

**IN THE MATTER OF A FOOTBALL ASSOCIATION**  
**APPEAL BOARD**

**Between**

**FC WYA**

**Appellant**

**-and-**

**LANCASHIRE COUNTY FA**

**Respondent**

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**WRITTEN REASONS AND DECISION  
OF THE APPEAL BOARD**

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**Appeal Board:** Lyndon Harris (Chair)

Peter Clayton

Terry Angus

**Secretary to the Appeal Board:** Conrad Gibbons

**Introduction**

1. This is an appeal by FC WYA against the decision of the National Serious Case Panel Discipline Commission, sitting on behalf of Lancashire County FA. The Appeal was heard by Microsoft Teams video link on 24 February 2022.
2. On 24 February 2022, the Panel unanimously allowed the appeal. This was communicated to the parties on 25 February 2022 in writing via email. As is their right, the Respondent requested written reasons for the decision in accordance with Regulation 26 of the Football Association (hereinafter, "FA") Handbook, 2021/2022.

**Procedural history**

3. On 27 November 2021, Junior Gardeners FC (Under 13) played FC WYA (Under 13) in the Accrington and District Junior Football League (Under 13). This appeal arises out of an incident that was said to have led to the abandonment of that fixture.
4. Following a report alleging misconduct at that fixture dated 28 November 2021, the Lancashire County FA charged Junior Gardeners FC, FC WYA and an individual player (hereinafter “the player”) with offences (10631478- M, 10631476- M and 10631487- M). Both clubs were charged with offences contrary to rule E20; the individual was charged with an offence contrary to rule E3.1 and E3.2. This appeal, as we have said, is concerned only with the charge against FC WYA (10631478- M), but the other offences provide important and relevant background to the charge against FC WYA and our decision.
5. FC WYA responded to the charge on 9 December 2021, denying the charge and requesting an in-person hearing. Junior Gardeners FC responded to the charge on 10 December 2021 and accepted the charge, requesting that it be dealt with in their absence. The player responded to the charge on 21 December 2021, accepting the charge under E3.1 but denying the charge under E3.2, and requested that the matter be dealt with in his absence.
6. As the incident involved an allegation of abuse involving a protected characteristic, the FA had convened a National Serious Case Panel, Discipline Commission and the hearings were combined in accordance with regulation 13. The in-person hearing was held on 10 January 2022 (via Microsoft Teams) and involved the receipt of evidence, including from the referee. The outcome was as follows:
  - a. The Commission found that the charge against FC WYA was proven.
  - b. The charge against the player contrary to E3.1 was admitted and the Commission was satisfied that it was proven.
  - c. The Commission found that the E3.2 charge against the player was proven.
  - d. The charge against Junior Gardeners FC was admitted and the Commission was satisfied it was proven.
7. In consequence, FC WYA:
  - a. Received a warning as to the Club’s future conduct;
  - b. Was not made the subject of a financial penalty.
  - c. Had five penalty points imposed against it.

8. Junior Gardeners FC was fined £50 and had seven penalty points recorded against it.
9. In relation to the player:
  - a. He was suspended for seven matches (two of which were mandatory as the player had received a red card during the fixture) (four of those matches would be suspended for a period of 12 months).
  - b. He was ordered to complete an education programme before the match suspension was to be served (failure to complete such programme would result in a sine die suspension).
  - c. No financial penalty was imposed.
10. On 13 January 2022, the Lancashire County FA communicated its decision to the parties.
11. On 27 January 2022, FC WYA lodged an appeal notice. On 1 February 2022, the Lancashire County FA lodged its respondent's notice.
12. Prior to the hearing of this appeal, we received and read a 66-page bundle of documents.

#### **Outline facts**

13. The following summary of the facts is necessarily brief and included for the purposes of this appeal. It is taken from the Commission's decision and serves to illustrate the factual background only. It is not intended to be a comprehensive recitation of all that occurred at the fixture.
14. The player subsequently charged with an offence committed a foul. The linesman (from Junior Gardeners FC) had entered the pitch. The referee showed the player a red card and the player said "you paki" to the referee. Parents/Supporters from both teams entered the pitch and at least two parents from FC WYA and one parent from Junior Gardeners FC entered into a verbal argument. As a result of the commotion, the referee abandoned the game. The referee was physically upset by the events. The player said "biased paki" to the FC WYA linesman and manager, Saki Iqbal.

