

**DECISION OF THE APPEAL PANEL OF THE CRICKET DISCIPLINE COMMISSION (“CDC”) IN THE MATTERS OF:**

**1. A CHARGE BROUGHT BY THE ENGLAND AND WALES CRICKET BOARD (“ECB”) AGAINST MR. MITCHELL CLAYDON IN RELATION TO A BREACH OF THE ECB DIRECTIVES 2020 AND THE PLAYING CONDITIONS OF THE BOB WILLIS TROPHY**

**and**

**2. A CHARGE BROUGHT BY THE ECB AGAINST SUSSEX COUNTY CRICKET CLUB IN RELATION TO A BREACH OF THE ECB DIRECTIVES 2020 AND THE PLAYING CONDITIONS OF THE BOB WILLIS TROPHY**

**30 September 2020**

**THE CDC APPEAL PANEL:**

Mark Milliken-Smith Q.C. (“MMS”) (Chair)  
S Claire Taylor (“SCT”)  
Chris Tickle (“CT”)

**THE PARTIES:**

**THE ECB:**

Represented by:  
Alan Fordham (“AF”) (Head of Cricket Operations (First Class))  
Meena Botros (“MB”) (Director of Legal and Integrity)  
James Pyemont (“JP”) (Head of Integrity)

**SUSSEX COUNTY CRICKET CLUB (“SCCC”):**

Represented by:  
Oliver Harland (“OH”) (Northridge Law LLP)  
Rob Andrew (“RA”) (CEO, SCCC)

**MITCHELL CLAYDON: (“MC”)**

Represented by:  
Oliver Harland (“OH”) (Northridge Law LLP)

## CIRCUMSTANCES GIVING RISE TO THIS APPEAL

1. This Appeal Panel was convened as a result of an appeal by both SCCC and MC against the sanctions imposed by a Disciplinary Panel of the CDC (the “**Disciplinary Panel**”, “DP”) which, on 28 September 2020, had heard cases in relation to charges brought by the ECB against:
  - a. MC for a breach of the ECB Directives 2020 and the playing conditions for the Bob Willis Trophy; and,
  - b. SCCC for a breach of the ECB Directives 2020 (the “**Directives**”) and the playing conditions for the Bob Willis Trophy.
2. It was alleged that MC deliberately applied hand sanitiser to the ball in the Bob Willis Trophy (“BWT”) match between SCCC and Middlesex County Cricket Club at Radlett on 23 August 2020.
3. Following an investigation, MC and SCCC were each charged (the “Charges”) with a breach of ECB Directives 3.3 and 3.7 which state:

*3.3 No Participant may conduct themselves in a manner or do any act or omission at any time which is improper or which may be prejudicial to the interests of cricket or which may bring the ECB, the game of cricket or any cricketer or group of cricketers into disrepute.*

*3.7 Contravention of the Bob Willis Trophy Playing Conditions 5 or 41.2....*
4. Both MC and SCCC admitted the Charges and therefore a Disciplinary Panel hearing was required to determine what sanctions should be imposed on each of them.
5. Given that the Charges arise from common facts and that SCCC and MC admitted those Charges, both parties agreed that these matters should be heard at the same time, by the same CDC Disciplinary Panel.
6. The Disciplinary Panel imposed the following penalties upon Sussex County Cricket Club:
  - a. a deduction of the maximum points available in the BWT match in which the offence occurred. Therefore, twenty-four (24) points will be deducted from the points total that SCCC achieved by the close of the 2020 BWT Competition;

- b. in addition, SCCC will have a twelve (12) point deduction for the 2021 Specsavers County Championship season (or any equivalent competition). This means that SCCC will start the 2021 County Championship season with -12 points; and,
  - c. a fine of £10,000 suspended for one year, to be invoked at the discretion of the CDC, should SCCC (and its players) commit further breaches not only in relation to ball-tampering or any other conduct that incurs a sanction from a CDC Disciplinary Panel in the next year. The fine would be additional to any such sanction.
7. The Disciplinary Panel imposed the following penalties upon Mitchell Claydon:
- a. Suspension from playing until the end of the domestic season in England and Wales.
8. The Disciplinary Panel made no order as to costs.

