

















18. The **secretary** will announce the decision made by the Commission – either **proven** or **not proven**.
19. If the charge is not proven, the hearing concludes. The outcome will be confirmed in writing.
20. If the charge is proven, the charged participant (or their representative) can provide **mitigation**.
21. The secretary will inform the Commission of any previous offence record.

## OUTCOME

22. The charged participant (and their representative) leave the hearing and the Commission deliberate in private on what **sanction** to impose, taking account of any sanction guidelines.
23. The charged participant (and their representative) are recalled, and the secretary will announce the sanction imposed by the Commission. The charged participant will be reminded of their right to appeal the decision. The outcome will be confirmed in writing.

## DEFINITIONS:

Association Witness	Someone who has submitted information or a statement that has been used as evidence in support of the charge. This should have been provided to the charged participant at the same time that the charge was raised
Balance of Probability	This is the 'Standard of Proof' used by the Commission, they will decide, based on the evidence available to them, whether it is more likely than not that the incident occurred. It's the normal threshold for most civil disputes, but is a much lower threshold than used in criminal cases
Charged Participant	The person who the charge has been raised against, who has requested a personal hearing
Defence Witness	Someone who is providing evidence in defence of the charge
Discipline Chair (or Chair)	One of the Commission members will lead the hearing and be responsible for producing any Written Reasons that are required. This person is the Chair of the Commission
Discipline Commission (or Commission)	The panel of people (usually three) who read and listen to the evidence and can ask questions. They decide on whether the charge is proven or not proven. If it is proven they will decide on the appropriate sanction
Mitigation	Reasons that the Commission should consider that might mean they give a lower sanction
Not Proven	If a charge is found not proven, it means the Commission think there <b>is not</b> enough evidence to support that the incident happened
Proven	If a charge is found proven, it means the Commission think there <b>is</b> enough evidence to support that the incident happened as outlined in the charge
Representative	A person chosen by the charged participant to ask questions on the participant's behalf and summarise at the end. The representative cannot answer questions that the Commission may have for the person charged in relation to the alleged incident
Sanction	The penalty for the offence, often a suspension and fine. Several other options are available to the Commission, outlined in the sanction guideline document
Secretary	The individual who hosts the hearing and liaises with all individuals to ensure the correct process is followed. The secretary has no influence on the outcome of the hearing



# SUPPORT FOR CLUBS AND PLAYERS: IDENTIFYING DISCRIMINATION AND AGGRAVATED LANGUAGE



To ensure Basketball is truly a game for All, everyone has a responsibility to challenge discrimination when we see it, whether it is at a game, at training or online. Recognising it and knowing how to respond can be vital to ensuring incidents are handled appropriately and promptly.

## WHAT IS DISCRIMINATION?

Basketball England follows the definitions set out in the Equality Act 2010. Discrimination can be any of the following:

### **DIRECT DISCRIMINATION:**

Treating someone with a protected characteristic less favourably than others.

### **HARASSMENT:**

Behaviour linked to a protected characteristic that that violates dignity or creates an offensive environment.

### **INDIRECT DISCRIMINATION:**

Provisions or practices with the effect of putting someone with a protected characteristic at a disadvantage.

### **VICTIMISATION:**

Unfair treatment of any individual because they have raised or reported an act of discrimination.

## WHAT ARE THE PROTECTED CHARACTERISTICS?

Protected characteristics are listed in the Equality Act 2010. They are as follows:

- **AGE**
- **DISABILITY**
- **GENDER REASSIGNMENT**
- **MARRIAGE OR CIVIL PARTNERSHIP**
- **PREGNANCY AND MATERNITY**
- **RACE**
- **RELIGION OR BELIEF**
- **SEX**
- **SEXUAL ORIENTATION**

## WHAT ARE 'AGGRAVATED' BREACHES?

The Disciplinary Code in Basketball describes as Aggravated the use of language of behaviour that makes reference, whether explicitly or implied, to another person's ethnic origin, colour, race, age, nationality, religion or belief, gender, gender reassignment, sexual orientation, or disability.

In most instances, Aggravated breaches could also be considered as Harassment under the Equality Act. They are comments or behaviour making reference to a protected characteristic that cause offence.

## WHAT DOES THIS LOOK LIKE IN BASKETBALL?

Discrimination and Aggravated language can be wide ranging. Isolated incidents are most likely to be dealt with as Aggravated breaches, tending to be a single comment or gesture. Direct and indirect discrimination tend to occur over a period of time.

