THE FOOTBALL ASSOCIATION

APPEAL BOARD

PERSONAL HEARING

of

DANIEL MINTER (Appellant)

&

ESSEX FOOTBALL ASSOCIATION (Respondent)

REASONS OF THE APPEAL BOARD

These are the written reasons of the decision of an appeal board (the "Appeal Board"), having considered the matter as a personal hearing held online via the video platform MS Teams on 23rd February 2024.

Introduction

1. The Football Association ("The FA") had received an appeal against a decision of the Essex Football Association ("Essex FA") finding a charge proven against the Appellant.

2. The charge had concerned a breach of FA Rule E3.1 Improper Conduct against a Match Official - (including threatening and/or abusive language/behaviour) in a match played on 15th October 2023 between Corringham Cosmos U13 United v White Ensign U13 White ("the Match").

3. The charge had been considered by an FA National Serious Cases panel Chair sitting alone on 30th January 2024 ("the Hearing") when the charge had been found proven ("the Decision").

4. The Appellant was appealing against the Decision.

The Appeal Hearing

5. The appeal hearing commenced on 23rd February 2024. The Appeal Board comprised:

    Paul Tompkins (Chair)
    Ian McKim
    Nolan Mortimer

The Appeal Board was assisted by Vicky Collins of Staffordshire FA acting as secretary to the Appeal Board.

6. In attendance were the Appellant, representing himself, and Greg Hart on behalf of the Respondent.

7. Having introduced all participants in the appeal hearing the Chair explained the procedure to be followed, the necessity to follow FA Non-Fast Track Appeal Regulations (which would be explained as and when necessary) and made careful point of explaining the private and confidential nature of the hearing.

Application to introduce New Evidence

8. The Appellant had sought to introduce new evidence to the appeal hearing in his notice of appeal in the form of a statement from Vinnie Gray and character references from Shihan Graham Sargeant, Danielle Pasquale, Mr & Mrs Darrah, Rachel Moore, Patricia Watson, Mike Deang, Lisa O'Reilly & William Jones, and Sian & Ben Nemorin.

9. The Chair took the opportunity of explaining Appeal Regulation 10 and in particular the necessity for any party seeking to introduce new evidence to satisfy the Appeal Board as to the relevance of that evidence and to explain satisfactorily why that evidence could not be or was not produced at first instance.

    FA Non-Fast Track Appeal Regulation 10 states:

    New Evidence

    10 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. Any 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 (i) with the reason given as to why it was not, or could not have been, presented at the original hearing and (ii) 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.[1]

10. The Appellant explained that the charge had been received by him some considerable time after the Match but he recalled the incidents and in his notice of appeal he had explained that he had been confident that the charge against him would not be found proven. Mr Minter also explained that he had received the notice of charge together with the match official's report from the club secretary, Mr Don French. He explained that he had not received anything further, just those two documents and had been asked by Mr French to provide whatever information he had. This was his first experience of being charged in this way.

11. Mr Minter confirmed that it was the match official's report at pages 31 & 32 of the bundle which he had seen. "To my knowledge and recollection the only document I saw was pages 31 and 32."

12. The indication on page 31 that there were two other witnesses "also reporting" had not registered with Mr Minter as he had only addressed the comments of the match official.

13. In response, Essex FA explained that the potential charge had been investigated in the usual way and the charge had been raised via the club secretary on the 12th January 2024 with all the information they had. This would have been bundled together in a single pdf document and the statement of Robert La Francesca would certainly have been included. Essex FA was unable to provide any insight as to why the club chairman would have entered a statement without letting Mr Minter know, if this was the case.

14. Essex FA had initially emailed the club seeking observations on 5 January 2024. The statement of the club chairman appearing at page 28 of the bundle is dated 7 January 2024. The first brief statement from Mr Minter that appeared at page 23 of the bundle, together with a further copy of his original match report, is dated 9 January 2024. Although Mr Hart was unable to recall precisely when these materials were received by Essex FA, it appeared from the papers that these statements were received in response to their email of 5 January 2024 and prior to the issue of the charge letter on 12 January 2024.Potentially the club secretary had not sent Mr Minter everything he should have but Essex FA was again unable

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1 The FA Handbook 2023/2024 at P.190

to comment. The club secretary should have sent Mr Minter the full case pack, including each of the items mentioned above, and Essex FA was unable to understand how part only of that pack had been received by Mr Minter. So far as Essex FA was concerned sufficient documentation had been provided for Mr Minter to understand the charge that had been raised against him and the strength of the evidence.

