

IN THE MATTER OF AN APPEAL BOARD HEARING

BETWEEN

MR GEORGE BENNETT

and

LINCOLNSHIRE FA

**WRITTEN REASONS AND DECISION OF THE APPEAL BOARD HEARING HELD ON 07
NOVEMBER 2024**

- 1) These are the written reasons for a decision made by an Appeal Board (the “Board”) which sat via videoconference on 07 November 2024.
- 2) The Appeal Board was appointed to determine an appeal brought by Mr George Bennett (the “Appellant”) against a decision imposed by a Commission (Chair sitting alone) appointed by the Lincolnshire FA (the “Respondent”). The members of the Appeal Board were Ms Laura McCallum (acting as Chair and Independent Legal Panel Member), Mr Yunus Lunat (Independent Football Member) and Mr Greg Fee (Independent Football Panel Member).
- 3) Mr Shane Comb 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 17 September 2024, the Respondent charged the Appellant with a breach of FA Rule E3 (“Charge 1”) for improper conduct and FA Rule E3.2 (“Charge 2”) for aggravated misconduct (together, the “Charges”). It was alleged that the Appellant used abusive and/or indecent and/or insulting words or behaviour contrary to FA Rule E3.1 and that this was an aggravated breach under FA Rule E3.2 because it included a reference to nationality. The comments alleged to have been used were: “*You’re a pathetic Spaniard*” and/or “*Fuck off and come back to your fucking country*” and/or “*You are jobless and came from a pathetic poor country*” and/or “*You came here to steal our jobs*”, or similar.
- 6) In bringing the Charge, the Respondent relied on the following witness statements:
 - a) Witness Statement of Opponent Player 1, who advised that the Appellant made racist comments towards him including but not limited to: “*Fuck off and come back to your fucking country*”; “*You are jobless, and you came from a pathetic poor country*” and “*You came here to steal our jobs.*” Opponent Player 1 described feeling shocked and

left the pitch immediately. He described approaching the match referee to report the incident. He confirmed that the match referee did not hear the comments. He advised that he was accompanied by his Captain, who overheard the comments, when speaking to the match referee. He also confirmed that the Captain and Manager of the Appellant's club were also informed.

- b) Witness Statement of Opponent Player 2, described there being raised tensions across both teams. He described the Appellant as "*aggravating*" throughout the game. He advised he was standing 3 metres from Opponent Player 1 when he heard the Appellant use the alleged comments - "*You're a pathetic Spaniard*", "*Fuck off back to your own country*", "*You're a piss poor Spaniard from a shitty little country*" and "*You're coming over here taking our jobs.*" He described confronting the Appellant. He said that Opponent Player 1 was immediately substituted from the game. He advised in his statement that Opponent Player 1 approached him after the game to advise that he wanted to report the comments to the match referee.
 - c) Witness Statement of Appellant Club Official, stated that she was unable to comment on the alleged incident as no one heard anything untoward, including the match referee. She advised that there was an altercation after the match. She described walking behind the Appellant with a friend and a baby. She advised that "*out of the blue*" one of the Opponent players ran over and grabbed the Appellant, looking to hit him. She advised that there was shouting, and accusations aimed at the Appellant, but the accusations were denied. The Club Official did not elaborate on the nature and extent of the accusations.
- 7) The Appellant denied the Charges and requested that the case be determined by way of a correspondence hearing, on the papers only. No in-person hearing was therefore held. The Appellant submitted a witness statement. He denied the allegations and confirmed that he felt victimised. He confirmed the altercation after the match and that an opponent player was accusing him of making comments to his teammate, under the caveat that the Appellant strongly denied this allegation. The Appellant described feeling unnerved by the altercation and under threat of violence. The Appellant stressed that he was not a racist and one of his good friends (who is also a teammate) is of mixed race.
- 8) The case at first instance was determined by a Commission of a Chair sitting alone. The Commission confirmed that it carefully considered all witness statements submitted in the matter, including that of the Appellant's statement. The Commission noted that whilst the

Opponent players' statements do not mention the post-match altercation, it was believed more likely than not to have taken place and demonstrates the belief of the Opponent teammates that something did occur. The Commission considered that whilst the supporting statement for the allegation did not replicate the exact comments alleged to have been made, it did provide credibility to the initial allegation due to the similarity in recollections.

- 9) The Commission went on to confirm that in its opinion, having reviewed the evidential bundle in full and with reference to the balance of probabilities test, it was more likely than not that the Appellant had approached opponent Player 1 made the comments as alleged which included the use of expletives. As such, he considered that Charge 1 (FA Rule E3) was proven. Turning to Charge 2 (FA Rule E3.2 – Aggravated Breach), the Commission accepted that the comments made included reference to the nationality of opponent Player 1 and therefore this also met the threshold to find Charge 2 proven.

