

**JOSEPH MCKERNAN & ECCLESFIELD RED ROSE JFC (Applicants)**

**-and-**

**SHEFFIELD & HALLAMSHIRE FA (Respondent)**

**DECISION OF THE APPEAL BOARD**

1. The matter was heard by *Microsoft Teams* video conference on 1 August 2022. The Appeal Board comprised:
  - a. Christopher Quinlan QC, Independent Judicial Panel Chair
  - b. Davide Corbino, Legal Panel Member
  - c. Kristian Jones, Legal Panel Member
  
2. The parties were represented as follows:
  - a. Joseph McKernan & Ecclesfield Red Rose JFC (“the Applicants”) – Paul Brammer, Club Secretary
  - b. Sheffield & Hallamshire FA (“CFA”) – Zoe Bond, Discipline Officer
  
3. We are grateful to them both.

**A. Background**

4. The Applicants were charged by the CFA as follows:
  - a. Joseph McKernan (“JK”):
    - i. (a) FA Rule E3 – Improper Conduct against a Match Official (including threatening and /or abusive language and behaviour).
    - ii. (b) The particulars of the charge are that JK kept swearing at the Match Official when asked to leave the field of play and proceeded to threaten the Match Official with a fight in the car park, saying he was going to beat the Match Official up.
  - b. Ecclesfield Red Rose JFC (“Ecclesfield”):
    - i. (a) FA Rule E20 – Failed to ensure Players and / or Officials and / or Spectators conducted themselves in an orderly fashion.

- ii. (b) The particulars of the charge are that throughout the fixture, the parent spectators were swearing on the touchlines towards the referee throughout the fixture
5. JK and Ecclesfield denied the charges.
6. The charges were considered by a Serious Case Panel (“SCP”) at a non-personal hearing on 5 May 2022. The charges arose out of a fixture between Hoyland Town Juniors U13 and Ecclesfield U13 that took place on 10 April 2022. It was alleged that JK, Ecclesfield manager, would not accept a penalty decision and for his dissent so was shown a red card. Having entered and been sent from the field of play, he was alleged to have sworn at and threatened to fight the referee in the car park and to beat him up. It was alleged he called the referee a ‘little Hitler’.
7. JK’s case was set out in his written statement. Therein he accepted the red card and the decision made by the referee to send him off. He denied swearing or acting in an abusive manner towards the referee. He denied making any reference to Hitler.
8. The charges against JK were found proved and sanctioned as follows:

*“(a) A 126 day suspension from football and all football activities plus a period of 92 days to account for the period of football inactivity between June – August.  
Therefore, a total suspension of 218 days is ordered.  
(b) A fine of £50;  
(c) A mandatory education course to be undertaken online before the suspension has been served, the details of which shall be provided by the FA.  
(d) 6 penalty points.”*
9. The charge against Ecclesfield reflected the referee’s evidence (accepted by the SCP) that parents of Ecclesfield swore at him throughout the fixture that necessitated the opposition spectators to intervene. It too was found proved and sanctioned as follows:
  - a. Fine of £50;

b. 5 penalty points.

10. The Appeal Board has read the SCP's succinct written reasons. The SCP's decision was promulgated by decision letters dated 9 May 2022 and 10 May 2022 ("the Decision Letters").

11. The Applicants sought permission to appeal out of time on 1 July 2022.

12. On 11 July 2022 the JPC ruled as follows:

*"The Applicant seeks permission to lodge an appeal out of time. The decision letter is dated 9 May 2022. The letter states clearly that any intention to appeal must be submitted within 7 days thereof and the Notice of Appeal within 14 days. I am told the application for permission to appeal out of time was not served until 1 July 2022, well out of time. The time limit exists for good reasons. Those reasons include providing for consistency of decision making, the timely resolution of disputes and finality of proceedings. The reason for the application being made out of time is said to be that the decision letter did not "appear on WGS (Secretary tab)" and as such the Applicant was "unable to respond/challenge etc". I am told that the said letter was issued to the Whole Game System on 9 May 2022 and also to the player the next day. I have also been provided with screenshots which support that. I therefore refuse the application."*

13. In response to that decision the Applicant stated:

*"The correspondence surrounding the 218 day ban (remainder of this calendar year) for Joe did not appear on the WGS system. The screenshots are from the FA side are not what I as secretary can see or indeed respond to.  
I would welcome where we can take this as we have a severe issue in terms of a manager taking on our U14s for the 2022/23 season"*

