

**APPEAL BOARD OF THE FOOTBALL ASSOCIATION  
BETWEEN:**

**DARREN WILDMAN (Appellant)**

**-and-**

**THE LIVERPOOL FA (Respondent)**

**DECISION OF THE APPEAL BOARD**

**Warning to the reader of this document. This document contains reference to offensive and/or discriminatory language.**

**BRIEF INTRODUCTION**

1. The Appeal Board conducted a hearing on Friday, 14 January 2022, to determine an appeal by the Appellant, against the decision of a Disciplinary Commission, made on 30 September 2021.
2. In light of the ongoing pandemic, this hearing was conducted over Microsoft Teams, without objection from any party.

## **THE APPEAL BOARD**

3. The members of the Appeal Board were:
  - Lawrence Selby (Chair);
  - Sally Davenport;
  - Jonathan Rennie.
4. No objection was raised concerning the composition of the Appeal Board.
5. The Secretary of the Appeal Board was Michael O'Connor, the Lead Judicial Services Officer and whose assistance was greatly appreciated.

## **ATTENDEES**

6. The Appellant attended the hearing and was represented by Dev Parmar, the Principal and Director of Parmars, with the assistance of Pablo Holley.
7. The Respondent was represented by Steven Swinnerton, Football Services Manager of Liverpool FA.
8. The Appeal Board is grateful to both Mr Parmar and Mr Swinnerton for their submissions and assistance both during the appeal hearing, and in the documents within the Appeal Bundle.

## **BRIEF BACKGROUND FACTS**

9. At the material time, the Appellant was the coach of Skelmersdale Football Club's ("SFC") youth team.

10. On 25 July 2021, SFC was playing a fixture against Prestwich Heys U18 Youth FC ["Prestwich"]. Late in the first half, after a couple of, what the referee described as, 'concerning tackles' by one of the players from Prestwich, the same player called a player from SFC, amongst other things, a "*bender*".
11. Consequently, at the end of the first half, the Appellant approached the referee to inform him (a) of what the Prestwich player had said; and (b) that, as such, the Appellant would not continue the match, if the Prestwich player remained on the pitch.
12. Although the match referee had not heard the homophobic slur, the Prestwich manager "Nick" agreed to take the offending player off.
13. It would appear that this exchange was overheard by Matthew Barnes, the Prestwich First Team Manager, whose reaction was to start hurling abuse towards the Appellant.
14. This abuse continued, even after Mr Barnes had been asked to calm down, given the presence of young children.
15. In all the circumstances, namely:

[REDACTED]

[REDACTED]

- (c) The Appellant felt there was a welfare issue and needed to protect the players;
- (d) The Appellant believed that he needed to take a stance;

The Appellant, with the agreement of his coaching staff and players, refused to field a team for the second half.

16. As such, the referee had no alternative but to abandon the match.

[NB. The following should be noted:

(a) the Prestwich player was charged with and, following a hearing, (i) found to have said; and (ii) consequently, sanctioned for, calling the SFC player a *“bender”*;

and

(b) Matthew Barnes was charged with and, following a hearing, (i) found to have said; and (ii) consequently, sanctioned for, making comments such as *“you are a busy cunt you are.. you need to fucking grow up you knobhead”* and *“you’re just a busy cunt and bender gets used every day in football and it’s okay for our lads to say that grow the fuck up you busy cunt”*]

## **FIRST INSTANCE DECISION**

17. On 18 August 2021, Liverpool Football Association (“Liverpool FA”) charged the Appellant with Improper Conduct (not including foul and abusive language), contrary to Rule E3.1 of the Rules of the Football Association.

18. In the briefest of terms, the allegation was that during the relevant match, the Appellant had acted in an improper way (not including threatening and/or abusive language or behaviour) by taking action(s) that led to the match being abandoned.

19. Following a hearing, conducted on 6 and 30 September 2021, the Commission found the matter proven and passed the following sanction:

(a) 1 match ground ban until SFC had completed 1 qualifying match;

(b) A fine of £10;

(c) 5 penalty points imposed on SFC.

## THE APPEAL REGULATIONS

20. Regulation 2, of the “Appeals - Non-Fast Track” Regulations, sets out the grounds upon which the Appellant may appeal the first instance decision(s) – they are:

*“... 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.”*

21. Regulation 12 states:

*“An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.”*

[NB. No application for leave to present new evidence was made in either the Notice of Appeal or the Response.]

22. Regulation 21 sets out the powers of the Appeal Board including the power to allow or dismiss the appeal. It further provides at Regulation 21.6 that the Appeal Board has the power to order that any costs, or part thereof, incurred by the Appeal Board be paid by either party or be shared by both parties in a manner determined by the Appeal Board.

