

**IN THE MATTER OF AN APPEAL FROM THE DECISION
OF A UK ATHLETICS DISCIPLINARY PANEL**

BETWEEN:

GRAHAM MCMULLEN

Appellant

- and -

UK ATHLETICS

Respondent

WRITTEN DECISION AND REASONS

INTRODUCTION

1. This is a decision of a UK Athletics (UKA") Appeal Panel ("**the Appeal Panel**") in respect of an appeal brought by Mr Graham McMullen ("**the Appellant**"), against a decision of a UKA Disciplinary Panel ("**the Disciplinary Panel**") dated 26 July 2023.
2. The appeal was brought on one sole ground, namely that the sanction imposed against the Appellant was too severe, pursuant to UKA Rule 21.1.7.
3. Both parties consented to the appeal taking place by way of a review of the papers pursuant to UKA Rule 27.4.

BACKGROUND

4. On 26 July 2023 the Disciplinary Panel considered fourteen separate charges against the Appellant which were alleged to have been in breach of UKA's Disciplinary Policy and Code of Conduct.
5. The Appellant who was a Coach and club welfare officer at Saltwell Harriers Athletics Club ("**the Club**") at the relevant time, admitted to eight of the charges prior to the hearing. The Disciplinary Panel went on to consider the remaining six charges at the hearing, and upheld one charge out of the six. It determined that there was insufficient evidence to uphold the other five charges.

6. The Disciplinary Panel went on to sanction the Appellant in respect of nine charges.
7. The breaches related to the Appellant's conduct towards female athletes which included physical touching (in the form of hugging), inappropriate sexual comments about female athletes, and inappropriate messages to female athletes.
8. In determining sanction, the Disciplinary Panel considered the following factors:
 - a. The impact (on the Appellant) of a permanent withdrawal of his coaching licence;
 - b. The conduct spanned a significant period of time;
 - c. The conduct involved numerous individuals;
 - d. Those individuals gave evidence about the effect that the Appellant's behaviour had on them, which included them considering leaving the sport;
 - e. The Appellant's position as club welfare officer as well as coach.
9. The Disciplinary Panel went on to impose the following sanctions:
 - a. Termination of the Appellant's membership at the Club (capable of review no earlier than 5 years from the decision);
 - b. Revocation of the Appellant's Coach Licence and a lifetime ban for any licensed role within athletics (capable of review no earlier than 5 years from the decision);
 - c. Termination of the Appellant's membership with England Athletics with lifetime ban on membership of any other England Athletics affiliated club and lifetime suspension from any competition where participation requires membership of England Athletics;
 - d. The Appellant to be barred from competition or taking part in any event run or organised under the UKA Rules for Competition, but which does not require membership of England Athletics for a period of two years;
 - e. The Appellant must not hold a position on a club committee for a minimum period of 10 years from the decision.

THE PARTIES' SUBMISSIONS

10. The Appellant submitted that the sanctions imposed upon him were too severe. He did not advance an appeal on any other ground, however he also argued that the Disciplinary Panel was wrong to consider private conversations as part of the case against him.
11. The Appellant also served new evidence in the form of photographs which he said showed international UKA coaches hugging, and with their arms around athletes in group photos. He did not make any application for this additional evidence to be relied upon.
12. The Respondent submitted that the Disciplinary Panel was perfectly entitled to consider the private conversations as part of the evidence against the Appellant, and there was nothing in UKA's Rules or Regulations that prohibited this. It further argued that the Appellant's conduct warranted the sanctions imposed and that any arguments that they were too severe should be rejected. In respect of the new evidence, it argued that this should not be admitted as it did not meet the requirements of Rule 27.3 of the UKA Rules and Procedures, as it was not evidence that was unavailable at the time of the hearing, nor was it relevant.
13. The Appeal Panel were of the view that the new evidence provided by the Appellant was evidence available at the time of the Disciplinary Panel, which the Appellant did not submit. The Appeal Panel therefore determined that the new evidence did not meet the criteria in Rule 27.3 and did not admit it.
14. However, even if such evidence had met the criteria and been admitted, it would not have altered our decision on the Appeal (see below). The evidence was of limited probative value and the photographs of other UKA coaches and athletes was provided without context or statements from said coaches or the athletes pictured.
15. The Appellant's submissions in respect of his private conversations did not relate to his ground of appeal, which was against sanction only. The argument advanced by the Appellant was against the evidence considered by the Disciplinary Panel and not against the sanction it imposed. Nevertheless, the Appeal Panel agreed that the

Disciplinary Panel was entitled to consider such evidence pursuant to UKA Rules and Regulations.

DECISION

16. The Appeal Panel reminded itself that the burden rests with the Appellant to establish that the Disciplinary Panel's decision was too severe. When assessing whether the sanctions were too severe, the threshold required is that of *Wednesbury* unreasonableness, namely whether the sanction was so severe that no reasonable such body could have come to such a sanction. It is not for an Appeal Panel to substitute its own opinion on sanction unless it finds that the original Panel's decision was unreasonable or one that was not open to the original Panel to have reached.
17. The Appeal Panel was satisfied that the sanctions imposed were necessary in order to protect athletes in the sport. The Appeal Panel did not find that the sanctions imposed were outside the reasonable scope of possible sanctions for the breaches committed by the Appellant.
18. Furthermore, the Appeal Panel saw no evidence to suggest that the Appellant's pattern of behaviour was likely to change. The evidence provided by the Appellant and his conduct and communications with the Appeal Panel strongly suggested that the Appellant appeared to lack any remorse or insight in respect of his conduct.
19. The Appeal Panel was unanimously of the view that the Appellant had not met the threshold required to prove that the Disciplinary Panel's sanction was too severe. Accordingly, the Panel was unanimously of the view that the Appeal should be dismissed.

CONCLUSION

20. For the reasons outlined above the appeal is dismissed. We make no order as to costs.

Amina Graham (Chair)
Jamie Johnston
Andy Battle

17 October 2023