- 10) Having found the Charges proven, the Commission noted that the Appellant had no similar offences and therefore treated this as mitigation. The Commission noted that the sanction range for the Charges under the FA's Standard Sanctioning Guidelines under the Disciplinary Regulations ("FA Sanctioning Guidelines") was a match suspension between 6 to 12 matches, a monetary fine and mandatory education. The Commission placed the entry point for this offence at the minimum of 6 matches, a fine of £75 and the mandated course of education. However, given the multiple aggravated comments and the use of expletives, the sanction was increased to a suspension of 10 matches, a fine of £125 and mandated education. Given the Appellant's disciplinary record and applying mitigation, this was reduced to an 8-match suspension, a fine of £100 and the mandatory course of education (the "Decision").

The Appeal

- 11) The Appellant lodged an appeal against the Decision and did so on three grounds:
 - a) The Commission failed to give the Appellant a fair hearing;
 - b) The Commission came to a decision which no reasonable body could have come to;
and
 - c) The Commission imposed a penalty, award, order or sanction that was excessive.

12) The Appellant lodged an application to submit new evidence in the form of a WhatsApp Message from the match referee, and a statement confirming that he never knew the nationality of opponent player 1 to allow him to form the basis of any discriminatory comments. When asked why the aforementioned was not lodged at first instance, the Appellant stressed that he was not aware of the process and much of it had been left to the Club, with Club Officials out of the country in the United States at the time. The Appellant stressed that this was the first time in which he had gone through such a process and had found it difficult. The Club Chairman stated that he found the procedure to be excessive given the nature of the Charges and the evidence lodged in support of the Charges.

The Appellant conceded that he did not seek guidance from the County FA until the appeal stage of the matter. Nevertheless, the County FA did not object to the message or the information concerning opponent player 1's identity being lodged in the interests of perceived fairness and as such, the Appeal Board allowed same.

In particular, the WhatsApp message confirmed that the match referee did not hear the comments. The match referee neither confirmed nor denied that the comments were reported to him.

13) The Appeal Board reminded itself, and advised the Appellant, of the limitations on an appeal before it. The Appeal Board is not permitted to effectively rehear the matter and provide the Appellant with a '*second bite of the cherry*' now that he has a better understanding of the process and/or is taking it more seriously, given the Decision. The Appeal takes the form of a review of the Decision, based on the documents that were originally before the Commission (and any new evidence that has been admitted under the consent of the Appeal Board). The Appeal Board's remit is restricted, and its powers limited.

14) Both the Appellant and the Respondent lodged written submissions for consideration prior to the in-person appeal hearing. The Appeal Board considered those submissions in full along with the verbal submissions. The Appellant was represented by his Club Chairman at the in-person appeal hearing. Those submissions can be summarised as follows:

a) Failed to provide the Appellant with a fair hearing

The Appellant stated that he didn't appreciate the severity of the Charges brought against him and this was a new procedure to all at the Club. He advised that, in his opinion, there was no independent evidence to support the Charges and therefore he was of the view that no panel could possibly come to a finding of guilt.

The Appellant also submitted that the case should not have been determined on the balance of probabilities.

b) Came to a decision to which no reasonable body could have come to

The Appellant stated that no body acting reasonably could have come to a finding of guilt based on the extent of evidence included at first instance. This was because, in the Appellant's opinion, the case was no more than a "he said she said" because the only supporting evidence came from a teammate of the alleged victim. It was one person's word against the other and in the Appellant's view, neither opponent player 1 or 2 were independent so their statements could not be relied upon. There were 22 other players on the pitch, and they didn't hear anything. Equally, the match referee also failed to hear any of the alleged comments. The Appellant raised the unlikelihood that only two people would hear such comments, if they were in fact said. There was therefore "zero evidence" to support the allegations.

The Appellant recognised that the Commission at first instance had been persuaded not only by the witness statements of Opponent Player 1 and 2, but the altercation after the match. The Appellant stated that, in his opinion, that was evidence in fact that nothing was said because the altercation took place twenty minutes after the comments were alleged to have been made, and if teammates were so aggrieved why would they wait twenty minutes, and "save up all that aggression" if the comments were in fact made.

The Appellant suggested that the Commission at first instance, and other Commissions in general, were making decisions with very little thought or consideration. The Appellant warned the Appeal Board that if it did not overturn this decision that the FA would see similar fictitious claims where players act in collusion with the aim to get opposition players suspended for future matches.

c) Imposed a penalty, award, order or sanction that was excessive

The Appellant argued that the sanction was excessive because if 6 matches is the minimum someone can receive for a finding of an aggravated breach, under the FA Sanctioning Guidelines, then 8 matches was unreasonable given the Appellant had no previous record of any similar offences. It was submitted that the Appellant's disciplinary record merited a sanction of no more than a 6-match suspension, if at all with the primary submission being that there should be no sanction at all because there was no evidence to support the Charges.

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

a) Failed to provide the Appellant with a fair hearing

The Respondent submitted that the standard of proof (ie. the balance of probabilities) was applied correctly. The Respondent also submitted that the Appellant opted for a correspondence hearing and therefore the Commission at first instance was only able to determine the matter on the documentary evidence alone. The Commission was not able to test the evidence or ask further questions. Had the Appellant contacted the County FA and discussed his concerns, the County FA would have recommended to the Appellant that he opt for an in-person hearing. However, the Appellant failed to do so.

