

[CLUB A]

-v-

[COUNTY FA]

DECISION OF THE APPEAL BOARD

1. The appeal in this matter was heard by *Microsoft Teams* video conference on 18 July 2022. Given the issues involved, the Appeal Board comprised:
 - a. Christopher Quinlan QC, Independent Judicial Panel Chair
 - b. Thura KT Win – National Game Disciplinary Chair & FA Council Member
 - c. Yunus Lunat – Independent Football Panel Member
2. This is a novel case. We have prepared written reasons as we anticipate the issues we have decided may be of interest to the wider game and our reasoning of assistance to those who have to decide similar cases.
3. The player in question is under 12 years of age. If this decision is published the name of the club must be redacted and no matter relating to the club may be included in any publication if it is likely to lead members of the public to identify him as the person involved in the case.
4. The relevant matter arose out of an alleged incident during a match played by his club, [Club A] (“the Club”) U10 side. In consequence of that incident a report was made to the [County Football Association] (“the CFA”). It was alleged that the player called an opponent a deeply offensive racist noun. The CFA delegated the matter to a third party to investigate.
5. On 1 March 2022 the CFA informed the Club:

For your information, an individual must be at least twelve years old in order for us to

take disciplinary action under FA regulations. Where a player under the age of twelve is alleged to have made an aggravated comment, FA Disciplinary Regulations instruct us as follows:

7.2 Where a child aged under 12 would otherwise have been charged with a disciplinary offence, alternative options should be considered to address the issues arising from any incident or behaviour. These could include:

7.2.1 convening a meeting to bring the parties together to talk through the issues.

7.2.2 the Affiliated Association Welfare Officer talking to the child to warn them about their behaviour and/or requesting the child undertake an education programme which is deemed relevant to the incident or behaviour. A parent/carer should be present at any meeting.

The FA have recently introduced online education programmes for children who may otherwise have been charged with an aggravated breach of FA Regulations. The sessions focus on the use of language and importance of inclusion. They do not reference the specific incident or words used and are run on the basis that all players for the Team would be invited to attend. The player accused of the offence is required to attend.

After reviewing the evidence with The FA, we are satisfied that had the player been 12 at the time of the offence a misconduct charge would have been raised. We have therefore been instructed to arrange an education session for the Team as per the regulations above. A copy of the evidence is attached. Had a charge been raised this would have been shared with the Club, so I am satisfied that it is appropriate to share it with you on this occasion to support the reason for the education session.

6. That is the decision the Club seeks to appeal against (“the decision”).
7. The first issue for the Appeal Board was whether the young player, an U10, had a right to appeal within the relevant regulations. The reason that issue arose was because

the decision in question was not one made by a Disciplinary or Regulatory Commission but by the CFA.

8. The 2022/2023 season Appeal Regulations took effect when approved by the FA Council on 26 May 2022. Since the appeal was not initiated until (at the earliest) 28 May 2022, they are the relevant regulations. Paragraph 2 of those regulations states:

The grounds of appeal available to Participants shall be that the body whose decision is appealed against:

2.1 failed to give that Participant a fair hearing; and/or

2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or

2.3 came to a decision to which no reasonable such body could have come; and/or

2.4 imposed a penalty, award, order or sanction that was excessive.

9. It is noted that the paragraph provides for an appeal against a **body who made the decision**. It is not limited, for example, to a decision of a Disciplinary or Regulatory Commission. Further support for that interpretation is provided in paragraph 6 of the Appeal Regulations:

5. In the case of an appeal from a decision of a Regulatory Commission or Disciplinary Commission;

5.1. notification of the intention to appeal shall be made in writing to The Association (or to the relevant Participant, where The Association is the appellant) within seven days of the Notification Date.

5.2. a notice of appeal (the "Notice of Appeal") with The Association by email to JudicialServices@TheFA.com (or, where The Association is the appellant, with the relevant Participant) within 14 days of the Notification Date.

6. In case of all other appeals, the timings set out in paragraph 5 above shall apply, unless the relevant rules provide otherwise.

10. Paragraph 6 expressly provides for appeals from decisions other than a Disciplinary or Regulatory Commission. Additionally, if there were no right of appeal, those aged under 12 would have no right of redress, which would not be fair.
11. The next issue concerns the fact that the intention to appeal and notice of appeal were served late. The Club did not contact Judicial Services about launching an appeal until 28 May 2022 having been told the decision on 1 March 2022. Applying paragraph 6 there are no rules to the contrary and so the relevant timeframe is that set out in paragraph 5.
12. Given the novelty of the issues in this case (an U10 player) the CFA did not object. We commend the CFA's approach. But for the novel issues in this case, we would unhesitatingly have rejected the application to appeal out of time. However, given the fact it was the first known (to us and The FA) appeal of an U10 player against the decision made under Regulation 7.2, we granted leave to appeal out of time. Therefore, on the issue of granting permission to appeal out of time, it sets no precedent at all. Any subsequent Appeal Board is very unlikely indeed to grant permission in such circumstances. The timeframes exist for good reasons. Those reasons include providing for consistency of decision making, the timely resolution of disputes and finality of proceedings.
13. We turn finally to the merits of the appeal. The Club complained that the CFA: did not seek the player's views or side; did not investigate the matter properly; and by requiring attendance at the said course implied a finding of guilt. We reject those complaints, for these reasons.
 - a. The decision does not amount to a finding that the player behaved as alleged. It does not imply that he did. It will not appear in his 'disciplinary record'. Indeed, it is to be noted that the whole team is required to attend the programme, so he is not singled out.
 - b. The body which investigated the matter did not interview the player. However, the CFA knew before it made the decision that he denied it. An account directly

from him, and indeed any other witnesses, would not have added significantly to what it knew. It had sufficient 'evidence' to charge, had he been aged 12 or older. Had the CFA been considering whether to charge, different considerations would have applied. We would then have expected the CFA to have sought his account and that from any witness/es he or his club could identify.

- c. Further, there are important safeguarding issues involved when dealing with children of this tender age. One must consider with care whether it would have been in their player's best interests to have been questioned by an investigator or another about it. Mr [redacted], representing the club, (rightly in our view) conceded during the appeal hearing that it probably would not have been.
- d. The CFA had to carefully balance the options.
 - i. Do nothing was not an option.
 - ii. A face-to-face meeting involving the parties would not have been in the player's best interests, risking as it does confrontation, denial and upset.
 - iii. A meeting during which he was warned would also have been, by its nature, accusatory and may have left him with a burning grievance and/or sense of injustice – that he had not been believed in his denials.
 - iv. The CFA's solution did not identify the player in question as the alleged culprit, which was plainly to his benefit.
 - v. It is no hardship for the whole team to undertake the online programme and its message is one no sensible person could possibly disagree with or take issue with.
- e. It was a difficult balancing exercise. The Appeal Board could find no error in the CFA's decision.

14. Accordingly, for those reasons we dismissed the appeal at the conclusion of the hearing. These are our reasons.

15. We are grateful for the parties and for their oral and written submissions.

16. We make no order as to costs. Given the novelty of the appeal, unusually the appeal fee is to be returned.

The Appeal Board

20 July 2022