

**IN THE MATTER OF THE FA APPEAL BOARD**

**THE FOOTBALL ASSOCIATION**

**BETWEEN:**

**ADAM SEARS**

**Appellant**

**-and-**

**LIVERPOOL COUNTY FA**

**Respondent**

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

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Appeal Board:	Ifeanyi Odogwu (Chair) – Independent Panel Alan Darfi – Independent Panel Christine Harrop-Griffiths – Independent Panel
Secretary:	Shane Comb
Date:	6 April 2023

**Introduction and Summary**

1. On 7 January 2023, a Merseyside Youth Football League U7 (Red) fixture took place between Knowsley and FGS U7 Marseille (FGS) ('the fixture'). Adam Sears ('the Player/Appellant') was a spectator at the fixture, and was involved in an incident after the fixture with a Match Official.
2. The Appellant was charged by Liverpool FA ('the County FA/The Respondent'). An FA National Serious Case Panel Disciplinary Commission, sitting on behalf of the Respondent ('the Commission'), found the allegation that the Appellant had assaulted or attempted to assault a Match Official proved, in a decision dated 24 February 2023 ('the Decision'). The Appellant was suspended from all football activities for 5 years and required to attend a face-to-face Education Course to be completed before the expiry of the 5-year suspension. The Appellant brings these appeal proceedings against the Decision.

3. This is the decision and written reasons of the Appeal Board. By necessity it is a summary document, and it 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 and submissions made in this case.

### **Background Facts**

4. The Appellant is a player and therefore bound by the FA Regulations as a Participant. Insofar as is relevant to this case, he was a spectator at the fixture where his son was playing for Knowsley.
5. During the fixture, the Match Official (or 'the Referee'), had cause to speak to the Knowsley manager about the Appellant's alleged abusive language. The Appellant was then alleged to have said that if the Match Official came any closer he was going to 'drop him'. The Match Official understood the words 'drop him' to mean that the Appellant was going to punch him. The Appellant was said to make the comment through gritted teeth and his fists were clenched. The Appellant allegedly repeated that he was going to drop him. The Match Official blew the whistle and abandoned the game.
6. The Commission was not persuaded that the Appellant was threatening to strike the Referee, concluding that he was referring to his son being dropped and how the Referee would feel if he were dropped in the same way.
7. The Match Official's father was at the game and is also a match official. He is a Level 5 referee, having refereed for approximately 15 years. The Match Official's father had stayed to watch the first 5-10 minutes of the fixture and then went to referee his own game on a neighbouring pitch. After abandoning the game, the Match Official walked over to the pitch where his father was refereeing. One of the spectators had already gone over to the Match Official's father to let him know what had happened.
8. When the Match Official's father was told about the incident, it was halftime in his game. the Match Official's father told the players of his game that the

second half would be delayed as he dealt with the incident. He jogged up to the car park. He saw the Knowsley managers in the car park and went across to talk with them. He asked them who had threatened his son. They said he was a stepdad to one of their players.

9. The incident that was the subject of the Assault Charge and is the relevant issue before this Appeal Board was captured by video footage. This was played at the initial hearing and was seen by this Board for the purposes of the appeal. The footage captures what happened in the car park, although there is no audio.
10. There was a factual dispute at the personal hearing on what was said and what happened next, who threw the first punch and who the aggressor was.
11. As the Match Official's father was talking with the Knowsley managers, a car slowly pulls up alongside them and stops. the Match Official's father takes steps towards the car and bends down to lower his head to look in the vehicle. The Appellant is seen to then exit the vehicle and approach the Match Official's father. Punches are then thrown by the Appellant.
12. The Commission was not persuaded by the evidence put forward by the Appellant, or the Knowsley managers and found the video evidence supported The Match Official's father's evidence that the Appellant aggressively approached him and struck him several times. The Commission determined that the Appellant was clearly the aggressor and that he punched or attempted to punch the Match Official's father several times.

### **The Charge**

13. The Appellant was charged on the 17 January 2023 for a breach of FA Rule E3.1 - Improper Conduct - assault or attempted assault on a Match Official by Liverpool FA ('the County FA/The Respondent'). Furthermore, an alternate charge of FA Rule E3 - Improper Conduct against a Match Official (including physical contact or attempted physical contact and threatening and/or abusive language/behaviour). The Appellant denied the Charge and requested a personal hearing.

