

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

PETER JONES

Appellant

and

LIVERPOOL FA

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

Introduction

1. The appeal board (the “**Appeal Board**”) was appointed under The Football Association’s (“**The FA**”) Disciplinary Regulations – Appeals 2022/23 (the “**Regulations**”)¹ to determine an appeal brought by the Appellant by Notice of Appeal Letter to The FA (the “**Notice**”), against the decision of the Liverpool FA (the “**Respondent**”) dated 22nd February 2023.
2. The appeal was heard by way of a personal hearing by online platform MS Teams at the request of the Appellant on 30th March 2023.
3. The Appeal Board had before it (1) the Notice; (2) the Appellant’s letter of appeal; (3) the Respondent’s response to the Notice; (4) the original correspondence; (5) the charge letter; (6) the response to charge; (7) statements in support of the charge; (8) written letter in response to the charge from Maghull Community Association FC; (9) the Respondent’s Results Letter; (10) the written reasons of the original commission dated 22nd February 2023, (collectively, the “**Bundle**”)
4. These written reasons do not purport to contain reference to all the points made in the course of the appeal, however the absence in these reasons of any particular point should not imply that the Appeal Board did not take such point into consideration when it considered the matter.

¹ The FA Handbook 2022/23

5. For the avoidance of doubt, the Appeal Board carefully considered all the materials provided with regard to this case.

The Appeal Board

6. The members of the Board were:
 - Paul Tompkins (Chair);
 - Elliott Kenton;
 - Leon Bird.
7. The Secretary of the Appeal Board was Shane Comb, whose assistance was greatly appreciated.

Brief Background

8. The Appellant had played in a fixture between Clay Brow Reserves (“**Clay Brow**”) and Maghull Community Association FC (“**Maghull**”) on 15th January 2023. The referee had reported that at the end of the game there had been a confrontation between players from both sides, that the Appellant had punched an opponent, Kevin Leadbetter, and the referee had reported that he was informed that Mr Leadbetter had had his jaw broken from a punch by the Appellant.
9. The Respondent had proceeded to investigate the incident.
10. The Appeal Board noted that the response to the charge by Appellant had been submitted through Whole Game by Maghull on behalf of the Appellant, accepting the charge and asking for a correspondence hearing. In other words, a hearing decided on the papers alone without further presentation of evidence by the parties.
11. As a consequence the case was considered by a FA National Serious Cases Commission Chair sitting alone in accordance with FA Regulations.

First Instance Decision

12. The Appeal Board considered the Written Reasons (“**Written Reasons**”) of the Commission chair, Naila Hadid, sitting on 22nd of February 2023 (“the **Commission**”). The written reasons were exhibited at pages 41 to 47 of the Bundle.

13. The Commission found the matter proven and passed the following sanction against the Appellant:
 - *Peter Jones – breach of FA Rule E3 - Assault by Participant on Participant.*
Case Proven - 3 Years suspension, £150 Fine and 9 Discipline Points
14. The Appellant was notified of the above decision in a Results Letter (the “**Decision**”) dated 28th February 2023 and as set out at page 39 of the Bundle.
15. The Appellant appealed the Decision and submitted the Notice to the FA. The copy of the Notice in the Bundle was undated but the Appeal Board was not aware of any challenge to the timing of the filing of the notice.
16. The Appellant, in the Notice, appealed the Decision on the ground that the Commission imposed a penalty, award, order or sanction that was excessive.

The Appeal Regulations

17. In essence, there are four grounds upon which the Appellant could seek to make an appeal against the decision of the Respondent.
18. General Appeal Regulation 2², of the Regulations, sets out four grounds upon which the Appellant may appeal the first instance decision(s) – 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.”*
19. General Appeal Regulation 12³ 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.”*

² FA Handbook 2022/2023, p.186

³ FA Handbook 2022/2023, p. 188.