The way a comment is received or perceived is key to identifying if it is an Aggravated breach, rather than the intent behind it. If it is reasonably deemed to be offensive, and either explicitly or implicitly makes reference to one of the listed protected characteristics, then it is likely to be an Aggravated breach. It doesn't matter if the intention of the person making the comment was not to reference a protected characteristic.



# CLUB RESPONSIBILITY – SPECTATOR BEHAVIOUR AND DUE DILIGENCE EXPLAINED

## CLUB RESPONSIBILITY

Basketball England only has jurisdiction over participants. This means individuals can only be charged for disciplinary offences if they are participants in basketball, for example coaches, referees, players, and club officials. Spectators are not classed as participants so they cannot be charged, and if spectators misbehave the Club may be charged for failure to control spectators.

## WHAT IS DUE DILIGENCE?

If a Club is charged for failure to control spectators, it can be a defence against the charge if the Club can demonstrate 'due diligence' - this means the Club took all reasonable steps to prevent and respond to incidents of misconduct by its spectators.

If a Club is charged and wants to rely on due diligence as a defence, it is the responsibility of the Club to demonstrate the steps taken, and ultimately it will be for the Disciplinary Commission to decide if the defence is applicable.

## WHAT DOES DUE DILIGENCE LOOK LIKE?

Examples of preventative steps that a Club may take could include:

- Parents/carers and spectators signing codes of conduct
- Displaying posters around a venue relating to expected behaviour
- Regular reminders to spectators and parents/carers of expected behaviour, either via electronic means or in person

Clubs should already be taking steps to reinforce the positive playing environment expected in Basketball. Remember, the Club will need to provide evidence of their actions to rely on a defence of due diligence, so it is strongly advised to keep records of steps taken. For example, keep copies of the signed codes of conduct on file, as well as copies of email reminders about expected behaviour.

Due diligence will require the Club to be proactive, so it won't be enough to show these steps have been taken after an incident has occurred (although that will be viewed positively).

As well as the proactive steps above, a due diligence defence will also require a positive reaction to be demonstrated following an incident.

Examples of responsive steps that a Club may take could include:

- Immediately removing the spectator(s) concerned if they can be or have been identified
- Monitoring closely the ongoing behaviour if the spectator(s) has not been identified
- Co-operating fully with any investigation by BE or appropriate authorities
- Working to identify the spectator(s) concerned, and taking appropriate steps to address the behaviour with the spectator(s). This may be education around the behaviour, or for more serious incidents imposing a suspension on that spectator attending matches.



Again, the Club need to be able to provide evidence that these steps have been taken.