14. The details of the charges as set out in the Charge Letter, concerned the allegation that the Appellant approached the Match Official's father and struck him several times or similar.
15. Accompanying the charge letter was the evidence that the County FA relied upon. In response to the Charge, the Appellant submitted his evidence. The list of documents is set out in the Commission's Written Reasons at §14.
16. A disciplinary hearing was held on 20 February 2023 ('the Hearing'). The central issue was whether the 'assault' charge had been made out.
17. As a Preliminary Issue, the Commission considered that the charge raised against the Appellant for Assaulting or Attempting to Assault a Match Official, was correct as the Match Official's father was discharging his duties "somewhat as a Match Official".
18. After hearing all the evidence, the Commission concluded that the Appellant acted in a manner which caused, or attempted to cause, injury to the Match Official's father. On the balance of probability, and by a unanimous decision, the Commission concluded that the charge against the Appellant of Improper Conduct, Assault or Attempted Assault on a Match Official, was proven.
19. The Disciplinary Commission therefore imposed a suspension from all football activities for 5 years, and a requirement to attend a face-to-face Education Course to be completed before the expiry of the 5-year suspension.
20. The Board noted that the Decision Letter recorded the sanction as: *Suspended from all football for the following categories: Playing, Refereeing, Coaching, Touchline, Ground/Venue, Administration If player is also a Match Official (Referee/Assistant Referee) whilst serving the above suspension you are not permitted to referee any football until the above suspension has been completed and served.*

## **Appeal Grounds**

21. The Appellant lodged an appeal on two grounds, the Respondent (1) came to a decision on the facts of the case no reasonable such body could have reached, and (2) imposed an award order or any other sanction that is excessive.
22. In substance, the issues in the case were (1) the Commission's interpretation of Regulation 96.3 of the FA Handbook concerning whether it was reasonable to consider the Match Official's father a 'Match Official' and (2) whether the Commission reasonably considered that the Appellant's actions constituted an assault on the Referee as per the Regulations, and (3) Whether the Sanction was excessive.

### **The Appeal Hearing**

23. During the appeal hearing, the Appellant appeared himself. The Respondent was represented by Mark Lloyd, Football Services Officer at the County FA.
24. It was argued by the Appellant that no reasonable Commission could have found the Assault proved. He submitted that the Match Official's father should have been considered the aggressor as he approached the Appellant's car and threw the first punch.
25. The Appellant also submitted that the Match Official's father was not a Match Official, as he had placed himself at the car park, away from the pitches. He was not in a visible referee's kit, and the Appellant did not know that he was a Match Official.
26. The Appellant also took issue with the fact that his 5-year suspension also extended to a ground/venue ban, excluding him from spectating or attending matches with his son.
27. Mr Lloyd was unable to assist with the rationale of the Decisions beyond what was contained within the written reasons as he was not part of the Decision. As regards the inclusion of a Ground/Venue ban in the decision letter, Mr. Lloyd clarified that he had selected this option from an electronic system as he had been directed to do so by his chief executive in all suspensions which

included “all football, and footballing activity”. The system allows him to select an “all footballing” suspension without imposing a ground ban. When queried whether the Commission had addressed their minds to the issue of the 5-year suspension also covering a ground ban, he was unable to say.

### **Relevant Rules**

28. Assault or attempted Assault against a Match Official is described on page 209 of the FA Handbook as being:

*“96.3 Assault or attempted assault: acting in a manner which causes or attempts to cause injury to the Match Official (whether or not it does in fact cause injury), examples include, but are not limited to, causing and/or attempting to cause injury by spitting (whether it connects or not), causing and/or attempting to cause injury by striking, or attempting to strike, kicking or attempting to kick, butting or attempting to butt, barging or attempting to barge, kicking or throwing any item directly at the Match Official.”*

### **Findings of the Appeal Board**

29. 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 just simply because it would have made a different decision at first instance. Therefore, the Board must apply the following principles to this ground of appeal:

- 1) An appeal such as these proceeds by way of a review of the decision of the Commission; it is not a rehearing.
- 2) 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 the Commission to reach, the fact that the Appeal Board (or a different Regulatory Commission) might have reached a different decision is irrelevant. To put it another way, it is not for the Appeal Board to ‘second guess’ the Commission.

- 3) The Appeal Board should be slow to interfere 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 was 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.

4) The test for the Board to apply in determining whether the Commission acted '*irrationally*' or '*perversely*' or '*came to a decision to which no reasonable body could have come*' is essentially the *Wednesbury* test applied in public law in cases of judicial review.