#### **Relevant regulations**

15. Rule E3 states:

*"E3.1 A Participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or a*

*combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.*

*E3.2 A breach of Rule E3.1 is an “Aggravated Breach” where it includes a reference, whether express or implied, to any one or more of the following:- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability”.*

16. The relevant sections of FA Rule E20 state:

*“Each Affiliated Association, Competition and Club shall be responsible for ensuring: E20.1 that its directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability) whilst attending at or taking part in a Match in which it is involved, whether on its own ground or elsewhere; [...]”*

### **Decision of the Commission**

17. As we have said, the Commission found the E20 charge against FC WYA proven, finding that the behaviour was disorderly and that in failing to prevent such behaviour, the club was in breach of rule E20.
18. Paragraph [68] of the Commission’s decision is of particular relevance to this appeal. For convenience, we set it out here:

*“68. In reaching its decision, the Commission;*  
*i. found the evidence of the match referee, [REDACTED] credible and consistent;*  
*ii. found, as a matter of fact, a verbal exchange took place between two FC WYA parents and at least one Junior Gardener parent;*  
*iii. accepted the evidence of Chris Whitwell that his exchange amounted to a heated argument and that shouting between both sets of parents took place;*  
*iv. found that the incident was not minimal in duration and lasted for some 5 to 10 minutes;*  
*v. accepted the evidence of the match referee that the incident involving the parents was material to his decision to abandon the game, and*

*vi. concluded that however well intentioned, the conduct of FC WYA parents had been disorderly.”*

## **Submissions**

19. The appellant, represented by Saki Iqbal, submitted that:
  - a. The fact that a parent (Mr Iqbal) and a referee (under the age of 18) had been racially abused had been overlooked.
  - b. The perpetrators of the racist behaviour were not being held to account.
  - c. The focus of the hearing shifted from the racist abuse to the decision to abandon the fixture.
  - d. Mr Iqbal as the manager of the team had “every right” to take his team off the field following the racist abuse, but chose not to and still received a misconduct charge (referring to Dorset County FA v Gillingham Town (2021)).
  - e. It was unfair to charge the club with misconduct; the misconduct was the parent’s actions in ‘calling out’ racism.
  - f. The Commission’s factual findings could not be sustained by the evidence, in particular in finding the referee to be clear and credible when (it was said) he struggled to recall facts in his statement and in his evidence.
  - g. The panel could not come to a reasonable judgment as the panel had not experienced racism themselves.
  - h. There was no credible evidence that the club failed to control their supporters/parents.
20. Mr Iqbal rhetorically asked what other action he was supposed to take and what message standing by and not acting at all sent to 12 year old boys.
21. The respondent submitted that the decision was not a decision that no reasonable panel could arrive at; i.e. it was reasonably open to the panel to find the E20 charge proven. In particular, it was submitted that:
  - a. The hearing was an appeal, a review of the Commission’s decision and not a de novo hearing.

22. Reference was made to *FA v Bradley Wood* (20 June 2018) (threshold for disturbing factual findings or evidential assessments is if they were “clearly wrong” or the wrong principles had been applied) and *FA v Jose Mourinho* (18 November 2018) (threshold for upholding appeal is only where there has been an error of principle or the decision was “plainly wrong”).
23. Additionally, the Respondent invited the Panel to adopt the following ‘principles’:
- a. 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.
  - b. 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.
  - c. 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.
  - d. 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.
  - e. 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.
  - f. 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.
  - g. 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.
24. As to the specific points raised by the Appellant, the Respondent submitted that:

