

**IN THE MATTER OF
THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION**

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BILLINGHAM TOWN FC (APPELLANT)

-v-

DURHAM FA (RESPONDENT)

INTRODUCTION

1. These are written reasons for the findings of an FA Appeal Board which met via videoconference (Microsoft Teams) on 28th March 2025. The Appeal Board considered an appeal brought by Billingham Town FC (Billingham) against a decision of the Durham FA.
2. The Appeal Board, all independent members of the FA's Appeal Board, was Anthony Rock (Chair), Keith Allen and Alec Berry.
3. Jack Mason, a member of the FA's National Secretaries Panel, acted as Secretary to the Appeal Board.
4. The Appellant elected for a personal hearing and was represented by the Club Chairman/Welfare Officer, Kevin Close (KC). The Respondent was represented by the Director of Sport Integrity Matters, Mark Ives (MI). In attendance as an observer was the Durham FA, CEO, John Topping.
5. This is the decision and written reasons of the Appeal Board. It is a summary document and is not intended to be a record of all submissions and evidence adduced. For the avoidance of doubt, the Appeal Board carefully considered all the evidence and submissions made in this case. Following notification of the Appeal Board's findings, published on Friday 28th March 2025, written reasons were requested by the Appellant.

BACKGROUND FACTS

6. On 17th December 2024, Billingham played an Ernest Armstrong cup tie away against Ryton and Crawcrook Town ("the match/game"). On 11th January 2025, the Northern League ("the League"), under League Rule 4.2, raised a charge against Billingham, namely causing the match to be abandoned. It is alleged that, following a floodlight failure, Billingham refused to continue playing. Following correspondence between Billingham, the League and the Respondent, it was

acknowledged by all parties that the League had no jurisdiction in this matter and that any disciplinary action should have been taken by the Respondent.

7. On 22nd January 2025, thirty six (36) days after the match, the Respondent charged Billingham under FA Rule E20 - failed to ensure directors, players, officials, employees, servants, representatives attending any match, do not behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting or provocative. The charge was raised following dispensation from the FA to raise the charge outside of the FA Regulation timeframe. The FA stipulated that the charge was to be raised by 24th January 2025 and was to be heard by 7th February 2025. Although there is no evidence of a formal response to the charge, the Respondent accepted that Billingham were pleading not guilty and were requesting a personal hearing.
8. A Disciplinary Commission (“the Commission”) sat on 29th January 2025 to consider the charge. Billingham were found guilty and fined £150. The Club received eight (8) disciplinary penalty points. Following publication of the Commission’s findings, by way of the Decision Letter issued on 30th January 2025, Billingham appealed the decision.

APPEAL GROUNDS/APPEAL BUNDLE

9. The Appellant appealed on all four grounds available to them; the Respondent, (1) failed to give the Participant a fair hearing, (2) misinterpreted or failed to comply with the Rules and/or regulations of the Association relevant to its decision, (3) came to a decision to which no reasonable such body could have come to and (4) imposed a penalty, award, order or sanction that was excessive.
10. The bundle of documents before the Appeal Board included:
 - a. Notice of Appeal.
 - b. Response to Notice of Appeal.
 - c. Papers of First Instance.
 - d. Appellant’s Offence History.
 - e. Results Letter and Written Reasons.
 - f. Observations submitted to the Appeal Board by both parties.
11. The Appeal Board papers are not replicated in these written reasons but were sent to all parties as part of the appeal process. If required, the papers can be obtained direct from the FA/Durham FA.
12. The Appeal Board noted the following within the FA’s Disciplinary Regulations, Appeals, Non Fast Track (page 189 of the FA Handbook 2024/2025):
 - a. Regulation 12: “*An appeal shall be by way of a review on documents only and shall not*

involve a rehearing of the evidence considered by the body appealed against. 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.”

- b. Regulation 21: “sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal”.

NEW EVIDENCE

13. On 27th February 2025, the Appeal Board was invited by the Appellant to consider if the Respondent’s reply to the Notice of Appeal included new evidence (the FA’s dispensation request form). In accordance with Regulation 10 of the Non-Fast Track Appeal Regulations, the Appeal Board, having considered the submissions of the parties, determined that the dispensation request form was not new evidence; a position which both parties accepted prior to the appeal hearing.

