BEFORE THE ENGLAND BOXING DISCIPLINARY PANEL

IN THE MATTER OF:

ENGLAND BOXING

-v-

TOM GILBERT

THE PANEL'S DECISION AND FULL WRITTEN REASONS

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1. These are the written reasons and decision of the England Boxing Disciplinary Panel ("the Panel"), which sat on 27th January 2019 in the case of Tom Gilbert ("the Respondent").

2. The independent Panel appointed by England Boxing ("EB"), pursuant to its Disciplinary Procedure ("the EB Procedure"), was Mr. Craig Harris, barrister (Chair), and Mr. Tiran Gunawardena, solicitor. This was a two-member panel for the reasons set out below [§§25-28].

3. The 'Responsible Person' in the case was Mr. Gordon Valentine.

4. England Boxing was represented at the hearing by counsel, Ms. Charlotte Mitchell-Dunn.

5. Mr. Gilbert attended the hearing and was represented by counsel, Mr. Ashley Cukier, with the assistance of his solicitor, Mr. Daniel Geey.

CHARGE

6. Mr. Gilbert was charged as follows:

> *On 7th April 2018, whilst acting as the Golden Gloves Manager, and in recipient (sic.) of an England Boxing permit for the Golden Gloves Box Cup, you mismanaged the Golden Gloves Box Cup held at Bowlers Exhibition Centre in that you;*
>
> *I) Requested that the EB Supervisor(s) register additional boxers and/or enter boxers into the Golden Gloves Box Cup, who were not on the list of competitors prior to 7th April 2018;*
> *II) Requested that the EB Supervisor(s) allow boxers to compete in the Golden Gloves Box Cup, despite the fact that they weighed more or less than the weight category they are registered as;*

III) Requested that new draws and bout lists be created by the EB Supervisor(s) on the 7th April 2018, to allow for additional or unregistered boxers, and/or weigh-in discrepancies;

IV) Failed to supply four workable boxing rings, despite assurances to the EB Supervisor(s);

V) Failed to provide four doctors in order that the fourth boxing ring could be used;

VI) Failed to supply adequate additional lighting, to ensure the ring was set up correctly;

The above act(s) taken individually or together amount to a mismanagement of the above event, and the mismanagement of this event led to its cancellation.

Such conduct is against the interests of the sport and/or brings the sport into disrepute.

Contrary to England Boxing Code of Conduct.

7. The wording of the EB Code of Conduct ("the Code of Conduct") need not be rehearsed in full here; it is available to all concerned and its requirements are well known. It is addressed in more detail below.

BURDEN AND STANDARD OF PROOF

8. The burden of proving the charge was on England Boxing.

9. The applicable standard of proof was the balance of probability.

10. The balance of probability means the Panel will be satisfied an event occurred if it considers that, on the evidence, the occurrence of the event was more likely than not. The same standard applies to the Panel's consideration of whether any proven act or omission amounts to a violation of the Code of Conduct, taking account of any applicable defence. EB has the burden of disproving any such defence to the same standard.

BACKGROUND

11. On 7th and 8th April 2018 an event known as the Golden Gloves Box Cup (variously referred to as "the tournament" and "event" in this document) was to take place at the Bowlers Exhibition Centre, Manchester. This was a commercial event run by the Respondent, who was an EB member at all material times.

12. The Respondent had obtained an EB Tournament Permit to run the event. The tournament would therefore take place under EB rules, with a Mr. Chris Roberts named as the 'Supervisor' and Mr. Tony Buff as the 'Assistant Supervisor' on the permit.

13. The event was doomed. It was beset with problems, seemingly from not long after the doors opened on the first day, such that it was eventually cancelled for that day (7th April 2018). Later

the same date, a social media announcement was put out to the effect that the tournament would not recommence on its second day (8th April 2018), such that it was cancelled as a whole.

14. The fall out was severe. Those who had pre-registered and paid to enter the tournament as competitors, or attended and paid on the day to enter as such (an issue to which the Panel will return), and those who had travelled to the venue whether as boxers, trainers, support staff or spectators, paying simply to watch, lost out both financially and in terms of their time commitment to the event. Many were completely let down by the failure of the tournament that had been planned and promoted. Their disappointment manifested itself in violent threats being made to those who assisted in running the event and items having been stolen from the venue on the first day, followed by complaints on social media and to EB thereafter.

15. The reasons for the failure of the tournament, as EB alleged, were those set out in the particulars of its charge at §6 above. Those particulars, it alleged, amounted to mismanagement of the event by the Respondent which, in turn, led to its cancellation and thereby amounted to a breach of the EB Code of Conduct.

16. The detailed factual background to the case, as brought by EB, can be found in its case summary, at pages 1-5 of EB's hearing bundle (running to 43 pages, with further appendices). Much of that case summary was agreed by the Respondent, at least in terms of (i) the fact of abandonment of the event and (ii) the resulting fall out. The issues in this case related to how that came about and whether the Respondent was responsible for it, both as a matter of fact and interpretation/application of EB's rules and the Code of Conduct; in particular, whether liability *could* attach to him in the first place and, if so, whether in fact it did.

RESPONSE TO CHARGE

17. The Respondent denied the charge against him in its entirety.

18. His position was first set out in detail by way of a response to EB during its investigation of this matter [see "*Investigation Submissions: Mr. Tom Gilbert",* from page 37 of the EB hearing bundle].

19. His detailed response to charge was set out by way of a further statement, at page 4 of the Respondent's hearing bundle (running to 359 pages overall).

20. The Respondent's position can be summarised thus:

    - He could not be held responsible under EB rules for the substantive occurrences identified in particulars (I) to (III) of the charge, if indeed those matters occurred at all, and, if they did, he did not make the identified requests of the Supervisor(s) that led to those occurrences. As such, he could not be liable for any misconduct that might attach to these aspects of the charge, on any basis.

- As to particulars (IV)-(VI), he disputed the substantive facts to which they related and argued that, even if proved (as Mr. Cukier clarified at the hearing) those failures ought not amount to breaches of the Code of Conduct by him, bearing in mind the Supervisor(s) overarching and ongoing duties at the event as set out under EB's rules i.e. the issues identified ought to have been managed and mitigated by the Supervisor(s), so that the event could still run adequately; and

- In general, again bearing in mind the Supervisor(s) intervening roles and duties, the matters identified in all particulars of the charge, either alone or collectively, did not amount to (i) mismanagement of the event on the Respondent's part, that (ii) caused its cancellation, upon the basis of which (i.e. the cancellation) the charge had been brought. Causation, as between any mismanagement and the 'resultant' cancellation, was therefore also in issue.

PRELIMINARY MATTERS

21. The Panel appointed for the final hearing in this case was not the Panel first appointed for that purpose.

22. The Panel first appointed was to hear the case in Manchester on 27/01/19. After that date was fixed, however, the Parties agreed that the matter should be heard in London. The Parties still wished to retain the hearing date, but that could not be met in London by those appointed to the Panel in Manchester. A new Panel was therefore appointed to hear the case in London and the date for full hearing remained fixed as above.

Delay

23. The Parties agreed that the previous Panel Chair, counsel Ms. Chloe Fordham, should retain jurisdiction over preliminary arguments that had already been raised during her management of the case. One of the arguments raised by the Respondent (by way of skeleton argument dated 21/12/18) amounted to an application for dismissal of the case on grounds of delay. Ms. Fordham gave her decision, dismissing on that application, on 8th December 2018. Her decision should be read in its entirety should any argument on that point rearise. There was no further delay between the date of Ms. Fordham's decision and the full hearing date, as had been fixed before her by agreement of the Parties, so no issue of delay should persist so far as proceedings thereafter are concerned (the full hearing was effective on the agreed fixed date, 27/01/19).

Particularisation of Charge

24. During the preliminary stages of the case, Ms. Fordham directed (in accordance with the Respondent's arguments for the same) that EB should better-particularise the charge against Mr. Gilbert. The charge had previously alleged unparticularised "mismanagement" of the Golden Gloves event, leading to its cancellation in breach of the Code of Conduct. Ms. Fordham's direction resulted in the charge coming to full hearing as at §6 above, before the newly-appointed

Panel. The terms of the particulars of that charge (now referring to "requests" being made of "Supervisor(s)" in particulars (i) to (iii), as it did) were the subject of written submissions from counsel for the Respondent that would be litigated at the hearing (the *'Respondent's Supplemental Written Submissions for Hearing on 27.01.19'*). Those submissions are addressed below [from §42], as part of this Panel's decision.

Final hearing Panel quorum

25. Issues arose with regard to EB appointing a third member to the 'new' Panel in advance of the full hearing in London, in addition to the Chair, Mr. Harris, and Mr. Gunawardena (independent counsel and solicitor, respectively).

