

NEW SOUTH WALES HARNESS RACING APPEAL PANEL

APPEAL PANEL MEMBERS

**Hon W Haylen KC
Hon P Kite AJ
Dr C Suann BVSc**

DECISION

25 November 2025

**APPELLANT ANTHONY BERTWISTLE
RESPONDENT HRNSW**

**AUSTRALIAN HARNESS RACING RULES
190(1), (2) & (4)**

DECISION

The Appeal Panel makes the following orders:

- **The penalties imposed by the Stewards in each charge are set aside;**
- **Mr Bertwistle is disqualified for a period of one year and six months on each charge commencing from 16 July 2025 with the two penalties being served concurrently;**
- **The appeal fee is to be returned to Mr Bertwistle**

1. Trainer Mr Anthony Bertwistle has appealed against the decision of HRNSW Stewards to disqualify him for a period of two and a half years after the horse, Harleequin, on two occasions, presented with high levels of the prohibited substance cobalt. The charges were brought under the provisions of AHRR190 (1) (2) and (4), i.e: a horse shall be presented for a race free from prohibited substances; if a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of the horse is guilty of an offence; and, an offence under sub rule 2 is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.”
2. The particulars of the first charge were that Mr Bertwistle, being a licensed trainer of the horse Harleequin, did present that horse to race at Menangle on 5th April 2025, not free of a prohibited substance, cobalt, above the threshold of 25 micrograms per litre in plasma reported by two laboratories approved by Harness Racing NSW. The particulars of the second charge were that Mr Bertwistle, being a licensed trainer of the horse Harleequin, did present that horse to race at Penrith on Thursday 24 April 2025, not free of a prohibited substance, namely cobalt above the threshold of 100 micrograms per litre in urine, as reported by two laboratories approved by Harness Racing NSW. Mr Bertwistle pleaded guilty to both charges.
3. In the course of dealing with the issue of penalty, Mr Bertwistle noted that in the Menangle race the horse had finished fifth, beaten by 13 metres after starting second favourite at \$4.80 and drifting out to \$14. He had not placed a bet on the horse and there was no financial gain. At the Penrith race, the horse won as the \$2.80 favourite. It had drawn 7, sat ‘three back the pegs’ and was driven for luck and getting home in 30.8. Mr Bertwistle observed that was not what you would do if you were drugging the horse. It was also noted by Mr Bertwistle that around 2007/8 he was disqualified for six months when he used his wife’s Body Shop hand cream and had a positive to theobromine. He was now 49 years old and had a license since 1998/99 but did not have other work. He had always been a hobbyist.
4. It is to be noted that on 15 July 2025, approximately 24 days before the hearing conducted by the Stewards, Mr Bertwistle wrote to HRNSW Integrity officers Mr Prentice and Mr Bentley. In that letter he stated that he had no idea what happened in relation to Harleequin’s second positive swab. He had gone through the receipts for the whole year and noticed that there was a bottle of Hemoplex on one of the receipts dated in March, that was submitted to the Stewards a few days earlier. He stated that he had never bought Hemoplex before and thought that it was sold to him by mistake, as he always bought Aminoplex (a product not containing cobalt). He thought he must have used it not noticing it was not Aminoplex. He was aware that it was his responsibility to be more thorough but was still confused as to how the horse was presented with such a high level, even if he had mistakenly administered Hemoplex, and how such a high level had not affected the health of the horse and was able to race. He stated that he was 100% for drug free racing and believed he did not notice that he had injected the wrong product. He concluded: “I should be stood down immediately and I will be pleading guilty to all charges”.