FIRST GROUND OF APPEAL - FAILED TO GIVE THE PARTICIPANT A FAIR HEARING

14. **Appellant’s written submission:** in their Notice of Appeal, the Appellant said they were expecting the League charge to be considered at a League personal hearing on 29th January 2025. On 15th January 2025 the Appellant was informed by the League that an independent committee had been appointed to hear the charge. The Appellant sought confirmation that the referee and representative of the home team would be present to answer questions. As requested at that time by the League, all correspondence was copied to the Respondent (CEO of Durham FA, John Topping).
15. On 20th January 2025, the Appellant informed both the League and the Respondent that the League ...‘did not have the authority to charge the club for Causing the Abandonment of the game, under FA Misconduct procedures this is only permissible by the Governing body’. On 22nd January 2025, the Respondent e-mailed the Appellant stating that they, the County FA, had now raised an FA Rule E20 charge and that the personal hearing was set for the 29th January 2025, the date arranged by the League to hear the League charge. KC replied on behalf of the Appellant stating that he was out of the country until 24th January 2025 and would respond on his return. He also requested confirmation that they were now being charged by the County FA and not by the League. On 23rd January 2025, the case bundle was issued by the Respondent stating that the FA Rule E20 charge would be heard at 6pm on 29th January 2025. The Appellant argued that they had not been given the required 7 days to respond to the charge. They stated that the Respondent's determination to hear the charge within 42 days of the match being played, as per FA Regulations, was the Respondent's sole focus. This pursuit was despite the fact that the FA had actually given the Respondent until 7th February 2025 to hear the charge. The Appellant highlighted this discrepancy, suggesting that the

Respondent's decision to prioritize the 42-day deadline over the FA's extended timeline was unjust and potentially unfair.

16. The Appellant argued that, to ensure fairness, the E20 charge should have '*been held*' outside of the County. The basis for that argument was that.... '*John Topping was involved with the league charge, was setting up an independent committee on behalf of the league and then sat as Secretary on the county charge with a committee that he is responsible for setting up*'. The Appellant further argued that, as no one from the League attended the hearing on 29th January 2025, they were unable to test/question the evidence on which the League charge had been raised. In reference to the dispensation request form, the Appellant said that during the initial hearing '*the chair/secretary of the commission stated that this was referred to the Serious case team, the dispensation form clearly states this is a Non-Serious Case, again misleading information provided by/to the commission who made their judgement with this information provided*'.
17. **Appellant's verbal submission to the Appeal Board:** initially, the Appellant started his verbal submission by stating that the whole situation was... '*a mess,*' caused fundamentally by the actions of the referee and not by Billingham. After being given some latitude to state his case, the Appeal Board Chair reminded the Appellant that he should focus on the grounds of his appeal, and not the referee's actions on the night of the game. Those actions had already been considered by the Commission at the first instance hearing on 29th January 2025.
18. The Appellant stated that the Respondent would have been aware of the abandonment when the referee uploaded details of the game on the FA's Whole Game System (WGS). He was surprised, therefore, that no action had been taken by the Respondent at that point. Despite raising a number of times that it was the Respondent and not the League who should be dealing with the abandonment, the Appellant was ignored.
19. When asked by the Appeal Board if the referee had been present at the hearing on 29th January 2025, and if he had been able to question all witnesses to his satisfaction, KC said.... '*yes he had*'. He added that the game had actually been abandoned at 9.16pm and the referee had not consulted with Billingham Officials before abandoning the game (KC said he was acting secretary at the game). KC said the fact that no League Officials were present at the hearing did not give him the opportunity to question them regarding the substitute goalkeeper. He felt that, whilst he was able to inform the Commission about the League's submission reference the goalkeeper, his inability to question League Officials on the matter was unfair.
20. **Respondent's written submission:** in written response to the Notice of Appeal, the Respondent said the FA set the date by which the hearing was to take place. This was to ensure that conclusion of the case was in line with FA Regulations and the FA authorised time extension. They stated

there was no reason why the hearing needed to be held outside the County. Mr Topping acted as secretary to the Commission and did not take part in deliberations. Also, there was no reason for the League to be in attendance. The Commission was set up to hear a charge of misconduct and not a League charge.