26. Those issues (set out in the paragraph below) were referred to the new Chair on a number of occasions, but the Chair decided that, pursuant to the EB Procedure, this Panel had no power over appointment of Panel members or jurisdiction to determine arguments on such issues. That was a matter for the EB Committee (see the Chair's decisions by emails dated 15/01/19, at 23:23 hours, and 16/01/19, at 10:29 hours, if required).

27. These issues arose because the Respondent had previously been an employee of EB and is well-known in the boxing community, such that appointing an EB member to the Panel who was considered to be impartial, as per the EB Procedure, proved difficult. On two occasions EB appointed a third member to the Panel whom the Respondent submitted ought to not sit on it – both recused themselves. EB was in the process of identifying another member to join the Panel – its third attempt at the same – in the immediate run up to the hearing. A concern was therefore raised by the Respondent that if the third member was appointed close to the hearing date, but issues then also arose as to his/her impartiality, the hearing itself would need to be delayed as there would be no time to find yet another new member.

28. In light of that, the Parties agreed that this case should be heard by a two-member Panel, as it was, in accordance with the submissions made to the Chair on the Respondent's behalf (see the email from Mr. Geey of 24/01/19 at 08:27, with reference to relevant parts of the EB Procedure that the Chair agreed permitted this course to be taken).

Scope of the Parties' cases

29. The case having come to the charge of this Panel, the Respondent next expressed concern that a case of its scope could not be heard within a single day, but that the matter should not be further delayed, such that the new Chair (Mr. Harris) should impose limits on the extent of EB's case. That argument was launched, by email from Mr. Geey, before any response to the charge had been, or was required to be made by the Respondent, so that the issues and extent of any dispute in the case were not yet known.

30. The Chair did not require EB – or either party – to limit the extent of its case at any stage, although communications between the Parties, through the Chair in advance of and during the hearing

itself, resulted in a narrowing of the issues such that the substantive case was heard in its entirety on 27/01/19, without the Panel needing to hear oral evidence from as many witnesses as was originally anticipated. The Chair offered guidance as to where the Panel saw the issues in the case laid, to assist the Parties in their decision(s) as to which witnesses really need give oral evidence, but the final decision on all such matters were those of the Parties themselves, as the Panel made clear.

Notification of Decision on Charge

31. Notwithstanding the streamlining of the case, the hearing on 27/01/19 ran late into the evening such that the Panel was unable to consider the issue of liability on the charge, doing justice to the case and considering the evidence as a whole, so as to return a decision on liability on that date.

32. Parties were therefore informed that the Panel would issue a Notification of its Decision on Charge, following further consideration of the matters at stake, on 28/01/19, as it did. Therein the Panel set out directions for the purposes of proceeding to the sanctioning stage, which had been agreed at the substantive hearing in the event that they were needed i.e. if the charge were found proved (it follows from this paragraph that the Charge was found proved, for reasons now set out below).

33. Following issuance of the Notification of Decision on Charge, the Chair received an email from counsel for the Respondent, Mr. Cukier, on 28/01/19 at 20:29 (and responded to by the Chair at 22:25 on the same date), which argued that the Panel was bound to change its decision against the Respondent on the charge. Its contents are dealt with below but, should this decision come for review, the reviewing body should have sight of that email and the Notification of Decision on Charge. The Notification made clear on its front page that the date of Parties' receipt of *these full written reasons* would trigger the timeframes that apply to appeal processes. It is the contents of *this document* that represents the Panel's full, reasoned decision.

34. The Notification of Decision on Charge was provided simply to assist the Parties in making written submissions on sanction at that stage, given that the charge had been found proved only in part and the Parties would, in fairness, need to understand the extent of that finding in order to make appropriate written submissions on sanction.

35. There is extensive email correspondence dealing with the background to all the preliminary issues addressed above, which are available if required but have not been summarised in this document for the sake of brevity.

FULL HEARING & DETERMINATION OF THE CHARGE

36. Counsel for EB opened the case and would argue, in summary, that the Golden Gloves event was an EB-sanctioned, commercial event, run by and for the financial benefit of the Respondent, who

had obtained an EB permit for that purpose. Counsel noted that the Supervisors[1] at the event were volunteers, assisting in the Respondent's commercial enterprise, and would, as such, take instructions from him. EB argued that the Respondent was seeking to evade liability as against the general obligations imposed upon him by the Code of Conduct pursuant to which he was charged, he being an EB member and the event organiser, by reference instead to more limited criteria that apply to individuals in particular roles at such events, as defined by the EB Rule Book. EB's case was, in short, that the EB Code of Conduct continued to apply overall and the Respondent had breached it by reason of the particulars of charge.

37. There was no issue that the Respondent had been/was an EB member at all material times, such that he was subject to the Code of Conduct and the Panel had jurisdiction over these matters.

38. As a consequence of issues narrowing at the hearing, the Panel heard oral evidence only from Chris Roberts and Ian Ireland in support of EB's case. By way of evidence-in-chief they adopted their written statements, which came in the form of post-event reports (see pages 7-13 and 14-16 of EB's bundle, respectively) and were asked some additional questions on behalf of EB before being cross-examined. Mr. Roberts was the event Supervisor, as named on the EB permit, whilst Mr. Ireland assisted in an "administration role", as he described it in his statement.

39. Cross-examination of both witnesses on the Respondent's behalf – particularly Mr. Roberts in the first instance – focused for some considerable time on the contents of the 2018 edition of the EB Rule Book.

40. Counsel for the Respondent pointed out that page four, paragraph (III) of the Rule Book sets out that, *"For the avoidance of doubt, any breach of any requirement, rule, or similar, of this rule book is capable of forming the basis of a "complaint", per paragraph 2 of the "England Boxing Disciplinary Procedure"".*

41. Cross-examination then focused on Section Four of the Rule Book, which, amongst other matters, defines the roles and responsibilities of personnel who might be involved in the running of an event such as the Golden Gloves Cup; see, in particular, rules 4.1 ("Officials") and 4.5 ("Officials roles"). The responsibilities of "The Supervisor" and "Competition Manager"[2], which were relevant here, are set out in Annexes A1 (page 111) and A2 (p.117) of the Rule Book, respectively, to which counsel Mr. Cukier also took the witnesses and the Panel.

42. That line of questioning focused upon the issues set out in the *'Respondent's Supplemental Written Submissions for Hearing on 27.01.19'*, dated 24.01.19, which had been submitted in advance. The reader should refer to those submissions in full at this stage, such that they need not be rehearsed here[3].

[1] This is a defined term in The EB Rule Book (2018 ed.) ["The EB Rule Book"], at page 13, para 4.5.1.
[2] Defined at paragraphs 4.5.1 and 4.5.2 respectively.
[3] The Panel notes that none of the submissions in that document pertaining to the period for which the Respondent had been subject to interim suspension, pending resolution of this case, had any bearing on the Panel's considerations as to his liability (or otherwise) on the charge, as to which they were irrelevant.

EB Rules vis-à-vis Members obligations under the Code of Conduct

43. The Respondent's contention was that EB had drafted particulars (I)-(III) of the charge, having been required to better-particularise the charge by the previous Panel Chair, Ms. Fordham, so as to allege that he was liable for having *"requested the EB Supervisor(s)"* to act in the manner complained of because the Respondent himself could not be responsible for the substantive misconduct alleged in those particulars, for which responsibility fell upon the Supervisors alone per the EB Rule Book. This was essentially a tacit concession by EB, said counsel for the Respondent, that the matters complained of in particulars (I)-(III) were matters that normally fell exclusively within the responsibility of the Supervisors, not the Competition Manager (the Respondent), pursuant to the EB Rule Book (particularly the sections set out at §§40-41 above), such that the Respondent ought not be liable for them.

44. The submission would follow that if the Respondent *did not request* the Supervisor(s) to conduct themselves as alleged in the charge, then their doing so – to the extent that their doing so might amount to a violation of any rules in the Rule Book that apply to Supervisors – put them (i.e. the Supervisors) in breach of EB rules and the buck stopped there. It was submitted that liability could not extend to the Respondent in those circumstances, even by reference to a Member's obligations under the EB Code of Conduct, when his role on the day was that of Competition Manager and his responsibilities as such were limited as defined by the Rule Book. An extension of that argument (or else the case would simply have depended upon whether the requests were made or not) was for counsel Mr. Cukier to argue that even if the Respondent *did* make the said requests, the Supervisors permitting those requests put them in breach of responsibilities that fell exclusively under their remit, so that, again, the buck stopped there and the Respondent could not attract liability even in those circumstances.