14. A member of the FA Judicial Services then informed the JPC:

*“For clarity, I have access to the Whole Game System from an administrative perspective which shows certain details, however a Club/Participants Whole Game System view is that of a Participant and is therefore different to our perspective. As Judicial Services do not upload or use the WGS for appeal procedures, other than pulling relevant documentation for appeal processes, the intricacies of what the County FA and Participants can see is not something I am wholly experienced with.”*

15. In consequence the JPC was concerned that he may inadvertently have been misled as to what the screenshots upon which he relied did in fact show. Concerned that the Applicants’ cases must be dealt with properly and fairly, he issued further directions. Compliance with those directions did not bring the certainty he required and he referred the issue of permission to appeal out of time to a full Appeal Board. He did so, so evidence could be called. He further directed that he would chair that Appeal Board.

**B. Permission to Appeal out of time**

16. That is the first issue this Appeal Board determined.

(a) Regulations

17. Paragraphs<sup>1</sup> 4-6 of the Appeal Regulations provide:

*“Appeal timings shall run from the date of notification of the decision being appealed against (“Notification Date”). The Notification Date shall be:*

*4.2 the date of provision of the written decision; or*

*4.2 where the relevant rules or regulations provide that written reasons may be produced or requested, the date of provision of the written reasons.*

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<sup>1</sup> They are described as paragraphs not regulations in the body 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](mailto: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."*

18. Paragraph 14 of the Appeal Regulation states:

*"14 The chairman of an Appeal Board (or the Judicial Panel Chair (or their nominee) if an Appeal Board has not yet been convened) may upon the application of a party or otherwise, give any instructions considered necessary for the proper conduct of the proceedings, including but not limited to:*

*14.1 extending or reducing any time limit;*

*14.2 amending or dispensing with any procedural steps set out in these Regulations;*

19. It is by exercise of the power in Paragraph 14.1 that permission may be granted to appeal out of time.

(b) Applicants' case

20. Ecclesfield sent an email to the CFA on 24 June 2022 indicating that it wished on JK's behalf to appeal the "decision/sanction in giving JK a football suspension of 218 days; removing JK from his team management duties for all of the 2022/23 pre-season and indeed the majority of the 2022/23 playing season". The said email also stated "the case decision did not and still has not appeared of [sic] the club secretaries [sic] WGS page hence why there is a delay in formally writing and subsequently request [sic] the

*appeal.*” It continued that the allegations made by the referee were “*unfounded*” and “*untrue*”.

21. The Applicant first contacted The FA indicating an intention to appeal on 1 July 2022. He had been told he was out of time and so that became the issue to be resolved.

22. In paragraph 6 of the Applicants’ written submissions dated 15 July the following is stated:

*“However, we feel that ERR and JM have not had the opportunity to receive a fair hearing based upon the final decision by Sheffield & Hallamshire FA (SHFA) did not show on the club secretary’s WGS page (See Annex A) and as such the club was unable to formally appeal within the stipulated timescales.”*

23. Mr Brammer told us that he did not see the Written Reasons until 24 June 2022. He showed us the relevant part of the WGS as visible to the Club.

(c) CFA’s response

24. In advance of the hearing the CFA disputed that. Its position, in summary was follows:

- a. The Written Reasons were uploaded to the system on the 9 May 2022 (having been received on 6 May 2022). Miss Bond (who represented the CFA) showed us the screenshot of the relevant entry on WGS. It reads “Correspondence” – 05/05/22” and was uploaded a at 14.41 on 9 May 2022.
- b. Further, on uploading information such as verdict notifications, the system should then generate a personal email which is sent to the listed club secretary advising that they have a new notification on the whole game system.
- c. The ghost log-in enables the CFA to log into the WGS as Ecclesfield. The screenshot taken when that was done, showed that the uploaded documents were available to view by Ecclesfield from the 9 and 10 of May respectively. We were told those documents were the Decisions Letters and the Written

Reasons. The notifications of 9 and 10 May were unread as the time of the relevant screenshots which was no earlier than 9 June.

