

**BEFORE THE DISCIPLINARY PANEL OF THE CRICKET  
DISCIPLINE COMMISSION OF THE ENGLAND & WALES  
CRICKET BOARD**

**IN THE MATTER OF A DISCIPLINARY CHARGE BROUGHT  
BY THE ENGLAND & WALES CRICKET BOARD (“ECB”)  
AGAINST ESSEX COUNTY CRICKET CLUB (“ECCC”)**

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DECISION OF THE DISCIPLINARY PANEL  
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**Introduction**

1. This Disciplinary Panel was convened to hear a case in relation to a single charge brought by the ECB against ECCC, namely a breach of ECB Directive 3.3 which provides that:

*“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”.*

2. The charge was in two parts as follows:

- (i) the use of the racist and/or discriminatory terminology “n\*\*\*\*r in the woodpile” by John Faragher, the then Chair of the Essex CCC Executive Board and General Committee, at an Essex CCC Executive Board meeting on 7 February 2017;

and

- (ii) the failure of the ECCC Executive Board and the ECCC General Committee to conduct an appropriate, or any, investigation into whether or not Mr. Faragher had used the racist and/or discriminatory terminology once the allegation of its use was known to all members of the Executive Board and General Committee in January 2018.
3. ECCC has admitted in full both elements of this charge, and it falls to this Panel to consider the appropriate sanctions.

#### **The Facts giving rise to these Charges**

4. The factual origin of this charge is self-evident from paragraph 2(i) above. Notwithstanding that Mr. Faragher denies making this racist and discriminatory comment, ECCC have nevertheless admitted its use in answer to this charge. The suggestion of the use of such terminology by the Chair of ECCC at a Board meeting should have triggered an internal investigation shortly after February 2017.
5. In any event, at the very latest the allegation of the use by Mr. Faragher of such terminology was known to **all** members of ECCC's Executive Board and Committee by the 18<sup>th</sup> January 2018, when its use was specifically raised at a Board meeting.
6. Notwithstanding this, there has been no internal investigation undertaken or conducted within the Club at any stage prior to the date of this hearing.

This manifest omission forms the second limb of the charge.

7. In October 2021 Mr. John Stephenson was appointed CEO of ECCC. On 10 November 2021, he became aware of the allegation made against Mr. Faragher. Mr. Faragher resigned from the Board on the 12<sup>th</sup> November 2021. Mr. Stephenson was appointed interim Chair of the Club.
8. Thereafter the Club agreed that an independent investigation should take place regarding Mr. Faragher's comment and its wider implications, and that this should be conducted by an experienced and independent Queen's Counsel. The terms of reference extend to the entirety of the Club's reporting and investigation procedures at the relevant time and since. Whilst an interim report has been received by the Club, it awaits the final report.
9. It is clear to the Panel that Mr. Stephenson has done all within his power to take appropriate internal action, but that he has been thwarted by the ECCC Board which has been paralysed by internal division.
10. Indeed during the hearing the Panel heard evidence from Mr. Stephenson that the Club's "*current constitution is written in a way where the Board is both judge and jury as regards its own behaviour which cannot be right.*" Indeed he said the position of some on the Board "*is not compatible with moving forward with a culture change.*"

## **Approach to the Breaches**

11. The Panel is very grateful to the parties for their written and oral submissions.
12. In making its decision as to sanction, the Panel recognised that the ECB Directives are rules which are intended to protect the interests of those who play the wider game as well as the reputation of the sport of cricket.
13. The ECB is committed to combatting all forms of racism and discriminatory conduct within cricket in England and Wales. It's objective is to create an environment in which no individual, group or organisation experiences racism and/or discriminatory conduct in any form, including the use of racist and/or discriminatory language.
14. ECCC has clear and obvious responsibilities to ensure that it operates to the highest professional and ethical standards. This includes responsibility for ensuring that racist and/or discriminatory language is not used by any officers or other representatives of the Club and, if it is, addressing such behaviour in an appropriate way.
15. The use of racist and discriminatory language such as this is plainly unacceptable: it's utterance by a Club Chair is all the more deplorable. However the failure of both will and process within the Club to properly investigate such an allegation, indeed not to investigate it at all, in the ensuing years, significantly aggravates the use of the terminology itself.
16. In the Panel's view, it is clear that the Club has failed to uphold the

standards expected of it, not only in respect of the conduct of its former Chair, but also as regards its failure to act appropriately or at all thereafter.

17. In doing so, ECCC has undermined the ECB's and the sport of cricket's strategic objectives of combatting all forms of racist and/or discriminatory conduct. The Panel is of the view that this is a serious breach of ECB Directive 3.3.

18. It is also clear that the impact of this breach has had a significant negative effect upon both the game of cricket and upon the ECB (see further at paragraphs 33 and 34 below).

#### **Mitigation applicable to ECCC's case**

19. Every case must be judged on its own facts and circumstances, and proper regard must be had to those factors which mitigate this breach.

20. The Panel takes the view that there are several mitigating factors which apply in this case.

#### **ECCC's admission of the charge**

21. Notwithstanding the problems at Board level within ECCC, it is right that the Club made an early admission of the Charge. In doing so it has recognised not only the seriousness of the breach but also the importance of combatting all forms of racist and/or discriminatory conduct in cricket,

and the wider impact this has on combatting the same within society as a whole.