45. The Panel considered that the submissions at §8 of the Respondent's Written Submissions for Hearing on 27.01.19 were misplaced. There was nothing *"remarkable"* about the charge. EB was not attempting to *"somehow root Mr. Gilbert within particular provisions of the EB Rules"* for matters that fell within the *"exclusive responsibility of the EB Supervisor and his/her administrative team".* He was not charged with breaching the rules set out in the EB Rule Book. Indeed, on that basis, it might be said that EB was conscious of the provisions of its Rule Book when particularising the charge, in that it had not charged the Respondent as being liable for matters that fell outside his responsibilities as defined for Competition Managers therein (accepting that the Respondent was a self-appointed Competition Manager for these purposes, as per his own case).

46. The Respondent was charged with acting against the interests of the sport and/or bringing the sport into disrepute, contrary to the EB Code of Conduct. Whilst the rules set out in the Rule Book, as referred to above, prescribe the standards to which certain tournament officials must comply (necessarily in respect of a competition) and thereby identify the extent of their responsibilities for the purposes of such a tournament, the overarching requirements of the EB Code of Conduct (not only to comply with EB rules, but not to act against the interest of the sport and/or bring the sport into disrepute by reference to the Code itself) do not cease to apply once the relevant provisions of the Rule Book are engaged by reason of a tournament taking place. All

EB Members agree to comply with the terms the Code of Conduct throughout the period of their membership. That is a continuous obligation of membership and the terms of the Code of Conduct would certainly apply during an EB-permitted event.

47. The Panel was satisfied, therefore, that even if one accepted the Respondent's submissions as to the limits of liability that might attach to those engaged in running EB-permitted boxing events, by reference to their positions and responsibilities as "Officials", including the Competition Manager and Supervisor(s) as defined in the Rule Book, an EB member who requested any such Official to conduct themselves in a manner inconsistent with their responsibilities would *prima facie* be acting against the interests of the sport and/or bringing the sport into disrepute – by reason of their being an EB member and having to comply with the Code of Conduct at all times, whatever their defined position in connection with the tournament concerned.

48. That is to say that the Respondent could incur liability for being in breach of the Code of Conduct, in the Panel's view, if he requested the Supervisors to act in contravention of the rules governing their responsibilities as set out in the EB Rule Book and, furthermore, would incur such liability if he requested them to act in the manner complained of in the circumstances of this case – he having been an EB member, running an event for his own gain under an EB-permit and employing volunteers to act as Officials and Supervisors for that purpose.

49. If that were not right, one could encounter the absurd position whereby an EB member who attends such an event, without an official role as defined in the EB Rule Book, might misconduct themselves in connection with the tournament so as to violate the Code of Conduct and be liable for the same, whilst the event organiser, also an EB Member, could not be liable for similar misconduct (or encouraging it, say) on account of the fact that the conduct complained of falls outside the prescribed areas for which they assumed responsibility by holding an official position in the tournament, as defined by the Rule Book. One could assign themselves a particular "Official" role during such an event to limit the extent of any liability they might incur for an act/omission that would otherwise amount to a breach of the Code of Conduct i.e. restrict application of that Code, which surely sets out the overarching obligations of all members and operates simultaneously to the EB rules.

50. The Panel determined that the Code of Conduct continues to apply at all times and EB brought the first three particulars of the charge on the basis, properly, that if the Respondent requested the Supervisor(s) to conduct themselves as alleged – in breach of the rules that governed their conduct under the Rule Book – then he would be in breach of the Code of Conduct himself [see §48 above]. The Panel agreed with Mr. Cukier's submissions, however, that such "requests" did need to be proved, as was clear on the wording of the charge that the Respondent was now meeting, as particularised.

51. In that context, with reference back to §§40-41 and §44 above, the Panel notes that it was not seized with deciding whether or not the Supervisor(s) and/or any other Officials at the Golden Gloves event had breached the EB Rule Book or Code of Conduct and, even if they had, that would not absolve another person from liability if that other person (allegedly the Respondent here, in overall charge) requested the conduct of them that put them in breach. Any Panel seized with

such a task would, of course, have to hear and consider any defence that those individuals might put forward in such a case; for example, would their conduct amount to a breach of the Code of Conduct if it was demanded by a superior?

52. It follows, equally, that this Panel did not need to conclude that a Supervisor did actually conduct themselves in breach of EB rules and/or the Code of Conduct before being able to conclude that the Respondent was liable under the Code for requesting them to conduct themselves as such, as in the Panel's view the making of such a request (i.e. that others conduct themselves in a manner that would amount to a *prima facie* breach the rules and/or Code) could be a breach of the Code of Conduct in itself and would amount to a breach in the circumstances of this case.

53. The real issue on particulars (I)-(III) of the charge, therefore, was whether or not the Respondent had requested the Supervisor(s) to conduct themselves as alleged. That was the question of fact upon which these aspects of the case would turn.

Particulars (I)-(III)

Particular (I)

54. Through the course of EB's case and cross-examination of its witnesses by Mr. Cukier, it became apparent that there was, in fact, no tenable evidence that the Respondent had made the request particularised at item (I) of the charge, that the EB Supervisor(s) register additional boxers and/or enter boxers into the Golden Gloves Box Cup who were not on the list of competitors prior to 7th April 2018. Evidence submitted by the Respondent (see the statement of Lauren Maloney) also militated against any such conclusion.

55. Messrs. Roberts and Ireland were unable to give evidence on that issue – and it follows that they did not give evidence to that effect – because they said that registration was dealt with by others, before the boxers, however or whenever so registered, came into the area over which they had remit i.e. "into the field of play", whereupon the Supervisors obligations under the EB Rule Book were engaged. Mr. Roberts summarised the position of boxers vis-à-vis the Supervisors: *"They* [the boxers] *have already been accredited to the tournament and registered by the time they get there* [into the field of play i.e. the Supervisors remit]".

56. There was no evidence from any witnesses, dealing specifically with the registration process, who could say that the Respondent had requested them, directly or indirectly[4], to register and permit boxers to enter the event who had not entered in advance, per the tournament rules[5]. There was also no evidence from any other witness who could report upon seeing/hearing the Respondent making such requests, or making such requests of the registration staff through other people.

[4] The Panel will return to the concepts of direct and indirect requests vis-à-vis the other particulars of charge.
[5] The application of the tournament rules is dealt with below.

57. The height of EB's case on this subject was from Mr. Roberts, who said in chief, *"A number of people* [boxers] *were added onto the bottom of the list who were not on the entry list* [i.e. were apparently not pre-registered]. *They* [the boxers] *told me Tom had said they could come on the day and participate".*

58. The Panel did not consider this was sufficient to prove the first element of the charge. It was hearsay evidence – perhaps even multiple hearsay – about the reason why some boxers apparently believed, or at least told Mr. Roberts they were allowed to be in the tournament despite having been added to the list and presumably therefore registered on the day. They might have said that to ensure Mr. Roberts did not question their participation, or for any number of other reasons about which the Panel could not enquire of any such witness. This evidence did not, in any event, deal with their registration.

59. This particular concerned the actual act of registration of boxers not on the pre-entry list and how that came about i.e. was it by *request* of the Respondent? Whether that be a direct or indirect request, there had to be an act amounting to a request nonetheless. The charge was not drafted so as to allow it to be proved on the basis that the Respondent, for example, merely turned a blind eye, allowed his team or even knowingly permitted boxers to enter/remain in the Golden Gloves event who were not on the list of competitors prior to 7th April 2018, or failed to put systems in place to prevent such boxers from gaining entry to the competition. In cross-examination, Mr. Roberts expressly said that, *"Tom* [the Respondent] *didn't tell me to register the boxers…The boxers had accredited in through Tom's desk, or whoever was managing it…They have already registered by the time they weigh in. The weigh in area is my responsibility"* (emphasis added). The Panel considered that boxers who sought to enter on the day, for whatever reason, might have done so on the back of any reason they chose to give to the registration staff, and/or the staff might have permitted their registration without any request that they should do so coming from the Respondent, as to which there was no evidence.

60. There was, therefore, simply a dearth of evidence on the issue at stake under particular (I), rather than any witness' account having changed or been discredited on it. As such, the Panel raised the matter for consideration with counsel for EB towards the end of its case, who later informed the Panel that EB would not pursue a finding against the Respondent in respect of the first particular of the charge. Particular (I) was accordingly found not proved.

61. The position was different, however, in respect of particulars (II) and (III), which concerned matters arsing after the additional boxers had entered the venue and tournament.

Particulars (II) and (III)

62. Mr. Roberts went on to say, in cross-examination, that insofar as additional boxers had registered and entered the venue (there was no dispute they had, albeit there was an issue as to how many of them had, as shall be seen below), *"He* [the Respondent] *wanted to get the added entrants boxing"*, and with reference to them coming into the weigh-in area, *"I asked Tom do we allow them to continue or not"*. There was no doubt in Mr. Roberts' account that the Respondent wanted to get as many people boxing as possible despite there being added entrants, not least

because part of the *"mission statement"* of the event had been to *"get the kids boxing*", not merely to make money. People like Mr. Roberts had volunteered to assist at the event in that vein.

