

INDEPENDENT DISCIPLINARY PANEL

of UK ATHLETICS

In the matter of disciplinary proceedings

brought pursuant to the UK Athletics Disciplinary Rules and Procedures

UK ATHLETICS LIMITED (“UKA”)

And

ENGLAND ATHLETICS (“EA”)

- and -

The Governing Bodies

MR GRAHAM MCMULLEN

The Respondent / GM

THE DECISION

of THE DISCIPLINARY PANEL

1. UKA and EA brought various charges against the Respondent, detailing numerous breaches of the UK Athletics Coach Code of Conduct.
2. The Charges derived from breaches of the relevant UKA Coach Licence scheme and related Codes of Conduct. The breaches identified are prohibited by reference to the UK Athletics Coach Licence Terms and Conditions (the “Coach Licence Scheme”), and Codes of Conduct for Coaches. They relate to the alleged conduct and behaviour of UK Athletics Coach Graham McMullen.
3. The Respondent is a Coach for Saltwell Harriers Athletics Club (“the Club”), and also acts as the club welfare officer at the Club. The Club is affiliated to England Athletics and the Respondent is a member of England Athletics. See ‘Section 2.3 Jurisdiction over Misconduct and Serious Misconduct’ of the England Athletics’ National

Disciplinary Policy. As part of club affiliation and membership, England Athletics expects all its clubs and members to abide the UKA Codes of Conduct.

4. The Respondent was suspended by the Club, on instruction from EA, with effect from 9 March 2022 pending further investigation into complaints about the Respondent's conduct.
5. The investigation was underpinned by the following policies and documents:
 - 5.1. UK Athletics Disciplinary Rules and Procedures;
 - 5.2. England Athletics National Disciplinary Procedure;
 - 5.3. UKA Codes of Conduct; and
 - 5.4. UKA Terms and Conditions of Coach License.
6. Upon conclusion of the investigation and by letter dated 14 December 2022 various charges were brought against the Respondent, as more particularised in the charge sheet attached to that letter. The specific charges brought against the Respondent are listed below in more detail. In summary, they consisted of the following:
 - 6.1. Charge No. 1 – that on or around 12 February 2022 onwards, the Respondent physically touched adult female runners.
 - 6.2. Charge No. 2 – that between July 2021 and February 2022, the Respondent made inappropriate comments in person about female athletes.
 - 6.3. Charge No. 3 – that between December 2021 and February 2022, the Respondent inappropriately messaged female runners privately via social media platforms.
 - 6.4. Charge No. 4 – that on 28 May 2022 and 9 June 2022, the Respondent failed to comply with the terms of the suspension imposed on him pending the outcome of the disciplinary investigation into his conduct, namely that despite the terms of his suspension, the Respondent contacted members of his club.
7. UKA and EA appointed the following members of a disciplinary panel (the “Panel” / “we” / “us”) to adjudicate this case:
 - Clive Dobbin, Chair
 - Sally Clark, Panel member
 - Scott Murray, Panel member

8. The Disciplinary Panel convened via videoconference on Friday 21 July 2023 to deal with the case. The Respondent did not attend the hearing. The Panel waited until 10.05am and then convened briefing before adjourning to allow UKA to seek to contact the Respondent to ascertain whether he was attending. The Panel re-convened at 10.15am and noted that the Respondent was still not in attendance. The Respondent when contacted had indicated that he was at work, was having difficulty in getting away but may join later. The Respondent did however indicate that he was content for the Panel to proceed in his absence (a point he repeated in a subsequent email sent at 11.29am).
9. The Panel decided to proceed in the absence of the Respondent. The Respondent had been aware for some time of the date and time for the hearing and had indicated that he may not be able or prepared to take time off work for the hearing. The Panel felt that even if they did adjourn there was nothing to say that the Respondent would attend any re-convened hearing. The Panel therefore decided that it was in the best interests of justice, and dealing with the case in an appropriate manner, to proceed.
10. The applicable standard of proof required for this case is the civil standard of the balance of probability. This standard means that the Panel would be satisfied that an event occurred if we considered that, on the evidence, it was more likely than not to have happened. Counsel for UKA and EA in his written submissions accepted that, in more serious cases, the Panel should look at the facts more critically before we can be satisfied that the requisite standard of proof had been met. Given the sanction sought by the UKA and EA (effectively a lifetime ban) the Panel concluded that this was a more serious case, and so this heightened examination should be applied.
11. A number of the charges against the Respondent had been, prior to the hearing, admitted to by the Respondent and therefore fell to be determined with regard to sanction only. These were:-
 - 11.1. Charge 1(a), that GM hugged A1 and A2 after runs and tried to A3 despite knowing that she did not like to be hugged and had made this clear to GM;
 - 11.2. Charge 1(b), that GM would put his arm around people in group pictures.
 - 11.3. Charge 2(a), that in relation to [REDACTED]
 - 11.4. Charge 2(b), that GM made comments about A1 being a "MILF", which is understood to be a sexually explicit reference.

