

IN THE MATTER OF AN APPEAL BOARD HEARING

BETWEEN

SAFFRON WALDEN TOWN FC

and

ESSEX SENIOR LEAGUE

WRITTEN REASONS OF THE APPEAL BOARD HEARING HELD ON 10 JUNE 2024

- 1) These are the written reasons for a decision made by an Appeal Board (the “Board”) which sat via videoconference on 10 June 2024.
- 2) The Appeal Board was appointed to determine an appeal brought by Saffron Walden Town (the “Appellant”) against a decision imposed by the Essex Senior League (the “Respondent”). The members of the Appeal Board were Ms Laura McCallum (acting as Chair and Independent Legal Panel Member), Mr Dennis Strudwick (Independent Football Panel Member) and Mr William Thomson (Former FA Council 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) The Appellant was charged by the Respondent after it was brought to the Respondent’s attention (by another member club) that the Appellant had played three games whilst under a ‘sine die’ suspension imposed by the Essex County FA. The Respondent was not aware that the suspension had been imposed and the matches in question were still scheduled to be played.
- 6) The Appellant became subject to the suspension after it failed to pay outstanding fines. This was said to be an oversight by the Appellant following a change in personnel. The outstanding fines were only discovered by the Appellant when it called the County FA to pay a fine imposed on a specific player. Upon discovery, the fines were paid immediately. The Appellant further submitted that it was its belief that the fines had not been posted on the Whole Game System but accepted its own responsibility that there was an administrative oversight on their part due to the change of personnel and lack of training when checking for sanctions.
- 7) The Respondent charged the Appellant under Standardised League Rule 4.2.

Standardised League Rule 4.2 states:

“Save where specifically provided otherwise in these Rules, the Board shall have the power to apply, act upon, and enforce these Rules and shall have jurisdiction over all matters affecting the Company or the Competition including any not provided for in these Rules. The Board shall also have the power to issue an order or instruction, by way of a Board Directive, in the best interest of the Competition, on any matter not provided for in these Rules, with which Clubs must comply or be subject to sanction under Rule 4.6, save where any such Directive is inconsistent with a Rule or Regulation of the FA, in which event the Directive will not create a binding obligations on Clubs.”

- 8) The Respondent’s Panel at first instance, and having taken advice, interpreted Rule 4.2 as meaning that they “*may apply the principles of ‘6.9 from the Standardised Rules for*

playing an ineligible player as in effect all the players who played were ineligible as the club was suspended and therefore none of them should have been playing.”

- 9) After the hearing at first instance, and in applying the above interpretation, the Respondent imposed an immediate six point deduction (all points obtained by the Appellant in the offending matches) and then imposed a further six point deduction that would trigger at the start of season 24/25. Additionally, the Appellant was fined a total of £4,800 (£1,600 per match that it played whilst suspended). £1,600 of that total was suspended for one season, pending any offences of a similar nature.

The Appeal

- 10) The Appellant lodged an appeal against the Respondent's decision as outlined at paragraph 9 above. It did so on one ground only, namely that the sanction was excessive.
- 11) 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.
- 12) The Appeal Board carefully considered the written submissions lodged by both parties in determining the appeal and any level of sanction that should be imposed.
- 13) A summary of the Appellant's submissions in appeal of the decision was as follows:
- a) The circumstances leading to the suspension were not deliberate and as a result of an administrative oversight, due to a change in club personnel;
 - b) The outstanding fines were dealt with immediately upon discovery;
 - c) The Appellant had co-operated with the Respondent and promptly acknowledged its error;
 - d) The Appellant did not have a previous disciplinary record of any similar administrative offences;
 - e) The Appellant has taken steps to reinforce their administrative robustness to ensure no similar offences occur in the future; and
 - f) The repercussions of the sanction (particularly the financial sanction) extend far beyond the First Team and may jeopardise the future of the entire club.
- 14) A summary of the Respondent's submissions in response to the Appellant's appeal is as follows:
- a) The circumstances in which the Appellant and Respondent faced whereby an entire club was suspended from playing football was unusual and not an incident the Respondent had ever had to deal with previously;
 - b) The Respondent dealt with the matter as best it could having taken advice by the FA, and believed that its decision was one that was based on, and fell in line with, the rules and regulations of the National League System;
 - c) The Respondent had sought advice from the FA and was advised to apply Rule 4.2 and 6.9 (fielding an ineligible player) of the Standardised Rules;
 - d) Careful consideration was given by the Respondent to all facts and evidence submitted by the Appellant when considering its decision; and

- e) The impact of the suspension was felt across the league and caused considerable stress given its impact on play-off spots. The sanction reflected this impact and also was pitched at a level to act as a deterrent.

