

1 February 2024

Re: Disciplinary meeting of Jessica Hayes-Hill and Laura Strugnell

Dear Jessica and Laura

You have been called for a disciplinary meeting by your Artistic swimming management team.

Date: 1 February 2024

Time: 15:15 - 15:45

Venue: Ezdan Hotel, Doha (specific place within the hotel to be communicated)

The case brought forward is noted as the following:

Deceitful actioning of training protocol without management approval

Meeting agenda:

Presenting of case

Possible outcome

Jessica and Laura defence

Deliberation

Outcome

Kind regards

Artistic Swimming management team South Africa

World aquatics championships Doha 2024



IN THE APPEAL PROCEEDINGS

In the appeal between:

LAURA STRUGNELL

First Appellant

JESSICA HAYES-HILL

Second Appellant

and

SWIMMING SOUTH AFRICA

First Respondent

YOLANDI DLAMINI N.O

Second Respondent

KELLY SLOLEY N.O

Second Respondent

WENDY BUITENDAG N.O

Fourth Respondent



APPEAL AND REVIEW AGAINST THE DISCIPLINARY PROCEEDINGS BROUGHT AND SANCTION/S IMPOSED AGAINST THE APPELLANTS BY THE SWIMMING SOUTH AFRICA

PARTIES

1. The First Appellant is **LAURA STRUGNELL**, an adult female and an Individual member and Athlete at the Respondent, residing at Bougain Villas, 1 Century Boulevard 104 Coral, Century City, Cape Town, 7441.

2. The Second Appellant is **JESSICA HAYES-HILL**, an adult female and an Individual member and Athlete at the Respondent, residing at 74 Pluto Road, Plumstead, Cape Town, 7800.
3. The First and Second Appellant shall here on out be referred to as ("**Members**")
4. The First Respondent is Swimming South Africa ("**SSA**") an association established in terms of section 1(e) of the National Sport and Recreation Act 18 of 2007 and it has sole jurisdiction for the administration and control of aquatics and its disciplines in the Republic of South Africa for and in the interests of all citizens of South Africa (the public) with its principal place of business at 124 Van Beek Street, North Wing, Ground Floor Johannesburg Stadium, New Doornfontein.
5. The Second Respondent is Yolandi Dlamini, an adult female and member of the Artistic Swimming Management Team.
6. The Third Respondent is Kelly Sloley, an adult female and member of the Artistic Swimming Management Team.
7. The Fourth Respondent is Wendy Buitendag, an adult female and member of the Artistic Swimming Management Team.
8. The Second to Fourth Respondents are cited in their normal capacities as the Artistic Swimming Management team of South Africa whose decision the Appellants appeal, alternately reviews.
9. SSA is governed by a constitution ("**SSA Constitution**") and is registered with the South African Revenue Service ("**SARS**") as a Public Benefit Organization and with the Department of Social development as a non-Profit Organization.



JURISDICTION AND DUTIES OF THE RESPONDENT

10. The Executive Committee of SSA is responsible, *inter alia*:

- 10.1 Deal with all cases of misconduct directly or through the Disciplinary Committee;
- 10.2 Approve the appointment of all officials and members of teams representing SSA;
- 10.3 Decide on and publish by-laws and Rules;
- 10.4 Impose sanctions as and when required;
- 10.5 Attend to all appeals.



11. The Respondent therefore has the requisite jurisdiction to entertain this matter.

BACKGROUND

SELECTION TO COMPETE AT THE WORLD CHAMPIONSHIPS

- 12. On 9 January 2024 SSA announced the team to attend the 21st World Aquatics Championships Qatar, Doha ("World Championships") which was to be held from 2 February 2024 to 18 February 2024 ("Team Announcement"). A copy of the Team Announcement is attached hereto marked as annexure "A1".
- 13. The Team Announcement confirmed the Members selection and appointment as members of the Artistic Swimming Team and the SSA National Team to participate at the World Championships.
- 14. The team staff ("Team Management" and/or "Team Officials") appointed by SSA as part of the Artistic Swimming Team ("Team") for the World Championships were as follows:

- 14.1. Yolandi Dlamini (Team Manager);
 - 14.2. Kelly Sloley (Coach); and
 - 14.3. Wendy Buitendag (Coach)
15. The aforesaid selection by SSA of the Artistic Swimming Team for the World Championships was subject to the completion and signature (by athletes and team officials) of the athlete and team official agreement ("**Athlete Agreement**").
 16. The Athlete Agreement is binding on SSA and all Athletes and Team Officials (referring to the Team Management) are bound by the terms and conditions of the Athlete Agreement, which agreement is of force and effect for the duration of the World Championships or "*Event*" as it is referred to in the Athlete Agreement.
 17. In terms of clause 3.1 of the Athlete Agreement direction of and authority over the Team is vested in SSA as provided in the SSA Constitution.



