

DECISION OF THE ENGLAND BOXING DISCIPLINARY PANEL

In the matter of:

DANNY MCFARLANE

REASONED DECISION

1. These are the written reasons and decision of the England Boxing Disciplinary Panel which sat on 1st October 2017 in the case of Danny McFarlane (“the Respondent”).
2. The independent panel appointed by England Boxing, pursuant to its Disciplinary Procedure (the “Procedure”), was Ms Chloe Fordham, barrister (Chair); Mr. Sean O’Toole, solicitor; and Ms. Clare Keast, England Boxing member.
3. England Boxing was represented by Ms. Charlotte Mitchell-Dunn of counsel.
4. The Respondent was represented by Mr Forrester.

The Allegation

5. By letter dated 1st May 2018 the Respondent was charged by EB as follows:

That you on 29th January 2018 exerted pressure and harassed members of Lakeside Boxing Club by improperly attempting them to give up the tenancy from Lakeside Community Centre.

Contrary to Article 2(3) AIBA Code of Ethics and England Boxing Code of Conduct.

6. An uncontested application was allowed at the hearing to amend the charge so that it read:

That you on 29th January 2018 exerted pressure on members of Lakeside Boxing Club and improperly attempted to get them to give up the tenancy from Lakeside Community Centre.

7. The burden of proving the charge was on EB. The applicable standard of proof was the balance of probability. The balance of probability means that the Panel will be satisfied that a charge is proved if, on the evidence and in the absence of any applicable defence, the facts alleged are more likely to have occurred than not.
8. The facts alleged were that on 29th January 2018 the Respondent had attended Lakeside Community Centre (“the Community Centre”) at the request of, and alongside, Kevin Foster. Also present with Mr Foster were Vincent Patterson and John Robinson. It was not disputed that the Respondent would not have known that Mr Patterson and Mr Robinson were going to be in attendance.
9. Mr Foster had asked the Respondent to attend in order to support him in relation to a dispute in relation to Lakeside Boxing Club (“the Club”). Mr Foster had set up the Club but, owing to personal difficulties, had not been able to participate in the Club’s activities for some weeks or months before this incident. During that time, others – specifically, Dean Gray, Joseph Dobbie and Debbie Easter – had taken over the day to day running of the Club.
10. It was alleged that, on that visit, the Respondent had by his words and actions exerted pressure on Dean Gray, Joseph Dobbie and Debbie Easter and had done so in order to persuade them to give up the tenancy of the Community Centre. It was alleged also that the Respondent had with him a piece of paper which purported to show that there was a hire agreement in respect of the Community Centre which was between Mr Foster and David Burton, on behalf of the Community Centre. The pressure was said to have been exerted by way of raised voices and by the turning off of lights in the gym by the Respondent.
11. There was no issue as to whether Mr. McFarlane fell under the jurisdiction of the EB Disciplinary Procedure and the Code of Conduct of England Boxing Limited (“the Code”).

Response to Charge

12. The Respondent provided a response to the charges in the form of a letter dated 17th March 2018. In that letter he accepted having attended the Community Centre on the date alleged and accepted the presence of all those set out in the allegations by England Boxing.
13. He said that Mr Foster has asked for his help in respect of a dispute concerning the Club. Having checked with David Burton, who the Respondent understood to be the secretary of the Community Centre, he was satisfied that Mr Foster was the rightful occupier of the premises and that anyone else using the premises may be trespassing. He said that it was in the spirit of assisting Mr Foster that he attended on that evening. He said that he was not expecting Mr Patterson or Mr Robinson to be present.
14. He said that he and Mr Foster had spoken to the three representatives of the Club in a separate room and that Mr Foster had produced a document which appeared to be the tenancy agreement. He said that he had understood Mr Foster to be the rightful occupier and that he (the Respondent) had acted only to explain this to the representatives of the Club and to calm the situation down. He said he had offered to assist them in finding another gym.

Evidence Received by the Panel

15. Prior to the hearing, the Panel were referred to a bundle containing the following documents:
 - Statement from Debbie Easter
 - Two statements from Dean Gray
 - Two statements from Joseph Dobbie
 - Response from the Respondent
 - Email from Debbie Easter dated 30th March 2018
 - Hire agreement dated 8th January 2017
 - Letter from David Burton dated 16th May 2018
 - Letter from Alan Wright dated 13th September 2018
 - Statement of Vincent Patterson
 - Character references for the Respondent from Paul Knox and Robert Wileman
 - Email from Alan Wright dated 24th January 2017
 - Letter from David Burton dated 18th October 2017
 - Email from Alan Wright dated 3rd October 2018

- Letter from Alan Wright (undated)
- Newspaper article about the Club

16. At the hearing, the following witnesses were called by England Boxing to give live evidence:

- Debbie Easter
- Dean Gray
- Joseph Dobbie
- Alan Wright

17. The following witnesses were called by the Respondent (in addition to his own live evidence):

- David Burton
- Kevin Foster
- Paul Knox (character witness)
- Robert Wileman (character witness)

18. At the hearing, a document (Exhibit 1) was produced by Debbie Easter. That document related to the hire agreement between the Club and the Community Centre.

