

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

**BETWEEN:**

**MARK ATKINSON (Appellant)**

**-and-**

**WEST RIDING FA (Respondent)**

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

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1. The Appeal Board conducted a hearing on Tuesday 25<sup>th</sup> October 2022 to determine an appeal by Mr Mark Atkinson (“the Appellant”) against the decision of a Disciplinary Commission arising from a non-personal hearing on 11<sup>th</sup> July 2022. An application for written reasons for the decision has been requested. This document contains the written reasons for the Appeal Board’s decision.
2. The charge arose from a match between Life United FC (“LUFC”) and Marshall Park FC First (“MPFC”) on 7<sup>th</sup> May 2022. The Charge letter dated 16<sup>th</sup> June 2022 set out the charge of misconduct in the following terms:  
  
*It is alleged that Mark Atkinson used abusive and/or indecent and/or insulting language contrary to FA Rule E3.1, and it is further alleged that this is an aggravated breach as defined by FA Rule E3.2 because it includes a reference to sexuality. This refers to comment(s), “get up you fucking faggot, you batty boy, or similar”.*
3. The Disciplinary Commission, a chair sitting alone, determined that the Appellant had breached FA rule E3.1 – Improper conduct (including foul and abusive language) and that the breach was aggravated as defined by FA Rule E3.2 because it included a reference to sexuality. With due regard to the sanctioning guidelines and the aggravating/mitigating factors, the Disciplinary Commission imposed a seven-match suspension and ordered the Appellant to undertake an online education programme

prior to the end of the suspension period, whilst also giving the Appellants club five disciplinary points, I refer to this as (the decision) as evidenced by a decision letter dated 14<sup>th</sup> July 2022 and the subsequent written reasons.

4. The Appellant submitted a Notice of Intention to Appeal in time in accordance with the FA rules and regulations on 20<sup>th</sup> July 2022. The Appellant subsequently missed the deadline for submitting his Notice of Appeal and sought an extension of time to do so citing extenuating circumstances. The Judicial Panel Vice-Chair considered the application to appeal out of time and granted the Appellant permission to submit a Notice of Appeal out of time, subject to the condition that the Notice of Appeal should not (without permission of the Judicial Panel) raise any ground of appeal or challenge to the Decision that was not already contained in the Notice of Intention to Appeal dated 20<sup>th</sup> July 2022.
5. The Appellant submitted his Notice of Appeal within the extended period of time allowed by the Judicial Panel Vice-Chair, on 23<sup>rd</sup> August 2022. The appeal was based on three grounds:
  - (a) The Disciplinary Commission had come to a decision to which no reasonable such body could have come.
  - (b) The Disciplinary Commission had failed to give the Appellant a fair hearing.
  - (c) The Disciplinary Commission had failed to comply with the rules and regulations of The Association relevant to its decision.
6. The Appeal Hearing was conducted as a personal hearing via MS Teams, the Appeal Board comprised Mr Kristian Jones (Chair), Mr Mellis (Wing) and Mr Manley (Wing). Mr Conrad Gibbons of the FA acted as secretary to the Appeal Board.
7. The Appellant was represented by Mr Thompson, the Respondent was represented by Mr Mason. The Appellants father Mr Phil Atkinson was also in attendance as an observer.
8. Prior to the Appeal hearing the parties raised a number of issues which the Appeal Board decided to consider as preliminary issues. The first issue raised by the Appellant was whether his attendance was required at the Appeal Hearing. The second issue raised by the Appellant was whether he could refer to photos of the pitch/facilities at

the Appeal Hearing that he had not relied upon at the disciplinary hearing. The third issue raised by the Appellant was his assertion that the witness statement that he had submitted to his club, and which had been uploaded to the Whole Game System had been modified by the Respondent prior to being placed in the bundle and forwarded by the Respondent to, and subsequently used by, the Disciplinary Commission Chair at the first instance hearing. The fourth issue raised by the Appellant was that the referees report had been altered in some way prior to being placed before the Disciplinary Chair. This assertion was subsequently clarified by the Appellant as the Disciplinary Chair having misinterpreted the referees report. The Respondent had raised the issue of whether Craig Lee, Regional Discipline Manager of the FA, could attend the hearing in an observer capacity

