

General Board of Appeal

Case ID:
12018627M

Personal Hearing

Harry Cusworth

Appellant

v

Birmingham Football Association

Respondent

The Decision and Written Reasons of The Appeal Board

Disclaimer:

These written reasons contain a summary of the principal evidence before the Appeal Board and do not purport to contain reference to all the points made, however the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Appeal Board did not take such a point, piece of evidence of submission, into consideration when determining the matter. For the avoidance of doubt, this Appeal Board has carefully considered all the evidence and materials in this matter.

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Introduction

1. This is an appeal by Harry Cusworth (the “Appellant”) against a decision of Birmingham FA (the “Respondent”) that was made by a Disciplinary Commission (the “Commission”) sitting at a non-personal hearing, written reasons dated 2nd January 2025.
2. On the 27th October 2024, there was a football match (the “match” or “game”) between *Total Football C.F Sundays KDM* (“Total Football”) and *Netherton Colts FC Reserves* (“Netherton”). Harry Cusworth was a player-manager for Total Football and he is a “participant” for the purpose of this case.
3. A summary of the original incident is set out in the referee’s (unamended) statement as:

“After the game, I was completing the post-match admin of completing the match report form whilst stood outside the changing rooms. Harry Cusworth had taken exception to me sin-binning him towards the end of the game for dissent and as player manager, was the one who was meant to pay me. This was proving difficult to receive the money however having sorted it with another individual (M Prosser), Harry walked off from me and said “you are lucky you're still able to walk”. I deemed this as a threat and therefore informed him, whilst he was walking off, that I will be reporting this comment”.
4. The incident was investigated by the Respondent and on the 17th December 2024 the Appellant was charged with FA Rule E3 - Improper Conduct against a Match Official - (including threatening and/or abusive language/behaviour). The Appellant responded by accepting the charge and elected a non-personal hearing where the charge was subsequently sanctioned. The Appellant now appeals on the ground(s) set out below.

The Appeal Board

5. This Appeal Board (“We”, “Us” and “Panel”) was appointed to determine the appeal in accordance with The Football Association’s (“The FA”) Disciplinary Regulations -

Appeals 2024/25. Assisting the Appeal Board on this occasion was an FA appointed secretary providing guidance to the Appeal Board on rules and regulations as and when necessary. For the purpose of fairness, there were no conflicts of interest between the Appeal Board and parties in this case.

The Grounds of Appeal

6. The Appellant communicated to the Respondent by way of Notice that they had made the decision to appeal the Disciplinary Commission's decision on the following grounds:

Ground 1

Failed to give the participant a fair hearing.

Ground 4

Imposed a penalty, award, order or sanction that was excessive.

The Hearing and Evidence

7. The Appeal Board heard this appeal on the 17th February 2025 via Microsoft Teams. The Appellant represented himself throughout the hearing. Representing the Respondent was Mr Mark Ives of Sports Integrity Matters. The Appellant was reminded that this was a review and not a re-hearing of the decision made by the Disciplinary Commission. There was a preliminary application for new evidence to be introduced by the Appellant. The explanation was that had he known he could have had a hearing, he would have produced the two statements to be taken into account. This was refused by the Appeal Board where although it was relevant and a reason was given as to its late submission, it was not considered to meet the threshold of an exceptional circumstance.
8. The following documents were presented to us for this appeal:
 - 8.1. Notice of Appeal;

- 8.2. Response to Notice of Appeal;
- 8.3. Papers of First Instance;
- 8.4. Participant Offence History;
- 8.5. Results Letter and Written Reasons.

Ground 1

9. In summary, the Appellant submitted that he had not received a fair hearing because his club secretary had responded to the charge on the assumption that it was a yellow card fee and therefore pleaded guilty on the Appellant's behalf. The Appellant said that he was not given an opportunity to provide statements or share his version of events for the Disciplinary Commission to consider and therefore it was an unfair hearing. He said he had not prior knowledge of the proceedings until he received the outcome.

9.1. In response to submissions made above, the Respondent argued that the failings fall with the Appellant and his club secretary and such responsibility is not to be attributed to the Respondent. There was emphasis as to the charge sheet being clear and a reference to the wording of the allegation, including the particulars of the Appellant's conduct. It was submitted that the County FA put forward all correspondence and responses received before a Disciplinary Commission, and their findings were based on that paperwork alone. It was that submitted that it cannot be an unfair hearing.

Ground 4

10. In summary, the Appellant submitted that because he had not received a fair hearing then it follows that the sanction was excessive. The Appellant did not address the range or any factors taken into account. The Appellant was reminded that this ground is separate from that of a fair hearing but he maintained his position, emphasising that it is a confusing process for an individual such as himself to be fined and banned without having any knowledge of the proceedings.

10.1. In response to submissions made above, the Respondent maintained written submissions that the sanction was within guidelines and within range.

The Decision

11. The Appeal Board carefully considered all written points and arguments made by the Appellant and the Respondent. In respect of ground 1, the Appeal Board reminded itself that this was a question as to whether the County FA or the Disciplinary Commission had given the participant a fair hearing. The Appeal Board considered that it was unfortunate for the Appellant to be in this position but the fault is entirely placed between him and his club. It may also be that a decision to plead guilty was made without consultation of the Appellant and there may have been a lack of communication between the club secretary and the Appellant. However, these factors are not grounds for an appeal that can be attributed as a responsibility of the Respondent. The Appeal Board find that the Respondent appropriately gave the Appellant notice of the charge, an opportunity to respond and set up a (nominated) correspondence hearing before an independent Disciplinary Commission. The Appeal Board find this to be a fair hearing and ground 1 is therefore dismissed.
12. In respect of the Appellant's ground 4 of the appeal, this was not accepted by the Appeal Board. The range for such conduct is between 112 days to 182 days and the Disciplinary, with a general starting point of 147 days. The Disciplinary Commission has come at a sanction of 112 days and a fine of £100, both of which are a minimum within the range. These are not excessive sanctions and rather, demonstrate a significant degree of leniency. The Appeal Board do not accept that the sanction was excessive and ground 4 is dismissed.
13. The Appeal Board would like to thank both parties for their submissions;
14. The Appeal Board dismisses the appeal on the both ground 1 and ground 4;
15. There is no order made as to costs and the appeal fee is to be retained;
16. The Appeal Board's decision is final and binding on all parties.

Alban Brahimi, Chair

Gordon Mellis

William Thomson

Vicky Collins, Secretary

25th February 2025