SPORT RESOLUTIONS (UK)

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IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE DISCIPLINARY COMMITTEE OF THE WORLD PROFESSIONAL BILLIARDS AND SNOOKER ASSOCIATION

B E T W E E N :-

JAMIE JONES

Appellant

and

THE WORLD PROFESSIONAL BILLIARDS AND SNOOKER ASSOCIATION

(‘*The WPBSA*’)

Respondent

WRITTEN DECISION AND REASONS

OF THE APPEALS COMMITTEE

Appeals Committee:	Graeme McPherson QC
Date:	28 March 2019
Representation:	Craig Harris (Counsel for the Appellant)
	Louis Weston (Counsel for the WPBSA)

(A) Introduction and Background

1) The background to this appeal is a fixed snooker match that took place on 29 September 2016 at the International Championship Qualifiers in the UK ('***the Match***'). The individual who fixed the Match was David John ('***Mr John***'). Mr John was paid by **A** to fix the Match.

2) During the course of interviews conducted by the WPBSA in 2018 for the purpose of investigating the fixing of the Match, Mr John alleged that another player – the Appellant – had also been involved in fixing the Match. Those allegations led the WPBSA to interview the Appellant about such alleged involvement.

3) At the conclusion of the WPBSA's investigations

   a) Mr John was charged by the WPBSA with breaches of the WPBSA Members Rules and Regulations ('***the Rules***') in relation to the fixing of the Match. He was also charged by the WPBSA with:

      i) Other breaches of the Rules relating to the fixing of another match on 24 January 2017 at the China Open Qualifiers, and
      ii) A breach of the Rules arising from his failure to co-operate with the WPBSA's investigations into the fixed matches; and

   b) The WPBSA charged the Appellant with 6 breaches of the Rules. I refer to those as '***the Charges***':

      i) Charges 1-3 and Charge 6 alleged actual involvement on the part of the Appellant in the fixing of the Match and the receipt of improper payment in return for such involvement,
      ii) Charge 4 alleged involvement on the part of the Appellant in the intended fixing of a future match,

iii) Charge 5 alleged a failure on the Appellant's part to report to the WPBSA as soon as reasonably practicable the fact that A had approached Mr John to influence the outcome of the Match.

4) Mr John admitted each of the breaches of the Rules with which he was charged. The Appellant admitted Charge 5, but denied Charges 1-4 and Charge 6.

5) The Appellant's position can be seen in his witness statement dated 2 December 2018 and in written submissions dated 3 December 2018. In summary:

a) On 29 September 2016 the Appellant had had text communications with A about his (the Appellant's) opinion of the likelihood of Mr John (with whom the Appellant was sharing a room at the Qualifiers) beating Graeme Dott in the Match – a prospect which the Appellant viewed as very unlikely;

b) Those text communications had escalated into an enquiry from A as to whether Mr John could ensure that he lost the Match i.e. an enquiry as to whether Mr John would fix the Match;

c) Following that enquiry, A and Mr John had communicated with each other using the Appellant's phone, and Mr John agreed to fix the Match;

d) Later that same day Mr John had told the Appellant that he (Mr John) had agreed to fix the Match.

6) Thus the Appellant accepted that from 29 September 2016:

a) He had known that there had been an approach by A to influence the outcome of the Match;

b) He had known (because he had been told by Mr John) that he (Mr John) had agreed with A to lose the Match; to use his words, '*[Mr] John was intending to*

conduct himself as he did in [the Match] following discussions between himself [Mr John] and [A]l'.

7) The Appellant denied any further 'involvement' in the fixing of the Match. He denied doing '*anything to contribute to [Mr] John's actions or the fixing of the Match … or any other match*' and denied knowing '*any of the details of any intended betting violations …*'.

8) As I understand it, the Appellant's position as summarised above mirrored the evidence that he had given when interviewed by the WPBSA in October 2018. It was during that interview that he had informed the WPBSA for the first time that he had known of A's approach to Mr John since 29 September 2016.

9) The charges against Mr John and the Appellant came before the Disciplinary Committee of the WPBSA ('***the DC***') on 18 December 2018:

   a) Mr John continued to admit the charges[1] against him. He continued to allege that the Appellant had been actively involved in the fixing of the Match;

   b) The Appellant continued to admit Charge 5 (relating to the failure to report to the WPBSA A's approach to Mr John on 29 September 2016) but to deny Charges 1-4 and Charge 6.

10) In support of Charges 1-4 and Charge 6 against the Appellant the WPBSA presented evidence to the DC. That evidence included oral evidence from Mr John, who was cross-examined on behalf of the Appellant. The Appellant also gave oral evidence before the DC; he was cross-examined on behalf of the WPBSA.

11) In a written Decision dated 11 January 2019 ('***the Breach Decision***') the DC:

[1] Certain charges were in the alternative; Mr John admitted the primary charges.

a) Accepted Mr John's guilty plea to each of the charges against him. The DC noted the '*extremely serious nature of the proven charges and the impact which they have on the sport where the public and other participants in the sport ought to be able to rely on the absolute integrity of the professional players within it*';

b) Accepted the Appellant's guilty plea to Charge 5. The DC noted that although the Appellant may well have found himself in a difficult position in, and after, 29 September 2016 (*inter alia* because of his friendship with Mr John and his relationship with A his failure to report the approach '*until some 2 years after the event*', and his choice not to take any steps to report the matter prior to that time (and thereby prevent a corrupt outcome of the Match and further similar activities from taking place) was '*an extremely serious matter in itself particularly in the context of the responsibility of a professional player to ensure as far as possible the integrity of the game*';

c) Dismissed Charges 1-4 and Charge 6 against the Appellant. It rejected Mr John's evidence as unreliable and, in the absence of any credible evidence of the Appellant having been actively involved in the conduct which underpinned Charges 1-4 and Charge 6, found that the WPBSA had failed to prove each of those Charges.

12) Following the delivery of the Breach Decision:

a) The WPBSA and the Appellant exchanged written submissions addressing
   i) The sanctions to be imposed by the DC, and
   ii) What order should be made in respect of the costs of the investigation carried out by the WPBSA and the hearing(s) before the DC, and

b) A further hearing took place (by telephone) before the DC on 24 January 2019 at which:
   i) Those submissions were developed orally, and
   ii) Mr John also made oral submissions.

