

APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

ALASTAIR BARK (Appellant)

-and-

HAMPSHIRE FA (Respondent)

WRITTEN REASONS OF THE APPEAL BOARD

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

Jamie Russell – Independent Legal Panel Member

Roy Schafer – FA Council Member

Secretary: Conrad Gibbons - Senior Judicial Services Officer

Date: 28 February 2025

Venue: Held remotely via Microsoft Teams

INTRODUCTION

1. The Appeal Board was appointed to determine an appeal by Alastair Bark (“the Appellant”) against the decision of a Disciplinary Commission (“the Commission”) sitting on behalf of

Hampshire FA (“the Respondent”). No objection was raised concerning the composition of the Appeal Board.

2. The Appeal Board conducted a hearing on the papers only on 28 February 2025. It had before it a bundle of documents which contained the following:
 - Notice of Appeal
 - Response to Notice of Appeal
 - Papers of First Instance
 - Participant Offence History
 - Results Letter and Written Reasons
3. This document constitutes the written reasons for the Appeal Board’s decision. The Appeal Board considered all of the materials before it. If this document does not explicitly refer to a particular document, point or submission, it should not be inferred that the Appeal Board overlooked or ignored it.

BRIEF BACKGROUND FACTS

4. The Appellant is the Club Secretary of Romsey Town FC (“Romsey”). On 12 November 2024 Romsey U23s played a match (“the Match”) against Lymington Town FC U23 Development (“Lymington”). The Appellant attended the Match as a spectator.
5. On 21 January 2025 the Respondent charged the Appellant with two charges of improper conduct contrary to FA Rule E3 (“the Charges”). Charge 1 alleged that the Appellant used foul and abusive language. Charge 2, brought under FA Rule E3.2, alleged that the improper conduct was aggravated by a person’s ethnic origin, colour, race, nationality, faith, gender, gender reassignment, sexual orientation or disability. Specifically the Appellant was alleged to have referred to a Lymington player as a “*lanky, black, prick*” or similar.
6. The Appellant accepted the Charges. He did not request a personal hearing.

FIRST INSTANCE DECISION

7. The Commission, consisting of a member of The FA’s National Serious Case Panel sitting alone, dealt with the case as a non-personal, correspondence case on 4 February 2025. The Commission considered the Charges on the basis of the documentary evidence before it, which is referred to and quoted in its written reasons dated 4 February 2025 (“the Written Reasons”). The Commission found both Charges proven by admission. It imposed a six-match suspension from all football and football-related activities, inclusive of a ground ban and ordered the Appellant to complete an education programme. It also allocated 7 penalty points to Romsey. A letter notifying the decision was sent to Romsey on 7 February 2025.

THE APPEAL REGULATIONS

8. Paragraph 2 of the Appeals – Non-Fast Track Regulations (“the Appeal Regulations”) sets out the grounds on 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.”

9. Paragraph 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.”

10. Paragraph 21 of the Appeal Regulations sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal, the power to remit the matter for re-hearing and the

power to exercise any power which the body against whose decision the appeal was made could have exercised.

THE APPELLANT’S CASE

11. In a Notice of Appeal dated 20 February 2025, the Appellant indicated that he relied on two of the four grounds of appeal cited in paragraph 9 above, namely that the Commission had misinterpreted or failed to comply with the Rules and/or Regulations of The Association relevant to its decision and/or imposed a penalty, award, order or sanction that was excessive.
12. The Appellant stated that he was a non-player and was not attached to any particular team. He said that he had been advised that he must serve his suspension based on the matches played by the team he was watching, ie Romsey U23s. The Appellant stressed that he was not seeking to avoid sanction. He was not proud of his actions and deserved to be sanctioned. However, he submitted that the Commission had been wrong to impose a match-based sanction and should have imposed a time-based sanction instead. Furthermore, a match-based sanction was disproportionately harsh in this case because the U23s played very few games. The Appellant provided details of their fixtures and the fixtures of the Romsey first team, ladies’ team and under 18s team.
13. The Notice of Appeal cited various paragraphs from the Disciplinary Regulations, including paragraph 4 under Part A General, which says that in the interests of achieving a just and fair result, procedural and technical considerations must take second place to the paramount objective of being just and fair to all parties, and paragraph 64 under Part D Section Three – Provisions applicable to Category 5, which states that in exceptional cases a Player can make a claim to the Affiliated Association on the ground that a match-based suspension from a particular football category is disproportionately harsh due to the period taken to serve the suspension. The Appellant said that he had raised paragraph 64 with the Respondent but had been told that it applied to players only.
14. The Notice of Appeal also cited the County FA Disciplinary Sanction Guidelines (“the Guidelines”). They state that:

“A Commission should always impose a sanction against an individual that is proportionate to the offence, with any alterations made for mitigating/aggravating factors.

Just because a Participants 3 match suspension could be over within 8 days should not make a Commission consider a longer suspension to match that of the previous term-based system.

Likewise, a proportionate sanction that takes over a month to serve would not be a reason for a Commission to reduce the sanction that is imposed.

There will be, of course, exceptions to the rule where a term-based suspension could and/or should be implemented.

Charges that may carry this include: E3 Improper Conduct – Assault or attempted Assault on a Match Official, Physical Contact or attempted Physical Contact on a Match Official, Threatening a Match Official, Assault by Participant on Participant.

