

IN THE MATTER OF AN APPEAL BOARD HEARING

BETWEEN

WICK FC

and

GLOUCESTERSHIRE FA

WRITTEN REASONS AND DECISION OF THE APPEAL BOARD HEARING ON 29 JUNE 2022

- 1) These are the written reasons for a decision made by an Appeal Board (the "Board") which sat via videoconference on 29 June 2022.
- 2) The Appeal Board was appointed to determine an appeal brought by Wick FC (the "Appellant") against a decision imposed by the Gloucestershire FA (the "Respondent"). The members of the Appeal Board were Ms Laura McCallum (acting as Chair and Independent Legal Panel Member), Leon Bird (Independent Panel Member) and Keith Allen (FA Council Member).
- 3) Mr Conrad Gibbons of the FA Judicial Services Department acted as Secretary to the Appeal Board.
- 4) The following is a summary of the principal issues and matters considered by the Appeal Board. It does not purport to contain reference to all the issues or matters considered, and the absence in these reasons of reference to any particular point or submission made by any party should not be read as implying that it was not taken into consideration. For the avoidance of doubt, all the evidence and materials provided to the Appeal Board by both parties was taken into consideration during our deliberations.

Background

- 5) By letter dated 14 April 2022, the Appellant was charged with a breach of FA Rule E20 in that it had failed to ensure that its Players and/or Officials and/or Spectators conducted themselves in an orderly fashion at a fixture against Shorehampton FC on 13 April 2022 (the "Match").
- 6) The allegation was in relation to a Wick FC supporter letting off "flares" around the pitch area on or around the 83rd minute.
- 7) On 19 April 2022, in response to the Charge, the Appellant notified the Respondent that they would be defending the Charge (albeit this appeared to be admitted on the Whole Game System) and that the matter should be heard by way of correspondence only. For the avoidance of doubt, the Appellant did not request a personal hearing.
- 8) The Appellant lodged a written submission for consideration by the commission that set out its reasons for defending the Charge. In summary, it was the Appellant's position that given their size and resources, it was impossible to control the behaviour of the crowd and it would be unjust for the Appellant to be punished for an incident outside of its control. The Appellant made references to care and effort taken to ensure safety throughout the Match but there was no further information provided as to the nature and extent of steps taken to deter unacceptable conduct (as required by Rule E21).
- 9) At the hearing, the Commission were provided with the following documents as part of the deliberations:
 - a) Charge Sheet
 - b) Report from the Referee
 - c) Written Submissions from the Appellant

d) Appellant's Disciplinary Record

10) Following consideration of the documents noted above, the Commission found the Charge to be proven. The Appellant was warned as to future conduct of spectators and fined £140.00.

The Appeal

11) The Appellant lodged an appeal against the decision of the Commission and did so on three grounds, namely:

- a) Failed to be provided with a fair hearing;
- b) Came to a decision that no reasonable body could have come to; and
- c) Imposed an award or order or other sanction that is excessive

12) The Appellant requested a personal hearing which was held on 29 April 2022. The Appellant was reminded at the hearing that the Appeal Board's role in relation to appeals was very limited. The Appeal Board cannot hear new evidence/information that was not before the Commission (unless there were exceptional reasons) and may only interfere with the Commission's decision if persuaded that one of the grounds of appeal had been established.

13) The Appellant's case can be summarised as follows:

Was not provided with a fair hearing

- a) The Appellant submitted that their submissions in relation to this ground centred on the fact that they felt the decision itself was unfair. The Appellant conceded, upon questioning, that they could not point to any procedural unfairness.

Came to a decision that no reasonable body could have come to

- a) The Appellant was a small club operating in Step 7 in the Gloucester County League.
- b) The Appellant has "very few on the ground."
- c) The Appellant was expecting a larger crowd but did not anticipate the size of the crowd that attended.
- d) The Appellant was concerned about parking and on that basis, extra stewards were engaged and deployed to the car park. The Appellant felt that their resources were placed where needed.
- e) The Appellant has no control of who comes into the ground and did their best during the Match.
- f) The pyrotechnic device was a sparkler and not a flare.
- g) The Appellant submitted that there was nothing that could be done to prevent the incident that led to the Charge. It was entirely out with the Appellant's control.

