuck out of his club as I was banned for life...”. The Applicant stated that the behaviour “...was done in front of numerous children and adults”.
36. A statement of Louise Culley¹⁵, the wife of the Applicant provided the following in relation to the incident of 10 January 2022:

“While I was paying I could hear Mr Petz screaming...”

...

“...every time Stephen tried to change direction, or step away Mr Petz kept getting in his face.”

...

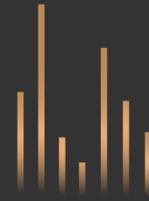
“Mr Petz was yelling get the fuck out of my club, who the fuck do you think you are?”

...

¹³ Arbitration Agreement signed by Applicant on 16 Feb 22, signed by Respondent on 23 Feb 22 and signed by the Representative for AusCycling on 4 Mar 22 at paragraph 4.1.

¹⁴ Exhibit 1, Complaint by Applicant to AusCycling, 11 Jan 22.

¹⁵ Exhibit 13, Statement of Louise Culley, undated.



“you are fucking banned for life from here.”

...

“Towards the end of the session our 11 yr old son Heath came back to inform me while he was training Mr Petz had pointed at his 4A plate and said “he doesn’t fucking deserve that 4A plate, he had a piss easy semi”. Another child also heard this.”

37. A written statement by Scott Zetter¹⁶ referred to a telephone call from the Respondent to a Kevin Gatt. Mr Zetter provides what is effectively double hearsay evidence as to what was said by Kevin Gatt to Scott Zetter in turn regarding what was said by the Respondent to Kevin Gatt regarding Applicant.
38. The Respondent cross-examined the Applicant in relation to his evidence. The Respondent did not request the maker of any other statement tendered by the Applicant to be available for cross-examination.
39. The Respondent provided evidence in response as follows:
40. In relation to the conduct of the Respondent on 10 January 2022, the Respondent agrees that he directed the Applicant to leave the Cross Keys Premises and indicated that he would call police if the Respondent did not comply.¹⁷ The Respondent further stated that “...I only stood my ground in front of Steve as he kept walking further into the club grounds even after being asked to leave multiple times, my arms were lifted as I was pointing to the gate for Steve to leave these actions were not meant in a threatening manner, they were just to get Steve to leave as he would not listen to anything I said”.
41. The statement of Adam Kerkemeyer confirms that Mr Kerkemeyer did not see or hear anything because he was “too busy helping the children”.¹⁸ The Tribunal cannot attach any significant weight to evidence from a witness that was distracted. It was not the case that the witness was focussed on the interactions between the Applicant and the Respondent and was therefore able to provide clear and cogent evidence of any interactions.
42. The statement of Michael Hutchens sets out that the Respondent requested the Applicant to leave the Cross Keys premises on 10 January 2022 on multiple occasions and that the Respondent contacted police for assistance.¹⁹
43. A witness Michael Edge provided oral evidence that he did not hear verbal abuse on the night of 10 January 2022. Mr Edge provided further evidence that he did not see the Respondent block the path of the Applicant on the night of 10 January 2022.

Findings regarding the Respondent’s conduct

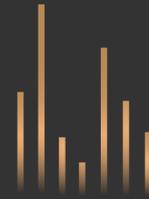
44. There was no evidence that suggested that the Respondent knew or understood that the lifetime ban imposed on the Applicant by Cross Keys was void or would be determined to be void. The Tribunal is satisfied that the Respondent held a genuine belief that the lifetime ban by Cross Keys was enforceable against the Applicant. Therefore, the actions of the Respondent in ejecting the Applicant were carried out in accordance with the genuine belief of the Respondent as to the enforceability of the ban and it cannot be construed that the ejection amounted to bullying or harassment.
45. However, there is sufficient weight of evidence as set out above to find, on the balance of probabilities that the Respondent did use profane language in a raised voice to eject the Applicant. On the evidence presented, the Tribunal accepts that the Applicant did not

¹⁶ Exhibit 14, Statement of Scott Zetter, undated.

