

IN THE MATTER OF AN APPEAL BOARD HEARING

BETWEEN

MR JAKE NOONE

and

SURREY FA

**WRITTEN REASONS AND DECISION OF THE APPEAL BOARD HEARING
HELD ON 18 JULY 2024**

- 1) These are the written reasons for a decision made by an Appeal Board (the “Board”) which sat via videoconference on 18 July 2024.
- 2) The Appeal Board was appointed to determine an appeal brought by Mr Jake Noone (the “Appellant”) against a decision imposed by a Commission appointed by the Surrey FA (the “Respondent”). The members of the Appeal Board were Ms Laura McCallum (acting as Chair and Independent Legal Panel Member), Mr Martin Hill (Independent Football Panel Member) and Miss Nabila Zulfiqar (Independent Football Panel Member).
- 3) Mr Richard Pallot of the Cornwall 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.
- 5) All references to individual names have been redacted for data protection purposes.

Background

- 6) By letter dated 22 May 2024, the Respondent charged the Appellant with a breach of FA Rule E3 for improper conduct including foul and abusive language on the basis that it was alleged that the Respondent called an opponent player a “*fucking puff*” during a match against Lightwater United on 06 April 2024 (the “Match”). This charge was further alleged to be an aggravated breach under FA Rule E3.2 in that the conduct included a reference to a protected characteristic, namely sexual orientation (the “Charges”).
- 7) In bringing the Charges, the Respondent relied on the following documentation:
 - a) Respondent Investigation Report;
 - b) Referee Report;
 - c) Witness Statements from Lightwater Player A and Lightwater Player B;
 - d) Email exchange between Lightwater United and the Respondent; and
 - e) Witness Statement from the Appellant
- 8) The Appellant denied the Charge and a personal hearing was fixed.
- 9) The Referee in his report stated (in part):

“In the 89th minute of the game following a defensive free kick Lightwater Player A came towards me with a raised voice alleging that he heard Milford player say to Lightwater player C, “get up you fucking puff.” Lightwater Player A kept telling me this with other players. I explained that I hadn’t heard or saw who it was but would raise it in my report afterwards...”
- 10) Lightwater Player A in his witness statement stated:

“During the semi-final match, in the final stages of the second half, Lightwater United player C dribbled the ball and was fouled by Milford and Witley’s number 5. As Lightwater United player C was on the floor, the Milford player stood over Lightwater Player C’s body and yelled “get up you fucking puff”.

Immediately upon hearing this, (I) went to the referee to share my disgust at hearing homophobic language being used on a player on my team. The referee at first dismissed me away, but upon hearing me say that we would consider walking off the pitch, he listened to my concern. The referee stated that he did not hear the language being used so was not able to take any action against him. I told the referee that it was the number 5, as I could identify him as being one of their substitutes who had recently entered the field of play.

The number 5 had fair coloured hair and skin. I’d like to state on record that incidences like this should be treated in the same manner as other discriminatory offences, including racism. You cannot be a “little bit homophobic” or a “little bit racist”. It’s black and white and in this incident their player has been homophobic and that should be punished accordingly.”

11) Lightwater Player B said in his statement:

“Chasing the game, Lightwater Player C was pressing forward towards the opposition’s penalty box. He rounded one player and got to the edge of the box where the left back, wearing shirt No.5, took Lightwater player C out, conceding a foul. As soon as Lightwater Player C fell down clutching his ankle, the No.5 player for Milford & Witley, stood over the top of him & said “get up you fucking poof!”

Lightwater Player A immediately protested the foul language to the referee who said he didn’t hear it, most likely due to the distance he was with the play. This dispute went on for a couple of minutes before Lightwater Player A said he would be reporting the player to the league.

I was playing alongside Lightwater Player A upfront & saw/heard the whole altercation.”

12) Lightwater Player C did not provide a statement.

13) The Appellant’s statement said:

“Towards the end of the game, I committed a tactical foul on the Lightwater United right winger and rightly received a yellow card that I didn’t protest as it was the correct decision. I was then told by both my Captain and Goalkeeper to line up in the wall for the ensuing freekick. Whilst forming the wall, Lightwater Player A ran up to the referee and was claiming that he heard some derogatory language was used towards the player who was fouled. I can confirm that I did not use any derogatory or ill-tempered language during this game not did I hear any directed against any of the Lightwater United players. The referee, who was right in the middle of this all and handed me a yellow card, said that he didn’t hear any foul language used and chose to continue the football game as normal. I would put this incident down as either a case of mistaken identity or as a misunderstanding.”

14) The Appellant’s club confirmed that the Appellant was the number 5 player. The Charge was denied by the Appellant and determined by way of a personal hearing (the “Hearing”).

15) At the Hearing, both Lightwater witnesses were adamant that the Appellant was the Milford number 5 player who uttered the words and they were certain of the words used. The Appellant did not cross examine either witness at the Hearing.

