

# **THE FOOTBALL ASSOCIATION**

## **APPEAL BOARD**

### **PERSONAL HEARING**

*of*

**FLEET SPURS FC (Appellant)**

**&**

**HAMPSHIRE FA (Respondent)**

**Case ID: 12032499M**

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### **REASONS OF THE APPEAL BOARD**

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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 6<sup>th</sup> March 2025.

#### **Introduction**

1. The Football Association (“The FA”) had received an appeal against a decision of the Hampshire Football Association (“Hampshire FA”) finding a charge proven against the Appellant.
2. The charge had concerned an alleged breach of FA Rule E20 in that Fleet Spurs FC 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 alleged misconduct had occurred in a match (“the match”) played on 23<sup>rd</sup> November 2024 between Fleet Spurs U15 Wolves v Hawley Youth U15 Colts in the North East Hampshire Youth League. It had been alleged that players and coaching staff from Fleet Spurs FC told the referee that he was ‘useless’, ‘he should not be

a referee' and that he 'lost control of the game'. Further to this, it was alleged that the managers of Fleet Town FC entered the field of play and abandoned the match.

3. The charge had been dealt with by a commission of the FA's Southern Regional Disciplinary Panel and had been heard by a three person commission ("the commission") sitting on behalf of the Respondent on 30<sup>th</sup> January 2025 ("the Decision").
4. The Appellant was appealing against the Decision.

### **The Appeal Hearing**

5. The Appeal Board convened on 6<sup>th</sup> March 2025 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)

Dennis Strudwick (Panel Member)

Glenn Moulton (Panel Member)

The Appeal Board was assisted by Shane Comb of FA National Secretaries Panel acting as secretary to the Appeal Board.

6. The Appellant having opted for a personal hearing was represented by Mr Richard Wyborn, Club Secretary of the Appellant club.
7. The Respondent was represented by Mrs Debbie Sowton – Discipline manager for Hampshire FA.

### **The Appeal Documentation:**

8. The Appeal Board had before it the full appeal bundle comprising:
  - The Appellant's Notice of Appeal
  - The Respondent's Response to Notice of Appeal
  - Papers of First Instance
  - Appellant's Offence History
  - Results Letter & Written Reasons
9. All members of the Appeal Board were fully conversant with the appeal bundle. Absence of specific reference to any part of the appeal bundle in these written reasons does not mean they were not considered; they were considered in full. These written reasons quote from the papers of first instance only if and when necessary. Absence of wholesale reference to

the papers of first instance should not be taken as an inference that they were not considered by the Appeal Board.

**Submissions by the Appellant:**

10. The Appeal Board carefully considered the appeal notice and its covering correspondence as set out in the bundle and invited Mr Wyborn to address them.

11. The Appellant was appealing against the decision on the following grounds:

- that the Respondent came to a decision to which no reasonable such party could have come and
- the Respondent failed to comply with the Rules and/or regulations of The Association relevant to its decision

12. Mr Wyborn described the circumstances surrounding the match as “*an unprecedented situation*”, “*it was just one of those days*”. He 100 percent believed that the managers acted in the best interests of the children in their care. As a club they teach managers and children how to behave and in the case of the managers, to do what they have been trained to do. However, when they did that they were punished.

13. The Appellant claimed that the Respondent failed to comply with the Rules and/or regulations of The Association relevant to its decision. Mr Wyborn submitted that:

- Safeguarding rules had been misinterpreted
- These are rules which govern every aspect of the game of football, particularly where children and other vulnerable persons are concerned
- He was unable to name the specific rule but submitted that children should be removed from an environment which is dangerous to them and this is what had happened at the match
- Although the submissions of the Appellant in the papers at first instance referred to safeguarding regulations, at the original hearing the chair had informed all parties that the charge being considered related to the abandonment of the fixture and the chair referred to nothing other than the abandonment
- The Appellant does not dispute the comments by players and coaching staff
- Mr Wyborn quoted the commission chair as saying “*we’re here to discuss the abandonment of the game*” and the submissions of the Appellant on the reasons why the coaching staff of both sides had agreed to abandon the match had been ignored