## SUBMISSIONS (INTRODUCTION)

23. The following is a summary of the principal submissions made to the Appeal Board.

24. It does not purport to contain reference to all the 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 it considered the matter.

25. For the avoidance of doubt, the Appeal Board carefully considered all the materials provided, and submissions made, with regard to this case.

26. On behalf of the Appellant, Mr Parmar submitted that the Disciplinary Commission had:

- Ground 1: failed to give the Appellant a fair hearing; and/or
- Ground 2: misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or
- Ground 3: come to a decision to which no reasonable such body could have come; and/or
- Ground 4: imposed a penalty, award, order or sanction that was excessive.

27. Following a preliminary discussion, the parties agreed:

- (a) To make submissions on Grounds 1 to 3, first, and, subject to the Appeal Board's decision on these Grounds, make submissions on Ground 4 - Sanction, thereafter;

- (b) That, on the facts of this case, there was little, if any, difference between Grounds 2 and 3, such that they could be considered together.

## **SUBMISSIONS ON GROUNDS 1 - 3**

### **Ground 1**

28. On behalf of the Appellant, Mr Parmar submitted that the Appellant did not have a fair hearing, before the Disciplinary Commission, for the following reasons:

- (a) The Appellant was prejudiced by the second day of the hearing being fixed for a date that he was unavailable to attend;
- (b) The Appellant was not, and not given the opportunity to be, represented;
- (c) The Commission, incorrectly, proceeded on the basis that the Appellant had admitted the charge;
- (d) The Appellant was unable to ask questions of the match referee, who departed the first day of the hearing prematurely.

29. In response, Liverpool FA submitted that the Appellant did have a fair hearing, before the Disciplinary Commission, and highlighted the following:

- (a) It was the Appellant's choice not to attend the second day of the hearing, and no adjournment was sought by him;
- (b) The responsibility of seeking representation lay with the Appellant;
- (c) It is clear that the Commission proceeded against the Appellant on the basis that the charge was contested; the wording at paragraph 14 of the Commission's

Written Reasons, suggesting to the contrary and relied upon by the Appellant, was a clear and obvious typographical error;

- (d) The Appellant did have an opportunity to question all the witnesses, including the match referee, who attended the first day of the hearing. In any event, the match referee's evidence was not contentious.

### **Grounds 2 and 3**

30. On behalf of the Appellant, Mr Parmar submitted that the Commission had (a) misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or (b) come to a decision to which no reasonable such body could have come.

31. In summary, the Appeal Board understood these submissions to be:

- (a) There was no improper conduct by the Appellant as he had followed FA guidelines (including the FA's Equality and Inclusion Strategy 2021 – 2024, entitled 'A Game for All'), in as far as they went, in refusing to field a team for the second half;
- (b) Given this match was a "friendly", which SFC was leading 1-0, it could not be said that the game was brought into disrepute by the Appellant's actions;
- (c) The fact that the match referee had determined that the match should proceed did not mean that the Appellant's decision was wrong, or his conduct improper;
- (d) The Appellant's decision to not field a team for the second half was for the greater good – in terms of both (i) the immediate risk of danger to the players; and (ii) taking a stance, against homophobic language;
- (e) Any other course of action, taken by the Appellant, would have been unreasonable, in all the circumstances;



(f) Accordingly, the Commission's decision was unreasonable.

32. In response, Liverpool FA submitted that the Commission had not (a) misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or (b) come to a decision to which no reasonable such body could have come.

33. These submissions are summarised as follows:

- (a) There was nothing in the Guidelines that permitted the Appellant to take the course of action that he did – as such, the improper conduct was the unilateral decision to force the abandonment of the match, by refusing to field a team for the second half;
- (b) The score was immaterial – such a situation (if it did not amount to improper conduct) would also permit a team, that was losing a match, to (i) force the abandonment of a match; (ii) face no sanction, and (iii) seek a replay, on the basis that they had acted properly in forcing the abandonment as they subjectively decided (against the judgment of the match officials) that abandonment of the match was justified;
- (c) The fact that the referee had concluded that the match could continue should have been determinative. Accordingly, the usurping of the authority of match officials was improper conduct, which brought the game into disrepute;
- (d) The greater good demanded that (i) the game be completed; and (ii) any misconduct be reported to the FA, through the proper channels;
- (e) Although, no doubt, well intentioned, the Appellant's actions were, in all the circumstances, misguided – regardless of personal views, the Rules of the Game must be followed;

(f) It was, plainly, reasonable for the Commission to come to the decision it did.