¹⁷ Exhibit 23, Statement of Respondent, 1 March 2022 at paragraph 3.

¹⁸ Exhibit 24, Statement of Adam Kerkemeyer, 7 March 2022.

¹⁹ Exhibit 27, Statement of Michael Hutchens, 6 Feb 2022.



immediately leave the premises when requested by the Respondent and that the firmness of any direction by the Respondent may have been reasonably elevated as a result of the initial refusal of the Applicant to depart. Multiple witnesses have referred to profanities used by the Respondent in directing the Applicant to depart the premises. Whilst some evidence was provided by the Respondent that was conflicting regarding the nature of the communications made to the Applicant, the weight of evidence supports a finding that profanities were used by the Respondent and that a raised voice was used.

46. Evidence was provided by the Applicant and the wife of the Applicant that minors were present to hear the profanities. The nature of venue and the nature of the event do indicate a reasonable likelihood that minors would be within earshot of any loud exchange between the Applicant and the Respondent. There was a paucity of evidence to suggest that the exchanges between the Applicant and the Respondent occurred in isolation from minors. Whilst the Tribunal cannot be satisfied as to the number of the minors that heard the exchanges, nor the precise distance minors were from the exchanges, the Tribunal is satisfied on the balance of probabilities that minors were able to hear the exchanges and therefore the use of the profanities in addition to the presence of minors made the communications by the Respondent inappropriate.
47. In relation to the evidence provided regarding comments made by the Respondent to the son of the Applicant, the evidence presented is hearsay evidence. In addition, there was conflicting evidence provided by the Respondent regarding the asserted interactions. Therefore, the Tribunal is not satisfied that there is sufficient weight of evidence to make an adverse finding regarding the alleged comments to the son of the Applicant.
48. To summarise, the Tribunal does not have sufficient evidence before it to find that the conduct of the Respondent amounted to harassment.²⁰ The Tribunal is not satisfied that the evidence supports any finding regarding harm to the interests of AusCycling.²¹ Nor does the language or tone used amount to sledging.²² In that the ejecting was in accordance with a genuine belief as to the legitimacy and enforceability of the purported ban, the Respondent was not failing to respect any separate decision of AusCycling regarding sanctioning.²³ Likewise, the Tribunal is not satisfied in all the circumstances, even noting the use of profanities and the presence of minors, that the evidence is sufficient to find that the Respondent should be sanctioned for not being a positive role model in behaviour or appearance.²⁴
49. However, the findings set out above regarding the use of profanities and the tone do contravene paragraph 7.7 of the AusCycling Code of Conduct (Including Officials) in that the language was not “courteous nor respectful”.²⁵ Further, the use of ‘profane’ language in the presence of children does contravene paragraph 3.5 of the AusCycling Child Safe Sport Policy and Code of Behaviour.
50. The AusCycling Disciplinary policy defines breaches as either “Minor” or “Serious” at paragraph 2.1 as follows:

²⁰ See Exhibit 3 Applicant's Written Submission, 24 February 2022 regarding the asserted breach of the AusCycling Code of Conduct (Including Officials) “4.3 ... free from harassments” and “7.13 Ensure your decisions and actions contribute to a harassment free environment”.

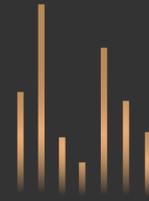
²¹ Ibid regarding the asserted breach of the AusCycling Code of Conduct (Including Officials) “5.1 Act in a manner that is compatible with the interests of Auscycling”.

²² Ibid regarding the asserted breach of the AusCycling Code of Conduct (Including Officials) “6.2 Sledging’ other athletes, officials or event organisers. Sledging is defined as a statement that is deemed to denigrate and/or intimidate another person, or behaviour likely to constitute emotional abuse.”

²³ Ibid regarding the asserted breach of the AusCycling Code of Conduct (Including Officials) “7.8 Respect the decisions of fellow officials, coaches and administrations in the conduct of the sport.”