(d) Decision

25. As we have said, the ghost log-in enables the CFA to log into the WGS as the club. The screenshot it supplied appeared to show that these documents were available to view by Ecclesfield from the 9 and 10 of May respectively. What is clear is that the result letters were available to view. Further they were viewed by the Club at some point before or on 27 May 2022 because that is when the fines were paid. Mr Brammer accepted when asked that they/he “*must have missed*” the fact that the Decision Letter to JK also told him he had been suspended for 218 days.

26. The Decision Letters state:

*“All appeals must be made by email to discipline@thefa.com or by post to Judicial Services Department, The Football Association, Wembley Stadium, PO Box 1966, London, SW1P 9EQ and your intentions to appeal must be made and received by the Association within 7 days of this written notice. The full written submissions are required to be received by Judicial Services department within 14 days of the written notice”*

27. It is pro forma. We are very familiar with this standard wording. But, it does not necessarily accord with paragraphs 4 and 5, which provides time to appeal runs from “*the date of provision of the written decision*” or “*where the relevant rules or regulations provide that written reasons may be produced or requested, the date of provision of the written reasons.*” This is a case where Written Reasons were produced. By virtue of paragraph 5, the notice of an intention to appeal must be filed within 7 days of provision of the Written Reasons not the Decision Letter (or “*this written notice*” as it is described). That may be the same date as the written notice but not necessarily so, as this case illustrates.

28. The CFA's case was that the Written Reason were available to Ecclesfield from 9 May when uploaded. If that is correct, time to appeal ran from that date. But, when Mr Brammer showed us live in the hearing the relevant pages on WGS using his laptop, the Written Reasons were not there. He clicked on the relevant tabs, including the one labelled "Correspondence– 05/05/22" and each showed only a Decisions Letter, not the Written Reasons. We are far from satisfied that those were uploaded or were available to Ecclesfield in May.

29. It follows that we are not satisfied that the Written Reasons were sent to either JK or Ecclesfield before the 24 June. Therefore, and since he accepted seeing them on 24 June, that is the date from which time for an appeal runs. He indicated an intention to appeal, namely on 1 July 2022. That was the 7<sup>th</sup> day and so in time. He did not submit a formal Notice as he was told he was out of time. That is understandable. He did submit written submissions in accordance with the JPC's direction.

30. Therefore, JK and Ecclesfield do not need permission to appeal out of time. We treated the written submissions served on 15 July as the appropriate Notice for both JK and Ecclesfield, granting permission for it to be served late. We did so because all wrongly proceeded on the basis that he was out of time. Both Mr Brammer and the CFA were content for us to proceed immediately to hear the substantive appeal, which we did.

### C. Appeals

31. Both JK and Ecclesfield appeal against the fact the charges were found proven and sanction.

32. Paragraph 2 of the Appeal Regulations states:

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

*2.2 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.”*

(a) Charges

33. The appeal against the regulatory breaches comprised assertions that the findings were contrary to the available evidence; argument as to merits of their respective cases; and included what were (in effect) requests to adduce new evidence.

34. As for the new evidence, we mean material that was not put before the SCP. Paragraph 10 of the Appeal Regulations states:

*“The Appeal Board shall hear new evidence only where it has given leave that it may be presented. An application for leave to present new evidence must be made in the Notice of Appeal or the Response. Any application must set out the nature and the relevance of the new evidence, and why it was not presented at the original hearing. Save in exceptional circumstances, the Appeal Board shall not grant leave to present new evidence unless satisfied (i) with the reason given as to why it was not, or could not have been, presented at the original hearing and (ii) that such evidence is relevant. The Appeal Board’s decision shall be final. Where leave to present new evidence has been granted, in all cases the other party will be given an opportunity to respond.”*

35. No attempt has been made to comply with that provision. Accordingly, we did not grant permission to adduce that new material and we did not consider it.

36. During the course of his submissions, we asked Mr Brammer why JK and Ecclesfield did not request an in-person hearing and make then the cases and arguments they made on appeal. He told they did not think it “*was worth it*”. He also said he did not appreciate the seriousness of the charges and the possible sanction for JK.

37. There are (at least) two problems with that approach. The charge letter dated 12 April 2022 informed them that the range of sanction facing JK was a suspension of between 56 days and 182 days. Mr Brammer said they “missed that”. Secondly, an appeal is by way of review, unless new evidence is admitted. It is not a second opportunity to ‘have a trial’. It is not acceptable for a participant to wait and see what happens and then appeal if they do not like the outcome. This was a serious case and should have been treated as such.