15. Mr Minter confirmed that he had only collected his evidence after he had received the Decision and the written reasons as he had not expected the outcome to be what it was, which is why the bulk of his evidence had only now been presented in the notice of appeal. When asked why the statement and character references had all been formatted into a single document rather than being presented as individual statements from the deponents, Mr Minter openly accepted that the presentation was his mistake but that he did have the originals if the Appeal Board wanted to see them.

16. In the course of these proceedings Mr Minter had not received any help from his club. He did understand the severity of the charge and this was set out on page one of the charge bundle: The severity of the charge had been known to him when the papers were sent to him and had been noted by him at the time. He did appreciate the severity of the allegation of threats having been issued.

17. In response to a question why he did not consider obtaining supporting evidence from the outset, Mr Minter explained that he had never been given any guidance that he could obtain evidence from other witnesses. The incident had been so long ago that he did not see any reason to seek evidence but once the Decision had been taken Mr Minter realised that he would have to live with the outcome from then onwards.

18. In response, Essex FA accepted all that Mr Minter had said but commented that Mr French is an experienced club secretary and it was concerning if Mr Minter had not received advice from the club, but this was not something of which the Respondent was aware. The Respondent had, after all received a detailed response from Mr Minter after issuing the charge, and placed this before the original commission. While sympathising with Mr Minter's predicament Essex FA was unable to agree to the submission of new evidence as it had not been available to the original commission and there had been nothing procedurally wrong. There was no procedural reason why the evidence and character references now being produced could not have been produced at the appropriate time.

Deliberation and Decision on New Evidence

19. The Appeal Board then retired to consider the application to introduce new evidence.

20. The Appeal Board took note of the following points:

- Charge notices and supporting documentation are sent to the club as a single document, not separate constituent parts. There was no explanation how or why Mr Minter had been sent part only of the charge papers.
- Mr Minter accepted that he understood the gravity of the charge at the time he received the charge papers.
- Mr Minter appeared to have had no difficulty collecting evidence after the charge had been heard and it was unclear why the significant effort which had been put into addressing the appeal had not been applied to his response to the original charge.
- Mr Minter himself had referred to the time lapse between the Match and him obtaining his evidence. Better evidence may have been available had it been collected sooner.

21. The Appeal Board reminded itself that, like all parties at an appeal hearing, they too are bound by FA Regulations. Appeal Regulation 10 requires there to be "exceptional circumstances" if new evidence is to be allowed to be presented to an appeal board. The Appeal Board did not agree that there were exceptional circumstances in this case, neither was there a satisfactory explanation as to why the evidence now being produced was not or could not have been produced in time to be submitted to the original commission.

22. The application to introduce new evidence therefore fails.

23. The decision not to admit the new evidence was communicated to the Appellant and Respondent.

The Appeal Proper:

Submissions by the Appellant:

24. The Appeal Board carefully considered the appeal notice and its covering correspondence as set out in the Bundle (but without the new evidence).

25. The Appellant presented his appeal, which was based on three grounds:

(i) The body whose decision is appealed against came to a decision to which no reasonable such body could have come.

26. Mr Minter explained to the Appeal Board that he has been involved in instructing and teaching children since he was 16 and instructs adults as well. At no time in his life has he faced a charge such as this and he considered it was disheartening not to allow the new evidence although he accepted that this could and should have been provided sooner. He trains and coaches Japanese Jiu Jitsu which is a discipline teaching respectfulness to others and defence in threatening situations.

27. Mr Minter stated that there was no physical evidence to convict him of the charge. He had seen the match official's statement accusing him of being threatening and yet there was no evidence that anybody at any time had intervened in the alleged confrontation. The Match Official had not sought help elsewhere. There was no evidence of any outside intervention happening on the day.

28. Mr Minter noted the comment in the statement of Robert Clack, his club chairman, stating that this was "not uncommon behaviour for the manager in question". He could not understand why his chairman would have said this. Mr Clack had been his coach since he was aged ten and Mr Clack's comments were inappropriate as he had no previous record of misconduct.

29. Mr Minter had wanted to make reference to his clean record when filing his response to the charge but had been advised by Mr French, the club secretary, that he should not refer to his clean record as he could not be certain the record was clean and if he were found to be misleading the commission that would put him in a bad light.

30. There was no evidence that the club chairman is familiar with Mr Minter's behaviour and the fact that Mr Minter's record is clear should be evidence that Mr Clack was mistaken.

