

THE DISCIPLINARY COMMISSION

In the matter of

Basketball England

v.

Liverpool Basketball

[CASE NUMBER D280]

THE DECISION AND WRITTEN REASONS OF THE COMMISSION

Disclaimer:

These written reasons contain a summary of the principal evidence before the Commission and do not purport to contain reference to all the points made. However, the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Commission did not take such a point, piece of evidence or submission, into consideration when determining the matter. For the avoidance of doubt, this Disciplinary Commission has carefully considered all the evidence and materials furnished with regard to this matter.

I. INTRODUCTION

1. The Basketball England (the “**BE**”) convened a Disciplinary Commission (the “**Commission**”), on 12 June 2024 to adjudicate upon disciplinary charges levied against Liverpool Basketball (the “**Club**”) (Case number: D280).
2. The Disciplinary Commission was constituted of a single member, Mr André Duarte Costa, an Independent appointed Chair.

II. THE CHARGES

3. In summary, by Misconduct Charge Notification dated 6 May 2023 (the “**Charge Notification**”) issued by Basketball England against the Club, the Club was charged with one charge relating to alleged misconduct in a match against Manchester Mystics on 18 February 2024.
4. It was alleged that the Club failed to ensure its members, officials, spectators and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any behaviour that brings the game into disrepute that is aggravated by the use or reference, whether express or implied, to any Protected Characteristics (“the “**Charge**”).
5. The Charge Notification referred to the following allegation: *“It is alleged that a spectator(s) used aggravated language/behaviour, with reference to Ethnic Origin and/or Colour and/or Race towards a member of Manchester Mystics, which included, but is not limited to, monkey chanting or similar.”* (the “**Alleged Behaviour**”).
6. The Charge Notification also referred to the Disciplinary Code and the Sanction Guideline documents.
7. The Club was required to submit a response by 20 May 2024. On 17 May 2024, the Club, via email, pleaded not guilty to the Charge and requested that its case be dealt with on correspondence only.

III. THE RULES

8. The Discipline Rules are foreseen in Section 5 of the Disciplinary Code¹.
9. Bearing in mind the charges levied against the Club the relevant rule to take into account for the purpose of the present case is Rule 5.6.
10. According to Rule E5.6: *A Club is responsible for ensuring its Officials, Spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any behaviour that in the opinion of The Association brings the game into disrepute, including, but not limited to, behaviour, that includes a reference, whether express or implied, to any Protected Characteristic.*

IV. WRITTEN EVIDENCE

11. The following is a summary of the principal evidence provided to the Commission. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or evidence, should not imply that the Commission did not take such point, or evidence, into consideration when the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished with regard to this case.
12. The evidence which the BE relied upon in support of the charge consisted of:
 - a) Email from Mr Adam Masters (“**Mr Masters**”), Head Coach for Manchester Mystics, dated 20 February 2024 at 10:57²;
 - b) Email from Mr Masters, Head Coach for Manchester Mystics, dated 20 February 2024 at 21:44³;
 - c) Two print screens⁴;

¹Available at: <https://www.basketballengland.co.uk/integrity/policies/discipline-expected-behaviours/disciplinary-code/>.

² PP. 5-6 of the case bundle.

³ P. 9 of the case bundle.

⁴ PP. 10-11 of the case bundle.

- d) Statement by Mr Masters, Head Coach for Manchester Mystics, dated 20 February 2024⁵;
- e) Email from Ms Amy Russel, linked to Liverpool Basketball, dated 19 February 2024 at 11:01⁶;
- f) Email from Mr Michael Wilson, linked to Liverpool Basketball, dated 18 February 2024 at 21:04⁷

