IN THE MATTER OF AN APPEAL

BEFORE THE APPEALS COMMITTEE OF THE DARTS REGULATION AUTHORITY

PURSUANT TO SECTION 14 OF THE DARTS REGULATION AUTHORITY RULE BOOK

B E T W E E N:

MR. GERWYN PRICE

Appellant

-and-

THE DARTS REGULATION AUTHORITY

Respondent

FINAL DECISION

A. INTRODUCTION

1. On 7 February 2019 the Appellant appealed against the findings and sanction of the Darts Regulation Authority (the "**DRA**") disciplinary committee dated 23 February 2019 (the "**Notice of Appeal**"), followed by detailed Grounds of Appeal and Submissions against Findings and Sanctions dated 31 March 2019 (the "**Grounds of Appeal**"). The Respondent's Reply dated 1 May 2019 (the "**Reply**") opposed the Appellant's appeal.

2. By letter dated 4 June 2019 John Mehrzad was appointed by the independent body, Sport Resolutions, to be chairman of this appeal in circumstances that the previously appointed chairman had stood down. The other panel members determining the appeal are Tarik Shamel and James Harms. All panel members are referred to collectively in this Final Decision as "the **Panel**".

3. The parties were not agreed as to whether the appeal should be determined at an in-person hearing or on the papers. Accordingly, having considered the parties' respective written submissions on point, by a Decision and Case Management Directions dated 24 June 2019, the chairman (acting alone) directed that the appeal be determined on the papers with the parties invited to file and serve skeleton arguments with costs of the issue about whether there should have been a hearing reserved.

4. In line with those directions, on 1 July 2019 Mr Andrew Taylor, counsel instructed by the DRA, filed and served a skeleton argument on behalf of the Appellant, and on 8 July 2019 Mr Louis Weston, counsel instructed by Moore Tibbets, filed and served a skeleton argument on behalf of the Respondent. There was no skeleton argument in reply by the Appellant.

5. Having pre-read the papers, the Panel convened on 16 July 2019 to deliberate in person, and thereafter liaised and unanimously agreed on the contents of this Final Decision.

B. THE GROUNDS OF APPEAL

6. In the Grounds of Appeal, the Appellant submits in summary as follows:

6.1. The way that the disciplinary committee hearing held on 11 January 2019 was conducted breached natural justice in that:

(i) he was not sent notice of the allegations prior to the hearing;

(ii) when he attended the hearing, he was informed by the chairman that the charges would be read and the statements read through;

(iii) this was the first time that he had seen the documents;

(iv) given that, and that he was without legal representation, it was not fair to commence the hearing that way; and,

(v) the disciplinary hearing should have adjourned to give him sufficient time to read all the documents and instruct lawyers if thought appropriate.

6.2. Nowhere in the findings of the disciplinary committee is there any reference to public complaints being taken into account;

6.3. If his conduct was so bad as to deserve sanctions, then the match referee, Russ Bray, would have done far more to intervene and bring him into line (but he did not);

6.4. He was not given the opportunity to challenge the witness statements of Russ Bray or Graham Fairhurst, the PDC Tournament Director, or Simon Whitlock, a player;

6.5. The match video was not played in his presence;

6.6. The allegations against him were tried at the same time as those against Gary Anderson, another player;

6.7. He was not told that he could bring witnesses in support of him (unlike Mr. Anderson);

6.8. His actions were not of any real concern to Paul Hinks, the second match referee, Mr. Bray or Mr. Fairhurst;

6.9. Mr. Anderson should not have been permitted to rely on written evidence or have Tommy Gilmore present his version of events;

6.10. The definition of "gamesmanship" in the 2019 DRA Rules was adopted, when it had no application to a match on 18 November 2018; and,

6.11. On the issue of sanction:

(i) the fines of £8,000 and £12,000 were unduly harsh and disproportionate, being the highest handed down by the DRA;

(ii) there were no findings that he had gained a significant advantage;

(iii) in comparison, a fine for the same offence was significantly lower for Justin Pipe in January 2018 (£3,000); for David Platt in January 2019 ($750 AUD for fabricating the result of a group match, a more serious offence; and Michael Mansell (£500), for not playing to the best of his ability;

(iv) his respective fines were not differentiated or explained, with the principle of totality not applied (with a resultant reduction);

(v) aggravating and mitigating features were not applied with any rationale;

(vi) the amount of prize money may have affected the level of fine;

(vii) the level of fine may have been linked to the 96 complaints from members of the public, which would have been wrong; and,

(viii) if there were sanction guidelines, they were not disclosed to him.