21. **Respondent's verbal submission to the Appeal Board:** the Respondent reminded the Appeal Board that this was an appeal against the County FA and not an appeal against the referee or the League. In response to the Appellant's observation regarding the FA's WGS, the Respondent said that the system is not used as a misconduct reporting system, it is used more for the gathering of statistical information. The system would not have alerted or informed the Respondent that the game was abandoned. On that specific point, the Respondent said the referee didn't abandon the game, Billingham refused to play on after the floodlights were fixed.
22. The Respondent said that asking for dispensation from the FA and then charging the Appellant was the fair and right thing to do. The League had already set a date (29th January 2025) for the League charge to be heard and so it made practical sense for the misconduct hearing to go ahead on that date. The Respondent had given the Appellant every opportunity to defend the charge. Given that the Appellant had not formally responded to the charge, the Respondent could have directed that the case was to be heard on written submissions only. They didn't do that and allowed the Appellant a personal hearing.

SECOND GROUND OF APPEAL - MISINTERPRETED OR FAILED TO COMPLY WITH THE RULES AND/OR REGULATIONS OF THE ASSOCIATION

23. **Appellant's written submission:** the Appellant stated that it was the responsibility of the referee to inform the governing body of any fixture that was abandoned; this clearly didn't happen. The League, wrongly, charged the Appellant. Despite being brought into all responses as from 15th January 2025, at no point from that date did the Respondent inform either the Appellant or the League that the League did not have the authority to issue a charge. It was only following further submissions from the Appellant, 20th January 2025, that the Respondent eventually accepted that the charge should have been raised by them and not the League. This timeframe was clearly outside of the FA Regulations which state....*'if an Affiliated Association decides to issue a Charge against the Club or the relevant Participants it must do so within 28 days of the abandoned Match unless prior dispensation has been granted by The Association to extend the applicable time limits'*.
24. The only procedure followed correctly was that the charge was heard within 42 days of the abandonment. KC said the Appellant was not given adequate time to respond to the charge issued by the Respondent on 23rd January 2025; in line with the FA's Regulations, the Appellant should have been given 7 days to respond to the charge and at least a further 7 days before the hearing took

place. That timeframe would still have met the FA's '*directive*' that the charge was to be heard by 7th February 2025.

25. **Appellant's verbal submission to the Appeal Board:** the Appellant said that the process failure was not their fault, it was the fault of the referee, the League and the County FA. They repeated a number of points stated in their written submission, particularly in regard to not being given adequate time to respond to the charge and then at least a further 7 days notification by which the charge was to be heard. The Appellant said that a charge under League Rule 4.2 was not the same as an E20 charge issued by the Respondent; it required a different approach. Whilst there were no issues with the appointed members of the Commission, if there had been then they would not have had time to make representation. The Appellant accepted that they did not request an extension to the date set for the initial hearing to take place (29th January 2025). The Appellant said that, irrespective of Billingham not formally responding to the charge, the hearing still went ahead. Again this was a clear breakdown in process and a failure to follow the relevant regulations.
26. **Respondent's written submission:** the Respondent accepted that the referee did not report the matter and that the League should not have raised a charge. However, they argued that such errors were not relevant to the appeal. The appeal was against failings of the Respondent and neither of those two failings were the result(s) of any failure by the County FA. The County FA was not aware of the abandonment until 15th January 2025 (29 days after the match), and were given dispensation by the FA to raise a charge outside of the 28 days stated in the FA's Regulations. It was the FA who set the time by which the hearing was to be heard. The Respondent had acted correctly when issuing and then dealing with the charge.
27. Whilst noting that the charge was raised after 28 days, the Respondent said the Appellant was mistaken when arguing that there are no regulations allowing this action. The Respondent made specific reference to the FA's Disciplinary Regulations (Chapter 11, General Provisions, Paragraphs 4, 6 and 7), stating that....'*In the interests of achieving a just and fair result, procedural and technical considerations must take second place to the paramount object of being just and fair to all parties*'. The Regulations also state that....'*the FA has the ability to regulate its own procedures and were right in allowing the charge to be raised*'. The Respondent concluded that such action did not prejudice the Appellant and was fair.
28. **Respondent's verbal submission to the Appeal Board:** the Respondent said the League had acted prematurely when '*charging*' the Appellant with a breach of League Rule 4.2. The Respondent was not aware of the incident until they were asked by the League to become involved, accepting that this was outside the 28 days set by the FA to charge a club or relevant participant following an abandoned match.