13) The DC then delivered a further written Decision ('***the Sanction and Costs Decision***') on 6 February 2019. By the Sanction and Costs Decision the DC imposed:

a) A Suspension[2] of 5 years and 7 months on Mr John. Taking into account 'time served' (Mr John having been suspended on an interim basis by the Chairman of the WPBSA on 22 May 2018) Mr John was therefore suspended from playing until 23.59 on 21 December 2023;

b) A 12 month Suspension on the Appellant. Taking into account 'time served' (the Appellant having been suspended by the Chairman of the WPBSA on an interim basis on 11 October 2018) the Appellant was therefore suspended from playing until 23.59 on 10 October 2019;

c) The DC directed that each of Mr John and the Appellant should pay costs to the WPBSA:
   i) The WPBSA's costs totalled £26,464.14. That sum comprised:
      (1) £7,438.82 (no VAT) for investigation and case preparation costs
      (2) £1,068,77 + VAT for 'forensic examination'
      (3) £9,500 + VAT for counsel's fees at the hearings
      (4) £5,526.96 + VAT for the DC, paralegal support for the hearings and disbursements
   ii) The DC directed that Mr John should pay a contribution of £17,000 towards those costs
   iii) The DC directed that the Appellant should pay a contribution of £9,000 towards those costs
   iv) The DC dismissed an application by the Appellant that the WPBSA should pay elements of his costs.

[2] '*Suspension*' is defined in the Disciplinary Rules as meaning that the person suspended is not permitted to participate in any way in WPBSA activities or events recognised or organised by the WPBSA, including but not limited by way of playing, officiating, management, organisation, administration or promotion.

(B) This appeal

14) The Appellant now appeals against the Sanction and Costs Decision. While I set out the bases for the appeal more fully below, in a nutshell the Appellant contends:

a) That the 12 month Suspension imposed by the DC was '*excessive and/or disproportionate in its effects*' ('***the Sanction Appeal***').

b) That the DC's decision to award costs against the Appellant was '*wrong in principle and in any event excessive*' ('***the Costs Appeal***'). The Appellant's position is that:
   i) The DC ought to have awarded costs in his favour, alternatively;
   ii) The DC ought not to have awarded costs against him in favour of the WPBSA.

(C) The appellate jurisdiction of this Committee

15) The jurisdictional basis for the Appellant's right to appeal against the Sanction and Costs Decision is found in Rule 11 of the WPBSA's Disciplinary Rules:

a) Rule 11.1 entitles any Member found by a DC to be guilty of Misconduct to appeal in accordance with Rule 11;

b) Rule 11.2 provides that an appeal further to section 11.1 shall be referred to a body to be known as the Appeals Committee. The Appeals Committee for each individual case shall consist or an individual appointed by Sport Resolutions (UK) who may hear the matter alone or may co-opt another person or persons to sit as members of the Appeals Committee:
   i) I am the individual that has been appointed by Sport Resolutions (UK) to be the Appeals Committee in this case;
   ii) I have not co-opted any other person to sit with me as a member of the Appeals Committee. I therefore sit alone as the Appeals Committee in this case;

c) My powers on this appeal include those set out at Rule 11.13. *Inter alia* I have power:

i) To affirm the decision of the DC appealed against;
ii) To set aside the decision of the DC appealed against and quash any finding made or sanction imposed by the DC;
iii) To set aside part of the decision of the DC appealed against;
iv) To substitute my own sanction for the sanction imposed by the DC. Rule 11.14 makes it clear that that power includes a power to impose a greater sanction than that which was imposed by the DC;
v) To take any other step that I consider necessary to deal justly with the appeal.

16) Rule 11.10 provides:

'*In a case where the appeal is solely against the sanction imposed, it will be considered by the Appeals Committee by way of review, taking account of the Member's representations in writing and other than where the Appeals Committee deem that there are exceptional circumstances, will be conducted on paper without a hearing'.*

17) In light of that Rule 11.10 it is common ground that this appeal proceeds by way of a review, not a rehearing. In other words, it is not for me to reconsider the evidence and submissions that were before the DC and reach my own conclusions as to:

a) What sanction should be imposed on the Appellant, or;

b) What costs order should be made.

Rather, my role is to review the Sanction and Costs Decision reached by the DC and consider whether each/either element of that Decision should be affirmed, set aside or varied.

18) There is however no agreement as to what test I should apply when reviewing the DC's Sanction and Costs Decision for that purpose:

a) The WPBSA contends that:
   i) I should allow the Sanction Appeal only if I conclude that the 12 month Suspension imposed by the DC was '*unreasonably harsh*' and/or amounted to an '*unreasonable exercise of discretion*', and;
   ii) I should allow the Costs Appeal only if I conclude that the costs award made by the DC was '*unreasonable*';

b) The Appellant contends that that sets the bar too high. He contends that the question that I should ask is whether each/either element of the Sanction and Costs Decision was '*excessive*'.

19) Ultimately, I do not believe that anything turns in this case on which party is correct as to the test that I should apply; to put it another way, I would have reached the conclusions that I set out below regardless of whether I had adopted the terminology urged on me by the WPBSA or by the Appellant in this regard. However, the view that I have taken is that:

a) For the purpose of the Sanction appeal, when reviewing the 12 month Suspension imposed by the DC the appropriate question for me to ask myself is whether that sanction was materially more than was necessary and proportionate in the circumstances of the case. In asking that question I must bear in mind that a first instance sporting tribunal – particularly one which has seen and heard the evidence first hand, and which is well-versed in the sport and its regulation – should be given a considerable degree of latitude in its decision-making role. It is wrong for an Appeals Committee to interfere with the decision of a DC simply because it (the Appeals Committee) might itself have reached a different conclusion; an Appeals Committee should interfere with a sanction imposed by a DC only in the event that that sanction goes materially beyond that which is necessary and proportionate in all of the circumstances of the case;

b) I would in addition be entitled to interfere with the sanction if the 'decision making process' by which the DC had determined that a 12 month suspension was

appropriate could be shown to have 'gone wrong', by which I mean if the DC could be shown:

i) To have wrongly applied appropriate legal principle;
ii) To have wrongly considered matters which it ought to have ignored, and/or;
iii) To have wrongly overlooked matters which it ought to have considered;

c) On the Costs appeal, I should interfere with the costs order made by the DC only if I conclude:
   i) That the DC erred in principle when determining where costs should fall, and/or;
   ii) That the DC's decision on costs fell outside the margins of the wide and generous ambit of the discretion as to costs given to a first instance tribunal.

(D) The Appeal: a preliminary overarching point

20) One 'theme' that is said by the WPBSA to run through the criticisms made by the Appellant on this appeal is that the Appellant focuses in large part:

a) Not on the Sanction and Costs Decision itself, or the reasoning of the DC in that Sanction and Costs Decision, but rather;

b) On the position that the WPBSA submitted the DC should take on sanction and costs.

21) I understand why the WPBSA makes that point; the Appellant's submissions do indeed stray on occasion into criticism not of the DC's Sanction and Costs Decision, but:

a) Of the position adopted by the WPBSA before the DC at the sanction and costs hearing, and so;

b) Of the position that the WPBSA invited the DC to accept.

