

**IN THE MATTER OF AN APPEAL BOARD HEARING**

**BETWEEN**

**MR DWAYNE MARLON DUNCAN**

**and**

**HERTFORDSHIRE FA**

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**WRITTEN REASONS AND DECISION OF THE APPEAL BOARD HEARING HELD ON 16  
FEBRUARY 2024**

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- 1) These are the written reasons for a decision made by an Appeal Board (the “Board”) which sat via videoconference on 16 February 2024.
- 2) The Appeal Board was appointed to determine an appeal brought by Mr Dwayne Duncan (the “Appellant”) against a decision imposed by a Commission appointed by the Hertfordshire FA (the “Respondent”). The members of the Appeal Board were Ms Laura McCallum (acting as Chair and Independent Legal Panel Member), Mr Roger Burden (Former FA Council Member) and Mr Ian McKim (Independent Football Panel Member).
- 3) Mr Shane Comb of the Wiltshire FA 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 26 October 2023, the Respondent charged the Appellant with a breach of FA Rule E3 as it was alleged that the Appellant, at a match against Little Heath Sunday First on 10 September 2023 (the “Match”), had used threatening and/or abusive and /or indecent and/or insulting words or behaviour contrary to FA Rule E3.1. It was further alleged that the Appellant had acted in a threatening manner when after being showed a red card, the Appellant used threatening words towards a Match Official when he said “*Me and you are having a chat after this*”, “*You better be fucking scared*”, and “*Me and you after the game see what I do*” or similar words to that effect. In addition, it was further alleged that after the fixture, the Appellant continued to use threatening words towards the Match Official when he said “*You can keep ignoring me but wait until I get others down here, then see what happens*” or words to a similar effect (the “Charge”).
- 6) In forming the Charge, the Respondent relied on reports from the Match Officials who officiated the Match as well as video footage (but the latter was not viewed by the Commission at the first instance). In any event, the Respondent insisted that the video footage only supports the Charge further.
- 7) The Appellant (via the Appellant’s Club Secretary) admitted the Charge and requested a hearing based on correspondence only. No personal hearing was requested. No other submissions were submitted on behalf of the Appellant including no written plea in mitigation.
- 8) On 17 January 2024, the Appellant was notified that he had (1) been suspended from all football for a period of 154 days (this also included a ground ban), (2) been fined £50, and (3) was ordered to satisfactorily complete an online education programme. In coming to its decision, the Commission at first instance stated with there being no submissions there was no reason not to accept the evidence provided by the Match Officials. As such, this evidence was determined to be undisputed. The Commission noted the Appellant’s previous disciplinary record but that no mitigation was put forward by the Appellant. The Commission looked to determine any mitigation on its own but found none, other than the

Appellant's acceptance of the Charge. The Commission noted the sanction range for this type of offence being 56 days to 182 days, with the recommended entry point being 112 days. The Commission wrote in detail as to how it arrived at the final sanction of 154 days suspension.

### The Appeal

9) The Appellant lodged an appeal against the decision of the Commission. The Appellant did so on two grounds:

- a) The Commission failed to give the Appellant a fair hearing; and
- b) The Commission imposed a penalty, award, order or sanction that was excessive.

10) The Appellant's appeal case may be summarised as follows:

- a) The Commission failed to provide the Appellant with a fair hearing

The Appellant submitted that he was not given a fair hearing because he was not notified of the Charge at all. The first he was aware of the Charge was when the decision letter was received in January 2024.

The Appellant advised the Appeal Board that the Club Secretary was on business in South Africa when the Charge was issued. There was no discussion with the Appellant as to how to deal with the Charge and the Club Secretary dealt with it entirely on his own accord, and unbeknown to the Appellant.

The Appellant contended that the only conversation that he and the Club Secretary had regarding any disciplinary sanction was in relation to his initial red card whereby they expected him to be suspended for 3 matches. The Appellant insisted that there was no communication about the Charge.

- b) The Commission imposed a penalty, award, order or sanction that was excessive

The Appellant failed to submit any written submissions regards this ground but at the hearing the Appellant's verbal submissions were, in essence, that 154 days was excessive regardless of the sanctioning guidelines. Such an offence, even if proven, should see no more than a 5-to-10-day suspension and this would be in line with sanctions that the Appellant has seen in reports about similar offences at Premier League level.