CODE OF CONDUCT

18. Furthermore, both Athletes and Team Officials agree to be bound by the SSA Constitution and the code of conduct attached to the Athlete Agreement as Appendix 2 thereto ("**Code of Conduct**").
19. The Code of Conduct provides, *inter alia*, that:
 - 19.1. In accepting the award of selection as members of the Swimming South Africa National Team, athletes, coaches, managers and other team officials involved in the participation of South Africa in the Event, accept and agree to conduct themselves at all times in a manner that will do the insignia under which they have been chosen to represent their sport,

SSA as custodian of South Africa's participation in the Event and finally their country, in whose name they participate, proud.

- 19.2 SSA has accepted the responsibility on behalf of government, sponsors, supporters and the broad South African public to ensure that the South African Team to the Event, is a credit to the country and that its members are at all times worthy and dignified ambassadors while representing the high ideals that SSA has set for their participation.

- 19.3 In the interest of South Africa and of sport in general, it is vital that the conduct of those representing the country will at all times be above reproach.



- 19.4 If anyone (Athletes and/or Team Management) should infringe the Code of Conduct, disciplinary steps in the discretion of SSA, and as necessary, in consultation with the authority concerned, will be taken against such person. This may include, under special circumstances, the immediate suspension of Team membership.

- 19.5 SSA will ensure that the Team management will consist of seasoned, experienced and responsible persons who can provide the necessary guidance.

- 19.6 Every Team Member, which includes Athletes and Team Officials, is an ambassador of South Africa and accepts that acceptable behaviour includes acting with dignity and respect for others.

DISCIPLINARY PROTOCOL AND SANCTIONS

20. Clause 17 of the Athlete Agreement provides that should an Athlete or Team Official be in breach of any of the provisions of the Athlete Agreement, all of which shall be deemed to be material, SSA may at its discretion:

- 20.1. Terminate the Athlete or Team Official's membership of the Team;
- 20.2. Require the Athlete or Team Official to leave the Event and to return home;
- 20.3. Exclude the Athlete or Team Official from competing at the Event;
- 20.4. Request the Athlete or Team Official's Affiliate or authority to institute disciplinary action;
- 20.5. Instruct the Athlete or Team Official to return any benefits granted.



- 21. In terms of the Disciplinary Protocol an Athlete and/or Team Official is accepted as a member of the Swimming South Africa National Team on condition that he/she has signed the Athlete/Team Official Agreement which clearly sets out the conditions under which an Athlete or Team Official is accepted as a member of the Swimming South Africa National Team and the Code of Conduct applicable to all Team members.
- 22. Specific reference is made in the Disciplinary Protocol to Clause 17 of the Athlete Agreement (Breach of Provisions of the Agreement).
- 23. In the event of a breach of the Athlete Agreement and/or the Code of Conduct, the Disciplinary Protocol provides the following:
 - 23.1 A disciplinary tribunal will act for SSA from the assembly of the Team and for the full period of the Team's participation in the Event.
 - 23.2 The Disciplinary Tribunal will comprise the Chef de Mission / Team Manager / Head Coach, with powers to co-opt any other member of SSA as necessary.

23.3 The following general principles will be applied to ensure that any disciplinary hearings in respect of any member of the Team (referred to as "Member" in the Disciplinary Protocol) are conducted by the Disciplinary Tribunal on a basis that is both procedurally and substantively fair:

23.3.1 The Member should be given reasonable notice of the date and time of the hearing as well as all the essential facts, to enable him/her to prepare his/her reply to the charge (-es). In the case of an Athlete, the Tribunal may decide, in its discretion, to have the respective Code/Section Manager and/or Coach present at the hearing.



23.3.2 The member should be given the opportunity to present his/her case at the hearing, prior to any decision taken that may affect his/her rights or privileges.