(ii) The body whose decision is appealed against failed to give that Participant a fair hearing.

31. Mr Minter explained once more that he had not been presented with all the evidence against him before responding to the charge and the only time he had seen the statement of Mr La Francesca and the additional statement of the Match Official had been after the Decision had been taken.

32. Mr Minter then referred the Appeal Board to his comments earlier in the appeal hearing when addressing the question of new evidence and explained how he had been at a disadvantage when submitting his response to the charge.

(iii) The body whose decision is appealed against imposed a penalty, award, order or sanction that was excessive.

33. Mr Minter referred to section 9f of the written reasons. He believed he had been placed at disadvantage because his original statement had not been read in full.

34. The maximum suspension of this offence was a suspension of 182 days. The original commission had acknowledged Mr Minter's mitigation but had still imposed the penalty of 140 days out of 182 even though the evidence was not clear cut.

35. The main hindrance of his lengthy suspension is to the children whom he coaches.

Submissions by the Respondent:

36. The Appeal Board considered the formal response to the notice of appeal as well as the written reasons of the commission when it had reached the Decision.

37. Essex FA addressed the Appeal Board in response to the appeal. The response had been set out fully in the written response.

38. The written documents submitted with the charge letter do comprise physical evidence, despite what Mr Minter stated.

39. On the question of whether Essex FA had given Mr Minter a fair hearing, procedurally there was nothing incorrect and they were only able to work on the information provided and the response received. There was nothing unusual or untoward in the investigation, documentation or procedure.

40. Addressing the Appeal Board on the grounds that the commission had come to a decision to which no reasonable body could have come, Essex FA referred the Appeal Board to the written reasons which set out the decision making process. Mr Hart, on behalf of Essex FA, was unable to comment further as he was not part of the decision making.

41. Similarly, the rationale behind the sanction was set out in the written reasons and Mr Hart himself was unable to comment on the level of sanction, other than to note that it was within the normal band, although the process was set out in the written reasons.

42. Mr Hart, on behalf of the Essex FA felt sympathy for Mr Minter if he had not been supported by his club but the Respondent had only been able to deal with the information in front of it, which it had done properly.

Closing submissions

43. In closing the Appellant had little to add but:

- This process has taken up a lot of time.
- He has endeavoured to provide as much information as he can.
- It is upsetting for him to receive such a charge because of his own character.
- This is a new experience for him.
- Mr Minter accepted that it is the club's duty to assist him and they had failed him.

Deliberation

Legal test for all grounds of appeal

44. As is clear from Regulation 12 of the Non- Fast Track Regulations,[2] the task of the Appeal Board is to conduct a review of the first instance decision, and not a new hearing. In other words, the Appeal Board is not considering the matter afresh but, instead, reviewing the first instance decision.

45. Guidance on how this review should be carried out is to be found in:

(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 was unreasonable."

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[2] The FA Handbook 2023/2024 at P.191

and

(b) The FA v José Mourinho, 18 November 18, 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; …

… We are permitted to 'intervene' only when there has been an error of principle by the Commission. To put it another way, we are not permitted to interfere with the decision of the Commission unless we are satisfied that the Commission has gone 'plainly wrong'."

46. Accordingly, the Appeal Board applied the following principles in its approach to the grounds of appeal:

- An appeal such as this proceeds by way of review of the decision of the Respondent. It is not a rehearing of the evidence and arguments at first instance;
- It is not open to the Appeal Board to substitute its own decision for that of the Respondent simply because the Appeal Board might themselves have reached a different decision at first instance;
- If the Respondent has reached findings of fact which it was reasonably open to the Respondent to reach, the fact that the Appeal Board might have reached a different factual finding is irrelevant;
- The Appeal Board will be slow to intervene in evidential assessments and factual findings made by the Respondent. Evidential assessments of the Respondent should only be interfered with if they are clearly wrong ("Wednesbury" unreasonable and/or irrational and/or perverse) or if the wrong legal principles were applied to the making of those factual findings;
- The only likely scenario for the Appeal Board to interfere with factual findings of the Respondent is where there is no proper evidential basis for a finding of fact that

has been made and/or where the evidence was overwhelmingly contrary to the finding of fact that has been made;

- The test for the Appeal Board in determining whether the Respondent acted irrationally and/or perversely and/or "Wednesbury" unreasonably, or came to a decision to which no reasonable such body could have come, is essentially the Wednesbury unreasonableness test applied in administrative law to cases of judicial review;
- Any Appellant who pursues an appeal on the ground that a Disciplinary 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 overcome.

