

IN THE MATTER OF DISCIPLINARY PROCEEDINGS

BEFORE SPORT RESOLUTIONS UK

ON APPEAL TO THE APPEALS COMMITTEE

(Mr Edwin Glasgow QC and Mr Peter Stockwell)

BETWEEN

STEPHEN LEE

Appellant

-and-

WORLD PROFESSIONAL BILLIARDS AND SNOOKER ASSOCIATION LIMITED

Respondent

DECISION ON COSTS AND RECUSAL

BACKGROUND

1. On the 25th February 2014 we issued our Decision on a preliminary issue relating to the ground of appeal alleging apparent bias on the part of Mr Adam Lewis QC. The procedures leading to the decision were set out fully in that decision and we do not repeat them.
2. In order properly to determine the issue of bias it was necessary for us to resolve a conflict of factual evidence which in turn required an assessment by us of the credibility of the witnesses who gave oral evidence. We formed, and stated in our decision, an unfavourable impression of Mr Lee's truthfulness as a witness of fact on a critical issue.

3. In those circumstances, and in the light of the background history of issues over possible conflicts and bias, when the Decision was provided to the parties the covering letter dated 25th January included, at our request, the following passage:
"However, in view of the findings in the Decision on the Bias Issue, they are willing to recuse themselves from conducting either or both of those further hearings in the event that either party would wish them to do so."
4. By letters dated 28th and 26th February 2014 respectively the solicitors on behalf of Mr Lee, the Appellant, indicated that they wished us to recuse ourselves from the substantive appeal, and solicitors for the WPBSA, the Respondent, requested that we should continue to hear the matter.
5. Having considered the views expressed by both parties, we came to the conclusion that we should recuse ourselves from hearing the substantive appeal. However, the Respondent has requested us to consider an application by them in relation to their costs of the bias issue. The Appellant has objected to that course and submitted that all issues relating to cost should in effect be reserved for decision by the Appeals Committee which hears the substantive appeal.
6. Our power to order one or other party to bear all or some of the costs of the proceedings is derived from Rule 14 of the Disciplinary Rules. We are of the view that the costs which have been occasioned by the bringing and determination of the preliminary bias issue are discrete and substantially separate from those which have been and will be incurred in the substantive appeal and that we are best placed to deal with them, because of our first hand knowledge of the way the preliminary issue of bias has been conducted before us, including the need for two hearings. We accordingly, gave informal directions for the submission of claims for costs in a letter sent by Sport Resolutions dated 28th February 2014, which stated that:

If both parties are in agreement, the Appeals Committee will formally reserve the costs of the "bias issue" to be determined by the Appeals Committee who hear the substantive appeal. In the absence of such agreement by 12.00 noon on Monday 3 March, the Appeals Committee will determine the costs issue on paper with the following timetable:

- 1. Each party may make written submissions as to the principles to be applied with details of costs claimed in respect of the bias issue by 5.00 pm on Wednesday 5 March 2014.*
 - 2. Each party may respond to the submissions of the other side in writing by no later than 12.00 noon on Friday 7 March 2014.*
7. In the event the parties were not in agreement that the costs should be reserved and each party made written submissions and responded to the submissions of each other.

CONCLUSION AND DECISION

8. We have been greatly assisted by the submissions of each party on both the principles relating to an award of costs and as to the quantum of costs claimed by the Respondent. The fact that we do not address each of the arguments in detail is not indicative of any lack of consideration or respect for them.
9. Despite the arguments that have been advanced on Mr Lee's behalf, we remain firmly of the view that, in the circumstances that have arisen, it is appropriate for us to deal with the costs of the bias issue at this stage. Indeed, we go further, we think that it would be inappropriate for us to reserve that issue to an Appeals Committee that could not be as well placed as we are to consider the matters of fact which have been carefully addressed in the course of argument and in the submissions that are now before us. We do not accept that in doing so we are in any way pre-judging the outcome of what we have referred to as Mr Lee's substantive appeal. Indeed, the reasons why we determined at the outset that it would be right for the bias issue to be resolved before the substantive appeal was heard were: (i) that we foresaw a real risk that, if we had decided otherwise, a significant amount of costs would or might be incurred unnecessarily; and (ii) that we wished to avoid any risk of a perception of unfairness or of pre-judging of the substantive appeal in the event that we decided the bias issue in the way in which we did.

