

JUDICIAL COMMITTEE:

- Mr Shayne Harris (Chairman)
- Mr Graeme Robertson
- Mr Kelvin Booth

PARTIES CONCERNED

- Mr Tim Smith (Represented by Wayne Barnard)
- Ben Trevelyan (Represented by Wayne Barnard)
- Mr Mike Hoskin (Clerk of the Course)
- Mr Steve Foster (Assistant Clerk of the Course)
- Mr Tony McConachy (Rally Organiser)
- Graham Buchanan (Rallysafe)

DOCUMENTS PROVIDED

- Inquiry Review Request
- Clerk of the Course memo requesting review of Penalty
- Clerk of the Course Decision
- Decision of the Review Panel
- Statement from Tim Smith and Ben Trevelyan (circulated separately)

1. The Judicial Committee was appointed by Motorsport New Zealand pursuant to Article 118 of the Motorsport New Zealand National Sporting Code (NSC), this is outlined in the Notice of Hearing dated 3 October 2024.

2. Background

That during the Daybreaker Rally held on 14 September 2024, and in particular in SS8 of the Rally, competitor 13 (Tim Smith / Ben Trevelyan) left the road in SS8 (Peep O Day Road), and were pulled back onto the road by the recovery crew. They toured out, aware the road was open.

After SS10, the crew toured back to the final time control and were notified that they were required to attend a hearing with the Clerk of the Course in relation to a charge of alleged dangerous driving.

They attended the hearing, and the decision of the hearing was that a penalty be imposed. The crew did not protest the decision, noting the significant cost of doing so.

Subsequent to the event, a communication has been received from the Clerk of the Course, advising that due to evaluation of the Rallysafe data, he was no longer comfortable with the evidence that was considered as part of the hearing and that his decision should be overturned, citing a major miscarriage of justice having occurred.

3. The Judicial Committee is tasked with holding a Judicial Hearing into the following:
 - To consider the fairness of the decision imposed on competitor Tim Smith.
 - Consider any other associated matters as may be identified by the hearing.
 - Consider whether there are any recommendations or findings to be made.
4. The Hearing was conducted via zoom and commenced at 6.30pm on the 21st of October 2024. The committee were present and all other parties listed attend via Teams meeting.
5. The hearing commenced with Tony McConachy explaining that he was partner of the Race Rally Group along with Paul Fallon, and they were the organisers of the Daybreaker Rally.
6. Prior to the Rally one of Tony's responsibilities was to undertake the residents visits. One of those residents was Dave Robinson who owns large farms on Peep O Day road and Turakina Valley road, both roads being used as special stages in the Rally. Tony explained that initially Dave was against the rally taking part and that it was only through meetings that occurred between Tony, Paul and Dave that he changed his mind and in the end did not object to any road closers.

7. After the running of SS8 Dave called Paul and was really upset about an incident that had occurred with a blue car on SS8 after the sweeper car had cleared the road. Dave said to Paul that there were kids on the road on Quads and that the car in question sounded like it was going pretty quick. The car was later identified as car 13 driven by Tim Smith.
8. Paul passed his concerns on to Tony who informed the Clerk of the Course Mike Hoskin.
9. Mike then completed a Notice to appear at a Hearing, for the driver and co-driver of car 13.
10. Present at the hearing was the Clerk of the Course Mike Hoskin, Assistant Clerk of the Course Steve Foster, Rally Organiser Tony McConachy and two CRO's.
11. At the hearing Mike explained, that it had been brought to their attention through a complaint from a member of the public that there had been an incident that involved dangerous driving on SS8. At this point in the hearing Mike asked Tony to elaborate on the complaint.
12. Tony outlined that his fellow rally organiser Paul Fallon and himself had received a call from a really upset resident concerning the driving behaviour of the driver of car 13, a Blue Subaru. The upset resident was identified as Dave Robinson. It was stated that Dave was so upset with the driving behaviour that he was going to object to any further road closures for future events.
13. Comments were also made in the hearing from Steve Foster, who made a point of outlining that obtaining road closures was difficult enough without drivers putting those road closures at risk through the likes of dangerous driving, and it would not be tolerated.
14. A point was also made that Mike had tried to obtain the Rallsafe data for the hearing but was unable to do so.
15. Mikes view of Tim and Bens behaviour in the hearing was that they had their heads in their hands and thought it was plain, in his opinion, that they knew they had made an error. It was this behaviour, the lack of a denial regarding the "incident" and the "public outcry" that lead Mike to conclude that Tim was guilty of the breaching Schedule R 16.1 (1) (a).