Imposed a sanction that was excessive

- a) The Appellant argued that the sanction was excessive given the conduct in question and the size of the club.

14) The Gloucester FA's case can be summarised as follows:

Came to a decision that no reasonable body could have come to

- a) The Charges were based on the Referee's observations.
- b) The Club confirmed that a pyrotechnic had been lit.
- c) The Club confirmed that they had a larger crowd than usual and that they had "*no chance of controlling the behaviour of the crowd.*"
- d) FA Rule E20 (and E20.2) is clear with regards to club responsibility for spectator behaviour.

Imposed a sanction that was excessive

- e) The action of letting off pyrotechnics was dangerous and had the potential to cause injury. The sanction reflected this.

Decision of the Appeal Board

15) The Appeal Board reminded itself of the limitations on an appeal before it. It is not permitted to effectively rehear the matter before it and provide the Appellant with a '*second bite at the cherry*'. The Appeal takes the form of a review of the original decision only, based on the documents that were originally before the Commission. The Appeal Board cannot consider new information introduced by the Appellant in what is effectively fuller submissions containing further information not previously communicated to the Commission.

16) The Appeal Board carefully considered the written submissions lodged by both parties in determining this matter as well as verbal submissions made during the day.

17) Rule E20 states that clubs shall be responsible for ensuring that their spectators conduct themselves in an orderly fashion... and that no spectators throw potentially harmful or dangerous objects. Rule E21 goes on to state that it shall be a defence if a club can show that all incidents complained of were the results of circumstances over which it had no control and that the club had used all due diligence to ensure that its said responsibility was discharged.

18) Thus, where Rule E20 is concerned, it is simply not enough to submit that the crowd behaviour was out with its control. The Club must also go on to prove the second element which is that all due diligence was carried out to deter said behaviour. Neither the Appeal Board or the Commission was addressed on that second point.

For example, the Appellant did not provide any submissions on what actual steps they had taken as a club to deter unacceptable conduct such as the use of pyrotechnic devices (or

sparklers) nor whether there was any consideration given to the fact that a larger crowd may pose different issues to that which the Appellant was used to. The Appeal Board considered that there were a number of reasonably practicable steps that the Appellant could have taken in an attempt to deter such behaviour, for instance (1) putting out messages about unacceptable conduct before and during the Match, (2) discussing with the local council whether there was anything they should be aware of when dealing with a crowd that was larger than their normal crowd size and (3) having stewards search spectators as they enter the ground for any prohibited items. Neither the Commission nor the Appeal Board were addressed on any such steps (either whether they were taken or why they could not be taken).

The Appeal Board noted that the Appellant had a concern around parking and stewards were deployed to the car park to alleviate that concern. However, once everyone was parked it did not appear to be the case that those stewards were then re-deployed to the stands. In any event, the Appellant had failed to provide this detail (ie. of extra stewards deployed to the car park) to the Commission in their original submission in defence of the Charge.

- 19) Given the lack of mitigation submitted by the Appellant in their original submission to the Commission and the failure to put across any submissions to prove that they had discharged their responsibilities in relation to spectator conduct (as described above), the Appeal Board is not persuaded that no body (faced with the same information) would have arrived at the same decision of the Commission.
- 20) Given the health and safety risks associated with pyrotechnic devices (of any kind), as well as the FA's Sanctioning Guidelines, the Appeal Board were not of the view that the sanction was excessive given the circumstances.
- 21) Turning to the Appellant's ground of appeal that the club did not have a fair hearing, the Appeal Board noted that the Appellant had failed to set out any reasoning in support of this ground and their submissions centred around the fact that they disagreed with the decision and felt it was unfair. It was felt by the Appeal Board that the Appellant had perhaps misunderstood the nature and extent of this ground.
- 22) To conclude, the Appeal Board finds the appeal dismissed on all three grounds for the reasons we have articulated. The sanction imposed on the Appellant stands.
- 23) The Appeal Board considered that in all the circumstances no order for costs is appropriate, but the Appellant must forfeit the appeal fee.
- 24) The Appeal Board's decision is final and binding on all parties.

Appeal Board

Ms Laura McCallum (Chair)

Keith Allen

Leon Bird

05 July 2022