

IN THE MATTER OF A DISCIPLINARY PANEL
OF ENGLAND BOXING LIMITED

BETWEEN:

ENGLAND BOXING LIMITED

Complainant

- and -

DAVID COCKELL

Respondent

WRITTEN REASONS FOR THE DECISION OF
THE DISCIPLINARY PANEL
FOLLOWING THE HEARING ON
24TH NOVEMBER 2015

1. BACKGROUND

- 1.1 England Boxing Limited (“EB”) is the national governing body (“NGB”) for the sport of boxing in England. It sits at the top of the pyramid for the control and regulation of boxing in the country. There are then a number of Regional Associations (“RAs”) that undertake various governance and administrative tasks on behalf of EB. Clubs, individual members and trainers are on the next level down.
- 1.2 EB has responsibility for organising championships, including the Junior Development Championships (“JDC”). The Technical Rules, Championships, Referees and Judges Sub-Committee of the Board of EB is responsible for organising the JDC, which are governed by the AIBA Technical and Competition Rules. Additional rules are set out in the entry form for the JDC. The latter rules provide that EB retains the right to amend, alter or add directives, policies and procedures at any time it deems necessary.

1.3 Further, at all material times:

- (i) The Respondent, David Cockell (“DC”), is and was the serving Honorary Association Secretary of the East Midlands (“EM”) Regional Association;
- (ii) Lynette Mayo (“LM”) was the EB Membership and Communication Support Officer; and
- (iii) Donna Brady (“DB”) was the Club Support Officer (“CSO”) for EM.

1.4 On 29th June 2015, LM sent an e-mail to all club Secretaries providing details from the JDC co-ordinator regarding those championships. The e-mail included the following request:

“Once Regions have organised Association Rounds please could you forward me the details, to put on the events calendar on the England Boxing website.”

LM provided similar details to DC by e-mail on the same date.

1.5 On 17th July 2015, LM sent a further e-mail to all club secretaries attaching the JDC entry form for circulation to clubs and their members. The e-mail was also sent to DC.

1.6 On 20th July 2015, LM sent a Word version of the JDC entry form to DC. In response, he requested further medical records of Boxers. These were provided to him the same day.

1.7 On 21st July 2015, LM sent an e-mail to DC seeking details of the EM association rounds for the JDC.

1.8 On 25th July 2015, an ‘Informal Meeting of England Boxing Regional Representatives’ was attended by representatives of a number of RAs (“the Informal Meeting”). EB Board Members and senior management were excluded from attending the Informal Meeting. It did not form part of EB’s formal management or communication structure and had no authority to make decisions on behalf of EB. DC attended and the minutes of the meeting show:

- (i) The purpose of the meeting was to:
“compare and discuss issues/problems that the Clubs and Regions are currently facing and try to identify possible suggestions/remedies ...”

The minutes show that suggestions would then be passed on to EB.

- (ii) As far as competitions were concerned:

“After a lengthy discussion, it was agreed by all that a proposed 12 month season is far too long. All the clubs and volunteers need a break. It was also agreed that EB should consult with the regions prior to setting out any dates and that the grass root clubs should always be their priority ...”

And the meeting resolved that:

“The Domestic/Championship season should run from Oct 1st until May 30th each year. Club events outside of this timeframe can go ahead with the permission from the relevant Region once it has been established that there will be adequate cover of officials.”

- (iii) The consensus amongst those who attended the informal meeting was that the domestic championships, including the JDC, should take place in the season from October to May and that the JDC itself should be moved back to its original position in the calendar to ensure maximum participation.

1.9 On 26th July 2015 (*i.e.* the day after the informal meeting of the Regions), EM held its AGM. The agenda and minutes of the AGM disclose that:

- (i) DC was elected to positions of responsibility;
- (ii) A proposal was passed to start the boxing season on 1st October each year; and
- (iii) The following proposal was discussed at length:

“No tournaments of Championships be allowed within the Region’s boundaries during the months of June, July, August and September each season unless special permission is provided in exceptional cases by the Executive Council.”

It appears to have been agreed that this proposal would be forwarded to EB.