- 11.5. Charge 2(c), that GM messaged A1 and said he was not sure if he was euphoric because of running or because he was with her;
 - 11.6. Charge 3(a), that when messaging A1, an athlete, GM finished messages with kisses. A1 expressed that she was not comfortable with this;
 - 11.7. Charge 3(b), that GM started messaging A1 three to four times a day and late into the night, which was unwanted contact;
 - 11.8. Charge 3(c), that GM visited A1's home to sign some documents and afterwards, messaged her and said he was not sure if he was euphoric because of running or because he was with her.
12. The Panel noted that the charges at 2(a), 2(b) and 2(c) had been admitted with conditions, the conditions being that the Respondent could not honestly say that he had made the comments as alleged, but that he was under the impression that he was friends with the athletes concerned. The Panel considered this. The Panel felt that the implication of the 'conditions' was that the Claimant was accepting that the comments may have been made. Further if the Claimant wanted to challenge making the comments then he could have attended the hearing to do so. Further there was evidence in the form of statements which supported the allegation that these comments had been made, which evidence was not challenged by the Respondent save for saying that he could not honestly say that he had made the comments as alleged. Therefore, the Panel were content to accept these charges as admitted, on the basis that even if they were not admitted there was sufficient evidence for the charges to be upheld in any event.
13. The following charges were, however, contested and therefore fell to be determined by the Panel with regard to both liability and, if appropriate, sanction:-
- 13.1. Charge 2(d), that GM made comments with R2 about female runners' shorts and who he would like to run behind;
 - 13.2. Charge 2(e), that GM made misogynistic comments about "picking runners up by a fist", which is understood to be a sexually explicit reference.
 - 13.3. Charge 3(d), that GM messaged A4 frequently, sending several uninvited messages a day.
 - 13.4. Charge 4, that GM failed to comply with the terms of his suspension for charges 1 - 3 in that he (a) took part in the Blaydon Race and were seen running with other Club members, and that he was telling competitors that

he was suspended from the Club, (b) was in contact and socialised with other members of the Club, and (c) had been seen at races

14. The following is a summary of the principal submissions provided to us. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or submission, should not imply that we did not take such point, or submission, into consideration when we determined the matter. For the avoidance of doubt, we have carefully considered all the evidence and materials furnished with regard to this case.
15. The Governing Bodies and the Respondent are aware of the facts of this case. We do not propose to recount all the facts in the same manner or order as the parties have done in their submissions, except where necessary for the purpose of our decision.
16. Based on the evidence before us and on the standard of proof required, being the balance of probability (but with heightened examination), Panel made the following findings.

Charge 2(d)

17. This charge was that the Respondent had made comments with another coach about female runners' shorts and who he would like to run behind. The Panel felt that if a charge was to be upheld against the Respondent that it would need to conclude that it was the Respondent who had made the comments. In this regard the Panel noted the evidence, in the form of the statement, that the witness had heard the Respondent and the other coach talking and that the witness:-

"heard them at the same 10k make comments about the length of female runners' shorts and who they would like to run behind"

18. In his response to the charges, the Respondent stated *"I can honestly say that I haven't made any comments about whom I would like to run behind based on athletes attire."*
19. The Panel concluded that it was not clear from the witness evidence above who is alleged to have said the comments concerned, and, given that the Respondent denied making such a comment, so concluded that there was insufficient evidence to uphold this charge as against the Respondent.

Charge 2(e)

20. This charge was that the Respondent had made misogynistic comments about picking runners up by the fist. In his response to the charge, the Respondent said *“the specific reference being made was relating to a viral TikTok trend #onearmpickupchallenge and it was in a private conversation with R2.”* The Respondent therefore effectively admitted having made such a comment but denied that the comment was a misogynistic comment and instead claimed it related to a viral trend. The Respondent did not, however, provide any further evidence to support his claims. Notwithstanding this, the Panel concluded that even if the reference was to a viral trend, this did not condone the comments, as picking up a female player, with one arm, so putting the arm between a female players legs was clearly inappropriate and had sexual connotations.
21. The Panel noted that the evidence, which was unchallenged by the Respondent who had not put forward any reason as to why the witness who gave this evidence should not be accepted or believed, that this comment had been made in front of others, including a female, who had considered it very misogynistic and inappropriate, especially in front of a female. The Panel therefore rejected the submission by the Respondent that it was a private conversation. The Respondent should clearly not have been making such comments even in a private conversation if there was a risk or possibility of such conversation being overheard.
22. The Panel further accepted the submissions by the Governing Bodies that the Respondent’s behaviour was consistent with other inappropriate behaviour by him, and this also supported the assertion that the Respondent had made this comment in a misogynistic manner.
23. Therefore, the Panel concluded that on the balance of probabilities this comment was made by the Respondent and upheld this allegation.