5) Any appellant who pursues an appeal on the ground that a Regulatory 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 pass.

6) The Board ought to accord the Commission a '*significant margin of appreciation*' when considering matters such as evidential assessments, factual findings, and any exercise of discretion by the Commission.

30. The crux of this case concerned Regulation 96.3 of the FA Handbook 2021/2022. The central issues for the Board in this appeal were (1) whether the Commission correctly interpreted and reasonably applied this provision to the facts, namely whether they were right to consider the Match Official's father a Match Official. (2) Whether their findings on the assault allegation was reasonable, and (3) whether the sanction was excessive.

31. The Board carefully considered the Board's reasons for finding the Match Official's father to be a Match Official at §12 of the Written Reasons. Whilst the Commission's stated reasons are not entirely persuasive and the expression "somewhat of a Match Official" is unclear, on balance we found the purported finding to be a reasonable conclusion applying the regulations as they currently exist.

(1) Match Official is a defined term in the Regulations at p101 as meaning "**all** match officials recognised by the International Football Association Board, including but not limited to any category of 'on-field match officials' (such as referees, assistant referees, fourth officials, additional assistant referees and reserve assistant referees)" (Emphasis added).

(2) The definition at p101 or under Regulation 96.3 under the Regulations is not limited to Match Officials officiating the fixture in which the

Participant charged was involved in. Neither is this definition apparently limited to officials who are acting in the capacity of a match official at the indexed time of an incident.

- (3) The Regulations do not expressly require the Participant to be aware that the other person is a Match Official.
  - (4) The incident occurred around the vicinity of a sporting venue where matches were being played.
  - (5) the Match Official's father was at the time of the assault in the middle of officiating in the capacity of a Match Official in the adjoining pitch, having delayed the re-start after half time in that game.
  - (6) the Match Official's father was dressed in black, including black shorts and socks. Whilst he was wearing a coat, this was due to the weather.
32. The Board did not accept the Appellant's submissions that the Commission's findings with respect to the actual assault was unreasonable. The Board were greatly assisted by the video footage. The Commission set out relevant considerations and evidence as part of the Decision, and it was completely reasonable for the Commission to find the Appellant was the aggressor and struck the Match Official's father several times, and therefore find the charge proved on the evidence.
33. Having found the charge proved, the Commission appropriately imposed the minimum period of sporting sanction that is permitted of five years, per Regulation 107, p212 in the Disciplinary Regulations.
34. The Board however allowed the appeal on the grounds that the sanction was excessive. This was on the basis that the County had imposed a five-year suspension from all football including a Ground/Venue ban. This was excessive because:
- (1) The Ground Ban was not reflected in the Commissions written reasons, which stated the Appellant was *"to be suspended from all football activity for 5 years (1825 days). Start of the suspension is to be backdated to the 17th January 2023, the date of his interim suspension order. In addition, he is ordered to complete a face to face education programme before the time-based suspension is served, the details of which are to be sent to him by LCFA."*



- (2) The Respondent was unable to clarify whether the Commission addressed their minds to a Ground/Stadium Ban.
  - (3) The Respondent's submissions for the appeal confirmed that the Commission gave the minimum sanction for the Charge.
  - (4) There was no justification in the reasons as to why a Ground Ban was considered appropriate, given the purported intention to impose the minimum sanction and the fact that the Appellant was not a registered coach, having been charged in his role as a spectator.
  - (5) The Respondent confirmed that they (the County) imposed a ground ban by default in such cases, having received guidance.
  - (6) The Board were not aware of any Regulation or purported Guidance which mandated a Ground/Stadium ban for 5-years for such cases.
35. Having allowed the appeal, the Board, in accordance with Regulation 21 of the Non-Fast Track Appeal Regulations, used their powers to determine the matter themselves.
36. In considering sanction, and having considered all the evidence presented to them, we considered this to be a serious incident. The Appellant acted in a confrontational and aggressive manner. Pursuant to the FA Regulations on sanction, the Board having considered the aggravating and mitigating circumstances ordered:
- (1) A 5-year suspension from all football activity (not including a ground/venue ban).
  - (2) He is ordered to complete a face-to-face education programme before the time-based suspension is served, the details of which are to be sent to him by LCFA
37. There was no order as to costs and the appeal fee is to be returned. The Appeal Board's decision is final and binding on all parties.

Ifeanyi Odogwu (Chair)

Alan Darfi

Christine Harrop-Griffiths

21 April 2023