However, that is in large part because one overarching strand of the Appellant's criticisms of the Sanction and Costs Decision is to the effect that the DC simply adopted (wrongly) the WPBSA's (flawed) submissions.

22) I do not agree that that is a fair characterisation of the DC's Sanction and Costs Decision. While the DC certainly:

a) Adopted an approach to sanction that was considerably closer to the approach urged on it by the WPBSA than the approach urged on it by the Appellant, and;

b) Accepted the WPBSA's submissions on costs (and rejected the Appellant's submissions)

It is not correct to say that the DC simply 'adopted' the WPBSA's position in the Sanction and Costs Decision.

23) Thus when considering each strand of the Appellant's appeal it has been necessary for me to ask myself whether the particular strand:

a) Is in fact a criticism of an approach taken or conclusion reached by the DC, or;

b) Is rather a criticism made of the WPBSA by the Appellant.

That is what I have done.

24) Against that introduction, I turn to the 2 limbs of the appeal.

(E) The Sanctions Appeal

25) The Appellant's written submissions set out a number of criticisms of the DC's Sanction Decision in support of his overall submission that the 12 month Suspension imposed by the DC was excessive and disproportionate. I deal with each in turn.

i) The actual finding of guilt in fact made by the DC: Reply submissions paras 11-13 & 20

26) The Appellant draws attention to the fact that the WPBSA has – it is said – mischaracterised (before the DC and before me) the offence of which the Appellant was guilty and which he admitted. Charge 5 alleged that the Appellant had '*failed to report the approach of [A] to David John to influence the outcome of [the Match] as soon as was reasonably practicable*'. It did not allege that the Appellant had failed to report the *fixing* of the Match.

27) That is correct. The DC accepted the Appellant's admission of guilt in respect of Charge 5 as the WPBSA had chosen to word it, and the DC determined the sanction to be imposed on the Appellant for that misconduct on that basis.

28) However, the simple fact is that, as well as knowing of the approach, the Appellant:

a) Also knew before the Match that the approach had been successful i.e. that Mr John had agreed to fix the Match, and;

b) Also failed to do anything with that information.

The Appellant admitted as much in his witness statement.

29) That was a matter of which the DC was entitled to take account insofar as it considered the same to be relevant to sanction.

ii) Inappropriate consideration of Rules from 'other sports': submissions paras 38-51

30) It was common ground before the DC:

a) That (unlike in certain other sports) the WPBSA's Rules do not provide any guidance as to what type or level of sanction might be considered by a DC as an appropriate 'starting point' for a breach of a particular Rule (before mitigating and aggravating factors are considered);

b) The Rules do not provide for any system of 'precedent' from which DCs can extrapolate appropriate sanctions from previous decisions of other DCs;

c) That in 2018/2019 there had in any event been no recent 'failure to report' cases to which the DC might have reference when considering the appropriate sanction to be imposed on the Appellant. The most recent was the case of ***Higgins*** in 2010;

d) That (unlike in certain other sports and environments) the WPBSA's Rules do not provide any guidance as to how a DC should approach sanction in a 'failure to approach' case in comparison to (say) actual involvement in the underlying misconduct which ought to have been, but was not, reported.

31) In its submissions before the DC the WPBSA suggested that, in the absence of such guidance:

a) The DC might derive assistance when considering what sanction would be appropriate to reflect the Appellant's admitted breach of Charge 5 from (amongst other things) the approach taken in certain other sports where 'involvement in misconduct' and 'failure to report misconduct' are (it was said by the WPBSA) treated as equivalent or analogous to one another for the purpose of determining what sanction is appropriate to reflect a 'failure to report', and so;

b) The DC might be assisted when determining the sanction to be imposed on the Appellant by knowledge of the sanctions that had been imposed on players for actual match fixing.

32) The Appellant now submits on this appeal that the DC – effectively at the invitation of the WPBSA – wrongly treated those 'other Rules' from other sports as providing guidance as to what sanction should be imposed by it on the Appellant for a 'failing to report' breach. That, the Appellant contends, was inappropriate.

33) The Appellant's criticisms in this regard are without merit:

a) The WPBSA did not invite the DC to have regard to the actual sanctions (i.e. lengths of periods of suspension) imposed in other sports for 'failure to report' when determining what sanction to impose on the Appellant. The WPBSA 's reference to the position in other sports was simply:
   i) To demonstrate the gravity with which other sports viewed failures to report misconduct, and;
   ii) To demonstrate that in other sporting regulatory environments a failure to report misconduct could in an appropriate case be considered on a par with the misconduct itself.

The WPBSA was thus inviting the DC to have regard to the approach to sanction taken in other sports in cases of failure to report misconduct, not to the length of the suspensions themselves imposed in other sports in such cases;

b) The WPBSA made it very clear to the DC that its reference to other sports was intended for guidance purposes only, and was not in any way binding on the DC;

c) The DC did not in fact have regard to sanctions imposed in other sports in cases of failure to report misconduct; it simply had regard to how other sports viewed 'failure to report misconduct' cases in comparison to 'actual misconduct' cases. Even then, the DC did not in this case endorse the principle of 'equivalence' that is found in other sports. What the DC did was conclude that in a case of 'failing to report' an approach in relation to match-fixing the sanction '*ought to bear some relationship to the parallel fixing offence*'. I cannot see how that conclusion can be sensibly criticised; a sanction for 'failing to report' plainly should *prima facie* bear a relationship to the underlying misconduct which has gone unreported (whether that misconduct is an improper approach, corruption, doping or anything else).

iii) Previous DC decisions, including Higgins: submissions paras 52-57

34) Aside from *Higgins* (see below), neither party was able to identify any previous decision of the DC in which a participant had been sanctioned for 'failing to report'. What each of the WPBSA and the Appellant did however do was:

a) Draw the attention of the DC to sanctions imposed by other DCs in other types of case, and;

b) Invite the DC to use those other cases as guidance when considering the appropriate sanction (or at least, the appropriate starting point for the appropriate sanction) to be imposed on the Appellant.

35) In that regard

a) The WPBSA drew the DC's attention to sanctions imposed for match fixing and invited the DC to approach sanction for the Appellant's failure to report the approach about fixing the Match in an analogous manner. The WPBSA:
   i) Described match or score fixing as '*the most serious breach of the Rules … no more serious misconduct could be found against a Member …*', and;
   ii) Submitted that a 'failure to report' '*… is also an extremely serious breach of the Rules in some cases equivalent to the actual fixing*';

b) The Appellant suggested that the DC '*might find the levels of sanction previously imposed upon those who were guilty of actual betting offences'* in other cases to be '*instructive*'. It was suggested that '*even a player betting on matches not involving himself or betting upon himself to win must be inherently more serious than failing to report the acts of others*', and that the Appellant's conduct should not be viewed as being as serious as the misconduct of players in the cited 'betting cases'.