### **HAVE WE DONE ENOUGH?**

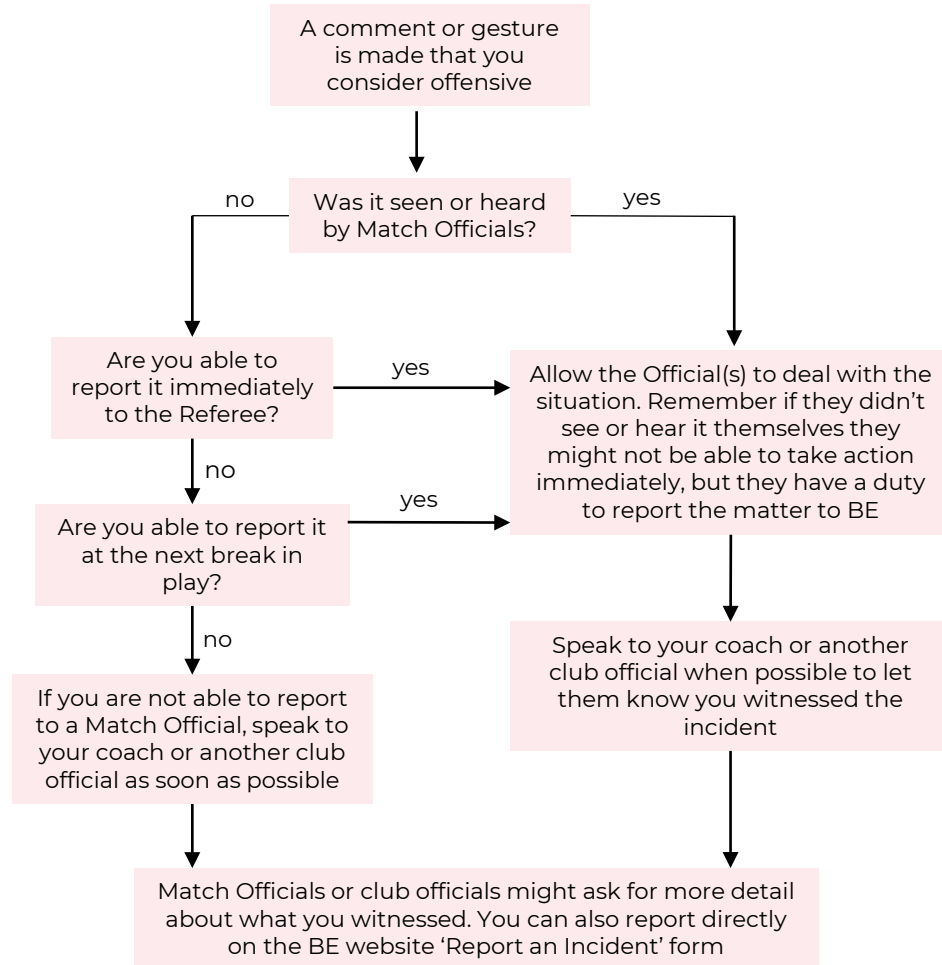
It will be for a Disciplinary Commission to decide if the threshold for demonstrating due diligence has been met. It will depend on the incident that has occurred, and how this relates to the steps taken by the Club. Some actions may be relevant for demonstrating an attempt to prevent certain behaviours, but not others. Each case will be considered individually and on its own merits so there is no definitive guidance that can be provided.