Charge 3(d)

24. The Panel noted that this charge related to the period, in accordance with the charge sheet, December 2021 to February 2022. With regard to charge 3(d) the majority of the messages related to the period from March 2022, so were outside of the period referenced in the charge sheet. In particular, counsel for the Governing Bodies relied on the fact that the messages were signed off with a kiss, but the messages relied upon were sent on 2 March and 3 March 2022.

25. Given the particulars of the charge, the Panel considered the messages sent up to February 2022. The Panel concluded that these messages were not such as to amount to a breach of the relevant Codes of Conduct. While there were a few messages which were signed off with a kiss on the Respondent's part, the other party to the conversation also signed off some messages with a 'X'. In addition, the Panel noted that the Respondent had apologised on several occasions for having added a 'x' to the end of his messages. Having considered the messages sent within the timeframe outlined in the charge, the Panel concluded that these did not amount to misconduct, for example one was congratulating the athlete on a good running time but the conversation had been initiated by the athlete concerned who had shared her running time with the Respondent in a message sent at 8.30pm in the evening. Further the Respondent had specifically asked if he was pestering the athlete, to which the response was 'Not at all...totally want to see it' – referring to the training plan.
26. Therefore, the charge with regard to charge 3(d) was not upheld.

Charge 4

27. This charge was that the Respondent had breached the terms of his suspension. The terms of the suspension included a requirement that the Respondent should not contact other club members. The alleged breaches related to the Respondent running in a number of events. In advance of participating in the races, it appears that the Respondent sought clarification as to whether he could run in events, and he was told that he could but that he needed to be aware of the risk of coming into contact with witnesses in which case he should not approach or communicate with them.
28. The Claimant is then said to have been seen running at certain specified events, and running with other club members. However there is no evidence that whilst running he was communicating with those other club members, or that he had approached those other club members in advance or at the event to arrange to run with them. Further, there was no suggestion that he had made any contact with any witnesses. There was a suggestion that the Respondent may have gone for a pub lunch with other club members, but this was guesswork on the part of the witness concerned.
29. Therefore the Panel concluded that there was insufficient evidence to uphold this charge against the Respondent based upon the evidence presented to it.

Breaches

30. Based upon the charges which were admitted by the Respondent, together with the Panel's findings with regard to the charges which the Respondent contested, the Panel then considered which rules had been breached. In their written submissions, the Governing Bodies relied upon the following breaches of the Disciplinary Policy:-
- 4.1.1.2 "breaches UKA's Safeguarding Policies and Procedures or any terms of reference, regulations or other rules of UKA as adopted by England Athletics"; and
 - 4.1.1.3 "behaves (whether by action or omission) in a manner which England Athletics considers (acting reasonably) is disgraceful or opposed to the general interests of England Athletics or the sport of athletics or is likely to bring the sport into serious disrepute".
31. At the hearing, Counsel for the Governing Bodies did not pursue the breach of 4.1.1.2 as the relevant safeguarding policies and procedures had not been included in the panel. With regard to 4.1.1.3 and considering the allegations which had been upheld or admitted, the Panel were satisfied that the Respondent had acted contrary to the general interests of EA, and had acted in a way which was likely to bring the sport into disrepute.
32. With regard to the Code of Conduct, the following paragraphs were relied upon as having been breached:-
- 2.3 "follow the relevant guidance for coaches on social media use and not post on social media any content which is inappropriate or offensive";
 - 2.5 "avoid swearing, abusive language and irresponsible or illegal behaviour, including behaviour that is dangerous to me or others, acts of violence, bullying, harassment, and physical and sexual abuse";
 - 2.10 "act ethically, professionally and with integrity, and take responsibility for your actions";
 - 3.7 "never exert undue influence to obtain personal benefit or reward";
 - 4.2 "develop healthy and appropriate working relationships with athletes based on mutual trust and respect, especially with those athletes under 18 years or who are adults at risk"; and
 - 4.5 "not use my position as a licensed coach to incite or engage in sexual activity, inappropriate touching or communication (in person or social media or any other form of verbal or non-verbal communication) with athletes I coach who are aged over 18 years. In certain circumstances a

violation of this code may result in a coach licence being permanently withdrawn”.