36) In fact, the DC does not appear to have been particularly influenced by either approach; the Sanction and Costs Decision makes no reference to any other DC decision (in any context).

37) That leads to a further criticism of the Sanction Decision by the Appellant, he contends:

a) That the DC erred in '*largely ignoring*' the *Higgins* decision, and;

b) That as a result the DC imposed a sanction '*that was excessive by reference to its own previous decisions*'.

Since, the Appellant contends, (1) there was '*little or no difference between the cases of Higgins and [the Appellant's case] so far as their failures to report are concerned*', and (2) '*the approach that the Appellant failed to report was no more serious than that in the Higgins case*', and (3) '*Higgins' position was arguably worse*', the DC must have erred in imposing a sanction on the Appellant that was materially greater than that imposed on Higgins.

38) I have read the *Higgins* decision with care. I have also read what the parties said about the *Higgins* decision before the DC. Having done so, it is plain that *Higgins* was a very different case to – and, at least in the eyes of the respective DCs that heard each case, a less serious case than - the present case. I therefore reject the Appellant's submission that there was '*little or no difference between the cases of Higgins and this Appellant*'. Even putting matters at their very highest therefore, the *Higgins* decision would have been of limited value to the DC. When one considers:

a) That the *Higgins* decision was 8 years old by the time of the Sanctions and Costs Decision, and;

b) That *Higgins* was but one of a number of decisions available to the DC (albeit the only one dealing directly with 'failing to report') to assist it to determine sanction.

I have no hesitation in rejecting the Appellant's submission that the DC is to be criticised for imposing a sanction that differed from, and was more severe than, that imposed in *Higgins* case. Each case turns on its own facts.

iv) Credit for admissions: submissions paras 58-70

39) The Appellant complains that the DC gave him insufficient credit for what he describes as his admission of Charge 5 '*at the earliest opportunity*'. The Appellant received a discount of 25% on sanction when, he contends, he ought to have been given a discount of 33%. He says that the DC's error in allowing 'only' a 25% discount can be seen:

a) By comparing the DC's approach with the approach adopted in the criminal law, and;

b) By comparing the discount allowed by the DC to him with the (only slightly smaller) discount given by the DC to Mr John for his (Mr John's) admissions and guilty pleas.

40) While other DCs might have allowed the Appellant greater credit for his guilty plea, I cannot say that the DC erred in principle, or considered erroneous/incomplete matters, when allowing him 'only' a 25% discount. Why it did so is not entirely clear from the Sanction and Costs Decision; it may have taken the view that in reality the Appellant had no real alternative but to plead guilty given the admissions that he had made in interview and/or other evidence against him, it may have accepted the WPBSA's argument that the guilty plea had not in fact been 'at the earliest opportunity' given an apparent period of silence on his part between 10 October 2018 and 2 December 2018, it may have been for some other reason altogether. However, what is plain in my view is that:

a) The DC was right to give the Appellant the benefit of a discount for his early admission of Charge 5;

b) The DC did give the Appellant the benefit of such a discount;

c) It will always be a matter for the DC to decide what discount should be allowed bearing in mind all of the facts of the case before it, and;

d) The 25% discount given to the Appellant was not so plainly 'wrong' to justify me now interfering with that figure.

41) What of the fact that the DC allowed the Appellant a discount only 5% greater than the discount allowed to Mr John, an individual:

a) Who (the DC found) had given unreliable evidence, and;

b) Whose lies (as they are described by the Appellant) had put the Appellant in jeopardy of having false charges proved against him?

42) While it is perhaps surprising that the DC allowed Mr John the credit that it did (and indeed, the Appellant's position is that it is '*peculiar to see a person in Mr John's position being afforded <u>any</u> credit for their admissions in those circumstances…'* (emphasis added)), I do not see that the fact that Mr John was allowed a 20% discount enables me to say that the 25% discount allowed to the Appellant was plainly wrong. When determining what credit should be given to multiple respondents before it any DC will of necessity approach each respondent individually. The DC concluded that a discount of 25% should be granted to the Appellant and as I have said above, that figure is not one with which it is appropriate for me to interfere.

43) The discount granted to Mr John – rightly or wrongly by the DC – does not change that.

<u>v) The Appellant's mitigation: submissions paras 71-76</u>

44) It is <u>not</u> said that the DC overlooked or ignored the mitigating factors available to the Appellant. Rather, the Appellant contends that the DC took '*wholly insufficient account*' of such matters.

45) I do not accept that submission. The DC expressly recorded in the Sanctions and Costs Decision:

a) That it had read the Appellant's written submissions (which set out the mitigating factors for which he contended in some detail);

b) That it had considered the submissions made as to the personal impact that suspension would have on the Appellant, and;

c) That it had '*weighed all the points*' when arriving at its determination of the appropriate sanction.

While the DC did not list out in the Sanction Decision each mitigating factor relied on by the Appellant and address the same, it was unnecessary for it to do so. I see no reason to conclude that the DC ignored or overlooked or gave wholly insufficient weight to any factor drawn to its attention on behalf of the Appellant.

46) One matter now expressly complained about by the Appellant is the fact that the WPBSA opposed his submission that his previous good character should be considered a mitigating factor; the WPBSA's position was that:

a) Good character should be a 'given' for any participant, and so was not a mitigating factor, and;

b) It was only where a player had previous bad character that 'character' would be a relevant factor at all for the purpose of determining sanction.

47) I do not need to determine that complaint. That is because there is nothing in the DC's Sanction and Costs Decision to suggest that it agreed with or adopted the WPBSA's position. However, even had it done so, that would not in my view give rise to any justifiable criticism. Good character <u>should</u> be a given for any professional snooker player, and a DC might well be thus entitled to conclude (1) that good character was a neutral factor for the purpose of assessing sanction, and (2) that it would be in cases of previous <u>bad</u> character that regard would be had (as an aggravating factor) to character at all.

vi) Proportionality: paras 77-83

48) According to the Appellant, there was an issue between the WPBSA and the Appellant before the DC as to the relevance – or at least, the weight – that ought to be placed by the DC on '*the effect of the sanction to be imposed upon the Appellant*'. The Appellant's position – correct in my view – was (and remains) that the DC ought to have had regard to the principle of proportionality (i.e. the need to ensure that the sanction to be imposed on the appellant 'fits' the circumstances of the breach and the circumstances of the appellant).

49) In fairness to the WPBSA, I should say that I cannot see that it suggested otherwise to the DC. The WPBSA accepted – and continues to accept on this appeal – that principles of proportionality are relevant to sanction.