23.3.3 Although no right to legal representation can be claimed in terms of the common law, legal representation will be permitted, if requested, unless it would cause an unreasonable delay or protraction of proceedings, particularly where circumstances require a speedy outcome.

23.3.4 The Tribunal conducting the hearing must be unbiased and unprejudiced. The test is objectivity and if it is found that a person has a material, pecuniary or some other interest in the case resulting in bias or has conducted him/herself in such a way that a preconceived attitude or state of mind can be inferred, his/her action will be invalid even if no injustice is proved.

23.3.5 The evidence presented should be carefully heard, assessed and a decision taken based thereon. Findings of the Tribunal are

definitive, i.e. findings are final and binding and are not subject to appeal.

23.3.6 The Tribunal shall furnish the Member with written reasons for its decision and the action taken by it.

23.3.7 The sanctions (if any) should be commensurate with the gravity of the offence.

23.3.8 In general, justice should not only be done but also be seen to be done. A general sense of fairness should prevail prior to, during and subsequent to the disciplinary hearing.



NOTICE OF DISCIPLINARY MEETING

24. At 13h26 (Doha time) on Friday 1 February 2024 the Members received a WhatsApp message from Ms. Dlamini which stated as follows:

"Hi Girls please see attached".

A copy of a screenshot of the aforesaid WhatsApp message is attached hereto as annexure "A2".

25. The attachment referred to by Ms. Dlamini was a written notice to attend a disciplinary hearing, attached hereto and marked as annexure "A3" (**"Notice of Disciplinary Meeting"**).

26. The Notice of Disciplinary Hearing purported to give the Members notice of the calling of a Disciplinary Hearing.

27. In terms of the Disciplinary Meeting Notice the disciplinary meeting was due to take place on 1 February 2024 at 15h15 to 15h45 (a 30-minute duration). It is important to note that this meant that the Disciplinary Hearing was set to take place less than 2 hours after notice was given.

28. The Charge the Respondent's relied upon was as follows:

"Deceitful actioning of training protocol without management approval" (the "Charge").

29. No further information was provided in the Disciplinary Meeting Notice, in particular the Disciplinary Meeting Notice did not disclose any alleged material facts in support of the Charge. The Disciplinary Notice thus failed and/or neglected to inform the Appellants of the "essential facts" which give rise to the Charge in the Disciplinary Notice.

30. In the circumstances the Appellants were unable to understand the charge fully and properly against them nor were they able to prepare a defense.

THE DISCIPLINARY MEETING

31. The Appellants attended the disciplinary meeting as instructed by the Respondents.

32. At the commencement of the disciplinary meeting, the Appellants raised the following preliminary matters, recording that the process was fundamentally unfair and prejudicial to them in the circumstances:

32.1 Inadequate (unreasonable) notice of the disciplinary meeting had been given which prevented properly and adequately preparing for the meeting;

- 32.2 There was a lack of disclosure of essential facts in support of the allegation and therefore the Appellants were unable to prepare a defence to and against the charge;
- 32.3 The right to legal representation was requested;
- 32.4 Enquiry as to why the matter could not be postponed to a time after the Event when all parties had returned to South Africa;
- 32.5 It was stated the disciplinary meeting would unreasonably interfere with the preparation for and competing in the competition on 2 February 2024.



33. Pursuant to the aforesaid representations and/or submissions, it was stated by Ms. Sloley that the Disciplinary Meeting would be commencing despite the Appellants submissions. It was further stated by Ms Sloley that disciplinary meetings **must** be held on the same day as the alleged offences.
34. Notwithstanding the above, the Respondents agreed to a short adjournment as they stated they would need to take advice and would revert. The Disciplinary Hearing was thereafter adjourned until further notice.

SANCTION OF WITHDRAWAL FROM THE COMPETITION

35. On Saturday 2 February 2024 the Appellants were informed by the Respondents that a decision had been made by the Respondents and that the Appellants had been withdrawn from all events, accreditation revoked and that the Appellants would be sent home on the first flight the following morning (Sunday, 3 February 2024).
36. This decision was made by the Respondents in the Appellants absence.

37. The sanction was issued by the Respondents without following due and proper process as prescribed by or in the Disciplinary Protocol.