33. The Panel concluded that the Respondent had breached the Code of Conduct as alleged subject to the following.
34. The Panel concluded that paragraph 3.7 was not breached. The Panel did not agree that the Respondent had acted to ‘obtain personal benefit or reward’. This allegation related to the assertion that, particularly with regard to the social media messaging, that the Respondent was testing the water to see if the athletes were open to a more intimate relationship. Counsel for the Governing Bodies relied upon the fact that messages had been signed off with a kiss to support this assertion. The Panel did not agree that this assertion could be supported by the messaging. The Panel found that the messaging was inappropriate, and that the Respondent had over-stepped the boundary of what was appropriate in a coach/athlete relationship, in the frequency of the messaging. However, the Panel did not agree that it could be argued that the recipients of the messages were in some way being ‘groomed’, with a view to a more intimate relationship. Whilst the messaging was inappropriate in terms of its frequency they did not agree that they supported the assertion that the Respondent was looking for a more intimate relationship.

Sanction

35. The Panel then turned to consider the question of sanction, taking into accounts the submissions made with regard to sanction made both by the Governing Bodies and the Respondent.
36. The Panel noted that that the Governing Bodies sought the following sanctions, namely that:-
 - 36.1. The Respondent’s coaching license be withdrawn with permanent effect;
 - 36.2. The Respondent be barred from competition or from taking part in any event organised or run under the UKA Rules for Competition for a period of two years.
37. The Panel were mindful that the legality of a permanent withdrawal in this case could potentially be impugned under two doctrines of English Law, namely:
 - 37.1. The rules prohibiting the enforcement of covenants in restraint of trade; and
 - 37.2. The administrative law requirements that any sanctions imposed by a private disciplinary body must be “proportionate”.

38. The Panel considered the submissions of the Governing Bodies that a permanent withdrawal was appropriate because the conduct complained of spanned a significant period of time, and involved numerous individuals, and these individuals had given evidence about the effect that the behaviour had on them, including the fact that they considered leaving the sport as a result. Counsel for the Governing Bodies also submitted that a permanent withdrawal was appropriate as it was difficult to see how the Respondent would be rehabilitated to ensure that such behaviour was not repeated.
39. The Panel concluded that a permanent withdrawal was appropriate, but that any such ban should be capable of being reviewed, to give the Respondent the option to apply for his coaches license in the future, and persuade a subsequent disciplinary panel (or other relevant body) that he had been rehabilitated, and that there was not a risk of the behaviour in this case being repeated. The Panel concluded that this review should not take place for a period of at least 5 years from the date of this decision.
40. The Panel did however consider that a significant aggravating factor was the fact that the Respondent was the welfare officer. The Panel therefore concluded that even if the Respondent applied for his permanent ban to be reviewed, and was granted a coaches license, that he should not hold a position on a club committee, including as a welfare officer, for a minimum period of 10 years from the date of this decision.
41. We, therefore, impose the following sanctions on the Respondent:
- 41.1. the Respondent's membership of Saltwell Harriers Athletics Club be terminated with immediate effect;
 - 41.2. the Respondent's Coach License be revoked by UKA with immediate effect and the sanction of a lifetime ban be imposed for any licensed role within athletics.
 - 41.3. the Respondent's membership with England Athletics be immediately terminated with lifetime ban on membership of any other England Athletics affiliated club and lifetime suspension from competition (where participation in such competition requires membership of England Athletics);
 - 41.4. The Respondent be barred from competition or from taking part in any event organised or run under the UKA Rules for Competition, but which does not require a membership of England Athletics to participate for a period of two years.
 - 41.5. That the lifetime bans imposed at paragraphs 41.2 and 41.3 above be capable of review on application by the Respondent (no earlier than 5 years from the

date of this decision), but that the bans should only be revoked if a subsequent disciplinary panel are satisfied that:-

41.5.1. the Respondent does not pose a future risk to athletes and there is no real risk of the behaviour which has formed the basis of the allegations which have been upheld being repeated;

41.5.2. The Respondent has completed the following courses prior to making such application (and that the Respondent undertakes to do such further courses as the subsequent disciplinary panel may direct);

41.5.2.1. Coach Education Course;

41.5.2.2. Safeguarding course;

41.5.2.3. Adults at risk course.

41.6. The Governing Bodies to consider if appropriate pursuing the DBS Referral Process.

42. Our decision is subject to right of appeal in accordance with applicable rules and regulations.

Signed...

Clive Dobbin

Chair

For and on behalf of the Panel

25 July 2023