

## **Football Association Appeal Board**

### **In the Matter of an Appeal by John Sheerin against a Decision of an FA-Appointed Commission acting on behalf of Herts FA**

### **Reasons for the Appeal Board's Decisions 8 December 2021**

Members of the Appeal Board, selected from the FA's Panels, were:

Roger Burden (Chair)

Elliott Kenton

Shaun Turner

Conrad Gibbons, FA Judicial Services Officer, was Secretary to the Appeal Board

The following decisions were issued to the Appellant and the Respondent:

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The Respondent, on 14 October 2021, charged the Appellant for breaching FA Rule E3 - Improper Conduct against a Match Official (including threatening and/or abusive language/behaviour). At a Correspondence Hearing, on 31 October 2021, the Disciplinary Commission found the charge proven. The Disciplinary Commission imposed a 130-day suspension from all football activity, a £75 fine and a requirement to attend an online FA Education course before the suspension was served. There were 6 Club penalty points also awarded against the Club.

Prior to the appeal hearing, as a preliminary matter, the Appeal Board considered an application to submit new evidence by the Appellant, in accordance with Regulation 10 of the Disciplinary Regulations in the FA Handbook, p.167. The Appeal Board, following consideration to the Appellant's requests and the written responses of the Respondent, allowed new evidence submitted by the Appellant. However, the Appeal Board dismissed the Appellant's application seeking for further evidence to be submitted by the Respondent.

The Appeal Board, having taken into account the submissions of the parties and having given the Appeal Bundle careful consideration, make the following observations:

- A. The Appeal Board noted that the Appellant was appealing on the following ground: *Imposed a penalty, award, order or sanction that was excessive.*
- B. The Appeal Board also considered all other available grounds of appeal on behalf of the Appellant and the parties were notified of this at the hearing.
- C. The Appeal Board unanimously upheld the appeal on the ground that the sanction was excessive, which was predicated by the Disciplinary Commission misinterpreting the relevant Rules and regulations of The Association relevant to its decision.
- D. The Appeal Board therefore alter the sanction. The sanction imposed against the Appellant is to be reinstated as following:
- a. 56-day suspension from all football, including the conditions imposed by the first instance Commission. For clarity, this sanction is backdated to the original date of the sanction imposed, 09/11/2021, and includes days already served by the Appellant.
  - b. The fine of £75 and the 6 Club Disciplinary points are to remain enforceable.
  - c. The Appellant remains required to complete an online FA Education Course before the suspension is served.
  - d. The sanctions listed above are effective immediately, with the fine to be paid to the Respondent within 14-days, if it has not already been paid.
  - e. There was no order made as to costs and the appeal fee is to be returned.

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#### THE WRITTEN REASONS FOR THE ABOVE DECISIONS

The Respondent has requested written reasons for the above decisions. The request is in accordance with FA Regulation 26.

I will not repeat all the evidence in the bundle but will refer to some of it when setting out our reasons.

Summary of Mr Sheerin's Address to the Appeal Board and his Answers to Questions

1. Although Mr Sheerin appealed only on the ground of excessive sanction, in recognition that, at grass-roots level, participants may not fully understand all the grounds available, the FA advises Appeal Boards to consider all 4 grounds available to participants. This was explained to Mr Sheerin before he addressed us.
2. The Appeal Board had accepted some additional evidence from Mr Sheerin. It consisted primarily of questioning the Referee's competence and impartiality (as did much of the evidence from his witnesses) and it was explained to Mr Sheerin prior to his address that the Commission and this Appeal Board concern themselves only with the facts surrounding the offence for which Mr Sheerin had been charged.
3. John Sheerin told us that during his discussion with the Referee he had said "That is a fucking joke, it is an absolute fucking kick in the teeth".
4. We pointed out to him that this was the first time that we, and the Chair of the Commission, were aware of this version of the conversation as nowhere in his, or his witnesses', submissions to the Commission, were these words set out.
5. Mr Sheerin told us that he did not include the language in his submission as he was embarrassed by it.
6. He told us that he was very sorry if the Referee felt threatened, but he did not threaten the Referee,
7. He said that he had no idea that the Referee was under the age of 18. He said that normal practice is for young Referees to wear a special coloured shirt but this Referee was dressed in the standard black kit
8. In mitigation, Mr Sheerin told us that he had a number of family problems which, amongst other things, meant that a suspension would make it difficult for his sons to be transported to games and for one son to even play matches.
9. He said that both his sons' teams would suffer because he manages and coaches both teams.
10. He told us that he was not challenging the fine but it was the suspension that he felt was excessive.