38. The sanction and actions taken by the Respondents contravened the Disciplinary Protocol in that:

38.1. The Appellants were not given reasonable notice of a disciplinary hearing together with all the essential facts to prepare a reply to the charge. In fact, no notice (or essential facts and details of the charge/s) was given at all and no disciplinary hearing was held before a properly constituted and appointed Disciplinary Panel.



38.2. The Appellants were accordingly not given the opportunity to present a case at a disciplinary hearing before a decision was made and the sanction/s imposed on the Appellants.

38.3. no written reasons for any decision and action taken against us were given to us.

38.4. No sense of fairness, whether general or at all, has prevailed prior to, during or after any decision.

39. The sanction and action taken against the Appellants is accordingly substantively and procedurally unfair and falls to be set aside on a review / appeal.

40. Despite repeated requests for written reasons for the decision the Respondents have failed and or refused and or neglected to make same available.

CONCLUSION

41. Based on the above grounds, the decision made by the Respondents is reviewable and appealable.

WHEREFORE THE APPELLANTS CLAIM THE FOLLOWING

- 42 The disciplinary findings and sanction/s of the Respondents against the Appellants be reviewed and set aside, alternately that a disciplinary hearing be reconvened in terms of the prescribed procedures.

**BURROWS ATTORNEYS INCORPORATED**

Attorneys for the Appellants
First Floor, Galaxy House
42 Homestead Road
Rivonia
Email: david@burrowslaw.co.za
Tel: 0737817370
Ref: Mr. B Landman/burrows/SSA



SWIMMING SOUTH AFRICA APPEAL HEARING

In the appeal between:

LAURA STRUGNELL

First Appellant

JESSICA HAYES-HILL

Second Appellant

and

SWIMMING SOUTH AFRICA

First Respondent

YOLANDI DLAMINI N.O

Second Respondent

KELLY SLOLEY N.O

Third Respondent

WENDY BUITENDAG N.O

Fourth Respondent



JUDGMENT

INTRODUCTION

1. The first appellant and the second appellant (“the appellants”) have instituted appeal proceedings to set aside the disciplinary findings and sanctions brought against them by the respondents, alternatively that the disciplinary hearing be reconvened in terms of the prescribed procedures.

2. In summary the appellants' case is the following:

2.1. On 9 January 2024, the first respondent announced the team to attend the 21st World Aquatics Championship, in Qatar, Doha that was scheduled to be held

from 2-18 February 2024. The appellants were selected as part of the team to compete in both the duet and team events.

2.2. On 1 February 2024 at 13h26, the appellants received WhatsApp messages, which contained a disciplinary notice, informing them that they were required to attend a disciplinary hearing on that day at 15h15.

2.3. The charge specified in the disciplinary notice was simply put as “*deceitful actioning of training protocol without management approval*”. No further information was provided in the respective notices.¹

2.4. When the appellants attended the disciplinary meeting at the time specified in the notice the appellants raised the following preliminary matters:

Unreasonable notice of the meeting had been given to them which prevented them from properly and adequately preparing for the meeting, the notice failed to specify essential facts in support of the alleged charge and as such the appellants did not know the case against them. The appellants further requested legal representation and that the matter be postponed until they were back in South Africa (“RSA”) and they informed the second to fourth respondents that the meeting would interfere with their preparation for the competition which was to commence the following day.

3. Despite the requests, the third respondent informed the appellants that the meeting would commence and that the meeting had to be held on the same day as the alleged offences.
4. Notwithstanding the above, the respondents agreed to a short adjournment, informing the appellants that they would revert. The meeting was thereafter adjourned until further notice.

¹ Page 28 of the appellants appeal bundle



5. On 2 February 2024, the appellants were informed that a decision had been taken, that the appellants had been withdrawn from all events, and that they would return to the RSA the following morning.
6. It is the appellants' case that the sanction that the respondents issued was done without following due and proper process as prescribed by the first respondent. Accordingly, the sanctions and actions taken against the appellants was substantively and procedurally unfair. It is on that basis that the appeal is brought.

Points in limine



7. Before proceeding with the hearing of the appeal certain points in limine pertaining to the appellants' membership and therefore their ability to bring the appeal including their right to be legally represented in the appeal hearing was raised by the first respondent.