9. Upon notification of the preliminary issues raised by the Appellant prior to the Appeal Hearing, the Appeal Board issued directions to include the following:

- a) That it was a matter for the Appellant as to whether he attended the Appeal Hearing however it was strongly recommended that he did, but if the Appellant chose not to attend the Appeal Hearing his representative Mr Thompson should ensure that he had full instructions in order to allow him to conduct the Appellants appeal in the Appellants absence.
- b) Given that neither party objected to the attendance of Craig Lee, he was welcome to attend the hearing solely in the role of an observer.
- c) In terms of the request to submit new evidence, by this we mean photos of the pitches/facilities that were not placed before the Disciplinary Commission, 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.”*

No attempt was made to comply with that provision by the Appellant. Accordingly, we did not grant permission to adduce that new material and we did not consider it.

d) With regard to the allegations raised by the Appellant in relation to the Referees Report and his own statement, the Appeal Board directed that the Appellant further particularise his assertions in this respect and that the Respondent be given the opportunity to respond.

10. Upon receipt of further particulars from the Appellant and Respondent being received, the Appeal Board directed that contact should be made with the Disciplinary Commission Chair to ascertain whether the statement of the referee that he had been provided with in first instance papers was the same as the statement that was contained within the appeal papers, and to enquire why there was an apparent difference between the account given by the referee in his statement and the account that the Disciplinary Chair had attributed to the referee in the written reasons.

11. The Appeal Board are grateful for the response received from the Disciplinary Chair which confirmed as follows:

*“As First Instance Chair, I can confirm that I considered the statement contained at page 23 of the Appeal Bundle. This is identical to the statement of James MacKintosh contained in the case papers provided to me when determining the matter. As the Written Reasons are published documents, my practice as a NSCP Chair is to capture the evidence presented as accurately as possible and to achieve ease of understanding to those reading the decision. This will mean that I may summarise the evidence and in some cases paraphrase certain words. For example, in the original statement, Mr MacKintosh said ‘At the time of the incident, I wasn’t in ear shot of the offence’, which I have paraphrased for ease of understanding to a reader of the WR as Mr MacKintosh not being in close proximity to the offending language. As stated above, I read and considered the same statement from Mr MacKintosh that is before the Appeal Board”.*

12. Having given directions which disposed with the first, second and third issues raised prior to the Appeal Hearing the Appeal Board were left to determine the issues regarding the Appellants witness statement and the referees statement as preliminary issues at the Appeal Hearing.

13. The Appeal Board is grateful to Mr Thompson and Mr Mason for their submissions and for the appeal bundle which the Appeal Board found to be well prepared and most useful.
14. The Appeal Board confirmed at the outset of the Appeal Hearing that in their view the Notice of Appeal did closely align with the issues raised in the Notice of Intention to Appeal and was therefore in accordance with the conditional permission given by the Judicial Panel Vice-Chair.
15. The Appeal Board ensured that all parties were aware of the response received from the Disciplinary Commission Chair and invited submissions from Mr Thompson on behalf of the Appellant as to the assertion by the Appellant that the referees witness statement had been altered or misinterpreted, in light of the Disciplinary Commission Chairs response. Mr Thompson confirmed that he accepted that the Disciplinary Commission Chair had paraphrased the report of the referee in his written reasons, and that the referees report had not been altered and that this was no longer an issue that the Appellant sought to pursue within the Appeal Hearing. The Appeal Board invited submissions from Mr Mason on this issue and he confirmed that he had no submissions to make on that issue.
16. The Appeal Board then invited submissions from Mr Thompson as to the preliminary issue relating to the assertion that the Appellants witness statement had been altered between the time that it had been uploaded to the Whole Game System and the time that the Disciplinary Commission Chair received the same.
17. Mr Thompson stated that he did not understand how the Appellants statement had come to be altered, as he had uploaded the statement that he had received from the Appellant to the Whole Game System. Mr Thompson confirmed that the Whole Game System was new to him and that he did not have the necessary technical knowledge to share his screen with the Appeal Board and show the Appeal Board the Appellants statement that he had uploaded to the Whole Game System. Mr Thompson confirmed that the Whole Game System showed that his statement had been created on the system on 30<sup>th</sup> June 2022, but also that the document had been modified by the Whole Game System.
18. The Appeal Board invited submissions from Mr Mason as to the assertion that the Appellants statement had been altered. Mr Mason said that he was disappointed that these allegations were being made as they were serious. Mr Mason accepted that