11) The Respondent's case, in defence of the Appeal, can be summarised as follows:

- a) The Commission failed to provide the Appellant with a fair hearing

The Respondent submitted that a failure in communication between the Appellant and the Appellant's Club Secretary was not enough to establish that the Commission failed to provide the Appellant with a fair hearing. The Club Secretary is known to the Respondent and is experienced in dealing with disciplinary matters, including attaching written evidence to cases both in accepting and denying charges. The Respondent, and the Commission, were entitled to proceed based on the response received on the Whole Game System. In any event, the Respondent emailed the Club Secretary on the day

following the initial response to the Charge with a copy of the documentation that the Charge related to. There was no confirmation that the response was to be changed in any way. The Respondent submitted that, in their opinion, it was a conscious decision of the Club Secretary not to provide, on this occasion, any supporting information (including mitigation related submissions). The Respondent makes that submission based on their previous experience of working with this particular Club Secretary.

b) The Commission imposed a penalty, award, order or sanction that was excessive

The Respondent submitted that the sanction cannot be said to be excessive as the Commission has clearly followed the sanctioning guidelines in determining the range and final period of suspension, applying correctly any mitigating and aggravating factors.

The Respondent also clarified that the suspension relates to Sunday football only and therefore does not impact the Appellant's playing career, as the Appellant also plays semi-professional football. The Respondent points to this as another reason for the sanction not being excessive.

Decision of the Appeal Board

12) The Appeal Board reminded itself of the limitations on an appeal before it. It is not permitted to effectively rehear the matter and provide the Appellant with a '*second bite of the cherry*'. The Appeal takes the form of a review of the original decision, based on the documents that were originally before the Commission. The Appeal Board's remit is restricted and its powers limited.

13) The Appeal Board carefully considered both the written and verbal submissions lodged by both parties in determining the appeal.

14) On the question of a fair hearing, the Appeal Board noted the Appellant's assertion that he did not get the opportunity to defend his case or opt for a personal hearing.

The Commission noted that the Appellant's argument was that the Club Secretary had wholly taken command of the running of the case and without his consent had accepted the Charge and asked for the determination to be dealt with by correspondence only. There was no evidence of this submitted with the appeal bundle. The Appeal Board asked the Appellant whether he had asked the Club to support him in his appeal, but the Appellant confirmed that he hadn't appreciated that he would need any support from the Club. The Appeal Board asked the Appellant whether he had attempted to submit new evidence to support his arguments. The Appellant confirmed that he had not and had been confused about the process. The Appellant confirmed that he did not seek help from either the Club or the County FA who were acting as secretary to the appeal. The Appellant did advise that the Club Secretary was maybe going to write a letter of support, but no such letter materialised.

The Appeal Board agreed with the Respondent's assertion that any allegation of a breakdown in communication between the Appellant and the Club Secretary did not meet the test for a finding that there was a failure on the part of the Commission to give the Appellant a fair hearing.

15) Turning to the second ground of appeal, the Appeal Board considered whether the sanction imposed was excessive. The Appeal Board found that the Commission applied the sanctioning guidelines correctly and provided a thorough, and understandable, explanation as to how it arrived at the 154-days suspension (including an application of

mitigating and aggravating factors). There was thus no evidence to suggest that the sanction was excessive.

- 16) Having considered the two grounds of appeal, the Appeal Board in the interests of fairness considered whether the matter should be remitted for a rehearing on the basis that the Appellant insists he had no knowledge of the Charge whatsoever, never mind had any say in how the matter was to be dealt with. However, given the lack of any evidence to support this position, the Appeal Board considered that there was nothing it could do in this regard.
- 17) To conclude, having considered the grounds of appeal, the Appeal Board unanimously finds the appeal dismissed for the reasons we have articulated. The original suspension imposed on the Appellant stands.
- 18) The Appeal Board considered that it would not be appropriate to award costs in this matter but the appeal fee shall be forfeited.
- 19) The Appeal Board's decision is final and binding on all parties.

Appeal Board

Ms Laura McCallum (Chair)

Mr Ian McKim

Mr Roger Burden

20 February 2024