20. The Appeal Board also bore in mind General Regulation 4⁴ of the Regulations which imposes an overriding duty of fairness:
- “The bodies subject to these General Provisions are not courts of law and are disciplinary, rather than arbitral, bodies. 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”.*

Submissions by the Appellant

21. The Appeal Board was asked to consider the submissions of the parties.
22. The Appellant appeared online to represent himself.
23. The Appellant stated from the outset that he had not caused the injuries to Mr Leadbetter. There had been loads of people coming together after the final whistle and anyone could have caused the injury to Mr Leadbetter. The first the Appellant had heard of the severity of the sanction imposed upon him was when he was informed of the three-year suspension by his club. This had been communicated to him by Maghull and when he heard of it he immediately contacted the Respondent where he spoke with Steven Swinnerton, Football Services Manager of the Respondent.
24. Mr Swinnerton was present at the appeal, representing the Respondent. The Appellant asked Mr Swinnerton to confirm he had been in touch immediately and Mr Swinnerton confirmed as much but said he had understood that the Appellant was simply appealing the sanction. Nonetheless he guided the Appellant as to how he could lodge his appeal.
25. At this juncture the Appeal Board broke to consider how it should proceed. There had been no application for the submission of new evidence and the appeal lodged had simply been against sanction but the very first comment which the Appellant had made was that he had not caused the injuries. This was the first denial to appear anywhere. The Appeal Board decided unanimously to proceed but to keep an open mind. It would not be able to determine the appeal on the basis of new evidence but would proceed as permitted by the Regulations.
26. The Appeal Board reconvened and the Appellant was informed that this was not a rehearing nor was it an opportunity to submit new evidence and that his appeal had been based on the single

⁴ FA Handbook 2022/2023, p 169

ground of excessive sanction.

27. The Appellant made reference to the eight match suspension for violent conduct which had been given to Mr Leadbetter, who had provoked the incident by attacking the Appellant's brother. The Appellant had intervened to protect his brother and as a result had received a three-year suspension. It was not fair. The Appellant considered their conduct had been equivalent but the sanctions handed down had been extremely different.
28. The Appellant had initially been told by Maghull that he had been suspended for three matches and fined £50 but was later informed that the suspension was for three years. He was extremely upset by this and that was the point at which he had contacted Mr Swinnerton. Three years effectively ended the Appellant's football career as he is 30 years of age and has suffered a number of medical conditions which he explained to the Appeal Board.
29. The Appellant referred specifically to the incident. He accepted he had punched Mr Leadbetter but that this had been a reaction to himself having been punched, although he could not say who it was that had punched him. As he had punched Mr Leadbetter he pushed him and Mr Leadbetter had stumbled back into a spectator with whom he had then become involved. The Appellant had walked away.
30. The Appellant stated that he is physically incapable of throwing a punch strong enough to break someone's jaw. On 8th August 2022 he had had an operation on his right hand as he was incapable of closing his right hand. Muscle had been removed and he is not capable of making a full fist. He maintained he was physically incapable of causing the injuries which Mr Leadbetter had apparently suffered. The Appellant attempted to introduce evidence from a letter dated 13th March 2023 stating that he is not yet back to full recovery. Having allowed the Appellant the latitude to revisit the incident and give his version of events the Appeal Board was not prepared to take this further by accepting the letter as new evidence.
31. Tellingly, the Appellant referred to the appeal as his first chance to speak. He had not seen the original charge letter, had not been asked whether he accepted the charge and was not aware that Maghull had accepted the charge on his behalf. He had been informed by Maghull that he was suspended for three matches, which is the standard punishment for the red card which the referee had issued on the day. He did not deny being involved in the fracas and had accepted the three match suspension. At this point he had still not seen any correspondence relating to the charge and had not been asked to comment or to plead. It was only after he had been notified of his three-

year suspension that he became involved personally and that was the point of which he had contacted Mr Swinnerton.

Submissions by the Respondent

32. Steven Swinnerton responded to the appeal on behalf of the Respondent.
33. The Respondent had no objection to the Appellant appealing but their prosecution of the charge had been on the basis of the referee's report. Relevant charges had been raised, they had engaged with the club in the correct manner and had followed the Regulations at all points. In the investigation process, both Clay Brow and Maghull had cooperated.
34. The Respondent had taken guidance from the FA before charging and had been advised to charge the Appellant with assault, participant on participant, and this was then presented to the FA's National Serious Case panel.
35. The Respondent had proceeded correctly at all stages and the reason the Appellant had not had the opportunity to address the Commission was because the charge had been accepted and had been asked to be dealt with on correspondence alone. Procedurally this was correct.
36. Mr Swinnerton was asked why it appeared the Appellant had been charged twice on the same facts. He made reference to the on field disciplinary procedure and the issue of the red card by the referee, for which the Appellant had received a standard three match ban. Once the facts became clear to the Respondent the more serious charge had been issued; the Respondent had been following procedure. The Respondent did not accept there was a danger of double jeopardy from the Appellant being charged twice from the same facts but did understand why the Appellant might have accepted a 3 match suspension. The Respondent was unable to comment on why no detailed defence had been mounted to the more serious assault charge.
37. The matter had been dealt with by the FA as a serious case where it had been regarded as a high level offence. Based on the facts, the Appellant and Mr Leadbetter had been charged differently. Mr Leadbetter's involvement had amounted to an allegation of violent conduct but with the medical evidence available the Appellant's involvement was more serious and had amounted to an allegation of assault.
38. The Appeal Board asked the Respondent why the Written Reasons make no reference to the Appellant's disciplinary record and his previous clean record, as well as the guilty plea which