## LEGAL TEST FOR ALL GROUNDS

34. As is clear from Regulation 12 (supra), the task of the Appeal Board is to conduct a review of the first instance decision, and not a de novo hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

35. Guidance on how this review should be carried out is to be found in, inter alia:

(a) The FA v Bradley Wood, 20 June 2018, which states, at paragraph 23:

*“When considering evidential assessments, factual findings and the exercise of a judicial discretion in the context of an appeal by way of review, a Commission must be accorded a significant margin of appreciation. Accordingly, such evidential assessments and factual findings should only be disturbed if they are clearly wrong or wrong principles have been applied. That threshold is high and deliberately so. When assessing whether a sanction is unreasonable the same margin of appreciation applies. It is not for the Appeal Board to substitute its own opinion or sanction unless it finds that the Commission’s decision as unreasonable.”*

and

(b) The FA v José Mourinho, 18 November 18, which states, at paragraph 54:

*“It is not open to us to substitute our decision for that of the Commission simply because we might ourselves have reached a different decision. If the Commission has reached a decision which it was open to the Commission to reach, the fact that we (or a different Regulatory Commission) might have reached a different decision is irrelevant. To put it another way, it is not for us to ‘second guess’ the Commission; ...*

*... We are permitted to 'intervene' only when there has been an error or principle by the Commission. To put it another way, we are not permitted to interfere with the decision of the Commission unless we are satisfied that the Commission has gone 'plainly wrong'."*

36. Accordingly, the Appeal Board applied the following principles in its approach to the grounds of appeal:

- An appeal such as this proceeds by way of review of the decision of the Commission. It is not a rehearing of the evidence and arguments at first instance;
- It is not open to the Appeal Board to substitute its own decision for that of the Commission simply because the Board might themselves have reached a different decision at first instance;
- If the Commission has reached findings of fact which it was reasonably open to the Commission to reach, the fact that the Appeal Board might have reached a different factual finding is irrelevant;
- The Appeal Board will be slow to intervene in evidential assessments and factual findings made by the Commission. Evidential assessments of the Commission should only be interfered with if they are clearly wrong ("Wednesbury" unreasonable and/or irrational and/or perverse) or if wrong legal principles were applied to the making of those factual findings;
- The only likely scenario for the Appeal Board to interfere with factual findings of the Commission is where there is no proper evidential basis for a finding of fact that has been made and/or where the evidence was overwhelmingly contrary to the finding of fact that has been made;
- The test for the Appeal Board in determining whether the Commission acted irrationally and/or perversely and/or "Wednesbury" unreasonably, or came to a

decision to which no reasonable such body could have come, is essentially the Wednesbury unreasonableness test applied in administrative law to cases of judicial review;

- Any Appellant who pursues an appeal on the ground that a Disciplinary Commission has come to a decision to which no reasonable such body could have come has a high hurdle to clear or a high threshold to overcome.

## **DISCUSSION ON GROUNDS 1 - 3**

37. In accordance with the principles set out, immediately above, the Appeal Board retired to consider the parties' submissions.

### **Ground 1**

38. The Appeal Board had little difficulty in preferring the submissions of the Respondent and, accordingly, concluding that the Commission had, at all times, afforded the Appellant a fair hearing.

39. The Appeal Board was fortified in its view by, inter alia, the following:

(a) Inability to attend the adjourned hearing:

- On 8 September 2021, the Appellant asserted, for the first time, that he was unfit to attend a hearing – namely, the second day of the hearing, which was set for 30 September 2021;
- The date of the first day of the hearing was 6 September 2021;
- The Appellant had raised no issue/objection to attending on that date;
- In those circumstances, and in the absence of any request for an adjournment, the Commission was more than entitled to proceed as it did.

(b) Access to representation:

- It was the Appellant's responsibility to secure representation;
- The Appellant was represented on Appeal;
- There was nothing to suggest that the Appellant had done this other than of his own accord.

(c) Commission proceeded on a false premise:

- It was self-evident from the contents of the Written Reasons that the Commission proceeded on the basis that the charge was contested;
- The reference to the contrary was clearly a typographical error.

(d) Ability to question witnesses:

- The Appellant was present when the match referee gave evidence;
- Accordingly, there was no proper basis to suggest that the Appellant was denied an opportunity to put questions to the referee;
- There was nothing in the Commission's Written Reasons to suggest that the Appellant had voiced any concern about not being able to put questions to the referee;
- In any event, and considering the case as a whole, the referee's evidence was not contentious.

