

**IN THE MATTER OF
BASKETBALL ENGLAND**

-v-

**MICHAEL FISCHER
(CASE NUMBER D207)**

**REASONS FOR DISCIPLINARY COMMISSION DECISIONS
FRIDAY 20th OCTOBER 2023**

Warning – This document contains offensive and/or discriminatory language.

INTRODUCTION

1. These are written reasons for the findings of a Disciplinary Commission ('the Commission'), held on behalf of Basketball England (BE) on Friday 20th October 2023. The Commission met by videoconference (Microsoft Teams) to consider a misconduct charge against Michael Fischer (MF), a registered Match Official. The offence is alleged to have taken place during the Junior NBA North West Tournament on 29th June 2023.

PARTIES

2. The Commission members were Anthony Rock (Chair), Vicky Collins and Bryan Faulkner (all members of BE's Disciplinary Panel).
3. Sam Anderson, BE's Discipline Manager, acted as Secretary to the Commission.

MISCONDUCT CHARGE LETTER

4. By BE's Misconduct Charge Letter, dated 28th September 2023, the following charges were raised:

Charge One (MF) - Disciplinary Code 5.2 - Inappropriate behaviour, falling below the standard expected.

Charge Two (MF) - Disciplinary Code 5.4 - Language or behaviour aggravated by reference to a protected characteristic.

BE DISCIPLINARY CODE

5. The relevant sections of BE's Disciplinary Code states:

5.2 - Participants are required to ensure their behaviour is appropriate at all times, and may be subject to a charge under these rules and regulations where such behaviour falls below the

standard expected irrespective as to whether that misconduct was committed during a game or at any other time.

5.4 - A Participant shall not use any language or behaviour that is Aggravated by the use or 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.

CHARGES

6. The charges against MF were raised when he allegedly used threatening language towards a fellow Match Official which included the comment that he would *'take him outside and fucking kill him'*, and/or *'just be careful, because I can very badly hurt you and you will regret it'* or similar (Charge One). It is also alleged that, within e-mail correspondence to BE, he made reference to the same fellow Match Official being, *'mentally unstable'* and having *'psychic issues'* or similar (Charge Two). Those words were deemed to be aggravated by specific reference to a protected characteristic (disability).

PLEA

7. On 11th October 2023, MF pleaded guilty to the charges and requested that the matter be dealt with on correspondence only.

WRITTEN EVIDENCE

8. The written evidence available to the Commission consisted of:
- a. E-mail dated 14th August 2023, submitted by Anthony Shaw to BE. The e-mail included a statement from Glynis Aghatabay in regard to an incident with MF.
 - b. E-mail exchanges dated 15th and 21st August 2023, and 21st September 2023. The exchanges included a statement from MF.
 - c. Witness statement dated 11th October 2023, submitted by MF. The statement included a reply to the allegation.
 - d. BE's Misconduct Charge Letter (MF), dated 28th September 2023.
 - e. BE's Response to Charge Form - Case D207, dated 11th October 2023, submitted by MF.

SUMMARY OF THE CASE

9. The following is a brief summary of the case. It does not purport to contain reference to all the points made. Glynis Aghatabay was one of the 'table officials' for the tournament's first game. During the game there was a stoppage in play so that team substitutions could be made. She felt this substitution procedure was in line with what had happened in the previous two days of the tournament. At the end of the quarter, MF, one of the match referees, approached the table and asked the table officials why they had sounded the horn for substitutions as it was ruining the game.

In his view, this was not the procedure that had been adopted in previous tournaments. Other games were being played in the venue and above the noise Glynis tried to explain her actions. She said that MF gestured to her to be quiet. She felt he wasn't actually listening to her.

10. Marcus Aghatabay, Glynis' son, was sat to the side of the table with other officials not involved in the game. Marcus asked MF not to be so condescending towards the table officials. Whilst there is conflicting evidence as to who was the aggressor, MF or Marcus, it is not disputed that there was then an altercation between the two men. Glynis said that Marcus did raise his voice to MF but that was no excuse for what MF came out with next, threatening to take Marcus outside and fucking kill him. MF states that Marcus said to him that they could settle things in a different way. MF was provoked by that line, and admitted saying to Marcus something like, '*here you go, just be careful because I can very badly hurt you and you will regret it*'. Following a verbal interjection by Kristine Ogden, one of the officials on an adjoining court, things settled down and the game continued without further incident.
11. During further game breaks, MF had various conversations with his co-official, Mayokun Owoseni. During those conversations MF said to Mayokun that he had been provoked into saying things by the mentally unstable Marcus. MF said that he also spoke with Glynis again later in the tournament who informed him that her son was having personal issues. On 21st September 2023, in his e-mail statement, MF wrote that on his way home after the tournament he was thinking if he should report the whole incident and Marcus' 'psychic' issues and provocations. In the end, he decided to let it go and not report it.
12. The Commission noted that MF requested statements to be provided by two other witnesses to the incident, George Roberts (table official) and Mayokun Owoseni (referee). The case bundle did not include statements from either of those witnesses.

FINDINGS

13. As MF pleaded guilty to the charges, the Commission would not normally deliberate on matters of fact/probability but 'only' determine the sanction to be imposed. However, whilst accepting that he was guilty of Charge One, the Commission discussed in some detail the basis of Charge Two. The Commission concluded that his comments did not meet the threshold to be considered as an offence aggravated by reference to a protected characteristic. On that basis, they concluded that he should not have been charged with an aggravated offence and dismissed the second charge.

BE SANCTION GUIDELINES/CATEGORISATION OF THE OFFENCE/DISCIPLINARY RECORD

14. The Commission considered the BE Sanction Guidelines and categorisation of the offence before then hearing MF's disciplinary record.
- a. BE Sanction Guidelines dated September 2023 in regard to the use of threatening words and/or behaviour towards a Match Official: a suspension of between 3-12 months, and a fine of between £150-300. Before hearing MF's previous disciplinary record, the Commission placed the offence in the Medium Category of the Guidelines, attracting a suspension of between 6-9 months and a fine of between £100-200.
 - b. The Commission noted that MF has no previous proven charges of misconduct.

SANCTION

15. In regard to mitigating and aggravating factors, the Commission determined that for someone of his experience who has completed courses in self-defence and conflict management, his actions were totally unacceptable. Whilst stating that he takes full responsibility for what happened, he then questioned the impartiality of the witnesses, suggesting that Glynis Aghatabay did not paint a 'full' picture of the incident. He goes on to state that he was provoked by his fellow Match Official and felt they were both at fault for what happened. So, whilst saying he takes full responsibility for his actions, the Commission concluded that he was not genuinely remorseful for what he did and tried, to some extent, to blame others. The Commission also took into account that whilst his comments were severe, there was little realistic possibility of him carrying out his threat to kill the Match Official.
16. Taking into account the BE Guidelines and Regulations, nature of the offence, his excellent disciplinary record, mitigating and aggravating factors and plea submitted, the Commission concluded that the following sanction is to be imposed:
- MF:** to be suspended from all basketball activity for a period of 8 months and fined £150. The suspension is to be backdated to 28th September 2023, the date of his Interim Suspension Order.
- Note:** the Commission did consider if an educational sanction or removal of his Officiating Licence should be invoked, but determined that, as this was his first offence, the suspension and fine were sufficient.
17. In accordance with BE Regulations there is a right of appeal against the decision.

Anthony Rock (Chair)
Vicky Collins
Bryan Faulkner

Friday 27th October 2023