38. We reviewed the Written Reasons. The SCP did not misinterpret or fail to comply with any rule and/or regulation of The Association relevant to the decisions. The decisions it came to were not unreasonable within the meaning of paragraph 2.3 of the Appeal Regulations or at all. Therefore, we dismiss this aspect of the appeal in respect of both JK and Ecclesfield.

(b) Sanction

39. JK was sanctioned as set out above. The 126-day suspension from football and all football related activities accords with the appropriate guidelines issued by the FA which provide for a sanction range of a suspension from all football activity for a period of between 56 days and 182 days with a recommended entry point, 112 days. That is then subject to mitigating or aggravating factors. We have looked at approach taken by the SCP and find no error in the final figure of 126 days. It is certainly not unreasonable or excessive. Nor was the imposition or size of the fine.

40. We are perplexed by the imposition of penalty points. Paragraph 87 of the Disciplinary Regulations provides that the purpose of the penalty points system is to assess the disciplinary record of players of each of a Club’s teams across a playing season. Paragraph 89 provides that each cautionable offence and sending-off offence committed by a team’s players in each Match during a playing season (together with each Charge issued to a team’s players in that playing season) will incur that team a set number of penalty points. Both concern players, as does the ‘totting-up’ provision in Paragraph 91. We can find no such provision for a manager.

41. A club may be charged contrary to Rule E20 where a certain number of charges of a specific type have been proved against it. But the trigger for a Rule E20 is charges proved, not penalty points accumulated.
42. While the SPC had the power to impose the said penalty points we cannot see the purpose or practical effect of so doing. Therefore, we quash that part of the sanction.
43. However, we are also troubled about the additional 92 days. The SCP said this: *“plus a period of 92 days to account for the period of football inactivity between June – August”*.
44. The derivation of that period appears to be guidance, which was not published, issued to Serious Case Panels in March 2022. It was issued by The FA Grassroots Division. It states:

*“We should be grateful if panel members would consider adding to the term-based sanction (for a proven misconduct charge whereby the Regulations necessitate a term-based suspension) to take into account any period of inactivity over the summer break. Otherwise, the practical effect is that the participant may serve a substantial proportion of their suspension whilst no football is being played. If this discretion is applied, we would advise that it is clearly referenced in the written reasons alongside the rationale behind the increase (i.e. to take into account the period of inactivity during the summer).*

*Please note that this is guidance only and, ultimately, whether or not this discretion is applied is a decision for the appointed Commission.*

*To assist you, we have illustrated some examples of where this discretion could be applied below:*

- *A participant playing at Step 5 of the NLS has a charge of Physical Contact on a Match Official found proven against them. The suspension imposed by the Commission is 182 days (recommended entry point) from 1 June (when the Interim Suspension Order was imposed). Taking into consideration that Step 5*

*football will not normally be played in June and July, the Commission may wish to add 61 days to the sanction to cover this period of football inactivity. Therefore, the sanction within the Written Reasons would be shown as 243 days including 61 days to take into account the period of football inactivity.*

- *A participant playing in youth football has a charge of Physical Contact on a Match Official found proven against them. The suspension imposed by the Commission is 182 days (recommended entry point) from 1 June (when the Interim Suspension Order was imposed). Taking into consideration that youth football would not normally be played in June, July and August, the Panel may wish to add 92 days to the sanction to cover this period of football inactivity. Therefore, the sanction within the Written Reasons would show as 274 days including 92 to take into account the period of football inactivity.*

45. The guidance provides for the addition of a period (“the additional period”) to reflect the time when no football matches are being played or no football activity is taking place during the summer. In other words, to ensure the sanction has meaningful effect for its entire duration. The purpose is to lengthen the period of the suspension so every day has meaningful effect.

46. We are concerned about the process by which that guidance was issued, its regulatory propriety and whether it is in fact correct. As for the process we do not know how the guidance came to be issued. For example, it was not done in consultation with or the knowledge of the Independent JPC. We know not what legal advice was provided nor the regulatory authority for the issuing of such guidance nor which regulation permits the additional period.

47. The relevant provisions for the imposition of a suspension appear to be Regulation 40 and 41 of the Disciplinary Regulations which state:

*“40 Save where expressly stated otherwise, a Regulatory Commission shall have the power to impose any one or more of the following penalties or orders on the Participant Charged:*

[...]