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

It was the Respondent's position that the Decision was reasonable when considered with the documentary information before the Commission at first instance, and it was not possible to conclude that no other body, acting reasonably, would have arrived at the same decision. The Respondent submitted that the WhatsApp Message from the match referee brought nothing new to the case. It was recognised by the Commission, and commented upon in the written reasons, that the match referee did not hear the comments. Therefore, the WhatsApp message did not provide any new information.

c) Imposed a penalty, award, order or sanction that was excessive

The Respondent submitted that the sanction imposed was consistent with the County FA Guidelines and that the Commission applied the aggravating and mitigating factors appropriately.

Decision of the Appeal Board

16) 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. The Appeal Board's remit is restricted, and its powers limited.

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

- 18) On the question of a fair hearing, the Appeal Board noted the Appellant's assertion that he did not get the opportunity to opt for a personal hearing. The Appeal Board considered that the failure of the Appellant to take the matter seriously at first instance and gather the required evidence in an attempt to adequately rebut the allegations, could not be said to be the fault of the County FA and/or the Commission at first instance. The Appellant could have opted for an in-person hearing and could have called on witnesses to test their evidence under cross examination, but he failed to do so, opting for a correspondence hearing instead. Equally, the Appellant could have contacted the County FA for further guidance, but no attempt was made to discuss the matter.

There was nothing heard, or read in the evidential bundle, to suggest that the Commission at first instance failed to follow proper procedure for determining the matter on the papers only.

As such, here was nothing submitted by the Appellant in relation to Ground 1 that persuaded the Appeal Board that he had not been given a fair hearing in all the circumstances.

- 19) With regards to the second ground of appeal, that the Commission reached a decision that no reasonable body could have come to - the Appeal Board was not persuaded that the Appellant met the high bar in this regard.

The Appeal Board reminded itself of the test concerned for this ground of appeal – the Wednesbury Test. The Wednesbury test is that a reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no person acting reasonably could have made it. The test is a different (and stricter) test than merely showing that the decision was unreasonable. The fact that a different Commission may come to a different decision on the evidence available is not the test.

Upon discussion with the Appeal Board, the Appellant accepted that if racially charged comments are made, they are usually made quietly given their nature. They are not

broadcasted or said loudly for everyone to hear. Thus, it was therefore entirely reasonable that you could find a hypothetical situation where only the assailant and the victim hears the words used and the actions and events thereafter can be relied upon to come to a finding on the balance of probabilities. It cannot be the case where a perpetrator can automatically escape liability on the basis only he and the victim hears the words used because he intentionally said the words quietly. As a result, the context and the circumstances around the alleged event can and are used during any determination.

On the Appellant's submissions, and following subsequent discussions, we cannot say with reference to the Wednesbury Test that no other body acting reasonably on the information before it, would have come to the same decision as the Commission did in this case.

20) Turning lastly to the third ground of appeal, the Appeal Board considered whether the sanction imposed was excessive.

The Appeal Board was disappointed to note, during our discussions with the Appellant, that neither he nor his club had given consideration to the Appeal Case Evidential Bundle (of which ran to 75 pages), but more astoundingly the written reasons of the Commission, which provided extensive reasoning as to why the Decision was reached. As a result of this, the Appeal Board took the Appellant through the Commission's decision. We explained that the Commission required to impose a minimum of a six-match suspension. We took the Appellant through the Commission's aggravating and mitigating application exercise. Given there was not just one but multiple offensive and discriminatory comments that the Commission accepted were said by the Appellant, the sanction was increased to a ten-match suspension as the multiple offending was considered to be an aggravating factor, and this action of increasing the sanction was entirely in line with the FA's sanctioning guidelines (regardless of a first offence). Thereafter, the Commission recognised the Appellant's good disciplinary record in relation to FA Rule E3 misconduct, and as a result the sanction was thereafter reduced in the Commission's mitigation exercise, to an 8-match suspension. Again, this was entirely in line with the FA's sanctioning guidelines.

During the Appeal Board's private deliberations, it was discussed that another Commission may have imposed a higher sanction either increasing the sanction further for the aggravating element and/or only deducting one match in recognition of the disciplinary record.

During our discussions, the Appellant stuck steadfast to its submission that despite the Commission's aggravating and mitigating exercise, the sanction should have been no more than a six-match suspension given the Appellant's disciplinary record.

Given the above and having considered the Appellant's submissions in relation to Ground 3, the Appeal Board were unanimous that the Commission considered aggravating and mitigating factors appropriately and arrived at a fair and proportionate sanction in line with the FA's Sanctioning Guidelines.

21) To conclude, having considered the grounds of appeal, the Appeal Board unanimously finds the appeal dismissed for the reasons we have articulated. The Decision is reimposed with immediate effect.

22) The Appeal Board did give consideration to the possibility of ordering costs against the Appellant but determined that ultimately it would not be appropriate to award costs in this matter, but the appeal fee shall be forfeited.

23) The Appeal Board's decision is final and binding on all parties.

Appeal Board

Ms Laura McCallum (Chair)

Mr Yunus Lunat

Mr Greg Fee

08 November 2024