# SUPPORT FOR CLUBS AND PLAYERS: REPORTING DISCRIMINATION AND AGGRAVATED LANGUAGE

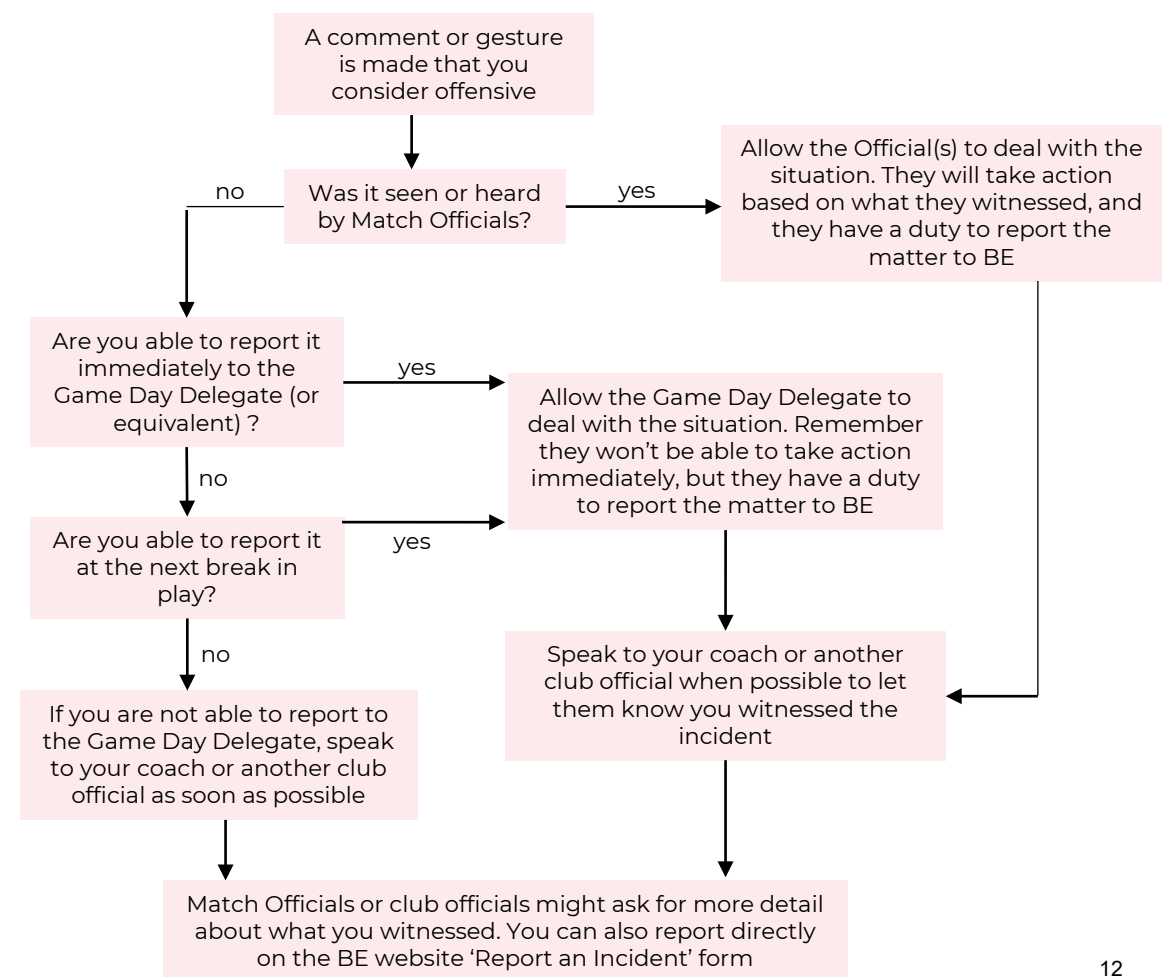


It can be difficult to know the best way to react when we witness discrimination or aggravated language. The impulse might be to challenge it, but this could escalate the situation; however not saying anything might feel like we are condoning it. The following aims to give guidance on how to respond appropriately. Remember that we all have a responsibility to report anything that we see or hear that causes us concern. If you're not sure what to do, speak to a Club Official who you trust for support.

## ON-COURT PLAYERS – STEPS TO FOLLOW:



## OFF-COURT PLAYERS AND CLUB OFFICIALS – STEPS TO FOLLOW:





## APPEALS AND COMPLAINTS

There are several different issues that may be challenged, which are dealt with via different routes.

### UNDERSTANDING THE DIFFERENT ISSUES

**In Game Incident** – an incident that occurs during or shortly after the game, actioned and/or reported by the referee, and with a standard or automatic sanction imposed by the League.

**League Rule Breach** – a matter related to the competition rules, such as failure to fulfil a fixture or failure to submit a team sheet. Some will have automatic sanctions, others may be heard and considered by a league Committee.

**League Discipline Charge** – a discipline matter beyond the scope of in-game processes, dealt with as a discipline charge and adjudicated on by a Discipline Commission or Sub-Committee.

**Summary Discipline Charge** – this could be either a League or BE charge, and relates to an offence that has been accepted, and a sanction that has been proposed when charging, which is accepted by the offender. If the charge is not admitted, or the sanction not accepted, the case cannot proceed summarily.

**Basketball England Discipline Charge** – a discipline matter defined as a Serious Case under the BE Disciplinary Code, including offences against, or by, a Match official and any offence with a discriminatory element. These cases must be passed to BE as soon as they are identified.

**Complaint** – dissatisfaction with the service provided. These should be resolved through a complaints process, and are separate from disciplinary procedures.

### WHERE AN APPEAL IS HEARD

ISSUE	FIRST INSTANCE	APPEAL	FURTHER APPEAL OR CHALLENGE
<b>In Game Incident</b>	Automatic League sanction	to League	No, unless explicitly permitted under League rules
<b>League Rule Breach</b>	Automatic League sanction	to League	No, unless explicitly permitted under League rules
	League Committee decision	to Regional Association*	No
<b>League Discipline Charge</b>	League Discipline Committee or Commission decision	to Regional Association*	No
<b>Summary Discipline Charge</b>	Offence is admitted, and sanction proposed at time of charge	No	No
<b>BE Discipline Charge</b>	Independent National Discipline Commission	to Independent Appeal Board	No
<b>Complaint</b>	As detailed in League or Organisation's Complaints process	Escalation should be detailed within the Complaints process	Escalation should be detailed within the Complaints process

\*Regional Association will refer to BE, and BE will either appoint a national Appeal Board or delegate back to the Region

If there is a concern that an affiliated league or association has breached either their own rules and regulations, or Basketball England's rules or regulations, this should be passed to BE for investigation as a disciplinary matter. The actions of the league or association are dealt with as a separate matter from any original case that may have led to the complaint.



