

IN THE MATTER OF THE APPEAL BOARD OF THE  
FOOTBALL ASSOCIATION

BETWEEN:

ASHLEY SMITH (Appellant or AS)

-and-

BIRMINGHAM FA (Respondent or BFA)

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WRITTEN REASONS FOR THE DECISION OF THE APPEAL BOARD

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1. These are the written reasons for a Decision made by an FA Appeal Board that heard the above-mentioned case on Thursday 1<sup>st</sup> December 2022.
2. The Appeal Board members were Mr. Stuart Ripley (Chair); Mr. Alan Darfi; and Mr. Christopher Reeves.
3. Mr. Richard Pallot, Cornwall FA National Secretary acted as Secretary to the Hearing.
4. The following is a summary of the principal submissions and evidence provided to the Appeal Board. It does not purport to contain reference to all points made, however the absence in these reasons of any particular point, or submission, should not imply that the Appeal Board did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, the Appeal Board has carefully considered all the evidence and materials furnished with regard to this case.

*Background to the Appeal*

5. Ashley Smith is a registered player at Folly Lane BCOB Association First Football Club ('Folly Lane').
6. On Saturday 27<sup>th</sup> August 2022 Folly Lane played Dunlop First in the David Gower Memorial Cup, a competition run under the jurisdiction of the Respondent ('BFA').

7. AS was sent off after the Assistant Referee reported a stamping incident to the Match Referee.
8. The Assistant Referee also reported the following in his Extraordinary Incident Report Form dated 30<sup>th</sup> August 2022 - *"...after he left the field of play he approached me in a very aggressive manner and threatened to "smack my face right now" just when Folly Lane manager pulled him from me"*.
9. On 7<sup>th</sup> September 2022, by Email Birmingham FA ('BFA') wrote to the Folly Lane Club Secretary, Michael Corden ('BFA Letter 1'). The Letter read as follows: *"Dear Michael, Secretary of Folly Lane BCOB Assoc FC, BFA has been made aware of an incident that occurred during the above match. It has been alleged that having been sent off, Ashley Smith of Folly Lane BCOB approached the Assistant Referee and used abusive and threatening language towards him. We require Folly Lane BCOB FC to complete and return the attached Witness Statement; or provide a Statement by Email to [Discipline@BirminghamFA.com](mailto:Discipline@BirminghamFA.com) providing the Club's comments and observations as to the above incident. We also require a statement from Ashley Smith with regards to the above allegation. Please be advised that by whichever method of reporting the Club chooses, the responses are required by 10am on Monday 12<sup>th</sup> September 2022"*.
10. BFA did not receive a response to BFA Letter 1.
11. On 13<sup>th</sup> September 2022 BFA emailed a second letter to Folly Lane Secretary, Michael Corden (BFA Letter 2). This letter read: *"We refer to the above game and our email below which we do not appear to have received a reply. Can you please provide the Club's comments and observations together with a statement from Ashley Smith as required, using the attached witness statement or a statement by email. Please be advised that by whichever method of reporting that the club chooses the responses are required by 10am on Thursday 15<sup>th</sup> September 2022"*.
12. BFA did not receive a response to BFA Letter 2.
13. On 20<sup>th</sup> September 2022 BFA emailed a third letter to Folly Lane Secretary, Michael Corden (BFA Letter 3). The Letter read: *"We refer to the above game and our emails below and as Folly Lane BCOB FC have failed to provide comments and observations, together with a Statement from Ashley Smith as required, the Association gives you final notice that unless the responses are sent to [Discipline@BirminghamFA.com](mailto:Discipline@BirminghamFA.com) by 12 noon on Wednesday 21<sup>st</sup> September 2022, the Association will, and without further correspondence, move to determine what action, if any, it will take in respect of a failure to respond as required and in the matter under investigation. This action includes but is*

*not limited to the raising of Misconduct Charges. The Association hopes that such action will prove not to be necessary”.*

14. BFA did not receive a response to BFA Letter 3.
15. On 22<sup>nd</sup> September 2022, by way of a Charge Letter sent to Folly Lane Secretary, Michael Corden, BFA charged AS with Misconduct, alleging that AS had breached FA Rule E3 through his use of *“Improper Conduct against a Match Official (including threatening and/or abusive language/behaviour”* (‘Charge Letter’). The Case was allocated a case ID which was 10899512M. The Charge letter set out the nature of the allegation and the evidence on which the FA intended to rely upon. The Charge letter also set out the following points of action: *“Ashley Smith is charged with misconduct in accordance with FA Regulations for the above charges and is required to submit a response to the charge by 06/10/22. As Club Secretary you are required to make the participant aware and show them the letter and enclosed Misconduct reports. Please ensure that the attached response form...is completed or updated, signed by yourself and returned to the Birmingham FA no later than 06/10/22”.*
16. BFA did not receive a response to the Charge Letter.