16. Schedule R 16.1 (1) (a) states: Competitors and their service crews must always drive and conduct themselves in a manner which does not discredit the event or arouse adverse public opinion.
17. In terms of Penalty it was found that NSC 4 applied, Tim was fined \$250.00 excluded from the event and his competition licence endorsed for 12 months.
18. In response Wayne Barnard representing Tim Smith and Ben Trevelyan disagreed with some of the points raised by the other parties.
19. Wayne said that Tim in particular denied they had done anything wrong and that they simply toured out of the stage and hadn't exceeded 80km/hr. It was also pointed out that Tim's Subaru was particularly loud.
20. At this stage Graham Buchanan (Buck) was asked to bring the Rallysafe map onto the screen. On the map presented to the committee we could see the road used for the rally stage. On a sharp right hand bend there was a large shearing shed located fairly close to the road on the left hand side. (It is the committee's understanding that Dave Robinson was using the shed as a viewing point for himself and friends during the Rally). Before the right hander there was a short piece of straight road and after the right hander a much longer length of straight road.
21. Buck was able to also show the committee the track of car 14 which was seeded after car 13 to provide a comparison speed track.
22. At the first point (halfway along the first short straight) the data showed car 14 travelling at 57.8 km/hr and car 13 at 37.3 km/hr. A difference of 20km/hr.
23. At the next point down the straight after the right hander the data showed car 14 in excess of 120km/hr and car 13 at 80km/hr. A difference of 40km/hr.
24. It does need to be pointed out that it was difficult to get the system to compare the exact speeds at the same position on the road, but as confirmed by Buck they were within a couple of metres of each other.
25. In summing up the panel asked Mike what made him want to change his mind over the decision he made on event. His response was that after viewing the Rallysafe data and being informed that Dave Robinson had changed his mind about opposing the event, that the circumstances dictated a review of the decision. Steve also added that he could see how Dave might have got wound up, but given the circumstances and the penalty applied that perhaps a miscarriage of justice had occurred.

Panels consideration

26. In the notice of hearing the Judicial Committee is requested to consider three different points, these are outlined in [3].
27. The first concerns the fairness of the penalty imposed on Tim Smith. As in any competition there are rules that competitors need to comply with and indeed give undertakings when entering events that they will do so.
28. When a competitor is accused of breaking one of the rules it becomes incumbent on the official that is making the accusation to identify the rule that has been transgressed and subsequently produce the necessary evidence that proves the rule has not been complied with.
29. Although not referenced as such in the Motorsport Rules it well accepted in the NZ legal system that everyone is innocent until proven guilty. It would seem sensible that this applies in all hearings.
30. In terms of the hearing process Tim Smith was found that being the driver of car 13, drove in a manner that has discredited the event and caused an adverse reaction by a landowner.
31. The committee accepts that Tim Smith drove car 13 on SS8.
32. The committee accepts that there was an adverse reaction by the landowner, namely Dave Robinson.
33. The committee does not accept that Tim Smith drove the car in a manner that discredited the event. During the hearing the committee was shown that the speeds travelled by car 13 in that part of the stage were reasonable and well below car 14 which was competing in the rally and well below the legal speed limit. There was no evidence presented to the committee that suggests anything else untoward has occurred. There has been reference made to an incident occurring, but no one could elaborate on what that meant.
34. Whilst the committee accepts that Dave Robinson rang Paul Fallon and Tony McConachy complaining and making threats that he would not support future events, the reasons for this are speculative given that Dave did not appear at the Clerk of the Course hearing.

35. The committee also notes the other reasons that Tim was found guilty, largely his persona in the hearing and the degree of compromise it may have placed further events from taking place. Tim's persona in a hearing is not relevant when considering evidence that seeks to prove how he was driving. In terms of the threats from Dave of his support for future events, this does not in the committee's view discredit the event nor is there any evidence to prove that anyone other than the one landowner had an issue with Tim and his driving.
36. The Clerk of the Course's decision notes in the Penalties to be Applied section that Tim Smith breached Schedule R 16.1 (1) (a). That schedule states: Competitors and their service crews must always drive and conduct themselves in a manner which does not discredit the event or arouse adverse public opinion. As mentioned in [33] the committee does not accept that any evidence has been presented that would support this finding.
37. The committee finds that there was no evidence to support the finding regarding Tim Smith, Decision number 2 issued by the Clerk of the Course of the Daybreaker Rally on the 14th September 2024. Accordingly all penalties applied on Tim Smith by that decision should be overturned.
38. The committee is firmly of the view that this matter progressed more on the emotive outburst of the landowner, and the fear of not being able to achieve future road closures for the event in coming years. Whilst we don't doubt the validity of the conversations that occurred with the event organisers and the landowner, the process the hearing followed was not fair and did not meet the processes that should be followed when determine the innocence of guilt of a competitor.
39. It is incumbent on our officials to get it right, and that includes a proper investigation into what has happened and then applying simple hearing procedures that analyse the evidence and come to a conclusion based on that evidence. Mike failed to do this and should be reprimanded for failing to undertake adequate investigations.
40. It is our view that the Clerk of the Course should be counselled by the Chief Clerk of the Course as to what the responsibilities of the role are in relation to hearing preparation and decision writing.

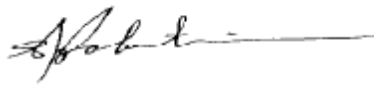
Decision:

41. It is the decision of the Panel that:

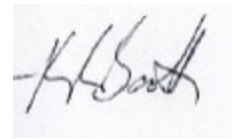
- (a) CotC decision 2 be overturned
- (b) Mike Hoskin be reprimanded for not preparing adequately for hearing and imposing a penalty without evidence
- (c) Chief Clerk of the Course undertake individual counselling of Mike Hoskin regarding hearing preparation and decision writing
- (d) Specific training information be prepared regarding hearing preparation and decision writing.



Shayne Harris
Chairman



Graeme Robertson
Member



Kelvin Booth
Member

Dated: 24th day of October 2024

The parties are reminded of their rights of Appeal under S124, Part XI of the NSC.