- 16) The Appellant gave oral evidence at the Hearing. He described the events leading up to the allegation. He was 100% certain that he did not use the words alleged. During his evidence he claimed it was mistaken identity or a misunderstanding. Whilst the Appellant claimed that other players fitted the description of the subject player, described by the Lightwater witnesses, he conceded that he was the only Milford player who wore the number 5 shirt.
- 17) The Appellant's manager also provided oral evidence to the Commission at the Hearing. He said he was made aware by the Referee after the Match that "*someone had said something.*" He had been standing in the dug-out for the duration of the Match and didn't see or hear anything untoward. He advised that he was surprised that such an allegation would be aimed at the Appellant as he described the Appellant as "*shy and timid.*" He advised that "*other players in his team maybe*" would be less of a surprise if such an allegation was made against them.
- 18) The Commission, at first instance, found both Charges proven against the Appellant. They found the Lightwater witness' evidence consistent and compelling in that both players identified the Milford player who was wearing the number 5 shirt (this being the Appellant) as the offender. One of the witnesses "described the Appellant and recognised him as the player who had earlier come on as a substitute".
- 19) Having had the Charges proven against him, the Appellant was said to have become "*agitated*" stating (1) there was no evidence to prove him guilty of the offence, (2) that he had 100% proof of who said it, and (3) his manager had a WhatsApp message from a particular individual admitting to the offence. The Appellant advised the Commission that he would send the WhatsApp messages to the Secretary of the Commission, and that he felt that he had been "forced" to participate in the Hearing as the accused.
- 20) The Appellant was sanctioned with a seven-match suspension from all football, a warning as to his future conduct, a £45 fine and an order to complete an online education programme.

The Appeal

- 21) The Appellant lodged an appeal against the decision of the Commission. The Appellant did so on the basis that the Commission came to a decision which no reasonable body could have come to. However, in reality, the Appellant's submissions centred around a case of mistaken identity.
- 22) The Appellant lodged new evidence and asked for it to be submitted under Regulation C10 of the Non-Fast Track Disciplinary Regulations. The new evidence took the form of a WhatsApp Group message exchange referred to at the conclusion of the Hearing along with a brief letter (statement) from the individual who the Appellant claims made the comments and has since admitted to same (the "New Evidence"). In the statement, the individual has not admitted making the comment referred to in the Charges. He says that he made a comment to a player who was on the floor, "*it wasn't a homophobic comment nor ment (sic) to cause offence.*" He says he made the comment and not the Appellant. The Whatsapp Group message exchange includes a message from who we are told is the individual who provided the aforementioned statement. In that message, this individual states "*Only called him a puff.*"

- 23) In determining whether the New Evidence should be submitted for consideration, the Appeal Board asked the Appellant why he did not provide this information at the Hearing to which the Appellant responded that he did not want to get his teammate into trouble and he was convinced that his club would either a) deal with the matter responsibly or b) that the case would be dismissed on the basis that there was no independent evidence to prove that the Appellant had made the comments. He said he relied on the fact that the referee did not see or hear the comment and on this basis, he believed and was told by his club that the charges would not be proven.
- 24) The Appeal Board also asked the Respondent whether they had any objections to the request for the New Evidence to be submitted for consideration. The Respondent, in response, expressed their frustration that the New Evidence wasn't provided to them at the outset but stressed that the correct participant should be charged for justice to be correctly carried out. The Appeal Board was encouraged to allow the New Evidence so that the Respondent could deal with it accordingly.
- 25) The New Evidence was admitted into the appeal bundle for consideration and determination.
- 26) The Appeal proceeded by way of a personal hearing.
- 27) A summary of the Appellant's submissions during the Appeal Hearing are as follows:
- a) He was told by his Club that everything would be okay and that the Charges would be "*swept under the carpet*";
 - b) The correct culprit was asked to attend the Hearing, but he refused because he was on holiday;
 - c) There was no conversation between the Appellant's Club and the Respondent prior to the Hearing, that he was aware of, concerning the mistaken identity point nor was there any request to delay the Hearing to allow the correct culprit to return from holiday;
 - d) The Appellant was hoping that his Club and teammate (ie. the correct culprit) would do the right thing and resolve the situation but they failed to do so;
 - e) The Appellant did not want to chuck his teammate "*under the bus*" but now felt he had no option as the process had gone too far;
 - f) He admitted that he had gone into the process very naively; and
 - g) He can understand to an extent why the Lightwater Witnesses may have mistaken him for making the comments as he looks very similar to the teammate who actually made the comments.
- 28) The Respondent replied to the Appellant's submission as follows:
- a) Ideally, the Respondent would have received the New Evidence prior to the Hearing so it could be dealt with appropriately and the Charges correctly served;
 - b) For justice to prevail, the right person requires to be charged;
 - c) The Respondent wants to charge the correct individual;
 - d) The Respondent believes the Appellant was "ill advised"; and
 - e) The Respondent asked the Appeal Board to take one of two actions: (1) transfer the sanction to the correct individual or (2) uphold the appeal by rescinding the sanction against the Appellant and allowing the Respondent to charge the correct individual.

- 29) In determining the matter, the Appeal Board recognised that there had been no flaw in the decision making of the Commission at the Hearing. The Commission had formed their conclusion based on the evidence before it which did not include the New Evidence but did include evidence from witnesses who at the Hearing were adamant that it was the Appellant (wearing the number 5 shirt) who made the comments. The Commission thus acted fairly and reasonably in determining the matter and it cannot be said that the members came to a decision that no such reasonable body would have come to.
- 30) However, that said, following the admission of the New Evidence and subsequent consideration of same, and following the submissions of the Respondent who encouraged the Appeal Board to take the actions set out at paragraph 28(e) above, the Appeal Board upheld the appeal to allow the Respondent to take any further action it deems appropriate following the receipt of the New Evidence.
- 31) As such, the sanction against the Appellant is rescinded in its entirety and the Appellant shall have the appeal fee refunded.
- 32) The Appeal Board's decision is final and binding on all parties.

Appeal Board

Ms Laura McCallum (Chair)

Mr Martin Hill

Miss Nabila Zulfiqar

26 July 2024