*First Instance Commission Hearing*

17. In the absence of any responses to BFA’s Letters 1,2 and 3 or the Charge Letter the case was dealt with as a Non-Personal Hearing by Mr. Elliot Kenton as a Single Member Commission on 19<sup>th</sup> October 2022.
18. In addition to AS’s charge a further separate charge relating to one of the Dunlop First FC players (Momoh Sesay (‘MS’)) who had also been dismissed in the same match, was consolidated within the proceedings and was also heard by Mr. Kenton. This case was allocated the Case ID of 10880952M
19. With AS not responding to the charge against him Mr. Kenton, correctly, treated the charge as having been denied. MS had admitted the charge against him.
20. Mr. Kenton found the charge against AS proven on the balance of probabilities.
21. Mr. Kenton provided at paragraphs 10.1-10.4 of his Decision and Written Reasons the following explanation in respect to his decision on liability: *“The Chair has detailed and cogent evidence from the Assistant Match Official explaining the circumstances of As’s offending. The Chair notes that the evidence was submitted, shortly after the fixture and*

*contains details of the identity of the offender, the proximity between him and the assistant, and the circumstances leading to the threatening behaviour and the events immediately following the threatening behaviour. The Chair considers the evidence to be reliable, balanced and credible based on the accounts provided...The Chair considered that the test as set out by the Regulations is a subjective one, i.e. did the Match Official himself feel threatened by the behaviour. The Chair considers based on the evidence before him that the Match Official did feel threatened when AS said in a threatening manner "I am going to smack your face right now". The words directly imply that the Assistant is going to be subjected to physical abuse. For completeness, the Chair considers that objectively speaking, these words also constitute threatening behaviour. The Chair notes the absence of any evidence from AS or other witnesses refuting the charge or providing an alternative version of events. Therefore, no weight has been placed on this evidence".*

22. Mr. Kenton turned his attention to the issue of sanction and set out his thinking at paragraphs 12 – 15, *"The Chair referred to FA Rules and the Disciplinary Sanction Guidelines issued by the FA. For this offence, the sanction range is a suspension from all football activity for a period of between 56 days and 182 days. The recommended entry point prior to considering mitigating or aggravating factors is 112 days. In addition to the football-based suspension this offence carries a fine of up to £100 with a mandatory minimum of £50 and a compulsory FA education course. It is at the Chair's discretion to vary a sanction where there are aggravating or mitigating factors present. The Chair consulted AS's previous disciplinary history and noted that prior to this incident, AS had one other proven misconduct charge relating to similar offending. The Chair considers that the previous disciplinary record to be an aggravating factor in this case. The Chair did not consider that there were any particular mitigating circumstances present".*
23. Mr. Kenton set out the sanction at paragraph 16 of his Decision and Written Reasons: *"AS is sanctioned as follows: (a) A 140 day suspension from football and all football activity; (b) A fine of £75; (c) An education programme to be undertaken virtually by the conclusion of the suspension; and (d) 6 penalty points".*
24. By way of a letter from the Folly Lane FC Secretary, Michael Corden, to The FA's Judicial Services Department, dated 3<sup>rd</sup> November 2022, AS gave Notice that he wished to Appeal the First Instance Decision and Sanction on three Grounds.
25. The Appellant, AS, stipulated three grounds of Appeal:
  - a. *BFA failed to give AS a fair hearing ('Ground 1');*
  - b. *The Commission came to a decision that no reasonable such body could have come ('Ground 2'); and*
  - c. *The Commission had imposed a penalty, award, order or sanction that was excessive ('Ground 3').*

26. As part of his Appeal, AS submitted a signed and dated (7<sup>th</sup> September 2022) handwritten letter from himself. ('ASWH Letter'). It was asserted that the letter was posted to the BCFA on 8<sup>th</sup> September 2022. The ASHW Letter was addressed to the 'BFA Discipline Dept, Ray Hall Lane, Birmingham B436JF' and read as follows, *"Dear Sirs, case ID:108699035, my version of events, I came over to side of the pitch after being sent off for 2 fouls that were not even fouls. As you can understand I was annoyed and questioned the Linesman. I didn't threaten him or swear at him but I heard spectators shouting at him. I was asking how he could flag for a foul that the Ref didn't think was a foul. He would not reply so I left and went to get changed and went home. Ashley Smith"*.
27. BFA submitted its 'Response to Notice of Appeal' on 14<sup>th</sup> November 2022. In this document BFA raised the issue of the admissibility of the ASHW Letter and requested that the Appeal Board, deal with the admissibility of the ASHW Letter as a preliminary issue prior to the Appeal Hearing.
28. The Date of the Appeal Hearing was set for 1<sup>st</sup> December 2022.