63. The Panel considered that Mr. Roberts presented as a highly credible witness. He had extensive supervisory experience dealing with boxing events, largely through his military connections, and plainly understood the rules that applied. He had been a volunteer on the day in question. His evidence was cogent and he was prepared to make admissions that might have been seen as against his own interests, when cross-examined by reference to those rules and the failure of the event on the day. Moreover, he was prepared to answer questions under cross-examination in terms that were plainly favourable to the Respondent (see §§59 & 62 by way of example at this stage, although more follow below), notwithstanding that his evidence and conduct on the day in question was being challenged – often in strong terms – on the whole. He also told the Panel that he had been involved in about fifty previous such events with the Respondent, who had then been working for EB rather than running events for personal financial gain at that time, and that they had gone ahead trouble-free. It was clear to the Panel that the Respondent knew how such tournaments should be run, as, indeed, was part of his own case.

64. To the extent that Mr. Roberts' evidence was not favourable to the Respondent, such that his credibility was put in question, the Panel considered it was difficult for the Respondent to contend that Mr. Roberts' was giving inaccurate evidence merely to support EB's case in some respects, when on the crucial issues as detailed in the charge sheet (which Mr. Roberts was, unusually, shown during cross-examination) he actually gave answers that counsel for the Respondent sought (see below) and, indeed, Mr. Roberts would have seen as lending more support to the Respondent's case than EB's. The Panel considered the reality to be that Mr. Roberts was a truthful and credible witness throughout his evidence.

65. We turn to those matters in respect of which Mr. Roberts' evidence might actually have assisted the Respondent so far as he saw it, specifically with regard to particulars (II) and (III) of the charge.

66. Mr. Cukier, for the Respondent, suggested to Mr. Roberts that the Respondent had never made the specific requests of him as identified in particulars (II) and (III). Mr. Roberts was shown the charge sheet, as mentioned above, when that suggestion was put to him in respect of each particular. The questions were therefore extremely focused upon the particularised issue on each point and were commendably clear and precise in terms of how they were put.

67. Mr. Roberts was equally precise in his response. He took a number of seconds to think about each answer and, albeit not without hesitation, confirmed that no *direct* request had been made of him by the Respondent in the terms set out at (I)-(III) of the charge. It was plainly the reference to "direct" requests, a word Mr. Cukier incorporated into his questions, that caused Mr. Roberts to reflect carefully upon his response before answering in a manner that was ostensibly favourable to the Respondent, because the wider essence of his evidence remained that the Respondent had wanted the additional boxers to compete in the tournament once entered, which would necessitate changes to the draw list and the like (see §62 above).

68. Mr. Cukier had indeed posed those questions by reference to "direct" requests and the Panel noted as much at the time:

> *Mr. Cukier:* *Do you accept there was no <u>direct</u> request from Mr. Gilbert to you requesting that boxers compete despite being in different weight category?* [With reference to particular (II) of the charge sheet].
>
> *Mr. Roberts:* *(Agrees) – That* [referring to particular (II) of the charge sheet] *is not correct*.
>
> *Mr. Cukier:* [Regarding particular (III)] *Did Mr. Gilbert make a <u>direct</u> request about draws and bout lists?*
>
> *Mr. Roberts:* *No – no <u>direct</u> request from Tom. Just a discussion down the line about how to accommodate* [the additional boxers].

69. The above note has been checked against a note of the evidence kept by the Respondent's legal team at the hearing[6], which was provided to the Chair by way of email from Mr. Cukier, dated 28/01/19 [see §33 above], in which he argued that those answers meant particulars (II) and (III) of the charge could not be proved and the Panel should change its decision upon them, of which the Parties were first notified earlier on that date.

70. With reference to that passage of evidence, in his email Mr. Cukier would contend that:

> *"It was not open for the Panel to come to this factual conclusion* [i.e. to find particulars (II)and (III) proved]*. The Panel was given by Mr Roberts, under cross-examination, a clear and categorical answer; in relation to alleged 'requests' of Mr Roberts (the 'Supervisor' of the competition, and accordingly the only person referred to in the Charge wording itself (NB Mr Ireland was not a Supervisor), Mr Roberts was unambiguous that, for the matters particularised at (ii) and (iii) of the Charge,* ***<u>no such request was ever made by Mr Gilbert</u>****. The Panel will recall that these answers were elicited after I took Mr Roberts to the Charge document itself, which he said he had not seen before, and which he was considering for the first time. No alternative answer was sought (still less elicited) by EB's Counsel in re-examination".*
>
> [Copied directly from the email. Words in square brackets inserted].

71. The Panel was struck that propositions were being put on the Respondent's behalf at the hearing, both in questions of witnesses and by way of submissions on these issues, that were always prefaced on the basis that there had to be a "direct" request from the Respondent to the Supervisor (i.e. Mr. Roberts, he being named as such on the EB Permit), seemingly by some express form of words, for these aspects of the charge to be proved. The Panel noted at one stage of submissions being made on behalf of the Respondent, in particular, that a point was made powerfully by Mr. Cukier on the basis that there had not been a "direct request" from the Respondent – implying that the same was required for the purposes of the charge – whilst he

[6] The notes are almost identical and there are no material differences, save the bracketed words here are inserted by the Panel for ease of understanding.

referred to the charge sheet itself, which of course did not include the word "direct". That appeared to cause a degree of hesitancy in the continuing submission. By comparison, it is notable that in the relevant passage of Mr. Cukier's email above *("Mr Roberts was unambiguous that, for the matters particularised at (ii) and (iii) of the Charge,* ***no such request was ever made by Mr Gilbert****")* the word "direct" is absent from those underlined in bold by Mr. Cukier, despite having been precisely emphasised in the questions he required Mr. Roberts to answer at the hearing [see §68 above].

72. Had the Panel received evidence of a direct request to the effect alleged, then plainly that would have proved the relevant aspect of the charge and, of course, Mr. Cukier had to establish that there were no such direct requests as the first line of defence on behalf of the Respondent, so far as the facts were concerned. He very much succeeded in that respect. But the Panel did not – and does not – consider that the matter ends there. The nature of how the request was made is not specified in any way in the charge and neither did it need to be; indeed, by way of comparative example, rarely would it be in other arbitral regulatory/disciplinary or penal legal jurisdictions.

73. The Respondent sought to impliedly restrict the ambit of the charge through the questioning of witnesses (i.e. having Mr. Roberts accept there had not been "direct" requests of the type alleged), then, at the hearing as in the email quoted above (absent the word "direct"), invited the Panel to adopt those answers so as to suggest that there had been no request at all. Contrary to Mr. Cukier's view in his email, that Mr. Roberts' answers were "unambiguous" on these issues, the Panel's view was that whilst Mr. Roberts' evidence had been precise in answer to very particular questions, he had hesitated before answering [see §67-68 above] by reference to Mr. Cukier's insertion of the word "direct" in his questions that did not appear in the charge, which Mr. Roberts was being told to look at he answered, and did not reflect the essence of Mr. Roberts' account.

74. The Panel considers the Respondent's approach of requiring there to have been a "direct request" before the charge could be proved to be artificially restrictive. The Panel did not begin its consideration of the case on that restrictive view of the charge and there is no basis for concluding, from the wording of these aspects of the charge, that it ought to be so narrowly construed. The Panel considers that any request(s) made of the Supervisor(s) would satisfy the charge, whether made directly or indirectly, or by a specific formulation of words or not. EB did not restrict itself as to the nature of the request it needed to prove by way of the charge sheet (the Panel repeats, the word "direct" is absent) and, in the Panel's view, neither ought it have been required to. It would be wholly artificial to find a person 'A' in breach of the Code of Conduct for making a direct request of person 'B' that amounts to a violation of that Code, but to find 'A' would not be in breach if he asked 'C' to pass the request on to 'B' for him (although the Panel notes immediately that it does not consider the latter example to have been what occurred in this case in any event).

75. The distinction between the submissions on behalf of Respondent and the Panel's view of the charge in this respect is significant. As Mr. Cukier was informed, in the Chair's response to his email of 28/01/19, the evidence must be considered as a whole. Mr. Roberts having given the answers he did, as set out at §68 above, he would also say that, "*there were discussions with Tom*

about accommodating it [i.e. the participation of the additional boxers]" [see also §62 above]. Mr. Roberts' evidence was clearly to the effect that, in line with the event mission statement, the Respondent wanted the additional boxers and those who arrived outside their weight category to take part. Discussions were held between the Respondent and the supervisory team to that effect, with the Respondent wanting those fighters accommodated, which necessarily meant (a) allowing boxers to fight outside their registered weight category, and (b) new bout lists being drawn up in order to *"accommodate"* the added entries and those who has not met weight ("accommodate" clearly meaning enabling them to take part, in the context of those discussions, rather than having space for them in the venue, for example).