7. The Respondent in its Reply urges the Panel to reject the Grounds of Appeal on a review basis given that, in summary, there has been no error of law or procedure and/or no unreasonable exercise of discretion (which is wide and generous). Further, the Respondent contends that many of the matters raised in the Grounds of Appeal have no merit and are without factual foundation. Yet further, the Respondent contends that the decision on sanction was reasonable and within the wide ambit of discretion available to the disciplinary committee. Finally, the Respondent seeks its costs of the appeal, with the Appellant to pay for the costs of the hearing.

8. The Panel notes that in the Skeleton Argument on behalf of the Appellant, he raises further matters, including how the public complaints affected the minds of the disciplinary committee, whether these complaints were genuine or at arm's length, and whether the Appellant had given informed consent to his case being heard with that of Mr. Anderson.

9. Taking into account ss. 14.3 and 14.5 of the DRA Rule Book (the "**Rules**"), the Panel shall not consider and must reject further matters that are not set out in the Grounds of Appeal and no "good cause" has been shown as to why those matters could not have been raised in those grounds in the first place.

C. REGULATORY FRAMEWORK AND APPROACH TO THE APPEAL

10. Pursuant to s.14.8 of the Rules, as confirmed by the Decision and Case Management Directions dated 24 June 2019, this appeal is by way of review of all the documents and evidence submitted to the disciplinary committee and the documents submitted as part of this appeal.

11. This is not a *de novo* hearing and the task of the Panel is not to determine what it would have found, but rather whether the disciplinary committee came to findings on the merits and sanction that fell within the wide and generous ambit available to it.

12. Further, this being an appeal by way of review, the following salient principles can be crystallised:

12.1. The decision of the disciplinary committee should not be disturbed unless it can be shown to be an error of law or involved a serious procedural irregularity;

12.2. The disciplinary committee would have erred if it took into account an irrelevant factor or did not take into account a relevant factor, the failure of (either or both of) which rendered the decision unjust; and/or,

12.3. A decision based on a discretion is not wrong simply because the Panel would have reached a different decision.

D. THE MERITS

13. As to the merits, the relevant bases in the Grounds of Appeal are summarised at paras. 6.1-6.10 above engage in a full-scale attack on the procedures adopted by the disciplinary committee. As outlined in the section immediately above, to succeed in such an approach the Appellant has to show not only that such procedural failings are made out on the facts, but also that such alleged failings materially affected the disciplinary committee's decision.

14. The matters listed at paras. 6.1-6.10 above are dealt with in turn below:

The way that the disciplinary committee hearing held on 11 January 2019 was conducted breaches natural justice in that:

(i) the Appellant was not sent notice of the allegations prior to the hearing

14.1. This ground is factually incorrect. The Appellant was sent a Notice of Complaint dated 22 November 2018 by the DRA, which set out the allegations against him. He was also then sent a letter dated 17 December 2018 in which the DRA informed him that the disciplinary committee chair had found there to be a case for him to answer, with the allegations set out again. Accordingly, this ground is rejected.

(ii) when he attended the hearing, the Appellant was informed by the chairman that the charges would be read and the statements read through

14.2. There was no prejudice to the Appellant to such an approach since he did not object to it, he had already been provided with copies of the evidence in relation to both allegations (as listed in the DRA's letter dated 17 December 2018), and the disciplinary committee reading the charges and the statements was good practice and procedure. Accordingly, this ground is also rejected.

(iii) this was the first time that the Appellant had seen the documents

14.3. This ground is factually incorrect and misconceived. As referred to above, the Appellant had been sent and had listed the papers that the disciplinary committee would consider in his case. During the disciplinary hearing, the Appellant did not allege he had not receive them. Accordingly, this ground is also rejected.

(iv) given that, and that the Appellant was without legal representation, it was not fair to commence the hearing that way.

14.4. This allegation is without merit. The Appellant was given the express right to procure representation in the DRA's letter dated 17 December 2018. At the disciplinary hearing, the Appellant acknowledged that he had been given the chance to be supported by Alan Warriner-Little but he chose not to take up that offer. Further, at no point during the hearing, did the Appellant contend that it was unfair that he had not been given the right to have representation. Accordingly, this ground is also rejected.

(v) the disciplinary hearing should have adjourned to give the Appellant sufficient time to read all the documents and instruct lawyers if thought appropriate.

14.5. This allegation is also without merit. The Appellant had already been sent the documents prior to the hearing, and had been given the right to procure representation if he wished. Further, the Appellant did not complain about either matter at the time. Accordingly, this ground is also rejected.

Nowhere in the findings of the disciplinary committee is there any reference to public complaints being taken into account

14.6. This is factually incorrect. Para. 6.22 of the disciplinary findings refers to those pubic complaints. Those complaints are also referenced in the hearing transcript. Accordingly, this ground is also rejected.