5. During the Stewards inquiry it was noted that in the 5 April race the blood sample rated 33 micrograms per litre of cobalt by the National Measurement Institute and 40 by the ChemCentre. In the 24 April race the urine sample rated 480 from the National Measurement Institute and 447 by the ChemCentre. These samples were considered to be high. Mr Bertwistle could not explain how these levels of cobalt were detected in those samples. In the first race the horse had been fed around 4pm as it was in a later race. It was the usual feed that also contained about 60mls of Red Cell. Mr Bertwistle did not know that RedCell contained cobalt. Further, he believed he must have mistakenly bought Hemoplex instead of the usual injectable product Aminoplex. Aminoplex did not contain cobalt salts but he later understood that Hemoplex contained cobalt. He surmised Hemoplex would have been given to the horse before three races because the bottle contains approximately three doses. . He did not remember using Hemoplex but he might have rushed the treatments and used the wrong product. He did not take these products out of the packaging when using them but simply took of the top. He accepted that he should have seen the Hemoplex as being the wrong product, believing it was Aminoplex and was written in his log book as such. Hemoplex was not entered in his log book but he accepted that he must have used Hemoplex. He used RedCell in the feed, 60 mls by syringe but was not aware that it contained cobalt. The Stewards informed him that mixed with feed, the use of RedCell would not be against the rules.
6. Following that evidence, Dr Wainscott noted that under AHRR 188A(2)(k), cobalt was considered to be prohibited at a concentration of greater than the threshold levels of 100 micrograms per litre in urine or 25 micrograms per litre in plasma.
7. In the course of indicating the penalty to be applied to this case, the Stewards stated that they had given consideration to the circumstances of this matter and the evidence of Dr Wainscott that the cobalt detected in the subject samples obtained from Harleequin were unable to be attributed to any of the treatments provided to that horse as outlined by Mr Bertwistle. The Stewards then stated: "Consequently, stewards regard the circumstances that have resulted in cobalt above the threshold being detected in the subject samples as not having been appropriately explained" Consideration was also given to subjective factors.
8. At the hearing of the Appeal, HRNSW traversed the matters raised before the Stewards including Mr Bertwistle's husbandry failures. He was not aware of the substances contained in the products he purchased, including those which contained cobalt. Products were kept in packages resulting in him being unaware of the contents. The significance of those matters, important as they were, and acknowledged by Mr Bertwistle, were reduced in significance when Dr Wainscott stated that Mr Bertwistle had provided information about his feeds and supplementation regime – they were considered to be a normal treatment regime. Red Cell used in the feed was not a concern as it was given at different times in a normal feeding regime.

9. It is understood in the Harness Racing industry AHRR 190 is an absolute liability provision and that disqualification is the appropriate penalty absent evidence supporting a positive finding that the trainer was not at fault. In the role of trainer, Mr Bertwistle was responsible for any prohibited substances found in the horse regardless of how it entered the horse's system. In this case Mr Bertwistle's stables were thoroughly inspected and recorded. Two products, Hemoplex and RedCell, were found to contain cobalt. Mr Bertwistle promptly informed Harness Racing Stewards of these products and took responsibility for the presence of cobalt. It is significant that Dr Wainscott concluded that the feeds and supplementation regime were considered to be a normal treatment regime. It appears that no other prohibited products were found that might result in the high levels found in Harleequin on the 5th and 24th of April 2025.
10. In the view of this Panel, that conclusion leaves Mr Bertwistle in the second category set out in the well known case of McDonough, that is the lack of evidence category. This is the situation where a tribunal is left in the position of having no real idea as to how the prohibited substance came to be in the horse. In this case it seems that the Stewards took the view that the circumstances that had resulted in cobalt above the threshold, as not being appropriately explained. That status, by itself, does not permit a finding that somehow Mr Bertwistle did apply cobalt to his horse on both race days. There was no evidence to support such a finding. Equally, there is no evidence which permits a conclusion that he was not at fault.
11. At this point, the Panel notes that Mr Bertwistle was completely cooperative with the Stewards at the stable inspection and in the hearing. His questions of Dr Wainscott seemed to be aimed at trying to understand what happened and how it might be avoided. He readily made admissions and expressed the view that he had done the wrong thing somehow. These matters are taken into account in determining an appropriate penalty.
12. In light of the conclusions reached in the paragraphs above, the Panel is unable to adopt the two penalties of two and a half years disqualification, to be served concurrently from 16 July 2025, reached by the Stewards. The Stewards had adopted a starting point of 5 years disqualification in each charge with a reduction of 25% for the guilty pleas and a further 25% in recognition of the impact of disqualification, personal and financial perspectives and the impact on his wife. These 50% reductions in each case are also adopted by the Panel.
13. After much consideration, the Panel makes the following determinations: (a) the penalties imposed by the Stewards in each charge are set aside; Mr Bertwistle is disqualified for a period of one year and six months on each charge commencing from 16 July 2025 with the two penalties being served concurrently; and, the Appeal Fee is to be returned to Mr Bertwistle.

Hon Wayne Haylen KC – Principal Member

Hon Peter Kite AJ – Panel Member

Dr Craig Suann BVSc MANZVS MAICD -Panel Member

25 November 2025