15) Having heard the parties' submissions, the Appeal Board retired to deliberate.

16) The Appeal Board recognised that this was an unusual matter and the panel sympathises with the position in which the Respondent found itself.

17) The Appellant submitted that the decision to impose effectively a 12 point deduction (over the course of two seasons) and a £4,800 fine in the circumstances was excessive. The Appeal Board agrees for the following reasons:

18) Application of Mitigating Factors

- a) Any sanction should not only reflect the overall offending behaviour but also any aggravating and mitigating factors so that the sanction is just and proportionate. It is clear that the panel at first instance considered aggravating factors but there does not appear to have been any application of mitigating factors.
- b) The panel was addressed on the impact that the offending had on the league and other clubs and that it was necessary that the sanction reflected this and acted as a deterrent for other clubs. However, there was no mention of mitigating factors such as the club's previous disciplinary record and the fact that the club had taken steps to ensure an offence of a similar nature did not happen again in the future. The Appeal Board consider these to be mitigating factors capable of reducing the sanction imposed.

19) Application of Rule 6.9

- a) The panel at first instance applied Rule 6.9 of the Standardised Rules – Playing an Ineligible Player.
- b) Rule 6.9 reads as follows:

“Any Club found to have played an ineligible player in a match or matches shall have any points gained from that match or matches deducted from its record, up to a maximum of 12 points, and have levied upon it a fine. The Board may also order that such match or matches be replayed on such terms as are decided by the Board which may also levy penalty points against the Club in default.”

It goes on to state that:

“The Board may vary its decision in respect of the points gained in circumstances where;

- (a) The ineligibility is due to the failure to obtain an International Transfer Certificate or
- (b) where the ineligibility is related to a change in the Player's status with the Club for whom he is registered or
- (c) where the Board determined that exceptional circumstances exist.

- c) The panel at first instance determined that all players who took part in the subject matches (16 x match) were ineligible to play on account of the Appellant being under the 'sine die' suspension. As a result, the panel concluded that there were sixteen ineligible players per match. We were advised at the hearing that the fine per ineligible player was set at £100 and all sixteen listed players had participated in each of the matches. Thus, per match, the fine was set at £1,600 totalling £4,800 over the three matches.
- d) The Appeal Board considers that this was an incorrect methodology to apply when determining the sanction. The Appeal Board are of the view that the Players, per se, were not ineligible. The Players were not suspended as such. The sanction imposed was on the Club not the individual players. Thus, applying the logic of sanctioning per player was incorrect and disproportionate.

20) Totality of Sanction

- a) The Appellant has committed multiple offences (playing matches whilst under FA suspension) arising from the same incident (the non-payment of fines). In such instances, it is appropriate to impose for the most serious offence a fine which reflects the totality of offending where this can be achieved within a maximum penalty for that offence. In such circumstances, the practice of adding up separate fines for each individual offence should be avoided.
- b) The Appeal Board is not convinced that the application of Rule 6.9 was the appropriate rule in this regard but was not addressed on the application of any other rule and therefore it would not be appropriate for us to comment on what rule should have been applied as an alternative. As described in paragraph 19(d) above, the Appeal Board does not agree that the individual players were "ineligible." However, the panel at first instance has confirmed the methodology applied when arriving at the sanction (that is to fine per player) and we consider this method to be in direct contravention to the totality principle.

21) To conclude, having considered the grounds of appeal, the Appeal Board unanimously finds the appeal upheld for the reasons we have articulated. The sanction imposed on the Appellant is rescinded and replaced with the following:

- 6-point deduction to be imposed for season 2023/24 only (for the avoidance of doubt, the further 6 points deduction for season 2024/25 has been rescinded).
- £500 fine (to be paid immediately upon invoice).

22) The appeal fee shall be refunded.

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

Appeal Board

Ms Laura McCallum (Chair)

Mr William Thomson

Mr Dennis Strudwick

20 June 2024