Summary of the Commission Chair's Address to the Appeal Board and his Answers to Questions

11. Ian Stephenson told us that he was appointed by the FA as the Chair sitting alone to adjudicate this case.
12. He told us that having reviewed his written reasons and having now heard first-hand from Mr Sheerin, he remained satisfied with his decisions and reasoning set out in those written reasons.
13. He said that, on reflection, he would have not applied a sanction of exactly 130 days but would have rounded it to the nearest multiple of 7 days.
14. In explaining his rationale for the sanction, Mr Stephenson told us that he was aware that the minimum suspension for this charge was 56 days. He said that he would have used that as a starting point but was unable to do so as Mr Sheerin had denied the charge. This had taken Mr Stephenson to the recommended entry point of 112 days.
15. Mr Stephenson said that he had felt unable to apply any mitigation, apart from Mr Sheerin's good disciplinary record, as Mr Sheerin had denied the charge.
16. He told us that his normal practice is to reduce a sanction by one third if the charge is accepted, which was not the case here.
17. In his written reasons, Mr Stephenson had cited the fact that Mr Sheerin "took it upon himself to approach MK at the end of the game" as one aggravating factor and that the Referee was under the age of 18 as another aggravating factor.
18. When asked if he would have deleted the latter aggravating factor if Mr Sheerin's submission to the Commission had made it clear that he was not aware that the Referee was under 18, Mr Stephenson said that he had not found Mr Sheerin's written submissions to be credible, therefore he would not have believed Mr Sheerin if he had said that he did not know the Referee was under 18.

### The Appeal Board's Deliberations on the Submissions and Discussions

19. We felt that Mr Stephenson had misinterpreted the FA's Regulations in a number of areas.
- Whilst not relevant to this case, there is nothing in the Regulations to state that mitigation of one third should be used if the charge is accepted. Commissions are advised to weight mitigation based on the facts of each case.
  - Whilst he was correct to use the recommended entry point of 112 days, Mr Stephenson was wrong to suggest that the denial of the charge meant the 56-day minimum could not be achieved.
  - The correct procedure is to use the entry point and then apply appropriate mitigating and aggravating factors to reach an appropriate sanction, which must not go below the 56-day minimum.
  - There is nothing in the Regulations to preclude mitigation in the event of a denial.
20. As a result of the above, we all felt that the sanction was excessive and that we should re-assess any mitigating and aggravating factors in order to decide on an appropriate sanction.

### The Appeal Board's Deliberations on Sanction

21. We sympathised with Mr Sheerin's family issues but they were not factors which could be taking into account when assessing sanction. In any case, any suspension would not preclude him from taking his sons to and from matches.
22. There were several supportive references from Mr Sheerin's witnesses which set out his good character and his good work with the boys' teams.
23. Whilst we accepted Mr Stephenson's assessment of Mr Sheerin's credibility when he was reviewing the papers at the Commission. We had the advantage of seeing and hearing Mr Sheerin. We found him to be entirely credible and believed that he did not know that the Referee was under 18. As a result, we felt that it would not be fair to use the Referee's age as an aggravating factor.
24. Mr Stephenson also found as an aggravating factor the fact that Mr Sheerin "took it upon himself to approach MK at the end of the game".

In fact, MK (the Referee) actually said that, after the game, he was called over by one of the Managers to discuss some of his decisions and then the other Manager called the Referee over, also to discuss his decisions. Mr Sheerin did not take it upon himself to approach the Referee and the Referee clearly had no issue in going over to the two Managers. We concluded that there was nothing there to qualify as an aggravating factor.

25. Mr Sheerin personally telephoned the Referee as soon as he got home and apologised to the Referee. It is normal practice to apply some mitigation for such apologies.
26. We noted that, whilst the type of remarks reported by the Referee are unpleasant, they would be in the lower end of threats, most of which are made face to face with a vicious attitude. In support of this assessment, we noted that the Referee said that he did not feel threatened, despite being prompted by the County FA.
27. We also noted, as had Mr Stephenson, Mr Sheerin's excellent previous record.
28. Taking the 120-day suspension as the entry point, we all agreed that there were no aggravating factors and that the mitigating factors were numerous enough and strong enough to take us to the minimum suspension of 56 days.
29. Mr Sheerin had not challenged the size of the fine and we left that unchanged.
30. The FA Education Course is mandatory in these circumstances.
31. This decision is final and binding, with no further right of appeal.

Roger Burden

Chair

10 December 2021