THIRD GROUND OF APPEAL - CAME TO A DECISION TO WHICH NO REASONABLE SUCH BODY COULD HAVE COME

29. **Appellant's written submission:** the Appellant drew attention to a number of the referee's actions during and immediately after the game, and said that his statements were not consistent with his verbal evidence. The Appellant also said the Commission did not consider the position and welfare of a number of Billingham's players when coming to their decision. They submitted that....*'the decision for the reasons stated and as such charged by the county is against all principles the FA stand for and showcase in all training materials, namely ensuring the safety and wellbeing of players'. The panel ignored previous occasions where floodlight failure had occurred in other fixtures'.*

30. The Appellant admitted that the decision by the referee to try and re-start the game was subjective. However, they felt that the correct decision would have been for the referee to have abandoned the game. The League, in the first instance, had the power/ability to replay the fixture due to floodlight failure. That would have been the right decision. The League decided they would charge Billingham and the County FA had clearly sided with the League's decision to execute the charge. In the Appellant's submission they said....*'it was clear in the hearings and the fact that the County FA did not follow their own guidelines that a guilty charge of causing the abandonment was the only outcome on the agenda of the regulatory commission'*

31. **Appellant's verbal submission to the Appeal Board:** the Appellant again said that the referee's decision to try and re-start the game was very subjective. But in the Appellant's opinion, given the circumstances, including a yellow weather warning, the right decision would have been to abandon the game. The Referee did not consult with the Appellant and was unaware that at least four Billingham players had other commitments. To expect players to arrive home after midnight, following a midweek fixture, was not acceptable. KC said the referee had told him that guidance was available regarding such situations/circumstances, but that he, the referee, was unaware of the detail. In the Appellant's opinion, common sense should have prevailed.

32. **Respondents written submission:** the Respondent stated the Appellant made no submission that would remotely lead to the Commission's decision to find the charge proven, as being unreasonable. The decision was clearly explained in the Commission's written reasons. The Appellant had simply given an alternative view that the referee should have abandoned the game for floodlight failure. A decision that, by the Appellant's own admission, was subjective.

33. **Respondent's verbal submission to the Appeal Board;** the Respondent said that the Appellant's subjective view is not enough to uphold the appeal. The decision whether or not to abandon the game was the referee's, and he deemed that the game should re-start.

FOURTH GROUND OF APPEAL - IMPOSED A PENALTY, AWARD, ORDER OR SANCTION THAT WAS EXCESSIVE

34. **Appellant's written submission:** the Appellant said that the £150 fine imposed puts the charge in the mid-medium range of sanction. Mitigating evidence indicates that the Appellant made every effort to try and continue the fixture. Through no fault of their own, a number of Billingham players were not able to continue. Billingham did not want to put their players at risk and in the spirit and fairness of the game decided not to play on. They felt the sanctioning level for any charge where welfare was the priority should be in the low bracket, attracting a maximum fine of £100. The two previous FA Rule E21 charges against the Club had no connection to this case and should have been kept separate. The Appellant said the fine levied in this case is higher than that levied for a more serious aggravated charge for which Billingham were fined £135. Therefore the sanction in this case is excessive and not in line with previous sanctions.

35. **Appellant's verbal submission to the Appeal Board:** in their verbal submission the Appellant said there was nothing in the Commission's written reasons to justify imposing a sanction of £150. Given the welfare issues involved, the maximum fine should have been somewhere in the middle region of the low category, attracting a fine of about £50. Through no fault of Billingham's, the FA's Regulations and processes were not followed and the charge was not correctly dealt with. Those factors were not properly considered by the Commission.

36. **Respondent's written submission:** the Respondent drew the Appeal Board's attention to the charge letter within the appeal case bundle. The charge letter clearly outlines the range of sanction that could be considered, and the £150 fine was well within the range which the Commission was entitled to award. The sanction could not be considered as excessive and it is not for the Appeal Board to alter simply because they may have given an alternative sanction.