13. The evidence submitted in defence of the charge consisted of:

- a) Email from Ms Amy Russel, linked to Liverpool Basketball, dated 19 February 2024 at 11:01⁸;
- b) Email from Mr Michael Wilson, linked to Liverpool Basketball, dated 18 February 2024 at 21:04⁹;
- c) Email from Mr Masters, Coach for Manchester Mystics, dated 20 February 2024 at 10:57¹⁰;
- d) Email from Mr Karen Billington, Secretary for Liverpool Basketball, dated 7 May 2024 at 19:10¹¹;
- e) Statement by Mr Tony Walsh, Coach for Liverpool Basketball, undated¹²

V. THE STANDARD OF PROOF

14. In accordance with Rule 7.6 of the Disciplinary Code: *The applicable standard of proof will be the civil standard of the balance of probability unless stated elsewhere in the applicable regulations.*

15. Therefore, the applicable standard of proof required for this case is the civil standard of the balance of probability. This standard means, the Commission would be satisfied that

⁵ PP. 12-13 of the case bundle.

⁶ P. 15 of the case bundle.

⁷ PP. 17-18 of the case bundle.

⁸ P. 21 of the case bundle.

⁹ PP. 22-23 of the case bundle.

¹⁰ PP. 23-24 of the case bundle.

¹¹ P. 25 of the case bundle.

¹² PP. 28-29 of the case bundle.

an event occurred if it considered that, on the evidence, it was more likely than not to have happened.

VI. FINDINGS & DECISION

A. GENERAL CONSIDERATIONS

16. The Commission reminded itself that the burden of proving a charge falls upon the BE.
17. In a Commission such as this, the assessment of the evidence is entirely a matter for the Commission to consider. We must assess the credibility of the witness (that is whether a witness is attempting to tell the truth) and the reliability of the witness (that is whether, even though a witness may be attempting to tell the truth, their evidence might not be relied upon).
18. Where there are discrepancies between witnesses, it is for us to decide which witnesses to accept and which to reject. Even where there are discrepancies between witnesses or within a witness's own evidence, it is for us to assess if the discrepancy is important. Having considered which evidence we accept and reject, we then must decide if, on the balance of probabilities, the alleged breach of the Disciplinary Code is established.
19. In assessing liability, the Commission was mindful of the issues to be determined in the present case. The issues were whether the Commission was satisfied to the requisite standard that the evidence before it proved that the Club failed to ensure its Club Officials, Players and/or Spectators conducted themselves in an orderly fashion, therefore bringing the game into disrepute by making the Alleged Behaviour.
20. The question to be answered by the Commission was whether it was satisfied, on the balance of probabilities, that the Alleged Behaviour was committed, and if so, whether the perpetrator was a director, player, official, employee, servant or representative of the Club.

B. FINDINGS

21. In the present case the allegation was that the Club failed to ensure its members, officials, spectators and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any behaviour that brings the game into disrepute that is aggravated by the use or reference, whether express or implied, to any Protected Characteristics.
22. According to the evidence provided to the Commission the allegation was that a member, official, spectator or a person purporting to be its supporter or follower adopted the Alleged Behaviour.
23. The Commission noted that no direct evidence of the alleged "monkey chants" was provided. The only testimony came from Mr Masters, who stated that he did not personally hear the chants but was informed about them by two of his players. Additionally, the video evidence submitted was deemed insufficient by the Commission, as it was too short to allow for a proper analysis of the noises made by the spectators. The Commission was not convinced that the sounds in the video constituted "monkey chants." It was also alleged that the noises occurred several times when the Manchester Mystics' players were shooting free throws, however there was no evidence of that.
24. Accordingly, the Commission concluded that, on the balance of probabilities, the Club did not fail to ensure its members, officials, spectators and all persons purporting to be its supporters or followers conducted themselves in an orderly fashion, therefore bringing the game into disrepute by making the Alleged Behaviour.
25. As a result of the aforementioned, the Commission found, on the balance of probabilities, the Charge not proven.

VII. SANCTION

26. As the Commission found the Charge not proven there was no sanction to be imposed on the Club.

VIII. RIGHT TO APPEAL

27. This decision is subject to the right of appeal under the relevant appeals procedure provided for in the Disciplinary Code.

André Duarte Costa

1 July 2024