1.10 On 5th August 2015, LM sent a further e-mail to DC seeking an update on the details for the JDC. Two days later, on 7th August, LM e-mailed DC again requesting details of the EM association rounds, stating:

“I am wanting to put the details on the website as we are getting queries coming in regarding association rounds. I am only outstanding a couple of regions now.”

1.11 Four of the Regions refused to support the JDC in 2015, including EM. EB responded by combining three located in the south of the country with another Region into one competition of geographically proximate RA's. That single competition involved four RAs, and EB took responsibility for its organisation.

1.12 EM was not geographically proximate to the other three RA's who had declined to support the JDC. EB therefore invited those boxers in the EM Region who wanted to enter the Competition to do so by entering the Yorkshire regional round.

1.13 EM and two of the three southern-based Regions had CSOs. LM requested the CSOs in question to disseminate information regarding the JDC to clubs within their RA. The other Region, which had decided not to hold a round of the Competition, but which did not have a CSO, was contacted directly by LM.

1.14 On 12th August 2015, DB (the CSO for EM) sent an e-mail to clubs in the Region regarding the JDC, and explained the position as follows:

“This season, there have been no arrangements made by East Midlands ABA to provide you with facilities in order to compete in the regional rounds of the England Boxing Junior Development Championships. [EB] would like to reassure you that entries will be accepted for any boxer in the [EM] who wishes to take part in the championship.”

Your entry will be administered by Yorkshire Boxing Association and you will represent [EM] in association rounds organised by our volunteers in Yorkshire, who have done their best to secure a venue that is as central as possible so that [EM] clubs don't have too far to travel.

If you would like to enter the championship, please complete the entry form attached and send by email or post.

Postal entries should be sent to [the Secretary for the Yorkshire RA at his address]. You can also send your entry via email to: info@yorkshireboxing.com. ..."

Details for paying the £5 entry fee then followed, together with the closing date for entries, the provisional dates for the association rounds and the venue. The e-mail concluded:

"We look forward to seeing as many [EM] boxers as possible at the championships."

1.15 DC's case is that the e-mail from DB created confusion amongst the EM member clubs. On 12th August he sent an email to all of the clubs in the following terms:

"You have now all seen the document sent out by the NGB regarding the [JDC]. I ask you now to ignore this on behalf of the Region. At our AGM, the MEMBERSHIP passed nem con, not to run these initial stages, on the basis that we all need a break from the sport. I personally find it despicable that any of you who want to enter boxers into these Championships have been asked to enter through another Region. This Region is not preventing anyone from entering, and has never stated this anywhere. Now, anyone who wishes to enter boxers, do so through the proper channels. Send to me the entry form with a cheque made payable to the 'East Midlands ABA' and I will inform the NGB of your entries. I cannot forward you an entry form because I never received one to dispatch." (emphasis added).

DC did not contact EB, either directly, or through either LM or DB, before sending his e-mail of 12th August 2015, the contents of which form the basis of the disciplinary charge against him (as set out below).

1.16 On 13th August 2015, DB sent an e-mail to EM clubs in these terms, correcting what they had been told by DC:

“Following the recent letter sent to you on behalf of the [EB] Board you are aware that, in the absence of [EM] Association making the necessary arrangement for you, EB had put in place a process for your club to enter its boxers into the [JDC]. We understand that since our letter was sent, you have received separate correspondence, instructing you to send your [JDC] Entries into [DC], along with your payment. Receiving that correspondence may have confused matters as to where to send your entries and we are wishing to clarify this issue.

Any [EM] club that wishes to enter boxers into the [JDC] should send their entry forms and fees as previously notified, to the Yorkshire Boxing Secretary. ...

Please be assured that entering your boxers through Yorkshire Association, on this occasion, will not impact on the status or membership of your club either in the [EM] Association or with [EB].”

1.17 A letter of complaint relating to DC’s e-mail of 12th August 2015 was sent to EB’s CEO and Company Secretary, Mark Abberley. The letter is dated 14th August 2015. For economies of scale, the contents are not set out here. DC was notified of the complaint by letter date 17th August 2015 and informed that he was provisionally suspended from membership of EB until the earlier of either (i) the conclusion of the JDC on 11th October 2015, or (ii) the completion of the disciplinary proceedings. The complaint then proceeded to a Case Management Referral Panel, which confirmed that there was a *prima facie* case for DC to answer and that the complaint should proceed.