76. As the Chair expressly clarified with Mr. Roberts at the hearing, allowing boxers to compete in new weight categories and drawing up new bout lists were the two fundamental aspects of "accommodating" the boxers concerned, as they were the processes that had to be undertaken for the event to continue as such. As much would have been obvious to the Respondent from his experience of the rules and the operation of such tournaments. The Panel was of the view that the Respondent's conduct, as evidenced by Mr. Roberts, was captured by particulars (II) and (III) of the charge if one did not read a requirement for a "*direct* request" into them, which there was no basis to given that word was absent.

77. There is no basis for the Panel to read the word "direct" into the charge, despite it being absent, in preference to giving the charge its plain and ordinary meaning; requests can be made directly or indirectly and, had the Respondent been in any doubt about that, he might have raised it as a matter requiring further particularisation, similarly to the points he had raised about the particularisation of the charge in the preliminary stages of the case [see §24 above]. Had he raised such a point, EB would have been wholly justified in simply inserting the words *"Requested, directly or indirectly…."* into the charge, had it chosen to add anything at all, for which reason the words in themselves would have served little purpose and were not required in the Panel's opinion.

78. The evidence of the witness Mr. Ireland was also instructive on this topic. In his evidence-in-chief he noted that, *"The mission statement here was to get as many boxing as possible"*. Having been asked about how things progressed after problems arose relating to unregistered/wrongly-weighted boxers entering the venue, he said:

> *"Tom's position was let's get something going, let's get something in the ring, to which I was very agreeable – people had been waiting around for a long time. We needed to get something going to appease the tension in the room. We'd be seen to have an event going…I am not sure I saw Mr. Gilbert after the frustrations"*

79. The Panel notes, again, that getting boxers in the ring necessarily meant the processes set out at particulars (II) and (III) of the charge had to be undertaken. Indeed, Mr. Cukier picked up on that part of Mr. Ireland's evidence in cross-examination, putting it to him that, as would seem to be the case on his own account, he had "permitted" those processes to be undertaken – Mr. Cukier

thereby accepting that they had been – in an effort to demonstrate that the buck stopped with the Supervisors and that the Respondent ought not be liable for what they allowed to occur.

80. The Panel notes again that that even if any of the event Officials did permit that which they ought not have (as to which the Panel was not charged with coming to a decision), that would not abrogate the Respondent of any liability he might incur for having requested the same. They could be simultaneously liable and, indeed, the Panel considered there was force in EB's submission that as the Respondent was the organiser of the event and stood to gain financially, whereas the officials were volunteers, rightly or wrongly they would have listened to his requests, as he might have expected them to. Indeed, in his own evidence the Respondent acknowledged that (i) this was his event, (ii) he was overseeing a team that was delivering a product, and (iii) the team of officials knew that this was his event. This only convinced the Panel that the Officials would have listened to the Respondent's requests and that the Respondent would have expected them to. Given the above, it would be an absurd position if the Respondent might avoid liability under the Code of Conduct for making requests he ought not have made (and he would have known he ought not have made them, asking Supervisors to act out with their duties as prescribed in the EB Rule Book in which he was well versed) merely because, in other circumstances, a strong minded official might have denied him what he was asking for, bearing in mind the Code of Conduct is concerned with Members not acting against the interests of the sport/EB or bringing it/EB into disrepute.

81. Mr. Ireland's evidence as at §78 above lends support to that of Mr. Roberts as to the Respondent's approach to the matters at stake. In the Panel's view, the Respondent did want and was requesting, whether directly or indirectly, the processes in particulars (II) and (III) of charge to be undertaken. The Panel found Mr. Ireland was, like Mr. Roberts, an impressive and credible witness, who had not come to the hearing in any way motivated to give evidence to the Respondent's detriment for his own protection. As the answer above [§78] shows in itself, he was not approaching matters with any view to self-preservation in terms of whether or not he had lapsed in his responsibilities under the EB Rule Book. He maintained that he had agreed to the requested course of action in cross-examination, when he knew it was being suggested that such conduct put him (on the Respondent's case) in breach of EB rules, plainly not knowing whether that was right or not – he looked to the Panel on one occasion as if to apologise for any imperfect conduct on his own part when these matters were put to him by Mr. Cukier. Even in his 'Event Analysis' (see para. 16 of EB's bundle), before knowing the Respondent would be charged and not knowing whether he would be himself, Mr. Ireland had written:

> *"Major concerns were now being raised as to how the draw could survive the influx of additional boxers and it proved obvious early on that no stage of the draw would remain intact. The decision was made by TG* [the Respondent] *to continue despite all of the changes and I was requested to start putting together draws and bout lists as soon as I could. At this point I should have refused and reverted back to the original draw and boxers that we had planned, but was convinced* [by the Respondent, he confirmed in evidence to the Panel] *to push ahead on the understanding that I would be given space and time to work".*

82. By his email of 28/01/18 [§70 above], Mr. Cukier made the point that Mr Roberts was the 'Supervisor' of the competition and the only person referred to in the charge wording itself, noting that "*Mr. Ireland was not a Supervisor*", presumably in support of the submission that any request made of him (Mr. Ireland) by the Respondent could not satisfy the charge.

83. It was notable by comparison, however, that at §8 of the Respondent's 'Supplemental Written Submissions for Hearing on 27/01/19', in the context of submissions to the effect that the matters in particulars (I)-(III) of the charge did not fall within the responsibility of the Competition Manager (i.e. the Respondent), it was suggested that they instead fell within *"the exclusive responsibility of the EB Supervisor and his/her administrative team"* [emphasis added]. Any such team would simply represent individuals to whom the Supervisor's tasks were delegated, but the Supervisor's responsibilities would ultimately still fall to him.

84. The Panel has noted that Mr. Ireland was indeed part of that administrative team [see §38 above; this was not challenged]. Again, whilst the charge alleged requests made of the *"Supervisor(s)",* a person such as the Respondent, who apparently understood the defined responsibilities of those who held official positions at the tournament and indeed relied heavily upon the limits of those responsibilities in these proceedings, would have also therefore known that such requests being made of Mr. Ireland could only be put into effect ultimately through a Supervisor, as they were. The Panel therefore considered that the requests made of Mr. Roberts [from §62 above] did amount to requests being made of him consistent with the allegations in particulars (II) and (III) of the charge, but especially so when considered in conjunction with the requests being made of Mr. Ireland, as part of the Supervisor's (i.e. Mr. Roberts') administrative team, which themselves would amount to requests of the Supervisor (reflecting upon Mr. Cukier's own submission at §83 above), even if indirectly.

85. Having determined that Mr. Ireland was a credible witness and accepting his evidence as such, the Panel considered that his evidence, as summarised above (§78), was therefore further supportive of the Respondent having made the requests alleged in particulars (II) and (III) of the charge. In that regard, it might be noteworthy that Mr. Cukier, in his email of 28/01/19, did not contend that Mr. Ireland had not given any evidence of a request (as he expressly contended vis-à-vis Mr. Roberts' evidence) but simply noted that Mr. Ireland had not been a Supervisor. Albeit his approach in that email was not, of course, determinative in the Panel's considerations, when the Respondent himself gave evidence in his case he said, *"I didn't ask Ian Ireland to do what he says",* so there was an acceptance there that Mr. Ireland's evidence amounted to him being asked to do something – which the Respondent denied asking vis-à-vis the charges – and the Panel did not find the Respondent's evidence to be as credible as Mr. Ireland's on this point. It amounted to the Respondent inviting the Panel to find that Mr. Ireland was lying to the Respondent's detriment (there was no reason to believe he could have mistakenly recalled something that did not happen on the first place), which was wholly at odds with the concessions Mr. Ireland routinely made throughout, considerably against his own interests and in the Respondent's favour, which the Respondent relied upon in other aspects of his defence [the evidence at §§78 & 81 being examples of the same]. The Panel found that to be highly improbable and contrary to common sense. The Respondent's evidence on these matters, by comparison, was extremely

vague in itself. When asked about Mr. Ireland's email to Mr. Valentine at page 29 of EB's bundle, in particular whether he (the Respondent) had *"said it may be too much trouble to turn people away rather than trying to make the event work"* as Mr. Ireland reported, the Respondent could only say in response, *"I can't remember"*. When pressed on the point and realising the significance of it, the he added, *"I'd say no".* The Panel found that combination of answers to be unconvincing to the point of being unreliable and preferred Mr. Ireland's account.

86. Considering the evidence as a whole, therefore, including the written statements in support of EB's case but focusing upon the live, contested evidence received at the hearing, the Panel concluded on the balance of probabilities that it was more likely than not that the requests particularised at items (II) and (III) of the charge were made by the Respondent, whether expressly or impliedly (at the least) and whether directly or indirectly, in his efforts to ensure the boxing tournament began in circumstances where, because of eventual irregularities in the numbers and weights of registered boxers once they had entered the venue, the processes identified in those particulars became necessities if the tournament was to begin.