19. Debbie Easter adopted the content of her statement. She said that she had received a phone call from Alan Wright on 29th January 2018 to say that an England Boxing Official was going to be visiting the Club later that day and that she had communicated that to Mr Gray and Mr Dobbie. She said that the Respondent came in first with Mr Foster and that he introduced himself as an official from England Boxing. She understood Mr Foster to be saying that he was shutting down the gym. She said that the Respondent was saying that Mr Foster had the right to occupy the Community Centre and that they (Ms Easter et al) were trespassing. She said that there was a youth boxing training session in progress at the time.

20. She said that the Respondent and Mr Foster, and possibly the other two men as well, were wearing England Boxing lanyards. Mr McFarlane had a piece of paper which purported to relate to the tenancy but she said that it was not the piece of paper that was included in the bundle but, instead, another document which she produced (Exhibit 1 in the case). She said that Mr Foster squared up to her at one point. She said that the Respondent raised his voice and wasn't listening to anyone. The incident finished with all parties leaving through the gym

where a junior training session was taking place. She said that the Respondent was the last to leave the room and to go through to the gym and that as he came through, the lights were turned off in the gym.

21. Dean Gray adopted the content of his statements. His evidence was broadly consistent with that of Debbie Easter. He agreed that the Respondent had introduced himself as being from England Boxing initially but under questioning from the Panel said that it might have been that it was an assumption that he had made). However, he said that the Respondent did not raise his voice (although agreed that he wasn't listening to Mr Gray, Mr Dobbie and Ms Easter) and said that he had said that he would help the club move and find new premises. He also described the lights going out but said that Jo Dobbie had told him that it was the Respondent who had told him that and he had not seen for himself who turned the lights out.
22. Joseph Dobbie also adopted the content of his statement. He said that Debbie Easter had phoned him to say that someone from England Boxing was coming to the gym. He said that the Respondent had introduced himself as "Danny McFarlane, England Official" and that he had a jacket on and a lanyard around his neck which also suggested that he was from England Boxing. Like Debbie Easter, he said that the document which the Respondent had with him was not that which had been produced in the bundle. Under questioning from the panel he said that he wouldn't have said that the Respondent raise his voice. Mr Dobbie said that he knew that it was the Respondent who had turned the lights out as he (Mr Dobbie) had been directly in front of the Respondent as they walked through the corridor to the gym (where the light switch was located) and there had been no one else behind him.
23. Finally, for England Boxing, Alan Wright gave evidence. He said that he had received a call from either the Respondent or Mr Douglas to say that they were going to be visiting the club because there was some kind of dispute. Mr Wright said that he had then relayed this information to Debbie Easter. He said that he did not recall being told or telling Ms Easter that the visit was going to be from England Boxing officials.
24. The Respondent gave evidence and adopted the content of his written response to the charges. Prior to the meeting he had checked with David Burton who the rightful occupier was and had been told that it was Mr Foster. He said that he was not there to take back control of the premises for Mr Foster but rather to ascertain who the rightful occupier was. He denied

wearing a lanyard or introducing himself as an England Boxing Official. His role, he said, was to try and calm the atmosphere. He agreed that he had told those using the premises that he would help to find them a new location for the Club. He said that he had tried to listen to the other side of the story but agreed that he didn't ask any questions which were targeted at ascertaining who the rightful owner was. He said that he did not believe he had turned the lights off to the gym and that if he had done so it could only have been accidental.

