

# APPEAL BOARD OF THE FOOTBALL ASSOCIATION

**BETWEEN:**

**ALFIE HEMINGTON (Appellant)**

**-and-**

**LONDON FA (Respondent)**

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## WRITTEN REASONS OF THE APPEAL BOARD

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Appeal Board: Sally Davenport (Chair) – Independent Legal Panel Member

Robert Purkiss – Independent Football Panel Member

Billy Thomson – Former FA Council Member

Secretary: Conrad Gibbons – Senior Judicial Services Officer

Date: 16 May 2024

Venue: Held remotely via Microsoft Teams

### INTRODUCTION

1. The Appeal Board was appointed under The Football Association’s Disciplinary Regulations – Appeals (“the Appeal Regulations”). No objection was raised concerning the composition of the Appeal Board.

2. The Appeal Board conducted a hearing on 16 May 2024 to determine an appeal submitted on behalf of Alfie Hemington (“the Appellant”) against a decision of a Disciplinary Commission (“the Commission”) sitting on behalf of London FA (“the Respondent”).
3. The Appellant was notified of the Commission’s decision by letter dated 12 April 2024. Written reasons were provided on 17 April 2024. A Notice of Appeal (“the Notice”) was submitted and a paper hearing was requested.
4. The Respondent submitted a response to the Notice on 9 May 2024 (“the Response”).
5. The Appeal Board had before it a bundle (“the Appeal Bundle”) containing the following:
  - Notice of Appeal
  - Response to Notice of Appeal
  - Papers of First Instance
  - Appellant’s Offence History
  - Results Letters and Written Reasons
  - Sanction Stay Application and Outcome
6. This document constitutes the written reasons for the Appeal Board’s decision. The Appeal Board considered the entirety of the materials that the parties put before it. If this document does not explicitly refer to a particular point, document or submission, it should not be inferred that the Appeal Board overlooked or ignored it.

## **BRIEF BACKGROUND FACTS**

7. The Appellant plays for Wingate & Finchley U18s (W&F”).
8. On 4 February 2024, W&F played a match (“the Match”) against Cockfosters (Youth) U18s. The Appellant played in the Match and captained W&F.

9. On 5 February 2024, the Referee Match Day Coach, Morgan Conn (“MC”), submitted a report to the Respondent in which he alleged that the Appellant had behaved inappropriately towards him in the tea bar facility after the Match (“the Allegation”).
10. The Respondent wrote to the W&F club secretary and asked for witness statements/observations from anyone who witnessed the interaction between the Appellant and MC. On 27 February 2024 the W&F club secretary sent an email to the Respondent containing a statement from the Appellant. The Appellant’s father also exchanged a number of emails with the Respondent regarding the Allegation and the Respondent’s investigation.
11. On 21 March 2024, the Respondent charged the Appellant with improper conduct (including foul and abusive language), contrary to FA Rule E3.1. Specifically, the allegation was that the Appellant approached MC in an aggressive manner, saying “*so you agree those 2 decisions have ruined the game and fucked up our season*” and/or shouted “*what are you going to write in your report?*” and/or “*Yeah, what are you Level 2, and Level 3*” and/or “*Yeah Wanker*” or similar (“the Charge”).
12. The Appellant did not submit any further evidence, either before or after the Charge. The due date for a response to the Charge was 4 April 2024. The W&F club secretary did not respond to the Charge until 5 April 2024, when he submitted a “deny” response and asked for a personal hearing.
13. On 8 April 2024, the Respondent wrote to the W&F club secretary to inform him that as a response to the Charge had not been received by the deadline, the Appellant had forfeited the right to a personal hearing and the hearing would be dealt with on the basis of correspondence only. The W&F club secretary was also advised that if the Appellant wished to submit any further correspondence, the deadline for so doing was 12 April 2024. The W&F club secretary replied to that email the same day, saying that the failure to meet the deadline was his fault and due to the fact that he had been unwell. He asked the Respondent to reconsider its position on a personal hearing, but the Respondent refused the request, effectively saying that deadlines are non-negotiable. The Appellant did not submit anything further ahead of the hearing.

## **FIRST INSTANCE DECISION**

14. The case was considered by a Commission as a correspondence hearing on 12 April 2024. In addition to the charge letter, the Commission had the statements from the Appellant and MC, the email exchanges between the W&F club secretary and the Respondent and the email exchanges between the Appellant's father and the Respondent.
15. The Commission found the charges proven. It imposed a two-match suspension and a fine of £20. It also awarded seven penalty points against W&F.
16. The Appellant was notified of the outcome of the case by a letter dated 12 April 2024. Written Reasons dated 17 April 2024 were subsequently provided.

