

General Board of Appeal

Case ID:

(1) 11164856M

(2) 11164857M

Personal Hearing

(1) John Brennan

(2) Britwell FC

Appellants

v

Berks and Bucks Football Association

Respondent

The Decision and Written Reasons of The Appeal Board

Disclaimer:

These written reasons contain a summary of the principal evidence before the Appeal Board and do not purport to contain reference to all the points made, however the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Appeal Board did not take such a point, piece of evidence of submission, into consideration when determining the matter. For the avoidance of doubt, this Appeal Board has carefully considered all the evidence and materials in this matter.

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Introduction

1. This is an appeal by John Brennan and Britwell FC (the “Appellants”) against a decision of Berks and Bucks FA (the “Respondent”) that was made by the Disciplinary Commission sitting on a non-personal hearing on the 22nd March 2023.
2. On the 4th March 2023, there was a football match (the “match” or “game”) between *Britwell Men* (“Britwell”) and *KS Gryf First* (“Gryf”). Mr John Brennan was a manager for Britwell and therefore he and Britwell are a “participant” for the purpose of this case.
3. A summary of the original incident is set out in the referee’s (unamended) report as:
“Following the fulltime whistle, i recieved a number of abusive verbal comments towards me from Britwell players, staff and possibly supporters (unsure as there was a large crowd) on my performance along with my decisions. It was intimidating and intrusive as i was surrounded several times after the final whistle by people associated with the club. Further, almost 15mins after the final whistle as i'm driving home, i receive a text message from the Britwell Manager John Brennan stating 'Mate no disrespect to you but in a refereeing capacity I don't want you officiating anything to do with our games in the future'. He then posts a further message defaming my character in an open WhatsApp group with a number of the East Berks Clubs and also the ref secretary saying 'I don't want Raj Mohindra any where near one of our games again. Egotistical, arrogant and biased' tagging the ref sec in this message”. The referee then clarifies that *“The verbal comments included alot of derogitary language including 'Your f*king sh*t ref, 'You're one of the worst refs ever. and shouldnt be allowed in this league'. 'Your biased and dont have a clue what your doing'. 'Your f*king arrogant and shouldnt be allowed near a football pitch' etc”.*
4. The incident was investigated by Berks and Bucks FA and Mr Brennan and Britwell FC were charged on the 9th March 2023. Britwell FC were charged with misconduct for a breach of FA Rule E20. 1 and E21.1 in respect of the behaviour of Players and/or Officials

and/or Spectators. This related to the allegation that after the final whistle several Britwell members approached the referee and used foul and abusive language towards him. John Brennan was charged with a breach of FA Rule E3.1 for improper Conduct against a Match Official including insulting and/or abusive language in respect of the above fixture. This related to the allegation that Mr Brennan used insulting words towards the Match Official via WhatsApp. The Appellants responded to their respective charges and elected a correspondence only hearing. This correspondence hearing was conducted on the 22nd March 2023 and both charges were found proven. The Commission Chair produced written reasons dated 3rd April 2023 explaining how they got to their decision and the Appellants now appeal on the grounds set out below.

The Appeal Board

5. This Appeal Board (“We”, “Us” and “Panel”) was appointed under The Football Association’s (“The FA”) Disciplinary Regulations - Appeals 2022/23. Assisting the Appeal Board on this occasion was an FA appointed secretary whom gave guidance to the Appeal Board on rules and regulations as and when necessary. For the purpose of fairness, there were no conflicts of interest raised or identified between the Appeal Board and parties in this case.