**Grounds 2 and 3**

40. The Appeal Board does not hide from the fact that it found this to be a particularly difficult and challenging case.

41. Mr Parmar's submissions were, at face value, deeply attractive and the actions of the Appellant were, in a personal capacity, highly commendable – put simply,

homophobic language must never be tolerated and would not be tolerated, as widely as it is, were more people to share the decency and integrity of the Appellant.

42. Notwithstanding these observations, the Appeal Board does not seek to criticise the Respondent for bringing this charge – it was plainly right to do so.

43. After careful consideration, the Appeal Board was compelled to accept the submissions of the Respondent – in particular:

- Once the referee had concluded that the match could continue, that should have been determinative;
- By causing the game to be abandoned, and, in so doing, usurping the authority of match officials, the Appellant's conduct was improper;
- Accordingly, it was unsustainable to suggest that the Commission had (a) misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or (b) come to a decision to which no reasonable such body could have come.

### **FINDINGS ON GROUNDS 1 - 3**

44. The Appeal Board came to the following, unanimous, conclusions:

- Liverpool FA were plainly correct in bringing the charges;
- The Commission had plainly considered all relevant material in coming to its findings of fact;
- There was nothing to suggest that the Commission had erroneously considered any irrelevant material in coming to its findings of fact;

- It was for the Commission to apply due weight to the evidence, and it had done so appropriately;
- The issues identified by the Commission in its “Written Reasons” and the detailed considerations, therein, demonstrate that the Commission applied its mind, both appropriately and correctly, to the relevant issues;
- The decision reached by the Commission was entirely within the boundaries of reasonable decisions available to a Commission;
- Accordingly, the appeal on Grounds 1 -3, must be dismissed.

45. In light of the above, the parties were invited to address the Appeal Board on Ground 4 - Sanction.

#### **SUBMISSIONS ON GROUND 4**

46. Mr Parmar, in essence and without wishing to do him any disservice, quite properly repeated some of his earlier submissions, but, now, focussing their relevance on Ground 4 - Sanction.

47. In particular, Mr Parmar urged the Appeal Board to consider, the following:

- (a) The Appellant had, at all times, acted in good faith;
- (b) The Appellant had no previous misconduct findings recorded against him;
- (c) To the average, right minded individual, the Appellant’s actions were deserving of commendation, and not punishment;

(d) In light of the findings against (i) the Prestwick player; and (ii) Mr Barnes, insufficient weight was given to the Appellant's mitigation.

48. On behalf of the Respondent, Mr Swinnerton, graciously, declined to make any submissions on this Ground.

#### **DISCUSSION ON GROUND 4**

49. The Appeal Board retired to consider the submissions on Ground 4 - Sanction.

50. The Appeal Board considered the relevant County FA Sanction Guidelines Table for 2021/22 and, in particular, the sentencing ranges for this offence – namely:

LOW: 0-1 matches/£0-£20

MEDIUM: 1-2 matches/£10-£30

HIGH: 2-3 matches/£20-£40

51. Thereafter, the Appeal Board noted that, in its Written Reasons, the Commission had not specified where in the range it considered this offence to lie – this omission prevented the Appeal Board from being able to determine whether: this was an offence of Low or Medium culpability; had the right starting point been used; had sufficient credit been given to the Appellant?

52. In those circumstances, the Appeal Board was persuaded that, on this discrete point, there had been an error by the Commission.

#### **FINDINGS ON GROUND 4**



53. It was the unanimous decision of the Appeal Board that the Commission had erred in its approach to sanction and, as such, the appeal on Ground 4 was allowed.

54. Having allowed the appeal on Ground 4, the Appeal Board determined that:

- The facts of this case were exceptional;
- As such, it should not, in any way, serve as a precedent;
- Given the national interest in this case, the Appellant had suffered terribly;
- The Appellant's actions were such that most right minded people would applaud him;
- The Appellant had already served the 1 match ground ban.

55. In light of the above, and pursuant to Regulation 21.2, the Appeal Board determined that it would:

- Quash the sanctions imposed by the Commission;
- Not impose any alternative sanctions;
- Make no order as to costs.

## CONCLUSION

56. In summary, the Appeal Board:

- Dismissed the Appeal on Grounds 1 to 3;

- Allowed the Appeal on Ground 4;
- Pursuant to Regulation 21.2, quashed the sanctions imposed by the Commission, and determined not to impose any alternative sanctions in their place.

57. The Appeal Board made no order as to costs.

58. Accordingly, this decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

#### MISCELLANEOUS REMARKS

[REDACTED]

[REDACTED]

Signed:

16 January 2022



Lawrence Selby

[for and on behalf of the Appeal Board]