- The Appellant had been honest enough to accept the E21 charge but as a club they denied the allegations against playing and coaching staff and therefore denied the E20 charge
- When asked about some confusion within the bundle (particularly a statement on page 80 of the bundle) as to whether the E20 charge had been accepted, Mr Wyborn admitted to some confusion but was clear that the E20 charge had been denied and was still denied
- Mr Wyborn confirmed that the Appellant accepts that their managers, along with the Hawley management team abandoned the match but submitted that all the evidence points to abandonment for a good reason
- The match was abandoned for the safety of the players.
- The managers of both sides felt the match was deteriorating
- It is clear that the referee has had mentorship and other guidance so there must be some issue with his refereeing
- The actions of the coaching staff was to take children out of an environment which was deteriorating and was no longer fun for them
- The Appeal Board questioned Mr Wyborn on comments such as “*it may have been easier to continue*”, reference to the action being “*overzealous*”, “*playing the game might have been the better decision*” and he was asked whether with hindsight the Appellant considered it might have made the wrong decision. Mr Wyborn emphatically denied that either he or the club was rethinking the situation and he endorsed the actions of the day
- Mr Wyborn was asked what it had been about the referee’s decisions which caused the management teams to abandon the match. He accepted the statements from both sides contained a lot of criticism about the referee but that detracts from the fact that “*the pot was beginning to bubble*” and that everybody, including the referee, was becoming more frustrated.
- It was a bad environment and the children should not have been playing in it
- He accepted nobody felt threatened by the referee
- The comment about playing the game being the “*easier decision*” was intended to convey the Appellant’s conviction that they had not ducked a difficult decision. Things could have gone wrong if the match had been allowed to continue and the consensus was that by abandoning the match this possibility was eliminated
- Mr Wyborn described this as “*a very rare incident*”.

- The Appellant's club linesman had entered the field of play but at least one of those occasions was when the ball was out of play and the Appellant considered this was the right thing to do in helping the referee. The decision to enter the field of play had been borne out of the fact of the referee making poor decisions
- When it was pointed out to Mr Wyborn that the papers of first instance did not refer to signs of growing danger but made much reference to dissatisfaction with the referee, Mr Wyborn submitted that there may be "*too much noise*" in the statements but there was evidence that the match was deteriorating.

### **Submissions by the Respondent:**

14. The Appeal Board considered the formal response to the notice of appeal as well as the written reasons as to how the Decision had been reached. The Appeal Board was not satisfied that the formal response contained a reply to the appeal. There had been reference to the written reasons but those written reasons themselves gave no indication as to how the Decision had been reached by the commission and the Respondent was invited to make oral submissions to the Appeal Board. Because of this unusual position, the Appellant was notified that it would have the opportunity of responding to the Respondent's submissions once they had been made, should the need arise.

15. Mrs Sowton, on behalf of the Respondent submitted the following in response to the appeal submissions:

- There was nothing in FA Regulations or Disciplinary Regulations which allow this action to abandon the fixture
- She agreed that safeguarding training requires children to be removed from harm
- There is an anomaly between safeguarding regulations and disciplinary regulations. If players are removed from a match causing an abandonment there will always be a charge but if that is justified by safeguarding considerations then the disciplinary procedure can be terminated
- Mrs Sowton made reference to her own experience as a discipline manager but this was anecdotal evidence upon which the Appeal Board could not rely and this was disregarded
- The club assistant referee had entered the field of play by his own admission. The referee is a qualified referee and had been properly appointed. It is normal for a club assistant referee to indicate whether the ball has crossed the touchline and maybe to

signal offsidess but not fouls and misconduct. It is not the club assistant referee's place to tell the referee how to do his job.

- The E20 charge raised against the Appellant was correct. The opposition had also been charged and that charge had been found proven
- It was clear from the written reasons provided by the commission that in reaching the Decision the commission had taken into account all factors included in the case papers, not just the question of the abandonment and the submission that the commission had taken too narrow a view of the charge was incorrect
- When asked why the written reasons had provided no indication as to how the Decision had been reached Mrs Sowton accepted that regional disciplinary panel commissions can be "*a mixed bag*" and that these written reasons are "*basic*".

### **Response from the Appellant**

16. The Appellant was invited to respond to the Respondent's submissions.

17. Mr Wyborn submitted that this was not about setting a precedent but was an action arising out of very unusual circumstances.

