

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

ON 20<sup>th</sup> February 2023

David Reade KC, Yunus Lunat and Shaun Turner

BETWEEN:

Ross McCarthy  
Bradford United

Appellants

And  
West Riding FA

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

Introduction

1. The Appeal Board (“the Board”) was appointed under The Football Association’s (“The FA”) Disciplinary Regulations- Appeals 2022/23 ( “the Appeal Regulations”) to determine an appeal brought by Ross McCarthy and Bradford United (“the Appellants”) by Notice of Appeal dated 4<sup>th</sup> January 2023.
2. By the Notice the Appellant appealed the decision of a Disciplinary Commission, held on 14<sup>th</sup> December 2022, convened on behalf West Riding FA (“the Respondent”), that:
  - a. Ross McCarthy had been guilty of the Offence of E3 - Improper Conduct (including foul and abusive language) and FA Rule E3.2 - Improper Conduct - Assault or Attempted Assault on a Match Official. The sanction imposed was a 1825 day suspension from all football activity, 7 penalty points and completion of a relevant face to face education course; and

- b. Bradford United had been guilty of an Offence under Rule E20- Failed to ensure directors, players, officials, employees, servants, representatives, conduct themselves in an orderly fashion whilst attending any Match. The sanction imposed was an £85 fine.
3. The appeal was heard on 20<sup>th</sup> February 2023 by way of MS Teams. The Appellants attended by Timothy Perera ( Club Representative). The Respondent was represented by Jack Mason (Discipline Manager). The hearing was additionally attended by two sign language interpreters as Mr McCarthy and Mr Perera are deaf and the charges concerned a match played by the Bradford United deaf team.
4. The hearing had been fixed for the attendance of Ross McCarthy but the panel were told that changed work commitments had meant that his attendance was not possible. An application had been made for a postponement on his behalf by Mr Perera but when it was explained that his attendance was not necessary, if Mr Perera felt able to represent him, the postponement application was withdrawn.
5. The Board had before it:
  - a. The Notice;
  - b. The Respondent's Responses.
6. The Appellants, through Mr Perera, made submissions, which were interpreted, and these were responded to by the Respondent's Mr Mason.
7. The Board considered the entirety of the materials which the parties put before us and the submissions made. If we do not explicitly refer a particular point, document or submission, it should not be inferred that we have overlooked or ignored it. We have considered all of the matters placed before us.

#### Background

8. Because of the decision of the Board, as addressed below, the Board are circumspect in their articulation of the background facts.

9. The Appellants were subject to disciplinary charges which arose out of an EDF Challenge Cup game between Bristol City City Deaf FC v Bradford United Deaf FC.
10. The Charges and the supporting evidence had been sent to the Secretary of Bradford United, Umear Aslam, on 1<sup>st</sup> December 2022. The gravity of the charges brought against the player, Mr McCarthy, and the severity of the possible sanctions was evident on the face of the written charge notifications.
11. Guilty pleas were entered and no responsive statements were filed by the due date. The Respondent emailed Mr Aslam on 9<sup>th</sup> December 2022 noting the absence of response statements and extending time to the 12<sup>th</sup> December 2022 for any responses. None were received.
12. A Disciplinary Commission was convened which heard the charges on the 14<sup>th</sup> December 2022. It proceeded on the basis of the guilty pleas and imposed sanctions which cannot be considered to be excessive on the basis of the admitted charges.
13. The Appellants appealed, the grounds of appeal being relied upon being that the Commission had a) come to decision which no reasonable body could have come and b) had imposed a penalty, award, order or sanction that was excessive. The Board notes that in accordance with its obligations it considering all the possible appeal grounds on the basis of the facts of the appeal as presented.

#### Grounds of Appeal

14. The written grounds of appeal appeared to challenge the basis of the findings and the factual account given in support of the original charges. However, no application was made to adduce new evidence and it is difficult see how that could have been made on the basis of the guilty pleas.
15. As the submissions unfolded it became clear that there had been a break down in communications. As noted the charges had been sent, as they were required to be, to the Club secretary Mr Aslam. The Board did not hear from Mr Aslam but the explanation given by Mr Perera was that whilst Mr Aslam was the club secretary the actual secretarial functions for the deaf team were carried out by Mr Perera. This would appear to reflect the practical issues around communicating with those engaged in deaf football. The challenges faced by the deaf in communicating cannot be underestimated, this was very evident to the Board in the conduct of the hearing. On

Mr Perera's account, which the Board had no reason to doubt, was that the nature and gravity of the charges had not been conveyed to him and the player and he understood that a two month suspension for the player was the likely sanction and that it was simpler to enter a guilty plea. The evidence does not appear to have been considered by him or those involved in the actual match until the sanctions had been received. Had the factual allegations and the possible consequences been conveyed to those involved it was clear to the Board that not guilty pleas would have been entered.

16. It is important to state that the Respondent had conducted itself entirely properly and made the charges and the evidence clear to the club secretary, there was no fault on their part nor was there any criticism to be made of the Commission in making the findings it did on the guilty pleas and imposing the sanctions in the light of the material before it.
17. However, the Panel considered that this was an exceptional case which arose from the particular communication difficulties experienced by deaf participants in football. Having heard the appeal it appears that the nature and gravity of the charges were not adequately conveyed by the club, to the player or those directly concerned in the running of the deaf team. This may have been occasioned by communication difficulties. As a consequence the hearing proceeded on the basis of guilty pleas when the nature and seriousness of the charges had not been adequately communicated to the player or those engaged in running the deaf team.
18. Exceptionally then the Panel concluded that a fair hearing did not occur, through no fault of West Riding FA or the Commission. The Panel considered that the possible ground for an appeal was whether the Appellants had been afforded a fair hearing and it was not a requirement of this ground of appeal that there was fault on the part of the Commission or the Respondent. The Appeal panel have therefore exceptionally decided to allow both of the appeals on this basis, having regard to the particular disability of those involved, and to order that the case be remitted for rehearing on the basis that not guilty pleas are entered.

#### Conclusion

19. The Board therefore allows the appeals and the existing decisions are set aside. The matter is remitted back for rehearing of the original charges.
20. The Board considers that in all the circumstances no order for costs is appropriate, and the appeal fee will be returned to the appellant.
21. The Board's decision is final and binding on all parties.

David Reade KC  
Yunus Lunat  
Shaun Turner  
20<sup>th</sup> February 2023