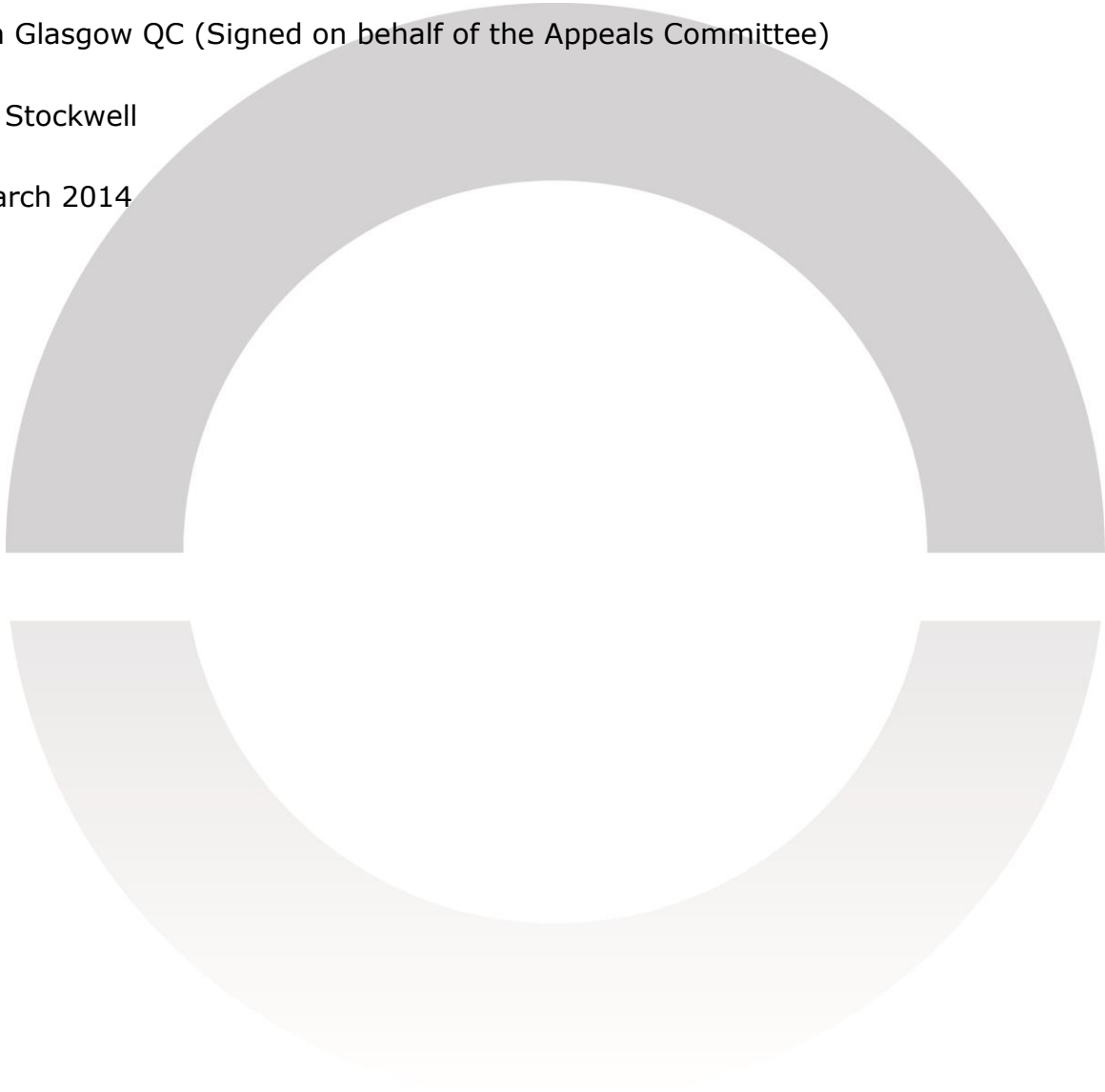
10. We are not persuaded that the case of *Solicitors Regulation Authority-v-Davis [2011] EWHC 232 (Admin)* is authority for the proposition that in the context of professional regulatory proceedings generally the means of the Appellant/Respondent are relevant to an award of costs. The principle identified by *Mitting J* in that the case was "*whether or not the Tribunal (referring to the Solicitors Disciplinary Tribunal) is entitled, when considering whether to make a costs order, and if so in what amount, to take account of the means of the respondent solicitor.*" We do not regard that case as having any application beyond the quite specific circumstances of proceedings before the Solicitors Disciplinary Tribunal. Nor do we accept that it could be appropriate for us to anticipate what consequences might flow from any failure of the part of the Appellant ultimately to pay any costs that we award.
11. Having considered the competing arguments we conclude that the appropriate order in this case is that Mr Lee should pay a contribution of £30,000 towards the legal costs incurred by the Respondent in successfully resisting the appeal insofar as it was based on what we found to be misconceived allegations of apparent bias.
12. So far as the costs and expenses of the Appeals Committee are concerned, we are conscious of the fact that the parties have not had the opportunity of considering or addressing argument on them. Further, it is inevitable that some of those costs and expenses were not specific to the bias issue alone, and would have been incurred in any event. We therefore leave it to the Appeals Committee which will determine all remaining grounds of appeal to deal also with these costs and expenses.
13. As to the hearing of the substantive appeal, having regard to all the matters summarised above, and in particular the nature of the preliminary issue, we confirm our decision that we should recuse ourselves from any further involvement with this case.

A handwritten signature in black ink, appearing to read 'Edwin Glasgow'.

Edwin Glasgow QC (Signed on behalf of the Appeals Committee)

Peter Stockwell

12 March 2014





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