# APPEALS PROCESS - GUIDANCE FOR PARTICIPANTS

Appeals are used to challenge a decision, and must be heard by an appeal board who are independent from those who made the original decision. In general, appeals are a review of the procedures and decision-making, ensuring the right processes were followed and that the original decision-makers were sound in their judgement. Appeals are not a re-hearing, and an appeal won't be successful just because an appeal board might have come to a different decision.

Before deciding whether to submit an appeal it is worth understanding the scope and limits of an appeal. This document should help, and if any further information is needed please contact [integrity@basketballengland.co.uk](mailto:integrity@basketballengland.co.uk).

This document is produced for guidance and support, full details of the Appeals Procedure can be found in the [Basketball England Disciplinary Code](#). If there is any discrepancy, the Disciplinary Code takes precedence.

## CIRCUMSTANCES WHEN AN APPEAL CAN BE SUBMITTED

Under the provisions of the Basketball England Disciplinary Code, an appeal can be submitted following a decision made by any of the following:

- A Disciplinary Commission
- Basketball England Competitions Committee
- A Safeguarding Panel
- An Affiliated League or Competition, or other relevant organisation
- Any other decision that is considered appropriate by Basketball England, unless the relevant rules properly declare there is no right to appeal.

## GROUNDINGS OF APPEAL

When submitting an appeal, the 'grounds of appeal' should be stated, this means the reason for the appeal, which are limited to the following:

- Failed to give the appellant a fair hearing
- Came to a decision that no reasonable body should have reached
- Failed to comply with the necessary rules and regulations pursuant to the charge
- Imposed an award or sanction that was excessive

Basketball England also has the right to appeal on the ground that the sanction imposed was so unduly lenient as to be unreasonable.

It is important to understand what each of the grounds mean so a decision can be made about whether it will be worth appealing on that ground. An appeal can be based on more than one of the grounds if appropriate.

**Failed to give the appellant a fair hearing** relates to the way that the hearing was conducted, and could include anything that seems unfair with the process and conduct of the hearing. For example, it could be unfair not to disclose the evidence for the charge to the person charged ahead of the hearing, because they would not have a chance to enter a defence.

**Came to a decision that no reasonable body should have reached** means that the decision was 'unreasonable'. This is a high threshold and is based on a legal principle called



the Wednesbury test. There are two strands, first is ensuring that the correct information was considered when making the decision, and second is determining if the outcome was reasonable – this simply means there is sound justification provided for the decision that has been made. Just because a different outcome could have been reached on the same evidence doesn't mean the original decision was unreasonable.

**Failed to comply with the necessary rules and regulations.** This could be applicable if the process and hearing hasn't been conducted in line with the relevant rules. It is worth remembering that there is a provision in the Disciplinary Code (7.3) stating that a just and fair outcome takes priority over procedural and technical irregularities, so to successfully appeal on this ground it may be necessary to demonstrate the impact of any failure to comply with rules and regulations, rather than simply highlighting them.

**Imposed an award or sanction that is excessive** simply means the sanction is higher than what would be considered reasonable and proportionate for the offence that has been committed. It is worth referring to the sanction guidelines to understand the range of the sanction that would usually be considered for the relevant offence.

## **THE APPEAL PROCESS – INCLUDING TIMINGS AND COSTS**

An appellant (the person submitting the appeal) has 14 days from the date they are notified of the original decision to submit their 'notice of appeal'. The notice of appeal has to include the following in order to be accepted:

- The precise details being appealed against
- The applicable ground(s) of appeal
- The precise basis of the appeal
- An application to submit new evidence (if applicable)
- The appeal fee

If an application to submit new evidence is made, it will usually only be granted where the appeal board are satisfied there is an exceptional reason that the evidence had not been made available for the original hearing.

For an appeal against a decision of a safeguarding panel the fee is £100, for any other appeal the fee is £250. The relevant fee must be paid within the same 14 day time limit. The appeal board will decide about any refund or partial refund of the appeal fee. It is usual practice for the appeal fee to be retained if the appeal is dismissed.

Once the notice of appeal (including all the requirements listed above) has been submitted, the respondent (the body/organisation who made the initial decision) will provide a response. This will include all the information that was considered by the original panel, and any response to the notice of appeal submitted. The appeal will then proceed as a review of all the papers submitted, however either/both parties are entitled to attend in person (via an online meeting platform such as Teams or Zoom) to support their written submissions.

## **WHAT HAPPENS AT A BOARD OF APPEAL**

If the appeal takes place on the written submissions only, the appeal board will meet online and discuss the submissions made, before coming to a decision that will be notified to both parties.