Causation

87. The Panel having reached that conclusion, the Respondent's next submission was that the charge was ultimately brought upon the cancellation of the Golden Gloves event i.e. that was the alleged breach of the Code of Conduct, with the particulars simply identifying the causes of that cancellation for which the Respondent was allegedly responsible.

88. As such, argued Mr. Cukier on the Respondent's behalf, a causative link had to be established between any proved particular for which the Respondent was responsible and the cancellation of the event. The Panel concluded that was the correct approach, having reflected upon the terms of the charge in full [see §6 above: *"…The above act(s) taken individually or together amount to a mismanagement of the above event, and the mismanagement of this event led to its cancellation…"*]

89. In this respect, Mr. Cukier's submissions focused upon the Supervisor and administrative staff having permitted, or at least failed to mitigate the consequences of any mismanagement attributable to the Respondent. Furthermore, Mr. Cukier sought to demonstrate, by reference to the tournament entry sheets, that whilst boxers who were not pre-registered and/or came in outside their weight category had been allowed to enter the tournament, there were far less competitors (numerically) who fell into that bracket that had been feared and estimated in EB's witnesses' accounts, so that the consequences ought not have been great.

90. As to the actual numbers of non-pre-registered and incorrectly weighted boxers, the Panel agreed with Mr. Cukier submissions, which followed extensive and fruitful cross-examination by him of Mr. Ireland with reference to Appendices 5-7 of the Respondent's hearing bundle (lists of boxers) and also page 306 thereof. The process that was gone through in Mr. Cukier's cross-examination on this point need not be rehearsed here, as it resulted in reflection by EB and eventual agreement between the parties as to the relevant numbers, with which the Panel also agreed. It was difficult to arrive at precise figures as to the eventual number of entrants, as entry sheets,

boxer lists and other documentation had been stolen in the disruption that came on day one of the event. In favour of the Respondent, bearing in mind the burden of proof and Mr. Ireland's evidence that there might have been duplication as between the lists that were available and those that were stolen in any event, EB agreed with the Chair that the Panel must not speculate that those missing documents would have listed further entrants that should be added to the numbers below. Upon the evidence that was available, therefore, and by reference to Appendix B of the Respondent's bundle, which Mr. Ireland said was the most definitive list of entrants with added entrants and incorrectly weighted boxers marked up, the numbers were approximately as follows:

There were 318 pre-registered entries to the tournament.

There were 71 additional entrants who attended on the day (not pre-registered).

That totalled 389 (318 + 71) who were eventually registered to take part.

But 144 failed to attend having pre-registered.

Leaving **246** (389 - 144) actual entrants present on the day.

67 (of the 246) had failed to meet their pre-registered weight and (as above) 71 of them had not pre-registered, but attended on the day.

91. Mr. Ireland said in his evidence that he had agreed with the Respondent in advance that there would be 300 participants, which could have been catered for in three workable rings, but a figure of slightly more than 400 participants could actually have been managed, albeit a fourth ring would then have needed to be in use. In his evidence, the Respondent would say that he hoped for about 400 participants, but knew that if 400 pre-registered then that number would only decrease in terms of who turned up at the event, and that he did not know about the 71 non-pre-registered boxers who entered but *"people do try and get in".* In any event, one can see that the agreed total number of participants who attended and registered (including those on the day) was just 246 – well within the anticipated manageable limit and manageable within three rings, which is significant for reasons the Panel shall come to regarding other aspects of the charge.

92. The Panel took that into account in the wider context of Mr. Cukier's submissions on causation i.e. as to whether the Supervisor(s) could/should have mitigated the consequences of any mismanagement by the Respondent, bearing in mind the consequences in terms of the number of additional participants might have been considerably less than initially feared and, on any view, was within the manageable maximum number of participants for which contingencies had been put in place in planning the tournament.

93. When the tournament was planned, however, it was anticipated that all entrants would (i) be pre-registered and (ii) come within their weight category on the day, or else they would not be allowed to compete. The only published UK Golden Gloves Box Cup rules were for 2017 (see the first appendix to EB's bundle for the hearing), which said at rule (7) that, *"Boxers cannot change weight once an application* [to enter] *is received. The boxers weight recorded on the entry form*

will determine the category they box in". It is therefore axiomatic that boxers had to pre-register, within a weight category that they had to meet to take part on the day.

94. In fact, those requirements were not applied and, unquestionably in the Panel's view, the combined number of participants who were not pre-registered and who did not come within their weight category, despite having pre-registered, caused unmanageable disruption to the organisation of the tournament. As much is proved as a matter of fact, more than on the balance of probabilities by reference to views expressed in the Supervisor's report[7], by agreed events as they transpired on the days in question [see §§13-14 above]. Whilst many tournaments might decide to cater for unexpected boxers or those not meeting their weight on the day, to the extent it is manageable, in this case there was a total of 71 additional non-pre-registered boxers and 67 changes to weight on the day, as against pre-registration weights. That was a total of 138 changes to be catered for – a very large amount for an event that only pre-registered 318 participants and had 246 in total attend on the day. The 138 figure amounts to 43% of the 318 boxers expected to enter the tournament by reference to the pre-registered entries and 56% of the 246 who actually attended on the day, either not being pre-registered or not making weight. It appeared clear to the Panel that the event failed because it could not cope with continuously trying to accommodate them, as it did, in an apparent complete relaxation of its previous rules [see §93] that had surely been put in place to ensure the proper running of the tournament.

95. In the Panel's view, but for the Respondent having wanted the tournament to continue with as many entrants as possible being allowed to take part, despite so many of them not being pre-registered (even if he had not requested or even known about that at the point of entry) or having missed their weight, and thereby requiring new bout lists to be drawn up in order to accommodate them, the event would not have reached the critical tipping-point that it did, before it tipped over into complete, unmanageable failure. This was supported by Mr. Ireland's evidence in his written report, as set out at §81 above.

96. On the basis of the evidence summarised by way of the Panel's decisions above, the Respondent was alive to the problems as they arose – and grew – and a number of options were open to him other than seeking to ensure that any and all participants could remain the tournament, perhaps out of financial motivation, as EB contended, but that need not be proved. He could have immediately prevented, or given directions to the Supervisors to prevent boxers taking part who had not been pre-registered or had not met their weight category, refunding those boxers and their supporters as appropriate; or, at the end of the first day of the tournament, by which time no meaningful progress had been made from sporting point of view, he could have re-ordered matters such that those boxers who were still eligible to take part having, met pre-registration and weight requirements (now much lower in number), could have taken part in some re-arranged event on the second day. Instead, the event was cancelled overnight by a social media post because, come the end of the first day, none of the boxers had been ruled out of the event for failing to meet the entry requirements and all could have turned up again on the second. One of the defined roles of the Competition Manger is "*to troubleshoot during the tournament*"[8] but no such action was taken by the Respondent on this occasion.

[7] See para. 14 at page 11 of EB's bundle, by way of example.

[8] Even by reference to rule 4.5.2 of the EB Rule Book, upon which the Respondent based much of his case.

97. Therefore, in the Panel's view, there was a causative link between the requests that the Panel found the Respondent made, as at particulars (II) and (III) of the charge, and the cancellation of the event, with those requests amounting to its mismanagement. That causative chain was not broken by the actions, or failure to act against the requests by any of the Supervisor(s) or other event staff. To the extent that their conduct might have facilitated the events that led to the cancellation of the tournament, the Panel has already found that they were requested so to act by the Respondent, who was in overall charge as the event organiser. They were working on a voluntary basis under the Respondent, who was ultimately in charge and seeking to make financial gain from the event, even if that ambition came hand-in-hand with wanting to *"get kids boxing"* as he said and the Panel accepted. As an aside, the Panel notes that Mr Cukier queried why, if requests were made by the Respondent which others had followed in breach of the requirements of their role, no one else was charged by EB. However, that was solely an issue for EB to consider. The alleged liability under EB rules and/or the Code of Conduct of anyone other than the Respondent was not for this Panel to determine, especially if any blame that might be attributed to others would not negate the Respondent's liability in any event, as the Panel found it would not.

98. Having found that the cancellation of the Golden Gloves event was caused by the particularised mismanagement of that event on the part of the Respondent, and taking account of (a) the circumstances that mismanagement and (b) it's inevitable and foreseeable effects (i.e. the cancellation), the Panel found that the Respondent's proven conduct did amount to a breach of the Code of Conduct for being against the interests of the sport and EB and bringing both into disrepute. The overarching requirements of the Code of Conduct remained operative (the Respondent being an EB Member) notwithstanding that the rules and regulations of the EB Rule Book were additionally engaged for tournament purposes. Accordingly, the charge was proved on the balance of probabilities by reference to particulars (II) and (III) thereof.