- a. the subjective experience of the Commission was irrelevant to the decision they made.
  - b. The Commission dealt with the allegation of racism in the same hearing.
  - c. The Commission had applied an objective test and found the charge against FC WYA proven.
  - d. Accordingly, the findings, and decision, were reasonably open to the Commission.
25. We are grateful to the clear and eloquent written submissions provided by both parties.
26. In oral submissions, the Appellant submitted that it was not possible to “disaggregate” the racism and the alleged misconduct of FC WYA and that “everything that followed was because of the racism”. We asked the Appellant whether it was accepted that there could be misconduct following a racist incident, or whether his submission was that the racism permitted a response of any gravity. The Appellant accepted that racism could not excuse serious misconduct, in essence, conceding that irrespective of the (actual or perceived) trigger event, the conduct which followed must be assessed by an objective standard. We regard that concession as rightly made.
27. The Appellant also submitted that the FC WYA parents were defending the referee who had also been racially abused and that he was proud of their actions, asking rhetorically again, what it was suggested he should have done in the face of two incidents of racism at a youth football match. Finally, it was submitted that the Commission did not explore the referee’s comment that he would ensure that the player did not play football again, and that the referee’s evidence was materially wrong.
28. The Respondent primarily addressed their submissions to the alleged procedural irregularities alleged by the Appellant.
29. We are grateful to both parties for their eloquent oral submissions.

### **Discussion and decision**

30. Firstly, it is important for us to recognise that this hearing was the third time Mr Iqbal had to live through this particular experience of racism; the first being the incident itself, the second being the in person hearing before the Commission and the third being the appeal hearing. That is a necessary product of disciplinary proceedings, however it should not be overlooked – and we do not overlook – the fact that this process and retraumatise victims of such abuse.

31. Mr Iqbal was dignified when he spoke about the incident and the way in which he made his oral submissions, despite this clearly being a highly upsetting incident for any person to endure. We thanked him for this at the conclusion of the oral hearing and we repeat those thanks here in writing.

### *Principles*

32. We adopt the ‘principles’ elucidated in the Respondent’s written submissions and repeated at paragraph 23, save that:
- a. We do not accept that it is irrelevant that the Panel may or would have come to a different conclusion to that of the Commission. There is no need for us to decide this point in the context of this appeal. For the avoidance of doubt, we recognise and have applied the threshold for allowing an appeal, namely that it was a decision that no reasonable Commission could have come to; we recognise that this is essentially the Wednesbury unreasonableness test applied in administrative law; and we recognise that this is a high standard.
  - b. We do not accept that the “only likely scenario” for interfering with factual findings of a Commission is where there is no proper evidential basis and/or where the evidence was “overwhelmingly contrary” to finding of fact that has been made. There is no reason to adjudicate on this point.

### *The procedural complaints*

33. We unhesitatingly reject the submissions regarding the composition of the panel and the fact that the panel had no experience of racism and thus this was a fundamental flaw in the disciplinary hearing. In fact, Mr Iqbal was asked during the oral hearing whether he considered that the hearing had been fair and he stated that he did. We agree with the Respondent that the subjective experiences of the panel did not amount to procedural unfairness.
34. We understand, however, the importance that the composition of panels determining disciplinary issues and appeals properly reflect the players, clubs and officials that may appear before them. This appears to us to be important both for the integrity of the hearing (so far as the appearance of justice goes) in addition to ensuring substantive justice by providing for a panel with a range of views, experiences and opinions, to provide for a sound outcome.
35. Similarly, we do not accept the submission that the racist issue was effectively “sidelined” and that the focus was “again” on those who were the victims of such abuse. We accept the



submissions of the Respondent as to the fact that this was demonstrated by the consolidated hearing and in particular finding that the E3.2 charge against the player was proven.

*The 'disaggregation' of the racist abuse and the conduct that followed*

36. We accept the submission made by Mr Iqbal that the racist incident could not be disaggregated from the conduct that followed. As we have said, however, we regard the concession made by him in oral argument to be entirely appropriate: that, as a matter of generality, the fact that misconduct followed a racist incident could not *of itself* excuse the misconduct.
37. We do not regard those two things to be inherently contradictory.
38. It is important, therefore, to understand that the E20 charge against FC WYA and the E3 charge against the player are two separate charges, albeit that they are factually linked. Thus, if the conduct of the FC WYA supporters/parents was disorderly, then the 'trigger' event for that could not excuse the disorderly conduct. To use a common aphorism, two wrongs do not make a right. But, it is important to see the conduct of the FC WYA parents/supporters in its proper context, namely a youth fixture in which there had been two incidents of racist abuse directed at the referee (himself a youth) and the FC WYA coach, itself in the context of a match in which tensions had 'run high'.