2. THE CHARGE

2.1 By a Notice of Charge, dated 23rd September 2015, EB charged DC with acting in breach of its Code of Conduct as follows:

1. Acting against the interests of the sport and/or England Boxing, in your capacity as Secretary of the [EM] Regional Boxing Association, by encouraging members to ignore a proposal put forward by [EB] for the organisation and running of the [EB] [JDC] 2015, and/or obstructing the organisation and running of the [EB] [JDC] 2015 generally.

2. Bringing the sport and/or EB into disrepute, in your capacity as the Secretary of the [EM] Regional Boxing Association, by encouraging members to ignore a proposal put forward by [EB] for the organisation and running of the [EB] [JDC] 2015, and/or obstructing the organisation and running of the 2015 [EB] [JDC] more generally.

2.2 Regulation 2 of EB's Disciplinary and Appeals Procedures ("the DAP") provides EB with jurisdiction to bring the charge. EB bears the burden of proving its case to the civil standard of proof, namely the balance of probabilities.

3. DC's DEFENCE

3.1 DC's response to the charge may be summarised thus:

- (i) EB has not responded to the minutes from the Informal Meeting. At that meeting, a decision was taken that the JDC have not normally been held during the summer and to do so would be a breach of Regional Articles;
- (ii) The e-mail which was sent directly to clubs via the CSO (DB) circumvented the RA, contrary to normal protocol;
- (iii) He sent his e-mail of 12th August 2015 in response to communications that he had received regarding the arrangements for the JDC. He claims that people were confused by the instruction from the CSO;
- (iv) He was acting on behalf of the RA and ought not to have been sanctioned as an individual;

- (v) Neither he, nor EM RA, had any intention to undermine EB. He passed the entries on that he received to the Yorkshire RA;
- (vi) While he was subject to the interim suspension, "*a very serious matter*" occurred involving a boxer in the EM Region, and which would not have happened if he (DC) had not been temporarily relieved of his duties.

3.2 At the hearing before the Disciplinary Panel, DC was represented by a so-called 'McKenzie Friend', James Hayes ("JH"). JH orally submitted on behalf of DC that there had been "*massive procedural irregularities*" in this case, namely:

- (i) That EB's case against DC and the information to which he had been entitled not less than 28 days before the hearing had not been communicated to him until the evening of Thursday 29th October 2015 when he received EB's skeleton argument;
- (ii) That the complaint against DC had been withdrawn; and
- (iii) That the interim suspension was flawed on the ground that a Case Management Referral Panel with power to impose such a sanction was not convened until two weeks after it was purportedly made.

4. FINDINGS AND DECISION OF THE DISCIPLINARY PANEL

4.1 A feature of the case which struck the members of the Disciplinary Panel was the tension that existed between EB and the RAs, culminating in the informal meeting of the Regions that took place in July 2015, with no senior representative of EB being in attendance. A history of previous difficulties between the EB and DC himself was also alluded to during the hearing, although it was not relevant to the decision that the Disciplinary Panel was required to make on the charge before us.

4.2 It is clear from the evidence that DC did not engage with EB (via LM, DB, or otherwise) about the arrangements for boxers from the EM Region to enter the JDC prior to his fateful e-mail of 12th August 2015:

- (i) DC did not acknowledge, or respond substantively, to the e-mails that LM sent him on 29th June, 17th July or 21st July.
- (ii) He then failed to respond to either of the e-mails that she sent him on 5th and 7th August. By the latter dates, the Informal Meeting of the RAs had taken place, as had the AGM of the EM. The timing of the 2015 JDC was aired at both, concerns raised and resolutions passed.

EB knew that EM RA would not be hosting any rounds, and it was therefore necessary for EB to ensure that necessary arrangements were in place for any boxers in the EM Region to enter. In the absence of responses to e-mails from DC, it was reasonable for EB to assume that (i) DC would not co-operate in the process, and (ii) to write directly to the Clubs in the terms that DB did.