Particulars (IV)-(VI)

99. These particulars were different, as the Respondent accepted through his counsel, insofar as they related simply to the infrastructural set up at the Golden Gloves event, for which the Respondent accepted he was responsible as the event organiser and Competition Manager (see para 1 of his submission to the EB investigation, at page 37 of EB's hearing bundle, and the Duties of a Competition Manager at Annex A.2 of The EB Rule Book). The causation argument (above) persisted in that the Respondent argued the Supervisors and staff ought to have mitigated the consequences of any failures on his part in this respect i.e. he had not mismanaged the event so as to cause its cancellation and put him in breach of the Code of Conduct.

100. These matters can be dealt with in shorter form, as the Panel found in the Respondent's favour that all three particulars (IV), (V) and (VI) were not proved on the balance of probabilities.

101. The parties agreed with the Chair's observations that particulars (IV) and (V) would stand or fall together, given the basis upon which EB put its case.

102. On the evidence, there were in fact four boxing rings available at the event that would have been *"workable"* (particular (IV) alleged they were not) but for the fact that there were only three doctors present. Particular (V), meanwhile, charged the Respondent with *"failing to provide four doctors in order that the fourth boxing ring could be used"*. The factual issue on both charges would therefore be determined according to whether or not the Respondent was/ought to have been expected to provide a fourth doctor, so that the fourth ring could be used, if there was any necessity for it to be used in the first place – if there was not that necessity, then the fourth doctor would not have been needed anyway. These issues would therefore be considered together.

103. The evidence as to whether there were ever to be four workable rings (and thus doctors) was ambiguous. Mr. Ireland confirmed that on the basis of the agreed anticipated number of participants, set out at §91 above, three rings would have been sufficient to run the tournament. There were three doctors at the event, which was sufficient to work those three rings, and even fewer boxers than actually attended on the day in question than were anticipated [see §90 above]. Three rings would therefore have been sufficient in numerical terms, ignoring the fact that so many boxers were not pre-registered or missed weight, which is not relevant for these purposes.

104. Mr. Roberts told the Panel that he had thought it would be a *"four ring, two day event…I envisaged four rings"* (emphasis added). Whilst the prospect of there being four rings had been plainly been considered, as the Respondent accepted and for which purpose he had in mind having a fourth doctor on standby to be called if he/she were needed, the documentary evidence that was highlighted on behalf of the Respondent (see the emails at pages 36-37 of the Respondent's bundle) plainly did not demonstrate a categorical decision having been made that four rings needed to/would be used, nor a commitment to the same from the Respondent. The finalised arrangement shown in those emails, not inconsistent with Mr. Roberts oral evidence, was for three rings to be used with an option to move into a fourth for a period of time, which Mr. Roberts had said "*may make life easier*" in his emails in the build up to the event. It follows that four doctors were not required as a starting point and, as the event turned out, four rings/doctors were not needed anyway given the actual number of entrants (246). Had more actually attended to participate, such that a fourth ring was needed, one was there to be used and there was no evidence to contradict the Respondent's assertion that he could have contacted a doctor to work that ring if required – but that is a hypothetical consideration that needs no resolution given what is set out above.

105. The Panel therefore found that particulars (IV) and (V) were not proved.

106. As to particular (VI), in his evidence-in-chief Mr. Roberts said that whilst *"the lighting in corner of* [one of the rings] *from distance was quite darkened, when you got physically to the ring it was fine".* He would later confirm, in answer to questions from the Chair and the Respondent's counsel in cross-examination, that whilst that aspect of the lighting was not perfect from a spectator point of view, the ring in question was sufficiently well-lit to allow boxing to take place safely within it. That was consistent with Mr. Roberts' written report (at page 10 of EB's bundle), where he had recorded in a footnote, favourably to the Respondent and potentially detrimental

to himself as the Supervisor (which is again relevant to his credibility as a witness on the matters dealt with above), that, *"There was a slight concern about some of the lighting sat above ring B; this was discussed with the Supervisor on the day of the tournament, who was content to run with bouts in that particular ring"*. Having heard all of that evidence, EB withdrew the allegation in Particular (VI) at the hearing and the Panel accordingly found it not proved.

107. As the substantive matters of fact alleged in particulars (IV)-(VI) were not proved, the Panel did not need to consider these matters any further in terms of the Respondent's conduct vis-a-mis any mismanagement and/or contribution to cancellation of the event. Had the event not run into the difficulties it did, consequent to the matters found proved in respect of particulars (II) and (III), these matters alone appear to have been unlikely to have affected the running of the tournament. For that same reason, however, they need not be considered as potentially intervening factors that broke any causal chain attributable to the Respondent for the cancellation of the event pursuant to his acts by which the Panel found particulars (II) and (III) proved.

DECISION

108. For the reasons given above, the Panel therefore found the charge proved, but only by reference to particulars (ii) and (iii) thereof. The other particulars were found not proved.

109. The Panel issued Notification of its Decision on Charge on 28/01/19, to which the reader is now referred by way of a further summary of its findings, in the full context of these written reasons.

COMPLAINT ABOUT THE NOTIFICATION OF DECISION ON CHARGE

110. This section relates to Mr. Cukier's email of 28/01/19, referenced above at §33.

111. It invited the Panel to change its decision on the Respondent's liability, the Panel having given its Notification of Decision on Charge earlier on the same date. Two issues were raised by Mr. Cukier.

112. The first issue concerned the Panel's remark at page three of its Notification of Decision on Charge that, *"it was an agreed fact that approximately 71 additional boxers were accredited to enter the competition on the day, having not pre-registered".* Mr. Cukier noted:

> *"This was **not** an agreed fact. Indeed, it was categorically rejected by Mr Gilbert in his evidence, and in the evidence of Ms Maloney, whose evidence was not challenged. Their evidence was that no accreditation was given to a single non-pre-registered boxer on the day. The Panel will moreover recall asking me specifically about the '71' number, and my clarification to the Panel for the avoidance of doubt that we were prepared to*

agree as a fact that there were 71 additional boxers in the exhibition centre who appear to have reached weigh-in, but did not under any circumstances accept as a fact that they were accredited by Mr Gilbert or his team at the accreditation desk".

113. The Panel accepts Mr. Cukier's observation insofar as the Respondent did not agree that he and/or his team accredited the 71 non-pre-registered boxers to enter the competition on the day.

114. The Panel did not intend to convey as much and, by the views it expressed in respect of particular (I) of the charge, resulting in EB withdrawing that allegation, the Panel found in the Respondent's favour on these matters in any event i.e. the Panel found the Respondent did not cause or agree to his team accrediting and registering additional boxers on the day.

115. It might be noted that whilst Mr. Cukier, in his email, noted that he, *"Did not under any circumstances accept as a fact that they* [the 71 additional boxers] *were accredited by Mr Gilbert or his team at the accreditation desk",* neither did the Panel's Notification of its Decision on charge say that those additional boxers had been accredited by the Respondent or his team at the accreditation desk.

116. By the passage in issue from its Notification of Decision on Charge [see §112 above] the Panel was merely referencing that which Mr Cukier did accept, as confirmed in his email: That the Respondent was *"prepared to agree as a fact that there were 71 additional boxers in the exhibition centre who appear to have reached weigh-in",* which figure (71) was factored into the Panel's finding as to the total number of actual participants in the tournament [see §90 above]. That figure was positively favourable to the Respondent, as compared to EB's initial allegations, and the same was reflected in the Panel's findings in respect of particulars (IV) and (V) regarding the adequacy of the number of rings at the tournament.

117. The fact – as agreed – was that 71 boxers in addition to those who were pre-registered made it into the venue on the day as competition entrants, whom the Respondent *then* sought to accommodate in the event by the Panel's finding.

118. The aspects of the charge that were found proved depended upon what occurred <u>after</u> the additional boxers entered the venue, however that position arose in the first place, and so played no factor in the Panel's decision against the Respondent vis-à-vis particulars (II) and (III). The Panel notes, again, its finding in respect of particular (I), which also formed part of its Notification of Decision on Charge but was overlooked in Mr Cukier's email.

119. The second issue in the email, as to whether there was any evidence of the Respondent making a request of the type alleged against him in particulars (II) and (III) of the charge, needs no further consideration here. It is addressed in the Panel's reasons for its decision on these particulars, as have now been set out fully above [§§62-86].

120. It follows that the further contention in Mr. Cukier's email, as follows below, is misplaced:

"The combination of these two manifest defects has self-evidently impacted upon the decision rendered, to the prejudice of Mr Gilbert. If (as was in fact the case) the Panel did not have before it the 'agreed fact' of 71 boxers accredited to enter the competition, and where it was not open to it as a matter of fact to find that a request had been made by Mr Gilbert in relation to the matters at (ii) and (iii) of the Charge, it would have been impossible for the Panel to come to the conclusion that it did".