22. It is also right to acknowledge that the Club has no previous findings against it of a similar nature.

*Recent and positive EDI action undertaken by the Club*

23. Whilst such action should of course have occurred at a much earlier stage, the Panel acknowledges that the Club has taken significant steps since the appointment of Mr. Stephenson in October 2021. The resignation of Mr. Faragher and the Club's restatement of its commitment against discrimination in November 2021 was a fresh start.

24. Moreover, notwithstanding the lamentable logjam at Board level, operationally there appears a significant motivation to tackle racism and to promote greater inclusion and diversity within the Club and its wider community.

25. As referred to above, ECCC awaits the final report from the inquiry which was commissioned not only to look at the circumstances of the original comment, but also to examine the wider reporting and investigation procedures at the Club. It was Mr. Stephenson's clear evidence that the Club's intention is to implement all recommendations from that inquiry to rectify the Club's obvious deficiencies in this area.

26. There is an increased commitment to greater diversity at management level within the Club, and ECCC has reenergised its historically positive

approach to its EDI obligations, both those required by the ECB and those which its community demands. It should not be forgotten that there are many at grass roots level who work tirelessly in this arena, whose impact can be considerably heightened when bodies such as the ECCC proactively collaborate with them.

27. The Panel noted Mr. Stephenson's sincerity in both the apology which he proffered on behalf of the Club, and in his determination to address the problems which confront ECCC.

#### *Impact upon the Club*

28. The impact upon the Club's wider reputation has been extensive.

29. The Panel has noted the recent resignations from the ECCC Board, which have taken place between the hearing and the handing down of this Decision. The Panel hopes that this is truly a step in the right direction in the leadership of the Club.

#### **Approach to sanction**

30. In assessing the seriousness of this matter, the Panel recognised the importance of proportionality in balancing the fact that this was a single racist comment with the fact that it emanated from the Chair of a County Cricket Club which exerts significant influence on the wider game.

31. The seriousness of this case, in the Panel's view, is significantly

exacerbated by the wholesale failure of the Club to investigate this comment over a long period of time, let alone to take any action in respect of it. Procedures to do so were still absent from the Club's processes at the time of the hearing.

32. The Panel accepts that the determination which the Club, through Mr. Stephenson and others, now shows to accept responsibility for what has happened in this case, and to commit to bringing positive change to the Club, is genuine. However the Panel cannot ignore the difficulties presented by a lack of similar assurance at Board level.

33. It is clear that the impact of the Club's conduct has created significant prejudice to cricket in general, and to the ECB, by virtue of the negative media coverage both in respect of the original comment itself and the Club's consequent failings.

34. But media coverage is not the single measure in this regard. In this case the very use of such language by a Chair, in a Board meeting and thus in the presence of others, brings the game into disrepute. At the least, it creates a perception of prevailing attitudes of those at a high level within the game.

35. The ECB takes all forms of racist and/or discriminatory conduct extremely seriously. However the Panel is mindful that any sanction imposed for this conduct should fairly and proportionately reflect the relative seriousness of Mr. Faragher's isolated comment, his position within the Club, and the consequential harm which the Club's related misconduct has caused.



36. The Panel considers that an on-field sporting sanction, in all the circumstances of this case, is not appropriate. This was a single comment made by a non-player away from the field of play. However the Panel can envisage different circumstances where such a course may indeed be a fair and proportionate approach.
37. The Panel has concluded that the appropriate sanction is a financial one. There are no analogous precedents involving First Class County Cricket Clubs. Given their wider role within the game and their ability to influence those within it, such Clubs bear a high level of responsibility to prevent such conduct and, if it occurs, to ensure that it is properly investigated and dealt with.
38. The Panel considered the various disciplinary cases within the cricketing and wider sporting arenas to which they were referred. As the parties conceded, they could be at best of limited assistance on their facts, not least as none dealt with failures to investigate at Club level.
39. The Panel has concluded that the appropriate penalty for the totality of the misconduct in this case is a fine of £50,000.
40. The Panel then turned to consider the mitigation applicable to ECCC's case. Giving appropriate weight to those matters, the Panel concluded that this is properly reflected by a suspension of a part of this fine.
41. As was clear from Mr. Stephenson's evidence to the Panel, the difficulties within ECCC to effectively deal with matters such as this

remain unresolved. The Panel also anticipates that a suspended element to this sanction should have a persuasive effect upon the Club to act promptly to rectify its internal processes and mindsets.

42. In imposing this sanction the Panel at all times had in mind the principles of proportionality and fairness.

### **Sanction**

**Given that ECCC admitted the Charge brought by the ECB and was therefore guilty of a breach of the ECB Directives the Panel imposes the following sanctions:**

- a. a fine of £50,000, of which £35,000 will be payable forthwith with the payment of the remaining £15,000 suspended for a period of 2 years.**
- b. a caution as to future conduct; and**
- c. a reprimand**

**If ECCC commits any further serious breach of cricketing regulations within the 2 year period of suspension, then it is likely that, at the discretion of the CDC, the suspended element of this sanction will be brought into operation, and may be in addition to any separate sanction imposed for that further serious breach.**

**Any appeal against this decision must be made within 14 days of the date of the decision and should be in accordance with the provisions set out in CDC Regulation 10.**

Ricky Needham

Chair, CDC Disciplinary Panel

4<sup>th</sup> May 2022

The members of the Disciplinary Panel were Ricky Needham, Amrisha Parathalingam and Mark Milliken-Smith Q.C.