Jurisdiction

8. In reply to the jurisdictional challenge based on membership to the first respondent, the appellants produced proof namely their registration for membership to the first respondent forms including payment of the prescribed fee. Notwithstanding this proof, when the appellants were sanctioned by the respondents, they were members of the first respondent. As such the appeal panel retains jurisdiction to entertain the appeal. The first respondent rightly did not persist with this point.

Right to legal representation

9. The representative for the first respondent argued that the appellants were not allowed to be legally represented at the hearing. The first respondent argued further that the appellants were only entitled to be represented by an SSA member and that any query must be presented by the appellants themselves or by a nominated member. This the appellants were made aware of in an email dated 28 May 2024 which was sent by the first respondent to the appellants. It must be highlighted however, the appeal panel retains a discretion in this regard.

10. The appellants in reply relied on clause 4.3 of the athlete and team management official agreement, appendix 4 disciplinary protocol, which states that *"Although no legal representation can be claimed in terms of the common law, legal representation will be permitted if requested unless it would cause an unreasonable delay or protraction of proceedings, particularly where circumstances require a speedy outcome...."*². In the alternative, the appellants relied on clause 5 of the SSA Constitution in particular clause 5.1.4 which states that *"each individual member and in the case of minors and their parents or legal guardians, by preceding according to clauses 5.1.1 and 5.1.3, acknowledge that the SSA is the only recognised body in South Africa which governs the aquatic disciplines and that they are bound by the provisions of the Constitution of the SSA"*.

11. It must be noted though that one of the appellants' legal representatives, Mr B Landman ("Landman") is a parent of a member of SSA and it is on that basis

² Page 226 of the appellants appeal bundle

that it was argued that even if legal representation was not allowed at the hearing, Landman could still assist the appellants based on membership. After hearing the argument by both representatives, it was decided that legal representation could be allowed more particularly in that:

- 11.1. Clause 4.3 did not expressly bar legal representation and
- 11.2. It is not specifically mentioned in the Constitution and/or by-laws that parties are not allowed to be represented at the appeal stage.

- 12. Notwithstanding the ruling, the appellants withdrew their right to be locally represented and elected to be represented by a member, being Mr Landman, when the first respondent requested a postponement for purposes of obtaining legal representation. It was on that basis that the hearing commenced.



Appellants case

- 13. The first appellant testified in support of their claim. The first appellant in her testimony testified regarding the meeting which took place on 1 February 2024, including the resultant sanction delivered on 2 February 2024. The first appellant further testified regarding the psychological and personal effects that the incident and the sanction has had on her. The first appellant's testimony was confirmed by the second appellant. To support their version of events that occurred on 1 and 2 February 2024 two recordings were played for the panel.³

³ Pages 283-285 of the appellants appeal bundle

The appellants further relied on a WhatsApp message sent to the second respondent in which they requested reasons for the decision.⁴

Respondents case

14. The representative for the first respondent questioned the appellants regarding the qualification criteria set by the national Olympic federation and the certainty of being able to qualify and subsequently compete at the Olympic Games to be held in July 2024, in Paris. It must be highlighted however that no evidence, whether documentary or oral, was provided by the respondents to refute the appellants' testimony regarding the incident of 1 February and the resultant sanctions. At this juncture it is important to highlight that during the first respondent's cross examination of the appellants, it was further re-enforced that the respondents had taken no steps to provide the appellants with any reasons for their sanctions.



15. As a result of this shortcoming, the first respondent once again requested a postponement to call witnesses to help cure their case. This request was denied as the first respondent had sufficient opportunity and time to have its witnesses present at the hearing as the appellants had applied for the appeal on 16 February 2024⁵. Furthermore, the panel's attention was drawn to correspondence sent to the first respondent on 30 May 2024 wherein the appellants requested the attendance of specific witnesses, in particular the

⁴ Page 299 of the appellants appeal bundle

⁵ Page 264 of the appellants appeal bundle

attendance of the second to fourth respondents.⁶Numerous correspondence was further sent to the first respondent requesting reasons for the sanctions (including invoking the provisions of the Promotion to Administrative Justice Act). Despite this correspondence, no reasons were provided.