25. David Burton then gave evidence for the Respondent. He confirmed that the Respondent had called him to ask who the rightful occupier was of the Community Centre and that he (Mr Burton) had said that it was Mr Foster. Although Mr Burton was no longer the secretary of the Community Centre at that time, it was his understanding that nothing had changed since the agreement had been made with Mr Foster. He agreed, under cross-examination, that it was Mr Gray and Mr Dobbie who paid the hire fee but he did not believe that any dealings with them had changed the fact that Mr Foster was responsible for the hire of the premises, only that Mr Gray had become the point of contact at the Club.
26. The final witness of fact for the Respondent was Kevin Foster. He said that he had asked the Respondent to guide him in the right direction as to what he should do about the situation with the hire of the Community Centre. He had received notification from AIBA that he was to be fined £5,000 as a result of matters relating to the Club. He said that, having spoken to the Respondent who then spoke to Mr Burton, he understood that those now running the Club could be trespassing. During the visit to the Community Centre Mr Foster said that Ms Easter and others were shouting and screaming and that the Respondent did not raise his voice. He said that the document he had shown to Ms Easter was the one which had been included in the bundle and that he had not seen the document which she produced as Exhibit One.
27. Vincent Patterson provided a witness statement in support of the Respondent's case. He described going to the Community Centre to help Mr Foster to get his opinion across. He said the Respondent tried to calm the situation as it became heated and that he said that he was there to support boxing and if anyone had to move he would help them find another location. The panel of course took this statement into consideration but, given that this evidence was untested by cross-examination, less weight was attached to it. However, it is noted that it was broadly consistent with accounts given by other witnesses for the Respondent.

28. The Respondent then called two character witnesses, Inspector Wileman and Detective Chief Inspector Paul Knox. Both had known the Respondent for a significant amount of time and through various phases of his life. Both spoke to his reputation and the importance to the Respondent of safeguarding that reputation. They also spoke about his abilities and experience in resolving conflicts and his dedication to boxing. They were both convincing in presenting a positive impression of the Respondent as someone who was known to conduct himself well and who was dedicated to the sport of boxing.

Findings

29. The Panel found as follows:

29.1. The Respondent had attended on that day in order to communicate to those running the Club that they were not entitled to remain in the Premises and would have to leave (although not immediately).

29.2. The Respondent had not introduced himself as an England Boxing Official (although he may have given that impression) and that it was Ms Easter's misunderstanding from her conversation with Mr Wright that the visit would be from England Boxing Officials, information that she had communicated (in good faith) to Mr Gray and Mr Dobbie.

29.3. Once at the Community Centre, the Respondent had made no efforts to establish the rightful occupier and, instead, forcefully advanced Mr Foster's point of view that he was the rightful occupier and that anyone else was trespassing. The Panel found that he did not listen to what was being said by those at the Community Centre and that he was not (as he asserted) mediating and trying to find a solution.

29.4. It was not proven to the requisite standard that the Respondent either shouted or did anything else which could objectively have been said to have been intimidating.

29.5. It was not proven that the Respondent deliberately turned the lights off in an effort to frighten or intimidate. The Panel found it unlikely that the Respondent would have deliberately taken such an action knowing that there were children training in the gym.

29.6. The Panel found that it was the Respondent's honestly held view that Mr Foster was the only rightful occupier of the premises at that time.

Determination

30. Given the facts found above, the Panel found that the Respondent was trying to exert some pressure on those running the club at the Community Centre in order to get them to give up the premises. The Panel found further support for this in the Respondent's own admission that he had told Mr Gray that he would help to find new premises for the Club.

31. The Panel then went on to consider whether the Respondent's actions were improper as alleged in the charge (it is worthy of note that the Code itself does not require the actions to have been improper in order to constitute a breach of Article 2(3)). The Panel found that although the Respondent attended the Club on the understanding that Mr Foster had a legal right to occupy the premises and that his actions were not intended to be intimidating, the fact that he had attended the Community Centre when children were there, knowing that this was likely to be a controversial matter which may have resulted, at the very least, in some heated discussion between the parties and then engaging in a fairly prolonged and heated discussion (albeit mostly out of the way of the children) meant that his actions were improper.

Sanction

32. Given the findings of fact, many of which were in the Respondent's favour, the Panel indicated that its provisional view was that a warning would be appropriate but invited submissions from the parties.

33. Mr Forrester, on behalf of the Respondent, submitted that if a warning were to be imposed it should be suspended.

34. It was submitted on behalf of England Boxing that, although the Rules allow for any penalty to be suspended, it would be illogical to impose a suspended warning as a warning was, in itself, a penalty which did not have any real effect unless there was any repetition of the behaviour which had led to its imposition.

35. England Boxing applied for the costs of the hearing to be awarded against Mr McFarlane.

36. The Panel retired to consider the submissions. Ultimately, it was not necessary for the Panel to decide whether a warning could be suspended as it was decided instead to impose no penalty. It is clear in the Rules that any penalty is imposed in the Panel's own discretion and that it is not required to impose any penalty at all.

37. In light of the findings of fact it was also decided that it would be inappropriate to award any costs against the Respondent.

Right of Appeal

38. There is a right of appeal against the above decisions open to both EB and the Respondent in accordance with the rule 40 of the Procedure.

Chloe Fordham
Sean O'Toole
Claire Keast

Dated this 16th day of November 2018