If the conduct of the Appellant was so bad as to deserve sanctions, then the match referee, Russ Bray, would have done far more to intervene and bring the Appellant into line (but he did not)

14.7. This contention is without merit. It is not the function of the match referee to determine whether there should be a disciplinary sanction. In any event, Mr. Bray did submit a witness statement to support the disciplinary allegations. Accordingly, this ground is also rejected.

The Appellant was not given the opportunity to challenge the witness statements of Russ Bray or Graham Fairhurst, the PDC Tournament Director, or Simon Whitlock, a player

14.8. This is factually incorrect. The Appellant agreed to have the appeal dealt with on the papers and did not take up the opportunity to question Mr. Whitlock. He was also given the prior opportunity to ask any of the witnesses to attend to take part in the hearing, but did not do so. Accordingly, this ground is also rejected.

The match video was not played in the presence of the Appellant

14.9. This is factually incorrect in part. The Appellant had prior to the hearing been sent a link to the video, so there was no prejudice to him of the video not being played in full in his presence. In any event, shortly after the start of the hearing, the Appellant was also informed that the disciplinary committee had viewed the full video of the match against Mr. Whitlock. Moreover, the committee and the Appellant viewed part of the match against Mr. Anderson during the hearing. Accordingly, this ground is also rejected.

The allegations against the Appellant were tried at the same time as those against Gary Anderson

14.10. This approach was explained to the Appellant at the hearing, and he did not object to it. In any event, in the Panel's collective experience of sports disciplinaries, when allegations concern the same factual matrix it is standard and usual for disciplinary allegations to be considered against different alleged protagonists at the same time. Such an approach is not a procedural irregularity, let alone one which materially affected the outcome. Accordingly, this ground is also rejected.

The Appellant was not told that he could bring witnesses in support of him (unlike Mr. Anderson)

14.11. The Appellant was permitted to make any representations or submit any evidence he wished, and was not precluded from doing so. He also did not object to Mr. Anderson tendering evidence, or suggest that he was prejudiced by Mr. Anderson doing so. Accordingly, this ground is also rejected.

The actions of the Appellant were not of any real concern to Paul Hinks, the second match referee, Mr. Bray or Mr. Fairhurst

14.12. Mr Hinks, Mr Bray and Mr Fairhurst all submitted statements in relation to the disciplinary allegations against the Appellant. It is not accurate to allege that those statements showed no real concern in relation to the allegations. In any event, it was a matter for the disciplinary committee having considered all the submitted evidence to decide whether the allegations were made out and of sufficient concern to merit a sanction. Accordingly, this ground is also rejected.

Mr. Anderson should not have been permitted to rely on written evidence or have Tommy Gilmore present his version of events

14.13. This ground is a variation of the ground treated at para. 14.11 above. It follows from the conclusion in relation to that ground above that this ground must be rejected too since the Appellant (and Mr Anderson) were both permitted to make any representations and tender any evidence they wished. Further, at the outset of the hearing the Appellant was informed that Mr. Gilmore was to attend with Mr. Anderson, and he did not object to his presence.

The definition of "gamesmanship" in the 2019 DRA Rules was adopted, when it had no application to a match on 18 November 2018

14.14. The Panel acknowledges that there was no definition of "gamesmanship" at the material time, and the disciplinary committee adopted a definition in the (subsequently applicable) 2019 version of the Rules. However, the Appellant does not suggest that by adopting such a definition he has been prejudiced since that definition rendered the findings unjust. In the Panel's view in the absence of a relevant definition at the relevant time, the disciplinary committee was entitled to form a commonsense, everyday view of the meaning of "gamesmanship". If that view was influenced by a more recent definition that was not a procedural irregularity, but rather a reflection of a sensible, sports-applicable meaning. Moreover, even if such a definition could have been raised with the Appellant at the time, the Panel finds that any such failure would not (nor is it alleged) have changed the findings. Accordingly, this ground is also rejected.

15. It flows from the above that the Appellant's Grounds of Appeal as to the merits are rejected individually and as a whole. For the reasons given, many of the grounds pursued by the Appellant were without merit, being contradicted by contemporaneous documentation or the transcript.

E. SANCTION

16. The Panel has had close regard to the grounds summarised under para. 6.11 above and the reasons given by the disciplinary committee under section 7 of its decision.

17. In terms of aggravating and mitigating factors, the disciplinary committee took into account relevant factors on both points. It was, in particular, a relevant aggravating feature that the Appellant had received 3 previous (and within the previous 2 years) fines for misconduct, of which 1 was for gamesmanship – and, yet, by its findings the disciplinary committee then found the Appellant to have committed 2 more acts of gamesmanship. In the circumstances, it was well within the disciplinary committee's wide discretionary power to issue the Appellant with a higher level of fine than previously given to him.

