

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

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RICHARD WILSON (APPELLANT)

-v-

SOMERSET FA (RESPONDENT)

INTRODUCTION

1. These are written reasons for the findings of an FA Appeal Board which met via videoconference (Teams) on Monday 23rd May 2022. The Appeal Board considered an appeal brought by Richard Wilson (RW) against a decision of Somerset FA (SFA).
2. The Appeal Board, all independent members of the FA's Appeal Panel, was Anthony Rock (Chair), Nolan Mortimer and Emma Vase.
3. Conrad Gibbons, a member of the FA's Judicial Services Team, acted as Secretary to the Appeal Board.
4. The Appellant, Richard Wilson, represented himself. At times he was verbally supported by Dave Brammar (DB). The Respondent was represented by Jonathan Pike, CEO of SFA.
5. This is the decision and written reasons of the Appeal Board. By necessity it is a summary document and is not intended to be a record of all submissions and evidence adduced. For the avoidance of doubt, the Board carefully considered all the evidence in the document bundle and submissions made in this case. Following notification of the Appeal Board's findings, published on Tuesday 24th May 2022, written reasons were requested by both the Appellant and the Respondent.

BACKGROUND FACTS

6. On 25 February 2020, SFA charged RW with two offences: Charge 1, FA Rule E1, failed to comply with Rules and Regulations of the FA, and Charge 2, FA Rule E3, not acting in the best interests of the game. Both charges relate to a game ("the match/game") played between Topsham and Newtown on 25th January 2020. The basis of the charges is that RW allowed/authorised a 12 year old young person to act as an Assistant Referee in an open age game of football. At the game in question, RW was acting as the referee observer and was accompanied by the 12 year old.
7. In February 2020, the FA launched a safeguarding investigation into the actions of RW. During the period of the investigation, which concluded on 26th May 2020, RW was suspended from all

football and the disciplinary charges against him were put on hold. The FA Safeguarding Committee concluded that RW was guilty of poor practice and the Interim Suspension Order issued to him in February 2020 was immediately lifted.

8. On 5th June 2020, SFA notified RW that the safeguarding investigation had concluded and invited him to respond formally to the two discipline charges. RW pleaded guilty to Charge 1 and not guilty to Charge 2, and requested that his case be considered by correspondence. On 13th July 2020, an FA disciplinary commission (“the Commission”), sitting on behalf of SFA, found RW guilty of both charges and imposed a 42 day suspension from all football and a fine of £250.
9. On 25th October 2020, RW appealed the Commission’s decision on all four grounds available to him. The Chair of the Commission responded to RW’s Notice of Appeal on 10th December 2020. In February 2021, the FA withdrew the appeal on the grounds of RW’s ill health. It is the Appeal Board’s understanding, confirmed by an SFA e-mail sent to the FA on 12th April 2022, that the suspension and fine were set aside pending the initial appeal. In March/April 2022, RW and DB made contact with FA Judicial Services requesting that the appeal now be considered.

REQUEST FOR AN OUT OF TIME APPEAL

10. In March 2022, the Chair of the Appeal Board considered a number of preliminary issues, including whether RW’s appeal was now out of time. He concluded that it was the FA who withdrew the appeal in February 2021, and directed that RW still had the right to appeal.

APPEAL GROUNDS/APPEAL BUNDLE

11. The Appellant lodged the appeal on four grounds. The SFA: (1) failed to give the participant a fair hearing; (2) misinterpreted or failed to comply with the rules and or/regulations of the Association; (3) came to a decision which no other such body would have come to and (4) imposed a penalty, award, order or sanction that was excessive. The bundle of documents before the Appeal Board included the original papers considered by the Commission, RW’s Notice of Appeal and a number of documents/e-mails exchanged between SFA and RW. A detailed list of documents considered by the Appeal Board is not reproduced in these written reasons.
12. The Appellant submitted no formal application under FA Disciplinary Regulations (Appeals - Regulation 10) for new evidence to be considered by the Appeal Board.

FIRST GROUND OF APPEAL - FAIR HEARING

13. RW said that he had been assured by SFA (Jennifer Gregory) that all evidence would be submitted to the Commission, and that is why he did not ask for a personal hearing. He thought that the Commission should have been given access to both the FA’s safeguarding report and to

photographs which he had submitted to SFA. Those photographs, which were in the Appeal Bundle, show the young Assistant being briefed by the Referee and shaking hands with both sets of players in the 'line up' before the game. RW said that the photographs had been taken for a very good reason and showed that the Referee and all players were complicit in allowing the 12 year old to officiate. He contended that the Commission would have treated him differently had they known the full facts. He claimed that he had been made a scapegoat for what happened. This was a complete cover up, particularly by Devon FA Officials, and that if he was charged then it was only right that the Referee and both Clubs should also have been charged. It was the Referee who had ultimate responsibility for allowing the young Assistant to officiate. He also made reference to the fact that his employer at the time, Somerset County Council, had been contacted by the FA. It was his view that such an approach was totally inappropriate.