²⁴ Ibid regarding the asserted breach of the AusCycling Code of Conduct (Including Officials) “7.11 Be a positive role model in behaviour and personal appearance”.

²⁵ Ibid regarding the asserted breach of the AusCycling Code of Conduct (Including Officials) “7.7 Be courteous, respectful and open to discussion and interaction”.



Minor Breaches

Any of the following if done during or in connection with a cycling activity conducted or managed under the auspices of AusCycling or a Member Club, constitute a minor breach:

- a) *inappropriate consumption of alcohol or tobacco (including consumption of alcohol whilst under the age of 18) and/or being drunk and disorderly;*
- b) *breaching a curfew or other rules;*
- c) *any other disruptive, disorderly, unreasonable, untoward or inappropriate behaviour.*

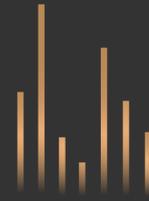
Serious Breaches

Any of the following if done during or in connection with a cycling activity conducted or managed under the auspices of AusCycling or a Member Club, constitute a serious breach:

- a) *consuming or aiding and abetting the consumption of illegal or illicit drugs and other prohibited substances;*
- b) *improperly incurring debts (e.g. telephone or accommodation charges) on behalf of AusCycling;*
- c) *committing any criminal breach or any other unlawful activity;*
- d) *acts, omissions, conduct and any other behaviour that brings, or is reasonably likely to bring the sport of cycling and/or AusCycling into ridicule or disrepute;*
- e) *any “match-fixing” or other act or omission that may artificially, improperly, illegally or unreasonably alter the outcome of a cycling race.*
- f) *gambling, or placing any wager or bet or assisting another individual to gamble or place a wager or bet, on the outcome or details of a cycling race in respect of which the relevant individual is involved or has some specialist, confidential, “insider” or other sensitive information;*
- g) *disclosing any specialist, confidential, “insider” or other sensitive information as described immediately above to any third party for the purposes of or relating to gambling, betting, “match-fixing”, or any act or omission designed to artificially, improperly, illegally or unreasonably alter the outcome of a cycling race;*
- h) *underage or inappropriate sexual activity; inappropriate use of social media and technology, including: i. posting or distributing actual or potentially defamatory, offensive, derogatory, private or otherwise sensitive photos, videos, comments or other information of or relating to another person or AusCycling; ii. recording and/or photographing another individual without their consent; and iii. any other disruptive, disorderly, unreasonable, untoward or inappropriate behaviour, that is of a serious nature (even if such behaviour or conduct is capable of being classified as a ‘minor breach’).*

51. The use of profanities in the presence of children does not fall under any category of serious breaches and must, accordingly, be classified as a minor breach being in the category of “other disruptive, disorderly, unreasonable, untoward or inappropriate behaviour”.

52. The AusCycling Disciplinary Policy at paragraph 3.5 provides for a range of sanctions for minor breaches as follows:



- a) *impose a warning;*
- b) *the requirement for a written apology from the offender to specified persons/organisations;*
- c) *a reprimand; and/or*
- d) *suspending the alleged offender from current or future cycling events, competition, teams, functions, training or practices sessions, or other event conducted or managed under the auspices of AusCycling (or any part for no longer than 3 months).*

53. In relation to the appropriate sanction, the use of the profanities in the presence of children occurred in circumstances where the Respondent was acting under a genuine belief as to the legitimacy of his actions in attempting to eject the Applicant. Whilst still unacceptable to use profane language in the presence of minors, the conduct is at the lower end of the severity and the nature of the sanction should accord with the level of severity. Therefore, the appropriate sanction is for AusCycling to issue a warning to the Respondent.

