

THE DISCIPLINARY COMMISSION

In the matter of

Basketball England

v.

Congleton Grizzlies Basketball Club

[CASE NUMBER D168]

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**”), via Microsoft Teams on 19 June 2023 to adjudicate upon disciplinary charges levied against Congleton Grizzlies (the “**Club**”) (Case number: D168).
2. The Disciplinary Commission was constituted of three members, Mr André Duarte Costa, an Independent appointed Chair, Mr Gerry Daish and Mr Tom Cleeve, Independent appointed Wing Members. The appointed Secretary to the Commission was Mr Colin Hills of Basketball England.

II. THE CHARGES

3. In summary, by Misconduct Charge Notification dated 2 May 2023 (the “**Charge Notification**”) issued by Basketball England against the Club, the Club was charged with one charge relating to alleged misconduct during the match involving Congleton Grizzlies U14 v. Liverpool U14 on 10 March 2023.
4. It was alleged that the Club failed to ensure its Club Officials, players and/or spectators conducted themselves in an orderly fashion, bringing the game into disrepute (“the “**Charge**”).
5. The Charge Notification referred to the following allegation: *“It is alleged that graffiti was written/drawn on the wall of the Liverpool team’s changing room, and that this was offensive and/or made reference to race and/or colour. This refers to the drawing of male genitalia and/or the word “n****r”.”, 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 16 May 2023. On 9 May 2023, 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 sent by Mr John Benstead dated 11 March 2023²;
 - b) Email sent by Mr Tom Rogers dated 14 March 2023³;
 - c) Statement by Lewis Watson, Table Official, dated 15 March 2023⁴;
 - d) Email sent by Carly, linked to Liverpool U14, undated⁵;

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

² P. 6 of the case bundle.

³ PP. 7-8 of the case bundle.

⁴ PP. 9-10 of the case bundle.

⁵ P. 11 of the case bundle.

- e) Statement by Ms Natalie Copeland, linked to Liverpool U14, dated 21 March 2023⁶;
and
- f) Photograph.
- g) Email sent by Mr Ian Lawson to Ms Karen Billington undated⁷;
- h) Email sent by Mr Rob Doran, U14's Liverpool Regional Coach, undated⁸;
- i) Email sent by Ms Faye Cargill, linked to Liverpool U14, undated⁹

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

- a) Statement by Mr Ryan Matthew Anderson, Treasurer and Head Coach for Congleton Grizzlies Basketball Club, dated 15 March 2023¹⁰;
- b) Statement by Mr Tom Watson, Coach for Congleton Grizzlies Basketball Club, dated 15 March 2023¹¹;
- c) Congleton Grizzlies Basketball Club's Spectator Behaviour Guidelines¹²;
- d) Email from Mr Bill Baxter, Welfare Officer and Secretary for Congleton Grizzlies Basketball Club, dated 9 May 2023¹³;
- e) Email from Mr Bill Baxter, Welfare Officer and Secretary for Congleton Grizzlies Basketball Club, dated 9 May 2023¹⁴; and
- f) Email from Mr Bill Baxter, Welfare Officer and Secretary for Congleton Grizzlies Basketball Club, dated 9 May 2023¹⁵.

⁶ PP. 14-16 of the case bundle.

⁷ P. 19 of the case bundle.

⁸ P. 20 of the case bundle.

⁹ P. 21 of the case bundle.

¹⁰ PP. 26-27 of the case bundle.

¹¹ PP. 28-29 of the case bundle.

¹² PP. 30-31 of the case bundle

¹³ PP. 33-34 of the case bundle.

¹⁴ P. 35 of the case bundle.

¹⁵ P. 38-39 of the case bundle.

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 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 Club Officials, players and/or spectators conducted themselves in an orderly fashion, bringing the game into disrepute (“the **Charge**”).
22. According to the evidence provided to the Commission the allegation was that *“[...] a graffiti was written/drawn on the wall of the Liverpool team’s changing room, and that this was offensive and/or made reference to race and/or colour. This refers to the drawing of male genitalia and/or the word “n****r”.”, or similar*
23. The Commission was satisfied that the referred words were improper, abusive and offensive and made a reference to Colour and/or Nationality.
24. The Commission noted that a photograph showing a drawing of male genitalia and the word *“nigger”* was tendered as evidence by BE after being provided to it by a witness. It was, therefore, not contested that such drawings existed.
25. However, the Commission could not find any evidence on when the drawing was made nor who the responsible for such drawing was. As far as the Commission was concerned, the drawing could have been made by anyone else who had access to the premises on or before the date of the match. Hence, no cogent evidence existed that could lead the Commission to consider that said drawings were made by a Club Official, Player or Spectator of the Club.
26. Accordingly, the Commission concluded that, on the balance of probabilities, the Club did not fail 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.
27. As a result of the aforementioned, the Commission found, on the balance of probabilities, the Charge not proven.

VII. SANCTION

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

VIII. RIGHT TO APPEAL

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

André Duarte Costa

Gerry Daish

Tom Cleeve

23 June 2023