could have afforded the Appellant some mitigation. Not having sat on the Commission Mr Swinnerton was unable to comment but did confirm that everything in the Bundle had been placed before the Commission, including the Appellant's disciplinary record. He accepted that the Appellant did not have a bad record but couldn't comment on how the sanctions had been determined.

Summing Up

39. The Appellant was invited to sum up his appeal.
40. The Appellant reminded the Appeal Board that this was the first opportunity he had had to put his case. On the day in question he had to defend himself but he strenuously denied that it was he who had caused the injuries to Mr Leadbetter. He also mentioned that since the incident he had received threats and this case has caused nothing but stress for him.

Deliberation

41. The Appeal Board was unanimous in appreciating that the appeal which had started as an appeal against excessive sanction had opened and closed with the Appellant claiming that this was the first opportunity he had had to present his case and defend himself.
42. The Appeal Board bore in mind that the appeal could be broader than the ground upon which it had been brought but there was nothing to suggest that there had been any error in the process, the investigation, the charging, the plea or the original hearing by the Commission.
43. However, the Appeal Board felt severe unease at allowing the original decision to stand. There was nothing in the Bundle to suggest that the Appellant had personally been involved at any stage of the disciplinary process until he himself had contacted Mr Swinnerton following determination. Maghull, on whom responsibility rested for responding to the charge and its investigation, had filed what purported to be a letter stating the Appellant's case (p.27 of the Bundle) but only one sentence related to the potential charge against the Appellant and that incriminated him. In truth, Maghull's letter of 19th January 2023 appeared to be more like an attempt to head off an E20 charge than an attempt to plead the Appellant's case.

Appeal Decision

44. The Appeal Board was deeply uneasy that the Appellant had received a severe suspension without having had the opportunity of putting his case. The Appeal Board had been told the Appellant believed he had good grounds for defence but he had not had any opportunity of pleading, let alone defending himself against the charge, because of the actions of his club, Maghull.
45. Such circumstances are not unique. It is not unusual for appeal boards to hear cases where participants have had to live with the consequences of club secretaries' inefficiency or failure to involve the participant in the process and this is not usually sufficient ground for an appeal to succeed. Nevertheless in this case the Appellant is having to live with particularly severe consequences when he sincerely believes he has a defence to the charge.
46. The Appeal Board considered strongly that, in the light of what it had learnt in the course of the appeal, to allow the original decision to stand risked perpetrating an injustice having regard to the severity of the charge and of the sanction.
47. The Appeal Board found no fault in the CFA, FA, or original Commission chair but it is clear from what the Appeal Board heard that this was the first opportunity for the Appellant to have any input on the case. As such the Appellant had not had a hearing at all and considering Appeal Regulation 2 in conjunction with the overriding duty of fairness encapsulated within the General Provisions of The FA Disciplinary Regulations, Regulation 4, the Appeal Board allowed the appeal on the ground that, as a consequence of the circumstances set out above, the Respondent failed to give the Appellant a fair hearing. Given the severity of the charge and sanction the Appeal Board remits the matter to be recharged to give the Appellant the opportunity to respond substantively.
48. In doing so the Appeal Board passes no comment on the Appellant's likely chances of success nor on the merits of the purported defence.

Conclusion

49. In summary, the Appeal Board unanimously allowed the Appeal on the ground stated above.
50. The Appeal Board made no order as to costs and the appeal fee is to be returned.

51. Accordingly, this decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

Signed:

6th April 2023

Paul Tompkins

Leon Bird

Elliott Kenton