50) While the Appellant criticises the submissions made by the WPBSA before the DC in such regard, the Appellant appears to overlook the fact that there is nothing in the Sanction and Costs Decision to suggest that the principle of proportionality was disregarded or overlooked by the DC. The best that the Appellant can say – as he does in paragraphs 84 *et seq* of his written submissions – is that the DC must have done so because the 12 month Suspension in fact imposed will have '*wholly disproportionate effects to the length of suspension that even the DC felt was appropriate*'. It therefore turns to that submission in sub-section (viii) below.

vii) Aside from the submissions relating to the Appellant's position on the professional Tour, was a 12 month Suspension too high?

51) I deal with this question before turning to the question of the impact on the Suspension on the Appellant's position on the professional Tour because, as set out at paragraph 96 of the Appellant's submissions, it is his primary case that regardless of the additional impact that the date of expiry has on his position on the professional Tour, a 12 month Suspension was excessive in its own right.

52) That submission fails:

a) This is not a case where the Appellant contends that a Suspension was *per se* an inappropriate sanction for the DC to impose for his admitted breach of Charge 5; indeed, while the Appellant's position before the DC was that a financial penalty alone might suffice to sanction the Appellant for his failure to report, the Appellant:
   i) Tacitly acknowledged before the DC that a Suspension – which he contended should be measured in months – might be considered an appropriate sanction, and;
   ii) Effectively accepts on this appeal (at paragraphs 101(v) and (vi) of his submissions) that a Suspension of 6 or 7 months would not be an inappropriate or disproportionate sanction;

b) In reality a period of Suspension was inevitable to reflect what the DC found to have been extremely serious misconduct on the part of the Appellant. The only real question for the DC was 'how long'?

c) The DC's decision to impose a 16 month Suspension, reduced to 12 months to reflect the 25% discount allowed for the Appellant's early admission of guilt, appears to me to be entirely reasonable and well within the scope of the sanction that a DC was properly entitled to impose in this case. I certainly cannot say that a Suspension of such duration:
   i) Was unnecessary to reflect the gravity of the Appellant's misconduct, or
   ii) Was disproportionate to the gravity of the Appellant's misconduct, or
   iii) Was materially excessive in the light of all of the circumstances of the case, including such aggravating and mitigating factors as were properly drawn to the attention of the DC.

53) Thus subject only to what I say in sub-section (viii) below about the additional consequences of the Suspension being for a period of 12 months, the Appellant's primary ground of appeal – that the 12 month Suspension was unreasonably excessive – fails.

viii) The Appellant's position on the professional Tour: paras 84-100

54) The DC imposed a 12 month Suspension that will expire at 23.59 on 10 October 2019; the Appellant will thus be able to resume playing with effect from 11 October 2019 and, as the DC put it in the Sanction and Costs Decision, after that date '*… [the Appellant] will be free to resume his career*'.

55) However, the Appellant contends that although the intention of the DC might have been to permit the Appellant to return to the sport on 11 October 2019, in reality he will not be able to do so because:

a) He has been unable to earn ranking points since his interim suspension was imposed on 11 October 2018;

b) As a result, his ranking on the WPBSA World Rankings list (which is ordered by ranking points pertaining to prize money won on the Tour over the 2 preceding seasons) has slipped. As at 11 October 2018 the Appellant was ranked 39 in the world; as at 20 February 2019 his ranking had fallen to world number 58;

c) Only the top 64 players on the World Rankings list after the World Championships (in April 2019) are issued with World Tour cards for the following season (which begins in late May 2019 and runs for the following 12 months);

d) It is likely that by the end of the 2018/2019 season (i.e. April/May 2019) his ranking will have dropped below world number 64, meaning that (1) he will not qualify for a World Tour card, and so (2) he will not be able to play on the World Tour when he returns to the sport in October 2019;

e) While players ranked 65-128 on the World Rankings can earn a World Tour card by other methods – for example:
   i) By being amongst the top 8 highest earning players in the current season,
   ii) By winning particular individual events,

iii) By re-qualifying to the professional ranks through Q school (a tournament run in the off season), through which 12 players are awarded World Tour cards;

the Appellant will not be able to earn a World Tour card by any of those means because (1) his earnings will not be 'top 8' (2) he will be unable to win any relevant qualifying event because he will be unable to compete in such events while he is suspended (3) Q school will take place in summer 2019, while he is suspended, and so he will be unable to play at Q school.

f) The reality of a Suspension until October 2019 is therefore that:
   i) The Appellant will not be able to return to the World Tour in October 2019, and so will not be able to play on the World Tour in 2019/2020, and;
   ii) If the Appellant wishes to secure a World Tour card for 2020/2021, he will only be able to do so through Q school in summer 2020;

g) Securing a route back into the sport in and after 2020 by such means is by no means guaranteed given:
   i) The time between now and summer 2020 (during which time the Appellant will be unable to earn from the sport, even though his Suspension will expire in October 2019), and;
   ii) Re-qualification for the 2020/2021 World Tour through Q school in summer 2020 is by no means a 'given' in light of the strength of the competition.

56) Thus, the Appellant contends, the practical effect of the Suspension

a) Is to exclude him from the sport not for 12 months, but for closer to 20 months, and;

b) May well be to end the Appellant's career.

That outcome, the Appellant contends, is '*grossly disproportionate*' and '*disproportionately severe in its impact*' and is an outcome which renders the Suspension '*no longer commensurate with the offence for which the sanction is being*

imposed'. It is also an outcome which the Appellant contends (since the DC recorded in the Sanction Decision that it intended to allow him to '*resume his career*' in October 2019) was not intended by the DC.

57) The WPBSA makes 3 points in response:

a) First, this was not an argument that was raised before the DC at the Sanction and Costs hearing. The Appellant simply argued at that hearing that the consequence of him losing ranking points as a result of the interim suspension and further suspension would be felt (because of the rolling 2-year system by which ranking points converted into World Rankings) '*for 2 seasons to come*'. The Appellant disagrees – he reminds me:

   i) That the facts that give rise to this limb of the appeal were set out in the Appellant's witness statement (which although primarily prepared for the purpose of defending Charges 1-4 and Charge 6, remained before the DC at the Sanction hearing) and;
   ii) That the argument was 'flagged' before the DC at the Sanctions and Costs hearing;

b) Secondly, that the Appellant cannot now rely on events that occurred after the Sanction and Costs hearing and information that only became available after that hearing to criticise the Suspension imposed by the DC. The Appellant accepts that as a point of principle;

c) Thirdly, that the Appellant's argument does not stand up to scrutiny and '*has no support in logic or authority*'. The Appellant does not agree.

(1) Argument not raised before the DC

58) The Appellant is correct that it could not have been submitted, with precision, on his behalf before the DC what effect a Suspension of different durations might have on him in terms of:

a) Actual ranking points that might be lost by him in the future,

b) Actual ranking points that might be earned by other players in the future, or

c) The actual future World Ranking positions of the Appellant or other players.