Conduct of the Applicant

54. The Respondent provided the following in relation to the conduct of the Applicant on 10 January 2022.

55. In the statement of the Respondent²⁶ the following is provided:

“... I walked down the back of start hill and up to Steve and asked him to leave he ignored me I told him that this is Cross Keys gate session and he was banned from Cross Keys run events, he kept saying NO I pointed to the black fence/gate and said you have to be behind the fence line while this is a cross keys event as you are banned from the club. Steve replied to me No Im not now as because we are all one under Auscycling, then he tried to walk off. I stood in front of him to stop him from entering further into the club area and said If you don't leave Im calling the police, he walked back to staging, it was at this time Scott Zetter who runs the Adelaide section of the team the Culley family are in. Scott asked multiple questions like why was Steve banned I replied Steve Knows, he then asked how was Steve informed I told him it was by email and Auscycling know about it. Scott then asked more questions in to which I replied this is known of your business. I then approached Steve again and said you are to leave now or Im calling the police. Steve refused again. I then asked Adam to stop the gates till this was sorted as there was kids riding around at the back of staging going up top the gates which I didn't want them to be witness to Steve behaviour. I called the police, then Smash (Auscycling), Kevin Dowse (Auscycling SA) and told them what had happened and why.”

56. The statement of Michael Hutchins²⁷ describes “The Non-member Steve Culley was argumentative Nick asked him again to leave and he kept persisting on entering the premises from all different areas of the facility. Nick then asked me to stop the gates as he phoned the police to help with the situation as he Steve was getting quite angry and even more argumentative.”

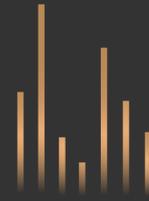
57. The statement of Andrew Roberts also sets out that the Applicant at first refused to leave when requested and that the police were contacted.²⁸

58. The Respondent also called Michael Hutchens, Andrew Roberts and Michael Edge as witnesses to provide oral evidence. The Applicant cross-examined the witnesses.

²⁶ Exhibit 23, Statement of Respondent, 1 March 2022 at paragraph 3.

²⁷ Exhibit 27, Statement of Michael Hutchens, 6 Feb 2022.

²⁸ Statement of Andrew Roberts undated 1 page (not marked as Exhibit).



59. Both Michael Hutchens and Andrew Roberts confirmed the contents of their statements. Michael Edge did not provide a written statement. As noted above, Mr. Edge provided oral evidence that he did not hear verbal abuse on the night of 10 January 2022. Mr Edge provided further evidence that he did not see the Respondent block the path of the Applicant on the night of 10 January 2022.

Findings regarding Applicant's conduct

60. It is not disputed that multiple requests were made to the Applicant to depart the Cross Keys premises on 10 January 2022. However, in the same way that the Respondent held a genuine belief as to the validity of the lifetime ban, the Applicant also held a genuine belief that the lifetime ban by Cross Keys was not effective. This belief would be supported by the absence of any documentation provided to the Applicant regarding the ban. Whilst it is open for an occupier of land to revoke a right or licence of a person to enter the occupier's land (as discussed above), the ejection was on the basis of the purported life ban. Therefore, the Applicant's initial questioning or refusal to immediately depart was not, in the circumstances, unreasonable. The evidence that the Applicant failed to immediately depart the Cross Keys premises when requested on 10 January 2022, does not, in the circumstances, permit an adverse finding against the Applicant.

61. The Respondent and the witness Michael Hutchens both commented as to the nature of the communications made by the Applicant on 10 January 2022. Michael Hutchens stated that the Applicant was "was getting quite angry and even more argumentative". However, no further evidence nor any particulars of the actual language used by the Applicant was provided and there was no further evidence to clarify how any anger was manifest.

62. There is insufficient evidence to make an adverse finding regarding the conduct of the Applicant on 10 January 2022.

THE TRIBUNAL THEREFORE DETERMINES:

1. That a non-publication order is made in relation to the entire contents of Exhibit 14 in these proceedings.
2. That the lifetime ban imposed by Cross Keys on the Applicant is *void ab initio*.
3. That a warning should be issued by AusCycling to the Respondent in relation to the Respondent's conduct towards the Applicant on 10 January 2022.

Date: 12 May 2022



Marcus Katter, Member