*40.3 suspension from all or any specified football activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of Matches;*

[...]

*40.9 such further or other penalty or order as it considers appropriate.*

*41 In imposing penalties, a Regulatory Commission must apply any:*

*41.1 applicable standard sanctions as may be communicated by The Association from time to time. A Regulatory Commission may only depart from such standard sanctions where it deems it appropriate having regard to the facts of an individual case (for example, where a particular act of Misconduct is sufficiently serious that the guideline sanction would not constitute a sufficient penalty for the Misconduct that has taken place);*

*41.2 mitigating and/or aggravating factors, to include but not limited to the disciplinary record of the Participant and other factors that may be communicated by The Association from time to time.”*

48. Those provisions do not expressly prohibit the imposition of the additional period. However, it represents a departure from the overall scheme of sanctioning which the regulations create, namely the imposition of penalties commensurate with the seriousness of the offending. One might therefore have expected specific provision/s or regulation/s addressing such an issue or deviation from the norm.
49. If we may say so, we understand and agree with the reasoning behind the guidance. Sanctions should have meaning and bite. To use the vernacular, a suspension should not be served on the beach. It is an issue (for example) rugby union has wrestled with. It has found a solution by specific regulations and the concept of meaningful matches. We also acknowledge that the guidance expressly states that it is just that. It states clearly that it does not purport to mandate the additional period, and the examples are clearly described as such. But there is an obvious danger that the additional period may be imposed automatically without proper regard to the individual facts of a specific case. To do so may result in unfairness.

50. This case concerns a manager not a player. There are football related activities to be undertaken during the off-season for a manager or coach. Even a player may be unfairly prevented from taking part in other football related activities during the summer months before competitive matches start. In short, they may serve a longer ban and miss more football related activities than is proportionate to the offending or was intended by the body imposing the sanction. That is not the purpose of the additional period.

51. We do have some concerns that the wording used in the Written Reasons creates (at the very least) the impression that the additional period was imposed automatically. There is no express consideration, for example, of any summer activities he may undertake. If it was, that was an error – the additional period should never have been imposed without proper consideration of the fact of an instant case. We have every sympathy for the SCP. The SCP had no evidence from JK, who did not attend, as to what his summer involved.

52. However, having heard from Mr Brammer we are satisfied that the sanction was excessive. We were told and accept that JK would – but for the ban – have been undertaking a range of footballing activities during the summer associated with his role as manager. They would include training, recruitment, and arranging friendly matches. To that extent the 92 days is not a fallow or barren period but covers a period during which such activity would (but for the suspension) have been undertaken. That means the additional 92 days are an additional period of effective suspension. That in turn has the effect that he serves a longer ban than was intended or if he had been sanctioned in, say an early or mid-season month. That is unfair. It is an illustration of how rigid application of the additional period may result in unfairness.

53. Therefore, we allow the appeal to this extent. We quash the penalty points and reduce the suspension to 126 days to run from 9 May 2022. That means he is suspended from football or football related activity until the expiry of that period.

54. Ecclesfield was sanctioned as set out above. In our judgement there is no merit in the submission that the said sanction was excessive. It was not.

55. Abuse of match officials in this way is unacceptable. That it occurred at an U13 match is appalling.

#### **D. Conclusion**

56. In summary and for the reasons set out:

- a. We dismiss Ecclesfield appeal
- b. We allow JK's appeal to this extent only – we quash the penalty points and impose a suspension from football and all football related activity for 126 days with effect from 9 May 2022.

57. Applications to appeal out of time are being made with increasingly frequency. They are an unnecessary drain on resources. The relevant timeframes are not complicated and readily available. The time limit exists for good reasons. Those reasons include providing for consistency of decision making, the timely resolution of disputes and finality of proceedings. It is incumbent upon all in football to know and to apply them. Applications for permission to appeal out of time will not be permitted unless there is good reason/s to disapply those strict time limits. Judicial Services should inform Regulatory Legal, County FA and clubs accordingly.

58. The standard decision letter used by CFAs should be amended to reflect accurately paragraph 4 and 5 of the Appeal Regulations.

59. We make no order as to costs. JK's appeal succeed in part and so his fee should be returned. Ecclesfield's appeal failed and so that fee is forfeited.

The Appeal Board

3 August 2022