### The Appeal Hearing

29. At the AB Hearing the Appellant (AS) was represented by Folly Lane Club Secretary, Michael Corden. The Respondent (BFA) was represented by Mark Ives of Sport Integrity Matters. David Nixon of BFA attended as an Observer.

### The ASHW Letter – Preliminary Issue

30. Prior to the Appeal Hearing date the Appeal Board Chair sought further information in respect to the ASHW Letter. The Appellant informed the AB that he had no evidence to prove that the ASHW Letter had been posted on the 8<sup>th</sup> September 2022 and the Respondent informed the AB that it had not received the letter.
31. The AB heard further oral submissions from both parties at the Hearing in respect to the ASHW Letter.
32. The AB ruled the ASHW Letter inadmissible for the following reasons:
- a. *No Application for the admittance of 'New Evidence' had been made by the Appellant in compliance with paragraphs 7 and 10 of the FA's Appeal Regulations;*
  - b. *The date the Appellant stated that the ASHW Letter was posted (08/09/22) pre-dates the date the Charge Letter was issued (22/09/22);*
  - c. *The ASHW Letter references a different case number to that on the Charge Letter;*

- d. *The Appellant had the opportunity to provide the ASHW Letter to the Respondent on four occasions prior to the Hearing at First Instance – that is to say, in response to BFA Letters 1, 2, 3 and the Charge Letter.*
- e. *Other than the assertions made by Mr Corden, there is no evidence that the ASHW Letter was posted. Equally, there is no evidence that the ASHW Letter was received by BFA.*

33. With the ASHW Letter being ruled inadmissible to the proceedings the AB Chair sought clarification from the Appellant as to whether or not he wished to continue to appeal on Ground 1 since within the written Notice of Appeal the Appellant had based his arguments in respect to Ground 1 on the fact that the ASHW Letter had not been put before the First Instance Commission. Mr Corden accepted that Ground 1 fell away with the ASHW Letter being ruled inadmissible.

34. As such the AB heard oral submissions in respect to Grounds 2 and 3 only.

35. The thrust of Mr Corden's written and oral submissions was that the Commission at First Instance had come to a decision that no reasonable body could have come to because there was a large disparity between the sanction handed down to AS and the sanction that was handed down to the Dunlop FC player, MS. Mr Corden asserted that the behaviour of MS had been comparatively worse than that of AS and as such the decision of the First Instance Commission had been unreasonable and the sanction handed down to AS had been excessive. Mr Corden asserted that the reason that MS had received a lesser sanction to that of AS was that MS had *"played the race card"*.

36. Mr Ives submitted that the sanction handed down to MS was irrelevant to the decision and sanction made in respect to AS's case. Although heard as a consolidation with the case of AS, the MS case was a separate case with different facts, a different plea, a different charge and a different applicable charging tariff.

37. Mr Ives pointed out that the Appellant had denied the charge by default by not responding to the numerous requests from BFA for observations or the Charge Letter.

38. Mr Ives pointed out that there was no mitigation submitted but there had been an aggravating factor applied by the Chair of the Commission.

39. Mr Ives drew the AB's attention to the fact that the sanction handed down by the Chair of the Commission of 140 days suspension and a £75 fine fell within the parameters set out in the FA's sentencing guidelines that were communicated to the Appellant in the Charge Letter.

40. The Charge Letter set out the following information and guidance for the First Instance Commission: *"If any charge is found Proven the Commission will refer to The FA Sanction Guidelines and relevant FA Regulations when deciding on the sanction. They will also take*

*account of any mitigating or aggravating factors. The Commission may deviate from the sanction guidelines where necessary, but where a mandatory minimum sanction is stated in FA Regulations, they cannot go below this. The relevant sanctions are listed below – suspension from all football activities for a period of between 56 days and 182 days. The recommended entry point, prior to considering any mitigation or aggravating factors is 112 days – a fine of up to £100, with a mandatory minimum fine of £50 – an order that the Participant completes an education programme before the time-based suspension is served”.*

#### Decision of the Appeal Board

41. The AB considered the arguments put forward by Mr Corden to be irrational and erroneous. Notwithstanding that there were significant differences between the consolidated cases of AS and MS both in the facts and in the charge, the AB considered the case of MS to be irrelevant to the Decision at First Instance and to the Appeal.
42. The AB considered the Decision and Sanction of the First Instance Commission to be cogent, logical and well within the parameters of reasonableness given the procedural non-compliance demonstrated by AS leading up to the issue of the Charge Letter, the effective denial of the Charge, the Sanction Guidelines as set out in the Charge Letter and AS's previous disciplinary record that was considered by the Commission to be an Aggravating factor.
43. Consequently, the AB dismissed the Appeal on all grounds.
44. This decision is final and binding on both parties and not subject to further appeal.

Stuart Ripley

(Chair of Appeal Board)

Date: 6<sup>th</sup> December 2022