59) However, that rather misses the point and does not get the Appellant very far:

a) The Appellant knew before the Sanction and Costs hearing that the WPBSA was contending that a Suspension should be imposed that would exclude him from the sport until well after May 2019;

b) The Appellant could have set out before the DC each of the matters now set at paragraphs 85 to 93 of his submissions, and made the very submissions that he does at paragraphs 97-99 of the submissions, save that:

i) The Appellant would have had to make submissions on the basis that '*<u>If</u> the DC was minded to impose a Suspension of a duration longer than 6/7 months, the possible consequences for the Appellant of a Suspension of that length would/might be …*', and;

ii) The Appellant would have been limited to providing the DC with data about:

(1) His World Ranking (and how it had slipped since 11 October 2018), and;

(2) How his 'frozen' ranking points compared with others

as at 24 January 2019 (when the Sanction and Costs hearing occurred) rather than as at 20 February 2019 (the date of the written submissions for this appeal). The figures in paragraphs 91 and 92 of the written submissions would thus have been different;

c) Thus while there might have been greater uncertainty as at 24 January 2019 than there was as at 20 February 2019 (and than there is now) because more of the 2018/2019 season remained to be completed, that did not prevent the Appellant:

i) From raising the matter in principle before the DC, and;

ii) From providing the DC with such (imperfect) data as was then available and that, on the Appellant's case, ought to have mitigated against a Suspension of more than 6/7 months being imposed.

60) Thus in my view there is merit in the WPBSA's first point. This argument could have been raised and developed before the DC, but was not. While:

a) The Appellant's witness statement touched on the matter, and;

b) The written submissions before the DC invited the DC to accept that the impact of a loss of world ranking points suffered during a period of Suspension would be felt by the Appellant during the 2 year rolling period following the end of that period of Suspension

The consequences of the Appellant dropping sufficiently far down the World Rankings by April/May 2019 so as to fall outside the top 64 players was not adequately drawn to the DC's attention.

61) As a result, for the Appellant now to criticise the DC for having 'failed' to consider such matter adequately or at all in the Sanction and Costs Decision is unfair.

62) That said, I am reluctant to determine this element of the Appellant's appeal on the narrow basis that the matter was not raised adequately below. I therefore propose to consider the substantive merit of this element of the appeal in any event. I do so below.

(2) Reliance on facts and matters that post-date the Sanction and Costs Decision

63) I have already touched on this above. While there can be cases where, subsequent to a decision, facts or matters emerge (or events occur) to which regard can be had by an appellate body for the purpose of assessing whether the first instance tribunal

'got it wrong', this is not such a case. Although the information and data available as at 24 January 2019 as regards world ranking positions and points, and possible year-end world ranking points and positions, would have been less developed than the information and data now set out in the Appellant's written submissions (because self-evidently less of the 2018/19 season had elapsed by 24 January 2019 than by late February 2019):

a) Information and data of similar type could have been provided to the DC on behalf of the Appellant, and;

b) Any appeal should now focus on that information and data that would have been available as at 24 January 2019 rather than on information and data that became available only after that date.

64) However, once again I am reluctant to determine this element of the Appellant's appeal on the narrow basis that the only information now available to me post-dates 24 January 2019 and so would not have been available to the DC. Once again, out of fairness to the Appellant it seems to me to be more satisfactory to determine this element of the appeal on its merits if at all possible.

(3) Does the practical consequence of the 12 month Suspension render that sanction disproportionate?

65) Aside from points (1) and (2) above, the WPBSA has not suggested that it has suffered any prejudice by this element of the Appellant's appeal:

a) Not being developed before the DC, and

b) Now being developed by reference to information and data that would not have been available to the DC.

I do not therefore see any reason for me not to consider the merits of this limb of appeal now advanced by the Appellant and, as I have said, my preference is to do so rather than decline to do for either of the reasons set out in (1) and (2) above.

66) The consequences that a sanction will have on a respondent are obviously relevant to the question of whether or not a sanction is necessary and proportionate to reflect the circumstances of the breach and the circumstances of the individual. As the Appellant makes clear, save in cases where a particular sanction is mandatory, the impact that a proposed sanction will have on a respondent must be considered – otherwise, the sanctioning body cannot properly determine whether the proposed sanction, and its impact on the respondent:

a) Is or is not commensurate with the offence for which it is being imposed, and;

b) Does or does not properly reflect the circumstances of the respondent.

67) However, it seems to me to stretch that principle considerably to say – as the Appellant attempts to do in this case – that if a particular period of Suspension *might* have a particular effect, depending on what other players may or may not achieve during the period of that Suspension, and so depending on the extent to which the Appellant slips down the world rankings (as he inevitably will to an extent as a result of being unable to earn world ranking points while suspended), a DC:

a) Should not impose a sanction which might expose the Appellant to a 'worst case' scenario, and instead;

b) Should impose a sanction which would ensure that any risk of that 'worst case scenario' arising is eliminated.

68) In other words, the Appellant goes too far when he suggests that the DC ought to have approached sanction in this case on the basis that:

a) A Suspension beyond April/May 2019 could condemn the Appellant (1) to being unable to play on the World Tour at all in 2019/2020, and (2) to having to try to requalify for the 2020/2021 World Tour through Q school in summer 2020, and so;

b) Any Suspension should be of such limited duration that any possibility of that outcome occurring should be avoided.

69) The WPBSA has given illustrations in its written submissions as to how the approach advocated by the Appellant might lead to surprising outcomes in practice if it was to be applied. I agree.

70) As I have said above, it is unlikely that the DC had in mind when imposing the Suspension the matters now at the heart of this limb of the appeal. That is because such matters were not raised in any detail before the DC. In such circumstances I have taken the view that I should ask myself whether, had such matters been raised before the DC, there was any likelihood that the DC:

a) Would not have imposed a 12 month Suspension on the Appellant, but;

b) Would instead:
   i) Have imposed a shorter Suspension on the Appellant, such that he could have returned to playing in April 2019 (in time for the final tournaments of the 2018/2019 season) or in May 2019 (in time to play at Q school), and thus give him a greater chance of qualifying for the 2019/2020 World Tour, or;
   ii) Have imposed a similar (12 month) period of Suspension but suspended 6 or 5 months of that Suspension, so as once again to enable the Appellant to resume playing in April/May 2019.

71) I have considered that matter carefully. I cannot see that there is any real prospect that the DC would have been attracted by the points now raised on behalf of the Appellant, and I cannot see that, had these been matters been raised before them, there is any real prospect that the DC:

a) Would not have imposed a 12 month Suspension on the Appellant, and;

b) Would instead have imposed only a short (6 or 7 month) Suspension, or a longer Suspension with 5 or 6 months of that Suspension suspended.