Disciplinary Protocol

16. In terms of Appendix 4 disciplinary protocol, clause 4 the following procedure and process must be followed when disciplining athletes and team officials which is set out below:



4) *The following general principles will be applied to ensure that any disciplinary hearings in respect of the team ("hereinafter referred to as members") are conducted by the Tribunal on a basis that is both procedurally and substantively fair:*

4.1) *The member should be given reasonable notice of the date and time of the hearing as well as the essential facts, to enable him/her to prepare his/her reply to the charge (-es). In the case of an athlete, the Tribunal may decide, in its discretion to have the respective Code/section/manager and/or coach present at the hearing.*

4.2) *The member should be given the opportunity to present his/her case at the hearing, prior to any decision taken that may affect his/her rights or privileges.*

4.3) *Although no right to legal representation can be claimed in terms of the common law, legal representation will be permitted, if requested, unless it would cause an unreasonable delay or protraction of proceedings, particularly where*

⁶ Page 275 of the appellants appeal bundle

circumstances require a speedy outcome. The Tribunal conducting the hearing must be unbiased and unprejudiced. The test is objectivity and if it is found that a person has a material, pecuniary or some other interest in the case resulting in bias, or has conducted him/herself in such a way that a preconceived attitude or state of mind can be inferred, his/her action will be invalid even if no injustice is proved.

4.4) The evidence presented should be carefully heard, assessed and a decision taken based thereon. Findings of the Tribunal are definitive i.e findings are final and binding and are not subject to appeal.

4.6) The sanctions (if any) should be commensurate with the gravity of the offence.

4.7) In general justice should not be done but also be seen to be done. A general sense of fairness should prevail prior to and during subsequent to the hearing”.



17. It is a settled principle that in employment matters, in order for a dismissal to be considered fair, both substantive and procedural fairness are required⁷.
18. In general there are certain guidelines that can be followed when conducting a disciplinary hearing, namely that:
 - 18.1. In order for a party to be placed in a position to answer the charges leveled against him/her the party must be afforded sufficient time to prepare for the hearing. Whilst the legislation does not provide pertinent

⁷ Labour Relations Act 66 of 1995

details in respect of what exactly constitutes sufficient notice, it is settled that, subject to possible longer hours provided in a party's disciplinary procedure, 48 hours excluding weekends and public holidays, constitute reasonable notice for a party to prepare for the pending hearing.

18.2. The formulated charge should be clear, unambiguous, and factually correct.

18.3. The rights afforded to the party should be stated clearly on the notice and in addition thereto it should also be explained when the party is presented with the charge sheet.



18.4. The party has the right to present his/her case by testifying in his/her defence. Witnesses may be called in an attempt to prove the party's case. In turn, the party has the right to cross-examine any witness called by the party instituting proceedings.

18.5. If the party is found guilty, the party must be allowed to present factors in mitigation to the Chairperson and the party who has brought the proceedings will have the opportunity to present aggravating factors. Furthermore a party is entitled to be provided with reasons when found guilty.

19. Having said that, the guidelines should not be seen as a checklist for the enquiry⁸. However the principles of natural justice dictates that a party must be put in a position to understand the charge against him/her. The party's right to be heard must be respected and if a decision is taken, like stated above, the

⁸ Code of good practice

party is entitled to be provided with reasons for such decision. In this matter this clearly did not take place.

20. It is clear from the evidence that has been presented, that the disciplinary meeting was not procedurally and substantively fair and that the sanctions that were imposed were imposed incorrectly. The respondents failed to comply with the SSA disciplinary protocol in every material respect.
21. The appellants were merely given 2 hours' notice before the disciplinary meeting was set to commence. The notice period was not reasonable in the circumstance. The alleged charge in the notice further contained insufficient particularity to enable the appellants to adequately prepare for the meeting.
22. Furthermore, the appellants request to: be legally represented, to be afforded an opportunity to prepare and to have the meeting adjourned until a time as the parties had returned to the RSA, was not unreasonable.
23. As stated, the respondents decided to proceed with the meeting in the appellants' absence despite the undertaking on 1February 2024 to revert to the appellants regarding their requests. This action by the respondents was likewise unfair. By doing so the respondents contravened the appellants' rights: to a fair disciplinary hearing, their right to be heard and the right to present their case and to challenge the respondents prior to being sanctioned. Accordingly the resulting sanctions that followed were therefore incorrect. Once again it is reiterated that to date the appellants have not been provided with written reasons for their sanctions notwithstanding the requests made by the appellants and their representative.
24. Taking all the evidence into account, including the reasons set out:
 - 24.1. The appeal is upheld; and