18 The Appeal Board should not be concerned about setting a precedent but rather acknowledging the situation and understanding the actions of both managers had been taken in good faith.

19. Despite what the Respondent had submitted, the reality is that assistant referees (whether from a club or officially appointed) will always assist the referee with offsidess.

20. The Appellant's club linesman had only entered the field of play to seek dialogue with the referee.

### **Closing Submissions**

21. In closing Mr Wyborn submitted that everything he needed to say had been covered and there was nothing he wanted to add.

### **Deliberation**

#### **Legal test for all grounds of appeal**

22. As laid down in Regulation 12 of the Non- Fast Track Appeal Regulations<sup>1</sup>, the task of the

<sup>1</sup> The FA Handbook 2024/2025 at P.191

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.

23. 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.”*

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’.”*

24. 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.

### **Deliberation on the grounds submitted**

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

26. The Appellant had submitted the commission had focused solely on the question of the abandonment but that was not borne out by the written reasons. The Appeal Board noted that the Appellant had admitted that its players and coaching staff had made the alleged comments to the referee.



27. What was not disputed and was therefore beyond doubt was the two managers had decided to abandon the match and this could have led to individual charges for a breach of FA rule E3 but had instead led to a club charge under E20.

28. The written reasons of the commission had not been as helpful as they might have been but this did not mean that they were in some way wrong or that the written reasons should be disregarded. Neither did it mean that the Appellant had the opportunity of succeeding by default; the Appeal Board still had to consider the grounds for appeal in the light of FA Regulation 12 quoted above.

29. It was to the credit of the Appellant that no attempt had been made to deny the facts of the case and in particular that the Appellant's coach had been part of the decision to abandon the match. Having established that much, the Appellant would then have needed to have satisfied the commission that the reason for abandoning the match was justified. The commission had not found that the Appellant had satisfactorily explained the reasons for the abandonment and the Appeal Board could not find sufficient justification for that either. The statements provided by both the Appellant and their opponents, Hawley FC, went into significant detail about the alleged incompetence and aberrations on the part of the referee without explaining why it was considered that the match was deteriorating, let alone seeking to explain the extent to which it was deteriorating or the rate at which it was deteriorating such as the justify the managers' calling the match off.

30. There was, however, evidence that the participating clubs had sought to usurp the referee's authority even before the match was abandoned. There was clear evidence that assistant referees had sought to advise the referee in the course of the match when the referee had neither invited nor wanted that advice. The question of whether the referee needed the advice was not something with which the commission nor the Appeal Board could concern themselves.

31. Apart from the growing exasperation of the coaching staff there was no evidence as to how the match had deteriorated to the extent that it was an unsafe environment for children. Mr Wyborn had submitted that the match had ceased to be "*fun*" but there had been no indication, for instance, that the referee's actions had exposed the children to harm or potential harm. Tellingly, there was also no indication as to how the potential harms identified in FA safeguarding guidance had arisen or manifested themselves.

32. The Appeal Board was satisfied that on the basis of the papers before it and the submissions they had received, the original commission had not come to a decision to which no reasonable such body could have come.

33. Furthermore, although the Appellant had sought to make out that to leave the children on the field of play would have been a dereliction of their safeguarding duty, breach of no specific Regulation had been identified. Neither had any of the specific harms or risks been identified.

34. The Appeal Board reminded itself of the guidance and principles set out in paragraphs 22 to 24 above. The appeal was not to proceed on the basis of a rehearing nor of what the Appeal Board itself might have decided had it sat in place of the commission but rather whether the commission in reaching the decision had come to a decision to which no reasonable such body could have come. In other words, to allow the appeal the Appeal Board would need to be satisfied that the commission had reached a decision which on the facts it was not entitled to reach. The Appeal Board found that the Decision was within the scope of decisions the commission was entitled to make.

## **Conclusion**

35. In summary, the Appeal Board unanimously dismissed the appeal on both grounds.

36. The Appeal Board therefore ordered:

- The appeal was dismissed on both grounds raised
- There was no order as to costs and
- The appeal fee is to be forfeited

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

Paul Tompkins

Glenn Moulton

Dennis Strudwick

13<sup>th</sup> March 2025