## **17. THE APPEAL REGULATIONS**

18. Regulation 2 of the Appeals - Non-Fast Track Regulations ("the Appeal Regulations") sets out the grounds upon which a participant may appeal a first instance decision. They are:

*"... the body whose decision is appealed against:*

*2.1 failed to give that Participant a fair hearing; and/or*

*2.2 misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision; and/or*

*2.3 came to a decision to which no reasonable such body could have come; and/or*

*2.4 imposed a penalty, award, order or sanction that was excessive."*

19. Regulation 12 of the Appeal Regulations states:

*“An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.”*

20. Regulation 10 deals with the circumstances in which new evidence may be admitted on appeal. It 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. Such 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 with the reason given as to why it was not, or could not have been, presented at the original hearing and 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.*

21. Regulation 12 of the Appeal Regulations states:

*“An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.”*

22. Regulation 21 of the Appeal Regulations sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal.

## **THE APPELLANT’S SUBMISSIONS**

23. As stated in paragraph 6 above, the following is a summary of the principal submissions made to the Appeal Board. It does not purport to contain reference to all the points made. The absence of a particular point or submission should not imply that the Appeal Board did not take that point or submission into consideration when reaching its decision.

24. In the Notice, the Club stated that it was appealing on grounds 2.1, 2.3 and 2.4 of Regulation 2. In essence, its case was that the Appellant had been denied a fair hearing because he had not been able to have a personal hearing as requested and that the Commission came to a decision to which no reasonable body could have come because the Appellant had not been given a chance to give his view on the situation. The grounds of appeal state that the Commission showed clear bias and that it was “*unreasonable that one statement has been taken into consideration when making the final decision*”. The appeal under ground 2.4 appeared to relate solely to the penalty points imposed on W&F. The Notice also commented in some detail on the behaviour of MC during the Match.

## **25. THE RESPONDENT’S SUBMISSIONS**

26. In the Response, the Respondent provided observations in response to the Notice. It drew the Appeal Board’s attention to the Grassroots Disciplinary Guide 2023/2024 and specifically the fact that no reminder will be sent to a participant who fails to respond to a misconduct charge. It emphasised the need for consistency in dealing with late responses. It submitted that a Commission can only decide the case on the evidence before it and that the sanction imposed was within the guidelines.

## **LEGAL TEST**

27. Regulation 12, cited in paragraph 19 above, makes it clear that the task of the Appeal Board is to conduct a review of the first instance decision rather than a new hearing. In other words, the Appeal Board is not considering the matter afresh, it is simply looking at whether evidential assessments are clearly wrong or wrong principles have been applied.

28. Guidance on how this review should be carried out is to be found in previous cases, including:

(a) The FA v Bradley Wood, 20 June 2018, which states, at paragraph 23:

*“When considering evidential assessments, factual findings and the exercise of a judicial discretion in the context of an appeal by way of review, a Commission must be accorded a significant margin of appreciation. Accordingly, such evidential assessments and factual findings should only be disturbed if they are clearly wrong or wrong principles have been applied. That threshold is high and deliberately so. When assessing whether a sanction is unreasonable the same margin of appreciation applies. It is not for the Appeal Board to substitute its own opinion or sanction unless it finds that the Commission’s decision as unreasonable.”*

and

(b) The FA v José Mourinho, 18 November 2018, which states, at paragraph 54:

*“It is not open to us to substitute our decision for that of the Commission simply because we might ourselves have reached a different decision. If the Commission has reached a decision which it was open to the Commission to reach, the fact that we (or a different Regulatory Commission) might have reached a different decision is irrelevant. To put it another way, it is not for us to ‘second guess’ the Commission; ...*

## **DETERMINATION**

29. The Appeal Board noted that the Appellant had had ample opportunity, both before and after the Charge, to provide any evidence he wished to provide in support of his version of events. No evidence other than his own statement was provided. No application was made to adduce new evidence before the Appeal Board. The Appellant’s comments in the Notice about MC’s behaviour during the Match were disregarded by the Appeal Board as these matters had not been previously raised.
30. The Appeal Board agreed with the Respondent’s submission that deadlines are in place for a good reason. It had some sympathy for the Appellant, in that he had clearly wanted a personal hearing and was not responsible for the late reply, but this was not a case where he had not had the opportunity to present his case at all. He had provided a statement and it was clear from the Written Reasons that the Commission had considered it. He had been given the opportunity to present further evidence/submissions ahead of the correspondence hearing.

The Appeal Board did not therefore consider that the Appellant had been denied a fair hearing.

31. In considering whether the Commission came to a decision to which no reasonable such body could have come, the Appeal Board reminded itself of the legal test and guidance set out in paragraphs 27 and 28 above. It reviewed the Written Reasons. It noted that the Commission had found MC's account "*clear and credible*" and that in preferring his evidence to that of the Appellant, it took account of the fact that by his own admission the Appellant had approached MC after the Match to discuss the referee's performance. In every case where there are two conflicting accounts of an incident and no corroborating evidence for either version of events, the Commission has to take a view on whether the charge is made out on the balance of probabilities. In this case the Commission concluded that it was. The Appeal Board did not find that that decision was a decision to which no similar body could have come. Accordingly it rejected this ground of appeal.
32. Finally the Appeal Board considered whether an excessive sanction had been imposed. It noted that the penalty imposed, including the penalty points for W&F, was clearly within the sanction guidelines and could not therefore be said to be excessive. This ground of appeal failed as well.

## **CONCLUSION**

33. The Appeal Board dismissed the Appellant's appeal.
34. The Appeal Board made no order as to costs.
35. The decision of the Appeal Board is final and binding and there is no further right of challenge.

Sally Davenport

Robert Purkiss



Billy Thomson

4 June 2024