Additionally, a sanction imposed on a non-player, i.e. Referee, does not lend itself to a match-based sanction. In these circumstances a term-based sanction must be applied. However, this does not apply to Team Officials who can serve match-based suspensions.” [our emphasis]

15. The Appellant submitted that the Commission had misinterpreted the Rules and Regulations by failing to follow the Guidelines. He also submitted that the sanction of six matches was excessive and disproportionate as it would take several months to serve, which was clearly not the intention of the Commission.
16. The Appellant submitted that the Appeal Board should allow the appeal for the reasons set out in the Notice of Appeal and invited it to exercise its powers under Paragraph 21.2 of Part C – Appeals Non-Fast Track to impose its own sanction. He submitted that it would be reasonable to convert the ban to a 42-day suspension, on the basis that a team can normally be expected to play one game a week.

THE RESPONDENT'S RESPONSE

17. In its Response, the Respondent summarised the case timeline and made no further observations.

LEGAL TEST

18. Paragraph 12 of the Appeal Regulations, cited in paragraph 9 above, makes it clear that the task of the Appeal Board is to conduct a review of the first instance decision rather than a *de novo* hearing. In other words, the Appeal Board is not considering the matter afresh.

DECISION

19. The Appeal Board carefully considered the Appellant's submissions. It noted that the Commission had carefully reviewed all the material before it. The Appellant had admitted using the words and expressed regret for doing so from the outset, even before he was charged. The Commission considered this to be a mitigating factor, along with the Appellant's clean disciplinary record. It also took into account the contents of a written statement that the Appellant had submitted. The Commission expressly stated that the Appellant's behaviour was offensive and had no place in football. It went on to say that having taken into account all factors, including the need for effective punishment, deterrence and the protection of players, it had decided to impose a sanction in line with the standard minimum of the range.

20. The Appeal Board noted that the Commission did not appear to have addressed its mind to the Appellant's role within football and whether a match-based suspension was appropriate. It further noted that the Commission made no mention of which team's matches the suspension would apply to. The application of the suspension to the matches of Romsey U23s appeared to be based on the form attached to the decision letter, which the Appeal Board understands to be a standard template. That template refers to the player being suspended from playing until the matches covered by the suspension have been played.

21. The Appeal Board considered that the Guidelines to be somewhat ambiguous in that they define a non-player only as a Referee. In the Appeal Board's view there are clearly other categories of participants, for example club officials who have no particular affiliation to any team within the club, for whom a time-based sanction may also be more suitable. It also noted that the Guidelines expressly state that a term-based sanction must be applied. While the Appeal Board accepted that the Guidelines are just that, namely guidelines rather than rules or regulations, it nonetheless recognised that The FA clearly intends that they should be followed by Disciplinary Commissions.

22. The Appeal Board further noted the provisions regarding time-based suspensions in Part A Appendix 1 – Standard Sanctions and Guidelines for Aggravated Breaches – of the Disciplinary Regulations (page 181 of The FA Handbook) under the heading Players, Managers and Technical Area Occupants. They clearly contemplate that the imposition of a time-based suspension may be appropriate when having regard to the specific roles and responsibilities of the participant, stating that:

“A Regulatory Commission may assess that a Match-based suspension is not appropriate due to the specific circumstances of a case; the nature of the role of a Participant, and/or whether they are currently engaged by a Club. A Regulatory Commission should have regard to the Sanction Range as set out in this Appendix as well as the mitigating and aggravating factors when determining sanction. However, a Regulatory Commission shall be entitled to impose an appropriate time-based suspension that is commensurate with the breach, having regard to the specific roles and responsibilities of the Participant.”

23. The Appeal Board took the view that the need to consider a time-based sanction is particularly compelling in the case of a participant who is neither a player nor a member of the coaching staff. It agreed with the Appellant that it was illogical to limit the right of challenge on the ground that a match-based suspension is disproportionately harsh due to the time to serve it, as referred to in paragraph 13 above, to players only. The Appeal Board does not criticise the Respondent for its response when this was raised, given the wording of the provision in question, but will take up the point with The FA.

24. The Appeal Board found that it was the Commission's clear intention to impose the minimum sanction available to it. It had done that by giving the Appellant a six-match suspension. It was the Appeal Board's understanding that the Appellant accepted that he should be subject to a suspension and that he would not have taken issue with the six-match ban were it not for the disproportionate impact on him because of the infrequency of U23 matches. As such, the Commission could not be said to have imposed an excessive sanction. Where the Commission did err, was in not addressing its mind to the question of whether a match-based suspension was appropriate in the Appellant's particular circumstances. Both the Disciplinary Regulations and the Guidelines clearly envisage such an assessment being made. For that reason the Appeal Board allowed the appeal on the ground that the Commission had misinterpreted the Rules and/or Regulations relevant to its decision.
25. The Appeal Board took the view that this was not a case that needed to be remitted to the Commission or to a fresh Disciplinary Commission. It exercised its power under Paragraph 21.2 of the Appeal Regulations and varied the suspension from six matches to its time-based equivalent, ie 42 days. The remainder of the sanction remains unchanged. It made no order as to costs.
26. The decision of the Appeal Board is final and binding and there is no further right of challenge.

Sally Davenport
Jamie Russell
Roy Schafer

6 March 2025