*The Commission's factual findings*

39. We remind ourselves that this is not a rehearing and that we may not substitute our views for those of the Commission. We will only interfere with a decision of a Commission where we consider the decision reached, based on factual findings or the assessment of evidence, was a decision which no reasonable Commission could have reached. Finally, we recognise that it is right to be slow to interfere with the factual findings of a Commission; they, for instance, heard the evidence and we did not.
40. Firstly, it is evident from the clear and detained written reasons provided by the Commission that there was some ambiguity as to the sequence of events and the length of time the alleged misconduct was said to have lasted. In particular, in its written reasons, the Commission concluded that the misconduct lasted for 5-10 minutes.
41. From the summary of the evidence in the Commission's written reasons, and the surrounding paperwork submitted by both parties, it is clear to us that this conclusion is not sustainable and was a conclusion on the evidence that no reasonable Commission could have reached.
42. We place emphasis upon the fact that the 5-10 minute estimate appeared to have come from the referee, but that the Commission recognised that the referee clarified this to say the

misconduct lasted about 5 minutes after the sending off, and stated that it lasted “more than a few minutes”. We note that the Commission recorded in its summary of the evidence that the evidence of the referee was that he penalised the player for the foul, and before he could take any action a parent/supporter of Junior Gardeners FC had entered the pitch. It was at this point the player racially abused the referee and the FC WYA parents/supporters entered the pitch.

43. Experience shows that such incidents can seem to last much longer than in fact they did. In any event, it is clear to us that the finding that the incident lasted 5-10 minutes is not sustainable on the evidence presented to the Commission. This is not an incidence of the Appeal Panel choosing one account over another; such would be impermissible, as we have set out above. Rather, we have concluded that there was no evidence on which a reasonable Commission could have concluded that the incident lasted 5-10 minutes. It appears to us that the evidence, taken at its highest and its most adverse to FC WYA (as a means of supporting the Commission’s decision and reasons) was that the incident lasted no more than 5 minutes after the initial whistle penalising the player for a foul – and possibly less than that.
44. Secondly, the Commission concluded that the conduct of the FC WYA parents/supporter was disorderly. We consider that this was not a conclusion open to the Commission on the evidence. Powerfully, Mr Iqbal asked how he and the other FC WYA parent was supposed to have acted in the face of two racist incidents. The Commission concluded that “a verbal exchange” took place between one Junior Gardener FC parent and two FC WYA parents and that this was (on the evidence of one of the FC WYA parents) “a heated argument” involving shouting.
45. In support of the Appellant’s case, the decision in Gillingham was cited to us. This was a fact-specific decision from which no assistance can be derived.
46. We have considered the meaning of the term “disorderly” and in light of our conclusion regarding the importance of viewing the conduct in its proper context, we cannot accept the decision of the Commission that two adults challenging racist abuse at an under 13 fixture, by way of “a verbal exchange” involving some shouting is not disorderly.
47. The racist abuse involved in this case was utterly vile. It is all the more shocking given it came from the mouth of a 12 year old. No right-thinking person could consider those comments to be anything other than abhorrent. The use of such language is corrosive to our society and highly damaging to the game and the football community.
48. We note that there was no physical altercation, that there was a heated argument between adults and that none of the players appear to have become involved.

49. Quite apart from the conduct of the FC WYA parents/supporters being disorderly, or FC WYA failing to control its parents/supporters, we regard the evidence as capable of supporting only one conclusion: the FC WYA parents/supporters (one of whom had himself been racially abused) was restrained and moderate given the circumstances. As we have said, although the ‘trigger’ cannot excuse behaviour that follows, it is vital that the following behaviour is viewed in its context.
50. Mr Iqbal stated he was proud that FC WYA had challenged or ‘called out’ the racism. We understand why he feels that way. In the circumstances, it was not open to the Commission to conclude that the behaviour – a verbal exchange lasting no more than five minutes from the initial whistle in which two FC WYA parents/supporters (one of which was the team coach) expressed their disgust at racist language being used towards an adult and a youth referee – amounted to disorderly conduct.

### **Conclusion**

51. It follows that the decision was one which no reasonable Commission could have arrived at. We allow the Appellant’s appeal.
52. We make no order for costs and the appeal fee is to be returned to the Appellant.

**Lyndon Harris  
Peter Clayton  
Terry Angus**

**1 March 2022**