4.3 What then followed was a clear challenge to EB's authority by DC when he told Clubs to ignore EB's instructions (as communicated via DB) for the processing of entries to the JDC from the EM Region. The proposals put forward by EB may have been contrary to custom and practice, but the situation was far from customary. Notwithstanding any relevant provisions that there may be in the Memorandum & Articles for RAs, the ultimate authority for setting competition rules was vested in EB, as explained in the witness statement of Gio Brugnoli, Chair of the Technical Rules *etc* Sub-Committee of the Board of EB. That authority included the right to amend, alter or add directives, policies and procedures "*at any time it deems necessary*". In other words, it was for EB, at its sole discretion, to make necessary arrangements at any time for competitions, including the procedure to be adopted for entries.

4.4 DC now acknowledges that he could and should have chosen his words more carefully. His use of the word "*despicable*" to describe the proposals for EM entries to the JDC was particularly intemperate. His evidence at the hearing was not entirely clear whether his grievance was with EB, the Yorkshire RA, or both. He seemed to settle on the former. The words were his own and were ill-judged. There is no corporate veil to protect him from individual liability.

4.5 Nevertheless, the Disciplinary Panel accepts that DC did not intend to obstruct the organisation and running of the JDC, even if his intervention may have had that effect. In the e-mail of 12th August itself he goes on to say that the EM Region is not preventing anyone from entering and proposes that he will process entries and inform EB of them. In the event, we accept DC's evidence that he sent the entries that he received on to the Regional Secretary for Yorkshire. Further, there is no evidence that any boxer was unable to enter the JDC as a result of DC's actions.

4.6 Accordingly, the same outcome was achieved as the one proposed by EB, albeit with an additional layer of administration involved and the creation of some unnecessary confusion.

4.7 DC also raised at the hearing what seemed on the face of it to be a reasonable concern that if entries to the JDC were administered by another RA, the latter would not be able to carry out adequate checks to ensure that boxers from another Region, and their trainers, (in this case from EM) were properly registered. The implications for the health and safety of boxers and the subject of insurance were also touched upon, but were not the subject of detailed argument. To what extent those factors may have motivated DC when he drafted his e-mail of 12th August 2015 is unclear. He does not mention them specifically. Whilst they may have been a subconscious consideration, we are more inclined to think that what motivated him to countermand DB's instruction to clubs was a desire to regain control from his governing body over something that he had historically dealt with at regional level. In short, he was cross because he felt that he had been bypassed.

- 4.8 The predicament which DC finds himself in this case was entirely avoidable. If he had simply responded to LM's earlier e-mails and indicated that he would still be willing to process entry forms for the JDC, despite EM not holding rounds of the competition in its Region, the outcome may well have been different. He did not have to say that he agreed to the earlier staging of the Championships. Indeed, he could have said quite the opposite. He could then have taken up his concerns, which the Informal Meeting shows were widely held by RAs, through formal channels. Instead, he widely disseminated an instruction to clubs which directly challenged and undermined the authority of his governing body.
- 4.9 The Notice of Charge alleges a single breach of the EB Code of Conduct, but has two limbs to it. The charge is therefore made out if either limb is proved. Furthermore, the alleged breach is a strict liability offence and there is no requirement to prove intention. Whether DC intended the consequences set out in the Notice is only relevant to the question of mitigation.

The first limb

- (i) The Disciplinary Panel finds that DC acted against the interests of England Boxing by encouraging members to ignore the proposal put forward by EB for the organisation and running of the JDC 2015. In doing so, he also acted against the interests of the sport of Boxing. His countermanding instruction was unjustified and created confusion (or even greater confusion if one follows his case to its logical conclusion). It undermined and disrupted the arrangements that EB had put in place.
- (ii) Moreover, DC's challenge to the NGB for the sport has potentially wider implications for the relationship of the EB with the other Regions.
- (iii) Accordingly, on the evidence before us, we find that the first limb of the charge is proved.