The appeal board will be assisted by an individual appointed as secretary. This person makes the arrangements for the appeal and will be the point of contact for all parties. They will ensure the correct process is followed and will not have any say in the decision making.

If either or both parties are present at the appeal, the following process will usually apply (the appeal board can amend this process if they need to):

- The appeal board Chair will make introductions, outlining the matter being appealed and may ask the parties to briefly introduce themselves.
- The appellant (person who submitted the appeal) outlines the basis of their appeal, highlighting areas from the written submissions that they think are most relevant.
- The respondent (person representing the organisation/body that made the original decision) will give a response, detailing how and why the decision was reached.
- The appeal board members may ask questions of either party. This may happen throughout the above two points, or they may prefer to ask questions after hearing from both parties. The appellant and respondent cannot ask each other questions.
- After questions have been answered, the respondent sums up their submissions.
- The appellant has the final word, summing up their submissions.
- The appeal board will then deliberate in private. They may recall the parties in person to announce the decision, or they may prefer to notify the parties in writing.

The appeal board have several options when making a decision, including:

- Dismissing the appeal
- Upholding, or partially upholding, the appeal
- Imposing any sanction or order that was open to the original panel
- Ordering a rehearing of the original case
- Imposing costs on either or both parties
- Any other order deemed appropriate

There is no further right of appeal after this, other than challenging the quantum of costs.

## **FURTHER STEPS**

If you remain dissatisfied with the original decision-making process and/or the appeals process, Basketball England have a complaints procedure that can be utilised. Please be aware that this is not a means to further challenge the outcome – it will be a review of the process to identify any shortcomings, with the aim of recognising and acknowledging where improvements can be made in future. Complaints can be submitted through the Basketball England website: [Make a Complaint | Basketball England](#).

It is the intention of Basketball England to introduce a disciplinary review group for the 2022/23 season, who will look at the processes and decisions made. This is important for ongoing progress and development, as well as accountability. To provide feedback to this group about your experience, or to provide any suggestions to improve the service provided by Basketball England, please email [integrity@basketballengland.co.uk](mailto:integrity@basketballengland.co.uk)





# ROLE OF THE GAME DAY DELEGATE - AMENDED GUIDANCE FOR AFFILIATED LEAGUES

**(NBL TEAMS MUST REFER TO THE FULL REQUIREMENTS STATED IN THE [NBL REGULATIONS](#))**

Both the home team and away team should nominate a responsible adult/member of their club to act as Game Day Delegate on the day of the game.

This should not be the team manager or coach, but if there is no other person is available, this role can be the responsibility of the team manager.

The Game Day Delegate should be confirmed in the communication between the two teams prior to the fixture, or if that is not possible, on the day of the fixture.

The Game Day Delegate needs to fully understand the schedule and logistics of the day to be able to respond to any questions/queries during the pre-match meeting and event.

## **The responsibilities of the Game Day Delegate are as follows:**

1. Upon arrival at the venue, the Game Day Delegate from the home team will ask their opponents who their Game Day Delegate is and make introductions to each other.
2. Together, they will then report to the match referee at least 15 minutes before the start of the game and introduce themselves to him or her.
3. The primary responsibility of the home team Game Day Delegate is to look after the referee before, during and after the game until they leave the venue. It would be appropriate if the home and away team delegates did the job together.
4. This would include, showing the referee where the changing rooms and toilets are, directing them to the correct court, possibly offering a drink at half time and after the game and ensuring that their fees are paid.
5. During the game, each delegate will be responsible for the behaviour of all club members and spectators. If the referee needs to he/she will, during a stoppage in play, approach the Game Day Delegate to assist him/her in dealing with any problems that may occur. The Game Day Delegate is not exempt from being reported for misconduct.
6. The home team Game Day Delegate is responsible for ensuring the scoresheet is submitted as required by the League, or is given to the club administrator who is responsible for this task immediately after the game.
7. The Basketball England Code of Ethics and Conduct and Disciplinary Code must be considered by the delegate at all times, and any Serious Incidents must be reported by emailing [integrity@basketballengland.co.uk](mailto:integrity@basketballengland.co.uk). The Referee and the League should also report any Serious Incidents directly to Basketball England,
8. Basketball England is totally committed to promoting anti-discrimination and the Basketball England Equality and Equity policy must be emphasised and observed at all times.