37. **Respondent's verbal submission to the Appeal Board:** the Respondent said the sanction imposed was one that the Commission was entitled to award and it was not for the Appeal Board to apply a different sanction. They had nothing further to add to their written submission.

LEGAL TEST FOR GROUND OF APPEAL/ROLE OF THE APPEAL BOARD

38. As stated in Regulation 12 of the Non- Fast Track Appeal Regulations, the task of the Appeal Board is to conduct a review of the Disciplinary Commission's decisions. It is not a new hearing or an opportunity to consider the matter afresh. Guidance on how this review should be carried out is to be found in:

- The FA v Bradley Wood, 20 June 2018, which states: *“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.”*

39. When deliberating on their findings the Appeal Board applied the following principles in its approach to the ground(s) of appeal:

- a. An appeal such as this proceeds by way of a review of the decision of the Respondent/Disciplinary Commission. It is not a rehearing of the evidence and arguments at first instance.
- b. It is not open to the Appeal Board to substitute their decision for that of the Disciplinary Commission simply because the Appeal Board might themselves have reached a different decision. If the Disciplinary Commission has reached a decision which it was open to them to reach, the fact that the Appeal Board might have reached a different decision is irrelevant.
- c. The Appeal Board should be slow to intervene with evidential assessments and factual findings made by the Disciplinary Commission. Evidential assessments should only be interfered with if they are clearly wrong or if the wrong legal principles were applied to the making of those factual findings.
- d. Any Appellant who pursues an appeal on the ground that a Regulatory/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 pass.

FINDINGS OF THE APPEAL BOARD

40. The Appeal Board, having taken into account the submissions of both parties and having given the Appeal Bundle careful consideration, make the following findings. For clarity, the Appeal Board has referenced each individual ground of appeal.

41. **First Ground - failed to give the Participant a fair hearing:** whilst the Respondent did not strictly apply the FA Regulations when determining the date of the first instance hearing, the Appellant was given the opportunity to present all their evidence and to question witnesses in

attendance. The Appellant made no representation, either before or during the hearing, in regard to being given only 7 days in which to respond to the charge and for the charge to be heard. The Appeal Board also concluded that there was no reason why the charge should have been heard '*out of County*'. In addition, the fact that no League Official was at the hearing had, in the Appeal Board's determination, no material effect on the findings of the Commission. This ground of appeal was dismissed.

42. **Second Ground - misinterpreted or failed to comply with the Rules and/or regulations of the Association relevant to its decision:** the FA determined that the Appellant could be charged outside of the 28-day period. In doing so the Respondent argued that, within the Disciplinary Regulations, the Appellant was treated fairly, did receive a fair hearing and that...'*in the interests of achieving a just and fair result, procedural and technical considerations must take second place to the paramount object of being just and fair to all parties*'. The Appeal Board had to determine if such irregularities had a detrimental effect on the Appellant and their ability to defend the charge. The Appeal Board concluded that they did not and dismissed this ground of appeal.
43. **Third Ground - came to a decision to which no reasonable such body could have come:** the Appellant said the referee's decision to abandon the game was subjective. Applying the test often referenced in these cases (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation*), the Appeal Board concluded that, on the evidence available to them, the Disciplinary Commission came to a decision they were entitled to make. The Appeal Board dismissed this ground of appeal.
44. **Fourth Ground - imposed a penalty, award, order or sanction that was excessive:** the Appeal Board was not persuaded by the Appellant's arguments that the sanction should be within the low category of the FA Sanction Guidelines. The Appeal Board also did not agree that the previous FA Rule E21 proven charges against the Appellant should have been kept separate and not considered by the Commission. In cases where a charge is proven, a Commission will be informed of the participant's previous disciplinary history (last 5 years, plus the current season) and then take account of the record when determining sanction. The Appeal Board determined that the Commission had imposed a sanction that was not excessive and dismissed this ground of appeal.

OUTCOME

45. The Appeal Board determined that:
- The appeal is unanimously dismissed on all four grounds.
 - The sanction imposed by the Disciplinary Commission on 29th January 2025 is to remain in place.
 - There is no order as to costs and the appeal fee is to be forfeited.

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

Anthony Rock (Chair)

Keith Allen

Alec Berry

Wednesday 2nd April 2025