there were two versions of the Appellants statement in the Appeal bundle. Mr Mason shared his screen so that the Appeal Board could see the Whole Game System on his screen. Mr Mason explained that documents could be either uploaded directly to the system by the participant charged or emailed to the Respondent who would then upload them to the Whole Game System. Mr Mason explained that the documents that we could see on his screen had been uploaded by the Appellant directly. Mr Mason confirmed that the Respondent simply facilitates the process and under no circumstances would any document ever be amended, as to do so would risk reputational damage or even continued employment. Mr Mason invited the Appeal Board to accept that any reference to a document being modified by the Whole Game System meant that the document had been modified by the club and not by the Respondent. Mr Mason stated that had the document been modified by the Respondent that person's name or reference would be shown on the Whole Game System as the person who had modified the document. Mr Mason did not demonstrate or prove this to be the case as he was conscious of GDPR considerations. Mr Mason confirmed that prior to the hearing his CEO had logged onto the Whole Game System with her FAN number at his request, as if she were the secretary of MPFC, so that she could see what the secretary of MPFC could see when they logged into the Whole Game System. Mr Mason confirmed that his CEO found the exact version of the Appellants statement on the system as the one that the Respondent had provided to the Disciplinary Commission Chair. Mr Mason asserted that the Appellant had not provided any credible evidence to support his assertion that his witness statement had been modified after being uploaded to the Whole Game System. Mr Mason said that the Respondent deals with hundreds of cases per year, they have no emotional attachment to any case and no reason to modify documents. Mr Mason accepted that he and his colleagues had access to the Whole Game System and therefore the Appellants documents.

19. The Appellant through his representative stated that the CRM system within the Whole Game System had been devised by Microsoft and he would find it astonishing to learn that the system would say that a document had been modified when it had not been. The Appellant stated that the Whole Game System clearly states that the document had been created by the portal and modified by the Whole Game System and that there was no reason for such a modification. The Appellant stated that he was concerned that it was possible for someone from the Respondent to log onto the Whole Game System and view the system as if they were the secretary from MPFC. The Appellant stated that given the nature of the allegations against him he wanted any

findings to be made on the statement that he wrote and submitted to the club and for there to be a fair decision made based upon his original statement.

20. The Appeal Board thanked the parties for their concluding submissions and retired to consider their decision on the preliminary issues.

21. The Appeal Board were of the view that neither party had, on the balance of probabilities, clearly demonstrated that the Appellants witness statement contained in the bundle provided to the Disciplinary Chair, was either the version uploaded to the Whole Game System by the club or a modified version of that statement. The Appeal Board felt that in order for the Appellant be afforded a fair hearing the hearing bundle must contain the statements upon which the Appellant wished to rely without any uncertainty. On this basis given the ongoing uncertainty on the issue of the Appellants witness statement despite the submissions of the parties during the Appeal Hearing, the Appeal Board felt unable to proceed with hearing the substantive issues contained within the Notice of Appeal and in exercising its powers under paragraph 21 of the Non-Fast Track Appeal Regulations ordered that the matter should be recharged by the Respondent, and that charge responded to by the Appellant before the matter is reheard by an independent Disciplinary Commission. The Appeal Board made no order as to costs and confirmed that the appeal fee would be returned.

## Conclusion

22. In summary and for the reasons set out:

- a) We order that the matter should be recharged by the Respondent and the parties be afforded the opportunity to have the matter heard afresh by an Independent Disciplinary Commission appointed by the relevant body.
- b) The parties will be free to elect either a paper hearing, or an in-person hearing but in either event, the parties should confirm, prior to any hearing that they are in agreement that the bundle for the hearing contains the evidence that they seek to rely upon.
- c) We make no order as to costs.
- d) We order the appeal fee to be returned.

## **The Appeal Board**

**31.10.22**