The second limb

- (i) The Oxford English Dictionary defines “disrepute” as “to be held in low esteem by the public”.
- (ii) In the absence of any other reference point, that definition is a useful one. It envisages harm or damage being caused to the reputation and standing of the person or body that is the subject of conduct or comments. It also includes the notion that it is the perception of the public that matters when considering the question of disrepute. This involves placing oneself in the position of an ordinary, objective and fair-minded member of the public and judging how he, or she, is likely to have reacted to conduct or comments in any given case.
- (iii) A reasonable, objective member of the public reading EB’s instruction (through DB), followed by DC’s forceful rejection of it, is likely to have concluded that the reputation and standing of EB was lowered as a consequence. In simple terms, the impression that would have been formed is that of a governing body telling its members to do one thing and an official at regional level telling them to ignore it and do something else. Even if some decisions of a sports governing body are unpopular, it must retain its authority in the eyes of the public, in order to maintain credibility and for the purposes of good governance.
- (iv) We therefore find that the second limb of the charge is also made out. However, it does not really add materially to DC’s overall level of culpability, or the sanctions to be imposed.

4.10 The new points that were raised by JH at the outset of the hearing were not foreshadowed in any of DC’s correspondence. Case management directions were made at a hearing on 26th October 2015, which DC did not attend. Care was taken to ensure that the directions were communicated to him. Permission for him to rely on a statement from a witness that was served a week out of time was refused prior to the substantive hearing as no reason(s) were provided for the delay, good or otherwise.

4.11 Similarly, we dismiss the points raised by JH on behalf of DC for the first time on the morning of the hearing itself, and for which no satisfactory explanation was given. Nevertheless, Ms. Manby took instructions at short notice and responded to the various points which we would have rejected on the following grounds:

(i) EB's skeleton argument

(a) The exchange of skeleton arguments was ordered as part of the case management directions that were made. The one that Ms. Manby helpfully prepared on behalf of EB assisted the Disciplinary Panel. There was nothing in it that took DC by surprise and there was no procedural breach.

(ii) The alleged withdrawal of the complaint

(a) Regulation 3 of the DAP sets out who can make a complaint. The Complainant in this case was an appropriate person to make the complaint against DC (see Regulations 3.2.1 and 3.2.5). Regulation 4 then sets out the procedure to be followed for making a complaint;

(b) There is no evidence before us to support the assertion that the complaint has been withdrawn; and

(c) A complaint is the first stage of a process that is then taken over by EB which steps into the shoes of the complainant. Even if the complaint had been withdrawn, it would not prevent EB from continuing to pursue the charge arising out of it.

(iii) The validity of the interim sanction

(a) The interim sanction pre-dated the convening of a Case Management Referral Panel, but Regulation 5.1 provides that where the criteria set out in Regulation 5.3 is satisfied, EB's Equity Manager, Secretary or Operations Manager may impose an interim sanction. The temporary suspension was communicated to DC by Mark Abberley, acting in his capacity as the Company Secretary of EB;

- (b) The interim sanction was subsequently ratified by an appropriately qualified Case Management Referral Panel, the composition of which DC approved;
- (c) The interim sanction was imposed to prevent DC from impeding the progress of the JDC, which there were reasonable grounds for believing he might do. He was reinstated immediately after the Championships were concluded on 11th October 2015;
- (d) The interim sanction was therefore reasonable and proportionate; and
- (e) Even if there had been some kind of procedural irregularity that fatally undermined the validity of the interim sanction, the suspension that the Disciplinary Panel imposes means that DC would have served the same suspension in any event.

4.10 For those reasons, even if the additional points had been identified earlier in the course of these proceedings, and permission given for them to be advanced, we would have dismissed them for the reasons given.

5. SANCTIONS

Sanctions

- 5.1 The range of sanctions that are at the disposal of a Disciplinary Panel are set out in Regulation 13.1 of the DAP. They include:
- (i) *a written warning;*
 - (ii) *a requirement to change current practices;*
 - (iii) *...*
 - (iv) *a suspension [or expulsion] from ABAE [registration, membership or affiliation] or from any and all activities under the jurisdiction of the ABAE [including, in particular, attending meetings, coaching, competing or officiating at events or organising ABAE accredited events] which may include suspension from a specified number of events or for a period of time;*
 - (v) *a financial penalty;*
 - (vi) *a requirement to participate in re-training;*

(vii) or any other appropriate sanction which may be levied from time to time.