72) I reach that conclusion for 3 principal reasons:

a) First, for the reasons set out by the WPBSA in its submissions. As I have said above, there is merit in those submissions;

b) Secondly, the DC made plain on more than one occasion that it considered the Appellant's admitted misconduct to have been extremely serious, and to have had significant consequences. I cannot see that there would have been any real prospect of the DC concluding that a short period of Suspension (or a 12 month period of Suspension with a large part of that period suspended) was sufficient sanction to reflect the gravity of the Appellant's misconduct;

c) Thirdly, contrary to what the Appellant now submits, it cannot be said that the DC's intention – insofar as it can be derived from the Sanction Decision – was to entitle the Appellant at the end of the period of Suspension:
   i) To return automatically to playing on the world tour, or;
   ii) To resume his career at the same level as at October 2018 (when the period of Suspension began).

The DC intended that at the end of the Suspension the Appellant could resume his playing career by participating in WPBSA activities and events recognised by the WPBSA; it did not intend that he should automatically be entitled to resume his career at any particular level. That is the basis on which the DC sanctioned the Appellant, and I cannot see that its approach would have been any different had the matters now argued by the Appellant been expressly drawn to its attention.

73) Indeed, it must be remembered that the DC expressly rejected the Appellant's attempts to persuade it:

a) That a short Suspension – effectively to reflect 'time served' since October 2011 or only a little longer – should be imposed, or;

b) That a period of any longer Suspension should be suspended.

The DC plainly concluded (to use the wording from paragraph 34 of the Appellant's written submissions on sanction) that such sanction would not '*send out the right message'* about the gravity of reporting breaches; it plainly concluded that a longer, 12 month, period of Suspension was needed to *'send out the right message'*.

74) For completeness I add that that I agree with the DC's conclusions in that regard. In my view a sanction of the type for which the Appellant contended – a short Suspension or a longer Suspension with the final months suspended – would in my view have been unduly lenient in a case such as this. As I have already said above, a 12 month Suspension in my view was an entirely appropriate sanction in this case. The fact that such a period of Suspension *might* have significant longer term consequences for the Appellant does not change that. A 12 month Suspension thus remains appropriate even knowing that, as a result of that Suspension, the Appellant might face difficulties re-establishing himself at the highest level in the sport as a result of the timing and duration of that Suspension.

ix) Conclusions on the Sanctions Appeal

75) None of the arguments raised on behalf of the Appellant succeed, and the Sanctions appeal therefore fails and is dismissed.

(F) The Costs Appeal

i) The Rules

76) Rule 14.1 gives a DC power to order '*one or other party to bear all or some of the costs of the proceedings held before it, including the costs of convening and holding the proceedings and the other party's costs*'.

77) Rule 14.3 directs that, when exercising the discretion to award costs as set out in Rule 14.1, the DC:

> '*should have regard to the regulatory function of the Secretary to the [DC] and [the WPBSA] and their duty to bring proceedings in accordance with these Disciplinary Rules keeping in mind the duties to safeguard and promote the interests and reputation of [the WPBSA], its Members, the sport of snooker and billiards and the individual Member concerned'*.

78) In that regard the WPBSA drew the attention of the DC to (and draws my attention to) the decision of the Court of Appeal in *Baxendale-Walker v The Law Society* [2007] EWCA Civ 233. There in summary the Court of Appeal affirmed that in regulatory proceedings, unless:

a) A complaint is improperly brought against a respondent, or;

b) A complaint against a respondent proceeds as a 'shambles from start to finish'

An order for costs would not ordinarily be made against the regulator in favour of a respondent, even if that respondent is successful in defending the complaint/charges brought against him by the regulator. While costs in such circumstances can 'follow the event', '*the event is simply one factor for consideration*' and is not the starting point; a crucial feature will often be whether the proceedings were brought in the exercise of a regulatory responsibility, in the public interests and in the maintenance of proper professional standards.

ii) The submissions before the DC

79) At the Sanction and Costs Hearing the Appellant's position was that:

a) He had successfully defended each of Charges 1-4 and Charge 6, and should be awarded his costs of defending those Charges (which in practice meant the entirety of his costs), and;

b) At worst, the DC should be permitted to deduct from those costs whatever (small) sum the WPBSA might have had to incur in costs if (as it ought to have done) it:
   i) Had not pursued Charges 1-4 and Charge 6 against the Appellant, but;
   ii) Had instead agreed to the matter being resolved by the Appellant's admission of Charge 5.

80) The WPBSA advocated a very different approach. It contended that the DC:

a) Should order the Appellant (together with Mr John) to pay the WPBSA's costs of investigating the matter (apportioned appropriately between them), and;

b) Should order the Appellant and Mr John to pay the costs of the Hearing (again, apportioned between them). It was said that, although the Appellant had successfully defended Charges 1-4 and Charge 6, that had not resulted in any '*saving in costs*' for the WPBSA or for the Appellant – '*John's account would have had to have been challenged in precisely the same way as it was to establish John's liability and the extent of [the Appellant's] involvement for the [DC] to reach a determination on the basis of John's sanction*'.

iii) The Costs Decision

81) The DC analysed the parties' submissions at paragraphs 13 to 16 of the Sanction and Costs Decision. It rejected the Appellant's submissions. It concluded:

a) That the WPBSA had been compelled – for the benefits of protecting the reputation and good governance of the sport – to commence and undertake its investigation,

and produce the information and evidence to enable the Hearing to take place, and proceed through a Hearing

b) That the WPBSA had acted in a manner which was '*entirely right and proper in the circumstances of how the investigation and hearing had unfolded*'

c) That the WPBSA had incurred costs which should be '*passed on*'

d) That a proportion of such costs – which it assessed at £9,000, or just over 1/3 of the total costs incurred by the WPBSA – should be '*passed on*' to the Appellant. The balance of the WPBSA's costs were ordered to be paid by Mr John.

iv) First ground of appeal: DC was wrong to order the Appellant to pay costs

82) If one stands back, one can see:

a) That the WPBSA incurred costs in investigating Mr John's misconduct and the Appellant's misconduct. Such costs would have been avoided in whole or in part (since no investigation would have been needed, or any such investigation would have been more focussed):
   i) Had Mr John not breached the Betting Rules as he did, and;
   ii) Had the Appellant reported the approach as he ought to have done.

Mr John and the Appellant were thus each partly responsible for the WPBSA having to incur costs to investigate matters;

b) That after concluding its investigation and charging each of Mr John and the Appellant, the WPBSA then incurred costs:
   i) In presenting its case on the admitted charges against Mr John and on the admitted Charge 5 against the Appellant, and;
   ii) In unsuccessfully attempting to establish the Appellant's guilt on Charges 1-4 and Charge 6.