121. The Panel did not, therefore, need to reconsider or reverse its decision and the case law Mr. Cukier provided in support of the contention that Panel had the discretion to do so bore no further relevance.

SANCTION

122. The Panel invited written submissions as to the appropriate level of sanction as part of its Notification of Decision on Charge (see §5 of that document). The directions were complied with.

123. EB's submissions, undated, were supported by a statement from Gareth Jenkins, CEO of EB, as to the impact of the Respondent's misconduct upon the organisation. The Respondent's submissions in response were dated 30th January 2019.

Comparative cases

124. Insofar as counsel for the Respondent cited previous EB Disciplinary Panel sanctioning decisions in support of his submissions, the Panel notes that the EB Disciplinary Procedure does not operate upon a precedent-based system. Still, there is nothing to prevent counsel from making submissions by reference to previous EB decisions, albeit they are not binding in any sense. It is difficult to draw any sort of equivalence, however, between the decisions cited on behalf of the Respondent, which variously concerned serious injury to a boxer, child safeguarding issues and encouragement of defiance of EB proposals so as to challenge its authority, and the facts of this case, which concerned event mismanagement.

125. Misconduct resulting in serious injury is inherently serious and the result of that misconduct will weigh into a sanctioning decision, but ultimately the fact of injury is generally an unwanted consequence, often an accident, albeit arising out of earlier acts or omissions amounting to misconduct. The misconduct in this case itself resulted in unintended consequences, as identified at §14 above, but the Panel was concerned with what it considered to be reckless and continued mismanagement of an event that brought about those consequences in the first place. There was no meaningful attempt by the Respondent to put matters right, or mitigate the effects of his mismanagement [see §96] as one might have expected him to as an EB Member, who was running an EB-permitted event, subject to its Code of Conduct and well-experienced in running similar events. It is difficult to equate that situation with any of the comparative cases cited by the Respondent and the usual approach of considering each case on its own facts prevails.

EB submissions on sanction

126. As to the aggravating factors set out at paragraphs (6)(i)-(vii) of EB's submissions, the Panel found that they all applied, save for points (i) - This is a natural consequence of contesting a charge, albeit point (iii) was relevant in terms of the Respondent's lack of remorse in the Panel's view; and (v) - The Respondent argued that he had paid some refunds and there was no clear evidence from either side on this issue. The Panel also considered that there was a degree of overlap between the matters raised at points (iv), (vi) and (vii), which were considered in the round rather than as separate aggravating factors.

127. EB's position was ultimately that *"the Respondent should be subject to a significant ban from membership, with a condition that his return is conditional upon him compensating Boxers and Clubs involved in the Golden Gloves Box Cup".*

128. The Panel was not minded to follow that submission for two reasons, which were set out in the Panel's Notification of its Decision on Sanction, by email from the Chair dated 31/01/19. Those reasons are not repeated here given the length of this decision – the reader is referred to that notification.

Respondent's submissions on sanction

129. The Panel took account of the Respondent's mitigation, which centred on the fact that he had been subject to an interim suspension for almost ten months prior to this hearing, in consequence of the investigation and charges being laid against him. The submissions made by Mr. Cukier in his 'Supplemental Submissions for Hearing on 27/01/19', dated 24/01/19, were relevant to this point, in addition to those in his written submissions on sanction.

130. If §§2-3 of Mr. Cukier's written submissions on sanction were intended to suggest that no sanction should be imposed for the Respondent's misconduct in this case, that was wholly unrealistic. Whilst the Respondent submitted that the interim suspension imposed on him was "*disproportionate and draconian*", the decision to impose the interim suspension was not made by this Panel, nor was it an issue for the Panel to consider. There were multiple reasons for that suspension lasting as long as it did. The Panel does acknowledge, however, that once the interim suspension was imposed, although the proceedings took their normal course thereafter the process did, in fact, take some time to come to completion. Whilst the reasons for that delay were not something for this Panel to consider, the Panel concluded that the delay did amount to meaningful mitigation in the Respondent's favour, which might result in his having already served the substantive part of any sanction to be imposed.

131. The Panel did not find force in §7 of Mr. Cukier's written submissions. The Respondent had argued at the hearing that there was no causative link between his conduct and the cancellation of the event. The Panel found against that argument in determining two aspects of the charged were proved i.e. the Respondent's conduct did cause – in whole or part – the cancellation of the event (these matters are dealt with above), however it is right that the Respondent cannot be

sanctioned for the reaction of others to the cancellation. The Panel took this into account when considering the sanction.

132. Subject to the Panel's observations above, as to the applicability of previous EB sanctioning decisions, §§8-16 of the Respondent's submissions were noted. As to the mitigating factors set out at paragraph 17, the Panel found that they did apply save for (b) – The panel identified no such contrition or regret through the Respondent's evidence. From start to finish in these proceedings he sought to argue that, somehow, the terms of the Code of Conduct ought not apply to him despite his being an EB member, through which he obtained an EB-permit to run an event for his financial benefit, and blamed his failures entirely upon others who volunteered to assist him throughout, right up to his submissions on sanction; and (e) – The Panel considered there was merit in EB's submissions regarding reputational damage and there was nothing unfair in the Respondent shouldering the burden of the failure of his event. It follows that the Panel also did not accept point (c), insofar as it sought to attribute blame to others for the failure of the event (hardly suggesting contrition on the Respondent's part), but accepted the Respondent did not intend the event to turn out as it did – for why would he? The Panel has made its observations as to (f) above (as to the interim suspension having been "draconian"). Paragraph 18 of the document was also noted.

Decision

133. Taking all of that into account, the sanction imposed by the Panel was that:

(i) Tom Gilbert be suspended from participating in all aspects of the sport for a period of six months, pursuant to rule 32.3 of the EB Disciplinary Procedure, backdated to the date of commencement of his interim suspension (11th April 2018) in accordance with rule 34, such that the period of suspension was deemed served. *[The interim suspension to which he had been subject was therefore lifted as of the date of Notification of Decision on sanction (31/01/19), subject to the further condition imposed at (iv) below]*

(ii) Mr. Gilbert be reprimanded as to his future conduct, pursuant to rule 32.1 of the EB Disciplinary Procedure; and

(iii) Ordered to pay a contribution to EB's costs of bringing the case, in the sum of £3,000.00, pursuant to rule 32.7 of the EB Disciplinary Procedure.

(iv) The Panel imposed a condition, in accordance with rule 32.5 of the EB Disciplinary Procedure, that the full sum of the costs at (iii) above must be paid within a period of twenty eight days of the Respondent (or his legal representatives, whichever is earlier) receiving the Panel's full Written Reasons (i.e. this document), and if full payment is not made within that period Mr. Gilbert will continue to be suspended from participating in all aspects of the sport (from and including the twenty-ninth day after receipt of these Written Reasons) until such time as full payment is made.

134. The Panel considered that a financial penalty would also have been appropriate in this case, but for the impact of the interim suspension upon the Respondent to date. He had effectively been suspended from all activity in the sport for a period of almost ten months overall, in accordance with the proper application of the EB Procedure, as this Panel sees it, but that amounts to nearly four months more than the suspension eventually imposed by way of sanction. The Panel considered that those additional four months, which came with the effect that the Respondent was prevented from running any commercial boxing event under the jurisdiction of EB, or otherwise earning any income related to his EB membership, ought to count as mitigation against the imposition of any financial penalty. As such, no additional financial penalty was imposed.

135. The Panel did consider, however, that an order that the Respondent make a contribution to EB's costs, as set out above, was appropriate in this case. That is an ancillary order to the sanction, rather than representing a further punitive measure, and would have been ordered at whatever date the proceedings had concluded to the extent the Panel saw appropriate (unless, say, any delay in the proceedings could be attributed to blameworthy conduct of EB, which the Panel found it could not, taking account of the decision of the previous Chair, Ms. Fordham, dated 08/01/19 and the progress of matters thereafter). The costs order took account of the fact that not all aspects of the charge were proved.

136. As to the Respondent's submissions concerning publication of the Panel's decisions [§§20-21 of Mr. Cukier's written submissions on sanction], this was not a matter for the Panel's determination under the EB Disciplinary Procedure. The parties were informed of the Chair's decision in that respect, with reasons, and it was left as a matter for resolution between the parties.

RIGHT OF APPEAL

137. A right of appeal is available to the Parties in accordance with Rule 40 of the EB Procedure.

138. There are no provisions in the EB Procedure to govern the implementation and enforcement of the sanctions set out above in the event of any appeal being lodged by the Respondents i.e. whether the sanctions, or any part of them, should be suspended pending any appeal process, from the time at which any notice of appeal is lodged. The Panel leaves that as a matter for England Boxing to consider, should the need arise.

4th April 2019

Craig Harris (Chair)

Tiran Gunawardena