### **GROUND OF APPEAL**

9. The first Ground of Appeal, which was advanced on behalf of both parties, was that there had been a procedural irregularity in the hearing before the Disciplinary Panel. The nub of this ground was the alleged failure by one of the members of the DP to declare a potential conflict of interest. As a result, it was argued that there was, at the very least, a perceived risk of bias which rendered the proceedings before the DP invalid.
10. The second Ground of Appeal, advanced by both parties, but upon different respective bases, was that the sanctions imposed by the DP were manifestly excessive in all the circumstances of each of their cases.

### **FIRST GROUND OF APPEAL**

11. RA gave evidence in support of this ground.
12. It is important to note that the appellants did not suggest any actual bias on the part of any particular member of the Panel, rather that, because the particular and potential conflict had not been declared prior to the DP hearing, the appellants had been given no opportunity to object to the composition of the Panel, as they would have done had such declaration been made.

13. The appellants argued therefore that the failure to declare such potential conflict of interest, resulting in the consequent loss of opportunity to object, was at least sufficient to present a perception of the risk of bias, thus undermining the integrity of the proceedings.

14. In response the ECB stated that it was difficult for it to comment on the accuracy of the evidence given by RA given that that these matters had only very recently been brought to the ECB's attention. The ECB could and did not agree RA's evidence, but, alive to the necessity for the expeditious resolution of this matter, did not seek an adjournment to investigate further.

15. Both the appellants and the ECB agreed with MMS that the appropriate test for the AP to apply was as follows:

- *“the tribunal should first ascertain all the relevant circumstances and then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased.”*

## **SECOND GROUND OF APPEAL**

16. Given this Panel's approach to the First Ground of Appeal set out below it has not been necessary to consider this Ground.

## **APPROACH AND DECISION OF THE APPEAL PANEL**

17. For very good reasons the ECB had not sought to seek an adjournment to investigate the accuracy and detail of RA's evidence. Had they done so, and succeeded in such an application, it may well be that this appeal would not have been able to be heard until after the last three rounds of the T20 Blast in which MC hoped to play. The quarter-final of the competition is to take place tomorrow, on the 1<sup>st</sup> October 2020, with Finals Day on the 3<sup>rd</sup> October 2020.

18. Of course the resulting unfairness to the ECB, and indeed to the particular member of the Panel in respect of whom complaint is made, is manifest: neither has had an opportunity to address the evidential matters raised by the appellants.

19. However the AP is not entitled to, nor shall it, speculate. In resolving this matter, it has been constrained to take Mr. Andrew's evidence at its highest. The AP is also

mindful of the fact that, in applying the test set out above, the standard is the balance of probabilities and not the criminal standard.

20. The integrity and transparency of the process of tribunals such as these is an essential prerequisite to a just disposal. Given that this Panel has no choice but to accept the evidence of RA, it has no alternative but to conclude, on the balance of probabilities, that the appellants were deprived of an opportunity to address the issue of conflict before the hearing before the DP began.
21. This Appeal Panel has no idea whether any such objection would have been well founded. It may very well not have been. However, in applying the test of the “*fair-minded and informed observer*” in light of the uncontroverted evidence before it, the AP is compelled to determine in favour of the appellants.
22. For those reasons this AP allows the first ground of appeal of both appellants. There have been no applications as regards costs, and thus no such orders are made.

#### **CONSEQUENCES OF THE APPEAL PANEL’S DECISION**

23. All parties agree that CDC Regulations, and in particular Regulations 10.11 and 10.12, permit this Appeal Panel to remit the case back to be heard by a fresh Disciplinary Panel. Indeed they invite us so to do. We so direct.
24. Rather than remitting this matter to a Disciplinary Panel of a different composition, both parties have specifically invited this Appeal Panel to sit immediately as a Disciplinary Panel, and to hear the matter afresh this evening.
25. Before doing so, we specifically asked both parties, and in particular the hitherto appellants, whether they agreed to waive all procedural requirements and rights set out in the CDC Regulations for the creation of a Disciplinary Panel. They unreservedly agreed.
26. Accordingly this Appeal Panel will now sit as a Disciplinary Panel to hear the case “*de novo*”. That hearing will form the subject of a separate judgment.

Mark Milliken-Smith Q.C.  
Chair, CDC Appeal Panel