Discussions on the ground submitted

47. In accordance with the principles set out immediately above, the Appeal Board considered all the parties' submissions.

48. The Appeal Board considered whether the Appellant had received a fair hearing.

49. The Appeal Board noted:

The ground for appeal in Regulation 2 of the FA's Non-Fast Track Appeal Regulations[3] is that "The body whose decision is appealed against failed to give that Participant a fair hearing." In other words, that Essex FA had failed to give the Appellant a fair hearing.

- The Appellant had not challenged the procedures of the Respondent nor alleged any shortcoming on the part of the Respondent.
- The Appellant accepted it was his club that had failed him.
- He had provided no evidence as to why his club had behaved in the way he complained that they had.
- There was no evidence that only the match official's first report had been sent with the charge letter.

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3 The FA Handbook 2023/2024 at P.189

- At one point the Appellant made reference to advice he had received from the club secretary when compiling his response so there had been some engagement with the club before the response was submitted.

- The Appellant's written response to the charge letter had been received by the Respondent via the club secretary, as is entirely proper.

- There was nothing defective in the procedures of the Respondent and this had not been challenged by the Appellant.

50. Having considered the question of whether the Respondent had given the Appellant a fair hearing the Appeal Board did not believe there was any way it could allow the appeal on this ground. The Respondent had acted entirely properly, a full written response had been received from the Appellant and there was nothing at any time in the process to suggest that they were any deficiencies.

51. The Appeal Board considered whether the Respondent had come a decision to which no reasonable such body could have come.

52. The Appeal Board took note that:

- From the evidence in front of the original commission, the Decision to find the charge proven was well within the scope of decisions open to the commission.

- Despite the Appellant's suspicion that his statement had not been considered in full, the written reasons specifically state that it was the length of this statement that precluded its being set out in the written reasons, and that his statement had been "read and considered in its entirety". The written reasons further confirmed that the Appellant's submissions were "detailed, informative and well presented".

- Against the Appellant's statement were two match reports from the match official, a statement from the opposing team manager, Mr La Francesca, and a statement from Robert Clack, the Appellant's club chairman.

- The Commission had considered Mr La Francesca's statement to be "particularly critical of the conduct of Daniel Minter throughout the game".

- The match official, who was a minor, described having felt both verbally and physically threatened by Mr Minter.

53. Although mindful of the high threshold for this ground of appeal, the Appeal Board found that the original commission was well within its powers in reaching the Decision that the charge was proven.

54. The Appeal Board considered whether the Respondent had imposed a penalty, award, order or sanction that was excessive.

55. The Appeal Board took note that:

- The entry level of suspension for this offence is 112 days.
- The Appellant did indeed have a clean record.
- Any threat had not been extreme and could have been considered light in some quarters.
- However, this had been at an under 13s match.
- The referee was a minor and had been wearing a yellow arm band to designate himself as such.
- The behaviour had been persistent on the evidence of both the referee and the opposition manager.
- The Appellant had not pleaded guilty so could not be allowed any credit for acceptance of the charge.

56. Having considered the question of sanction at length the Appeal Board could not find fault in the decision-making process. A suspension of 140 days could have been considered harsh, but it was within the scope of available punishments and could not be regarded as wrong. The Commission had correctly identified the potential range of sanctions for an offence of this nature, and had taken account of both mitigating and aggravating factors. It was not for the Appeal Board to impose its own sanction but rather to consider whether the original sanction was wrong and that was not a finding which the Appeal Board considered it could make.

57. Having given due consideration to the Appellant's submissions on all grounds:

- It was unsustainable to suggest that the Respondent had come to a decision to which no reasonable such body could have come. On the evidence in front of the commission, the Decision was well within the reasonable range of decisions to which the commission could have come.

- Procedurally the Respondent had not erred at all. The Hearing had been properly conducted and the limited evidence or representation on behalf of the Appellant was down to the Appellant and his club.
- The sanctioning process had been correct and the Appeal Board would not interfere with the sanction.

Conclusion

58. In summary, the Appeal Board unanimously dismissed the Appeal on each of the grounds raised.

59. The Appeal Board made no order as to costs and the appeal fee is to be forfeited.

60. This decision of the Appeal Board is final and binding and there shall be no right of further challenge.

Paul Tompkins

Ian McKim

Nolan Mortimer 1st March 2024