14. In response, the CEO of SFA detailed the process in regard to both the safeguarding investigation and the raising of discipline charges against RW. Whilst he agreed that there was commonality between the two, he did not believe that the findings of the safeguarding investigation should have been available to the Commission. Indeed, SFA did not have access to the full report and therefore could not have included it in the disciplinary case papers. He didn't know if the Commission were aware of the outcome of the FA's investigation, but had no reason to believe that they were. He was not sure if the photographs referenced by RW had been seen by the Commission. The Appeal Board noted that there is no reference to photographs in the Commission's response to the Notice of Appeal but, in e-mails dated 5th November 2020 and 29th April 2022, SFA confirm that the photographs were included in the Commission's case papers.

SECOND GROUND OF APPEAL - MISINTERPRETED OR FAILED TO COMPLY WITH THE RULES AND/OR REGULATIONS OF THE ASSOCIATION

15. In regard to the second ground, whilst in his written submission RW made reference to disciplinary law, in their verbal submissions neither he nor DB could identify specific rules or regulations which the Commission had failed to comply with.

THIRD GROUND OF APPEAL - CAME TO A DECISION WHICH NO OTHER SUCH BODY WOULD HAVE COME TO

16. In regard to the third ground, RW reiterated the points he made under the first Ground of Appeal. It was his submission that because the Commission had not been 'furnished' with all of the evidence available, they had clearly come to a decision that no other such body would have come to. The Appeal Board Chair reminded RW and DB that this was not a re-hearing of the case. It was the role of the Appeal Board to review the decisions and findings of the Commission, based on the evidence that was available to them at the time.

FOURTH GROUND OF APPEAL – IMPOSED A PENALTY, AWARD, ORDER OR SANCTION THAT WAS EXCESSIVE

17. In regard to the fourth ground, RW accepted that he was guilty of poor practice and had openly admitted so. During the safeguarding investigation, which lasted over 3 months, he had been suspended from all football activity. He felt that to be sanctioned with a second suspension (42 days) was double jeopardy and that the Commission should have taken into consideration that he had already been suspended. The Appeal Board noted that whilst he was suspended from February to May 2020, the vast majority of his suspension was served during a time, due to COVID restrictions, when very little football was played.
18. The Respondent said that the safeguarding and discipline cases were separate issues and it was fair that the Commission, in addition to the fine, had imposed a suspension.

FINDINGS OF THE APPEAL BOARD

19. The Appeal Board having considered submissions made on behalf of the Appellant and the Respondent make the following observations. The role of the Appeal Board is to exercise a supervisory jurisdiction. It is not the role of the Appeal Board to substitute its own decision for that of the Commission simply because it would have made a different decision at first instance. Therefore, the Board must apply the following principles to the grounds of appeal:
- a. An appeal such as this proceeds by way of review of the decision of the Commission, it is not a re-hearing.
 - b. It is not open to the Board to substitute their decision for that of the Commission simply because the Board might themselves have reached a different decision. If the Commission has reached a decision which it was open to them to reach, the fact that the Appeal Board might have reached a different decision is irrelevant.
 - c. The Appeal Board should be slow to intervene with evidential assessments and factual findings made by the Commission. It should only be interfered with if they are clearly wrong or if wrong principles were applied. This is likely to be where there is no evidential basis whatsoever for a finding of fact that had been made, and/or where the evidence was overwhelmingly contrary to the finding of fact that had been made.
20. In their determination, the Appeal Board unanimously dismissed the totality of the appeal for the following reasons:
- a. The disciplinary charges against RW were raised in February 2020 and were not reliant on the findings of the FA's safeguarding investigation. In fact, at the time the charges were

raised, the investigation had not started. The Appeal Board concluded that, whilst there was a clear link between the safeguarding and disciplinary cases, the two issues were separate and RW was not disadvantaged by the Commission not having access to the safeguarding report. It is not clear if the photographs referenced by RW in his verbal submission were available to the Commission. However, the Appeal Board concluded that such photographs were not key to the Commission's decision. The fact that the young Assistant Referee is seen in discussion with the Referee and players from both teams is not material to the charges raised against RW.

- b. Based on discussions he had with SFA, RW decided not to ask for a personal hearing. He submitted a short statement in regard to his refereeing relationship with the young Assistant but offered no detailed submission for consideration by the Commission. The Commission had to base their findings on the evidence available to them at the time.
- c. The Commission made a reasonable decision when suspending RW for 42 days. The fact that he had already been suspended during the safeguarding investigation is not double jeopardy. The Appeal Board did not consider in any detail the fact that RW was initially suspended between February-May 2022, when very little football was played. The Commission determined the fine of £250 to be high but did not consider it to be excessive.

- 21. Given RW's ill health and the fact that he is no longer involved in the game, the Appeal Board considered at some length if it was in the best interest of the sport to pursue and invoke the sanction against RW. The Appeal Board concluded that the sanction is to be invoked. In coming to such a conclusion, the Appeal Board encourages the Respondent to agree a suitable repayment schedule with the Appellant should that be of assistance to him.
- 22. The sanction imposed by the Commission is to remain and any aspect of the sanction not yet served becomes immediately enforceable from notification of the Appeal Board's decision. The appeal fee is to be retained. There is no order as to costs.
- 23. The Appeal Board's decision is final and binding on all parties.

Anthony Rock (Chair)

Nolan Mortimer

Emma Vase

Wednesday 25th May 2022