5.2 Under Regulation 13.4, any period of suspension imposed by a Disciplinary Panel may be back-dated to start at such date it thinks fit, particularly if it wishes to take into account any interim sanction which has been imposed.

5.3 The limitations on the sanctions that may be imposed by a National Discipline Panel under Regulation 13.7 are:

- (i) Suspension and/or expulsions of up to and including 5 years; and
- (ii) A fine of up to £5,000.

5.4 The interim suspension that was imposed on DC was for a period of just under eight weeks. In the judgment of the Disciplinary Panel, a brief period of suspension was an appropriate sanction in this case, taking into account all of the relevant circumstances and, in particular, the seriousness of the breach, which undermined the authority of EB as the NGB for the sport. We were invited by Ms. Manby, on behalf of EB, to consider a further period of suspension of three months. However, we did not consider that any further sanction beyond that which has already been imposed was justified for the following reasons:

- (i) DC's long history of voluntary service to the sport, in excess of 40 years;
- (ii) His previously unblemished disciplinary record;
- (iii) Our finding that he had no intention to disrupt the organisation of the JDC;
- (iv) The absence of any evidence that DC's actions resulted in any boxer based in the EM Region, and who wished to enter the JDC, was unable to do so due to DC's actions; and
- (v) The understandable anxiety which the interim sanction and the disciplinary proceedings against him have already caused DC.

- 5.5 Having regard to all of the circumstances of the case, the Disciplinary Panel was unanimously of the view that the interim suspension that DC has already 'served' represented an appropriate sanction and that no further period of suspension from boxing activity (actual or suspended) was warranted.
- 5.6 We considered whether to impose a small additional financial penalty, but concluded that the interim suspension was sufficient, both in terms of its punitive and deterrent effect. We were also mindful of the question of costs and to ensure that the totality of the financial burden imposed on DC would be fair, reasonable and proportionate for someone who is no longer working and reliant upon pensions for his income.
- 5.7 The Panel does, though, consider it appropriate to warn DC as to his future conduct and trust that this experience will inform his future relations with EB in a positive way. To that end, a willingness to engage and communicate constructively is essential, especially when differences of opinion arise.

Costs

- 5.8 The power of a Disciplinary Panel to make an order for the payment of costs is found in Regulation 14 of the DAP.
- 5.9 We heard submissions in relation to costs and the various expenses that had been incurred as a result of the disciplinary proceedings as a whole, and the convening of a formal disciplinary hearing in particular. Certain costs would inevitably have been incurred in any event, even if DC had accepted the charge. The hearing before the Disciplinary Panel took significantly longer because of the additional points that were taken on behalf of DC by Mr. Hayes, but whether a formal hearing would have been required if DC had represented himself with no assistance is a moot point. The written evidence that he had submitted was somewhat equivocal, although it inclines more towards a plea in mitigation rather than advancing a substantive defence to the charge.

5.10 Ultimately, the Disciplinary Panel determined that DC should make a contribution of £500 towards the costs of the proceedings. That sum represents a significant reduction from the additional costs that have actually been incurred as a result of him pleading not guilty.

6. ORDER

6.1 In view of our findings, the Disciplinary Panel makes the following Order:

- (i) The charge against DC is proved.
- (ii) DC is suspended from membership of EB. The suspension shall take effect from 17th August 2015 and be for the same period and in the same terms as the interim suspension.
- (iii) DC is warned as to his future conduct.
- (iv) DC shall pay a contribution of £500 towards the costs of the disciplinary proceedings that have been incurred by EB, payable by 4pm on Tuesday 22nd December 2015.

6.2 The time for any appeal against this decision under Regulation 16 of the DAP shall commence at 4pm on Monday 30th November 2015.

29th November 2015

Craig Moore, Barrister, Independent Chairman of the Disciplinary Panel

Des Smith, Independent Member of the Disciplinary Panel

Dr. Terry Crystal, Independent Member of the Disciplinary Panel

Appearances

For EB

Pippa Manby, Counsel

Instructed by Gordon Valentine, EB National Compliance Manager

For DC

DC, acting in person

James Hayes, acting as McKenzie Friend