83) Against that background:

a) I can well see why the DC felt that the WPBSA's investigation costs should be borne by Mr John and the Appellant; each was in part responsible for those costs needing to be incurred. I see no reason for interfering with the DC's conclusion that those costs should be apportioned so that Mr John was to pay 2/3 of those costs and the Appellant was to pay 1/3 of those costs;

b) I can likewise see why the DC felt that the WPBSA should have from Mr John its costs of prosecuting Mr John:
   i) The WPBSA was wholly successful in that prosecution, in that each charge against Mr John was admitted (and so was 'successful');
   ii) A hearing to determine sanction against Mr John was thus needed, and;
   iii) The WPBSA inevitably had to incur costs in connection with that hearing;

c) Similarly, I can see why the DC felt that the WPBSA should have from the Appellant its costs of prosecuting Charge 5 against the Appellant:
   i) The WPBSA was successful in that prosecution, in that Charge 5 against the Appellant was admitted by him (and so was 'successful');
   ii) A hearing to determine sanction against the Appellant would thus have been needed, and;
   iii) The WPBSA inevitably had to incur costs in connection with that hearing.

84) What is harder to see is why the DC felt that the Appellant should be ordered to pay costs that the WPBSA incurred in <u>un</u>successfully prosecuting Charges 1-4 and Charge 6. While the DC concluded that the WPBSA was not to be criticised for prosecuting those additional Charges against the Appellant – and had acted in a manner that was '*entirely right and proper*' – it appears to have overlooked the fact that those charges ultimately failed. In those circumstances I cannot see any justification for the DC's conclusion that the Appellant should have to meet the WPBSA's costs of that unsuccessful prosecution.

85) In light of that it seems to me that the DC was wrong simply:

a) To order that the Appellant and Mr John should pay all of the WPBSA's costs of the investigation and the hearings, and;

b) To apportion those costs between the Appellant and Mr John.

What the DC ought to have done was (1) to separate out those costs that related to the unsuccessful elements of the WPBSA's prosecution of the Appellant, (2) to conclude that the WPBSA should not be awarded those costs, and (3) to then determine how the balance of the WPBSA's costs (i.e. the costs incurred in investigating matters and in the 'successful' prosecutions of Mr John and the Appellant) should be apportioned.

86) There is an element of guesswork in that exercise given the limited factual information about costs that is available. However, doing the best I can from the available information it appears to me:

a) That from the WPBSA's total costs of £26,464.14 a sum of about £6,000 (including VAT where appropriate) ought to have been separated out as representing costs incurred by the WPBSA[3] in connection with its unsuccessful prosecution of Charges 1-4 and Charge 6 against the Appellant;

b) That the balance of £20,464.14 would have been reduced slightly (just as the DC reduced the figure of £26,464.14 to £26,000) as effectively an assessment of those costs;

c) That the Appellant ought to have been ordered to pay a 1/3 share of the reduced, assessed. Since the DC appears to have preferred round figures, the figure that the Appellant ought to have been ordered to pay as costs should have been £6,500.

[3] i.e. additional Tribunal fees, paralegal support fees and disbursements for the first hearing and additional case preparation costs and counsel fees for the first hearing

v) Second ground of appeal: DC ought to have ordered the WPBSA to pay the Appellant's costs

87) This ground of appeal cannot succeed in light of:

a) the principle from *Baxendale-Walker v The Law Society* to which I have referred above, and;

b) the DC's findings that the WPBSA had acted properly throughout the investigation, the prosecution of the Appellant and the hearing.

88) Thus while the Appellant was successful in his defence of Charges 1-4 and Charge 6, the DC was justified in concluding that costs do not 'follow the event' in a case such as this. The Appellant is wrong to suggest otherwise: see for example paragraphs 49 and 50 of his reply submissions on this appeal. The DC's decision not to award the Appellant any part of his costs of the hearing cannot sensibly be criticised, particularly in light of the DC's findings about the reasonableness of the WPBSA's investigation and conduct.

vi) Conclusions on the Costs Appeal

89) I set aside the costs award made by the DC and replace it with an order that the Appellant shall pay a contribution to the WPBSA's costs of £6,500.

(G) Costs of the appeal and the Appellant's Deposit

90) Rule 11.14 gives the Appeals Committee the power to order a player to pay all or part of the costs of an appeal hearing. Rule 14.1 also gives the Appeals Committee power to order '*one or other party to bear all or some of the costs of the proceedings held before it, including the costs of convening and holding the proceedings and the other party's costs'*, albeit that such power is expressly subject to the provisions of Rule 14.3 (see above).

91) There have been 2 limbs to this appeal. One – the Sanction appeal – has failed altogether. The other – the Costs appeal – has succeeded in small part. Of those 2

limbs, the Sanction appeal has been by far the more involved and has no doubt been the limb that has caused the majority of the costs to be imposed.

92) Had both limbs of the appeal failed, I would have ordered the Appellant to pay the WPBSA's costs of the appeal (subject to issues of quantum – see below). Because the Costs appeal has succeeded in limited part (despite opposition by the WPBSA) that needs to be reflected in any costs award made by me. In my view the appropriate way to reflect that limited success is to award the WPBSA a percentage of its costs. Doing the best that I can, I direct that the Appellant should pay 85% of the WPBSA's reasonable costs.

93) The WPBSA's Schedule of Appeal Costs records:

a) That the Appeals Committee fees and Sport Resolutions fees total £1,250 plus VAT – a total of £1,500. Those fees are fixed, and there can be no sensible challenge to their reasonableness;

b) That the WPBSA's costs (counsel and preparation) for the appeal total £2,850 (plus VAT on counsel's fees) – a total of £3,360. While it is never easy to determine reasonableness of such costs on paper, I propose to assess those costs at £2,800.

94) 85% of those sums totals £3,655. The Appellant is ordered to pay that sum to the WPBSA as a contribution towards the WPBSA's costs of the appeal. The sum of £800 lodged by the Appellant as a deposit as security for the costs of the appeal pursuant to Rule 11.4 shall be retained by the WPBSA, and the balance of £2,855 shall be paid within 28 days.

(H) Final Order

95) My order on this appeal is as follows:

a) Appeal against Sanction is dismissed.

b) Appeal against Costs is allowed in part. The DC's order that the Appellant should make a contribution of £9,000 towards the WPBSA's costs is replaced with an order that the Appellant shall make a contribution of £6,500 towards the WPBSA's costs of investigation and of the proceedings before the DC.

c) The Appellant shall pay £3,655 towards the WPBSA's costs of the appeal. The deposit of £800 shall be retained by the WPBSA as part-payment of such costs, with the balance to be paid within 28 days.

Graeme McPherson QC

Signed as the Appeals Committee
02 April 2019

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