The Grounds of Appeal

6. The Appellants communicated to the Respondent by way of Notice that they had made the decision to appeal the Disciplinary Commission’s decision on the following grounds:

Ground 3

Came to a decision to which no reasonable such body could have come;

The Hearing and Evidence

7. The Appeal Board heard this case on the 25th April 2023 from 6pm online via Teams. Mr Brennan was in attendance and represented himself and Britwell FC. Representing the Respondent was Alastair Kay, Head of Governance for Berks and Bucks FA. The Appellant was reminded that this was a review and not a re-hearing of the decision made by the Disciplinary Commission.
8. The following documents were presented to us for this appeal:
 - 8.1. Notice of Appeal;
 - 8.2. Supplementary Submission;
 - 8.3. Response to Notice of Appeal;
 - 8.4. Papers of First Instance;
 - 8.5. Participant Offence History;
 - 8.6. Results Letter and Written Reasons;
 - 8.7. Vice-Judicial Panel Chair Decision.
9. New Evidence
 - 9.1. Mr Brennan invited the Panel to accept the introduction of new evidence which was a short statement from a Sian Higgins (undated) that gave an account of what she saw at the game. The Panel carefully considered this application against the guidelines and although there was not an entirely satisfactory reason for it not being produced on the first occasion, we did consider it to be relevant and therefore allowed it as part of our assessment.
10. The following paragraphs are a summary of the grounds raised and argued by the Appellants. As mentioned in the disclaimer above, these paragraphs do not purport to rehearse and reiterate every point made, while of course the Appeal Board did take into account all of what was submitted by the Appellants.

Ground 3

11. Mr Brennan explained that in the time in between the decision and the appeal he has received the written reasons and he now understands how the Commission came to their decision regarding his own charge. He re-iterated that it was his opinion and there is “far worse” that is said within these chat groups, but he said he understands that his language could have come across as abusive if he’s calling someone “biased”, which he accepted is effectively “cheating”.
12. Mr Brennan did maintain his argument in respect of the charge against Britwell FC. He invited the panel to find that the Commission were wrong to come to their finding because if they had observed the video originally submitted, the behaviour shown within the game, should lead to the finding that the team didn’t behave as alleged after the game. Mr Brennan was challenged that this would mean that the Commission would have assumed nothing happened at the end of the game as a result of watching a video. He acknowledged the point but he said that they could therefore not find it proven “beyond reasonable doubt”. He was reminded that the test was “on the balance of probabilities” and he explained that on that test also they should not find it proven. Mr Brennan was asked how he responds to the Commission having a referee’s report and then a further email clarifying what happened, compared to no statements at all about the incident. He responded that he provided a response denying the incident and that would be “enough” evidence for the Commission to have found it did not happen. He was again reminded that his statement does not touch on the incidents after the final whistle and rather explains the conduct during the match. Mr Brennan argued that it was all fabricated by the referee and the additional statement of Sian Higgins goes towards this.
- 12.1. In response to these arguments, Mr Kay stated that again he was unable to answer for the Commission Chair and relied on the written reasons.

The Decision

13. The Panel note that Mr Brennan accepted that his language, on reflection, may have been abusive and understood why the Commission came to that decision. To some extent he had abandoned his ground of appeal but the Panel still considered whether this ground was made out. We did not consider that no such reasonable body would have come to this decision. There were messages that Mr Brennan accepted sending and the Commission was right to assess that some of the words used were abusive. The Panel even considered that the Commission was lenient in not including some of the other comments as part of its decision and based this solely on “biased”. The Panel had no difficulty in deciding that the ground of appeal in respect of Mr Brennan is not made out.
14. In respect of Britwell FC, the Panel did not accept that an inference of behaviour is persuasive evidence or evidence stronger than an actual statement of events. We did not accept Mr Brennan’s submissions that the Commission should have assumed nothing happened after the final whistle because the video demonstrated no similar conduct up until the final whistle. Often is the case that a game runs particularly well and an incident can spark major incidents and/or lead to more significant events that are later reported. The Panel did not agree that another body would have gone against the Commission approach in not making this assumption and rather, made their decision based on an extradentary report, as well as an expanded email. Although we allowed the statement in of Miss Sian Higgins, we did not consider this to have made a different to our decision on the ground of appeal.
15. The Appeal Board would like to thank both parties for their submissions and the way in which they conducted themselves throughout the entire hearing.
16. The Appeal Board therefore dismisses the appeal on all grounds (ground 3 in this case).
17. There is no order made as to costs and the appeal fee is forfeited.

18. The Appeal Board's decision is final and binding on all parties.

Alban Brahimi, Chair

Alec Berry

Michael Edwards

3rd May 2023