18. However, the Panel is troubled by the absence of any reasons given for the particular level of financial sanctions then issued by the disciplinary committee (save as to social media, which is at a level commensurate to a second offence, namely 2x the previous level).

19. That concern is further heightened by the fact that, previously, for his first gamesmanship offence the Appellant was given a fine of £2,000 and yet the disciplinary committee gave him a fine 4x times higher for his next offence (in relation to Mr. Whitlock) and 6x higher for the next offence (in relation to Mr. Anderson). There is no clear explanation for that vast, multiple times increase in financial sanctions.

20. The Panel is not assisted by a list of recent disciplinary sanctions, supplied to it by email dated 16 July 2019 by the DRA. Those sanctions relate to a variety of different offences, not merely gamesmanship and their circumstances are not known. Of course, each case will turn on its own facts. Further, the list was filed with the Panel late, and well after the deadline for skeleton arguments. It is also not clear to the Panel whether the list was served on the Appellant. In those circumstances, the Panel declines to take that list into account.

21. In any event, in the Panel's experience of sports disciplinary cases (and especially those sports which have sanction guidelines, which the DRA has now belatedly introduced – but too late for the purposes of this matter), it is commonplace for fines to increase by a factor of 2-3x for the purposes of a second or third offence (as the Panel notes was the approach adopted by the disciplinary committee in relation to the social media offence, which was a fine 2x higher than the Appellant's previous one for the same offence). Any higher than a reasonable range of increase of 2-3x, though, smacks as a disproportionate reaction that cannot be justified without a clear explanation – which the disciplinary committee has not provided.

22. For completeness, had the offences taken place during the same match, then the principle of totality may have come into play, but they did not, so the disciplinary committee was justified in levying separate, cumulative sanctions for each of the material offences.

23. In the premises, given the lack of clarity as to its reasoning for the level of its fines and more generally their disproportionate nature compared to the level of fines for first offences, the Panel pursuant to its powers under s.14.13.4 of the Rules substitutes the following sanctions (by the order of 2x and 3x respectively for second and third offences) for those given by the disciplinary committee with the remainder of its sanctions remaining as made by the disciplinary committee:

    23.1. For Bringing the game into disrepute and gamesmanship in the GSOD Quarter Final the Appellant is to pay a fine of £4,000; and,

    23.2. For Bringing the sport into disrepute and gamesmanship in the GSOD Final the Appellant is to pay a fine of £6,000.

F. CONCLUSION

24. Further to the above, the Appellant's appeal is successful in part.

25. The Appellant's revised sanctions (in total) are:

    25.1. For Bringing the game into disrepute and gamesmanship in the GSOD Quarter Final the Appellant is to pay a fine of £4,000;

    25.2. For Bringing the sport into disrepute and gamesmanship in the GSOD Final the Appellant is to pay a fine of £6,000;

    25.3. In relation to 25.1 and 25.2 above the Appellant will also be suspended from attending or competing in DRA sanction events for a period of 3 months. This will be suspended for a period of 6 months until 11 July 2019 (the Panel though notes that this suspension has now expired); and,

    25.4. For the inappropriate posts on social media the Appellant is to pay a fine of £1,500 and warned as to his future behaviour.

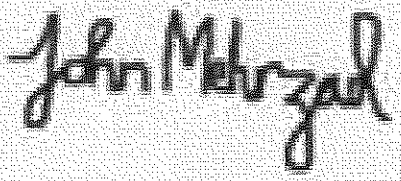
26. As to costs, it is only fair to invite the parties to make written representations in light of this decision, taking into account that the Appellant's appeal has been successful in part. There are also the outstanding costs of the Appellant's unsuccessful application for a *de novo* hearing.

27. Accordingly, unless the parties otherwise agree a draft consent order on the issue of all costs (inclusive of the Panel's fees) which should then be emailed to the Panel for their consideration and approval, the chairman of the Panel will determine that issue of costs on the papers and, as such, orders as follows:

    27.1. The parties shall file and serve any written submissions on the issue of costs (limited to 4-pages of A4 maximum), supported by a statement of costs, by 4.30pm on 24 July 2019; and,

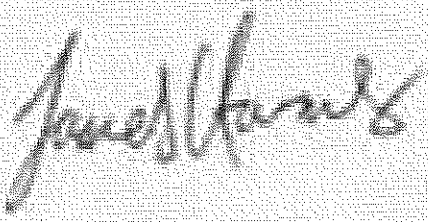
    27.2. The parties shall, as so advised, file and serve any reply submissions (limited to 2-pages of A4 maximum) by 4.30pm on 29 July 2019.

Dated this day 17 July 2019



John Mehrzad (Chairman)

Tarik Shamel



James Harms