

B E T W E E N:

SAMANTHA SMITH (Appellant)

-and-

OXFORDSHIRE FA (Respondent)

DECISION RELATING TO APPEAL HEARING ON 18 JANUARY 2024

Appeal Board

- 1. Evans Amoah- Nyamekye (Chair) – Independent Legal Panel Member**
- 2. Alan Darfi – Independent Football Panel Member**
- 3. Nabila Zulfiqar– Independent Football Panel Member**

Panel secretary: Jack Mason

SUMMARY OF DECISION

The Appeal Panel are grateful to both Samantha Smith (the appellant) and to Mark Ives (representing the Respondent) for both their written submissions and oral submissions.

On Thursday, 18 January 2024, this appeal was heard as a Personal Hearing, via video conference on Microsoft Teams.

The Respondent, on 4 December 2023, charged the Appellant with a breach of FA Rule E3 - Improper Conduct (*not including threatening and/or abusive language/behaviour*). The Disciplinary Commission, in its results letter dated 8 December 2023, found the charge proven and imposed a 3-match suspension and a £40 fine.

The Appeal Board, having given the appeal bundle and oral representations careful consideration, made the following observations:

- a. *The Appeal Board thanks the parties for their oral and written submissions.*
- b. *The Appeal Board noted that the Appellant was appealing on the following two grounds:*
 - 1) *Failed to give the Appellant a fair hearing.*
 - 2) *Imposed a penalty, award, order, or sanction that was excessive.*
- c. *The Appeal Board, in relying on Regulation 4 of the General Provisions, allowed the appeal on the ground that the Appellant was not given a fair hearing.*
- d. *In order to give effect to this decision, the Appeal Board, in accordance with Regulation 21 of the Non-Fast Track Appeal Regulations, order the following:*
 - i. *Remit the charge for rehearing by a different Disciplinary Commission.*
- e. *There was no order as to costs and the appeal fee is to be returned.*
- f. *The Appeal Board's decision is final and binding on all parties.*

The reasons for the decision are stated in full below.

The following is a record of the salient points which we heard and is not intended to be and should not be taken as a verbatim record of the reasoning, submissions or evidence considered. These written reasons contain a summary of the principal evidence before the Appeal Panel and do not purport to contain reference to all the points made or considered, however the absence in these reasons of any particular point, piece of evidence or submission should not imply that the Appeal Panel did not take such point, piece of evidence or submission, into consideration when determining the matter. For the avoidance of doubt, the Appel Panel carefully considered all the evidence and material in this matter.

INTRODUCTION

1. Samantha Smith was charged by letter dated 4th December 2023 with FA Rule E3 – Improper Conduct (*not including threatening and/or abusive language/behaviour*).
2. The case relates to a fixture between Carterton Ladies v Procision Oxford Ladies in a County Cup fixture on 19th November 2023 where the game was abandoned near the conclusion of the game.
3. The charge was accepted, and **the Club** elected for the matter to be dealt with by way of a correspondence hearing.
4. The Commission having considered the charges proven imposed a 3-match suspension (including Ground Ban) and a £40 fine.

THE ISSUES TO BE DETERMINED ON APPEAL

5. Principally there were two (2) grounds of appeal issues which required determination at the hearing:
 - I. Did the Appellant get a fair hearing; and/or
 - II. Imposed an award or sanction that was excessive.

THE RELEVANT FA RULES

The relevant FA Rules

DISCIPLINARY REGULATIONS NEW EVIDENCE

10. *“The Appeal Board shall hear new evidence only where it has given leave that it may be presented. An application for leave to present new evidence must be made in the Notice of Appeal or the Response. Any application must set out the nature and the relevance of the new evidence, and why it was not presented at the original hearing. Save in exceptional circumstances, the Appeal Board shall not grant leave to present new evidence unless satisfied (i) with the reason given as to why it was not, or could not have been, presented at the original hearing and (ii) that such evidence is relevant. The Appeal Board’s decision shall be final. Where leave to present new evidence has been granted, in all cases the other party will be given an opportunity to respond.”*

H. APPEALS TO AN APPEAL BOARD

H1 There shall be a right of appeal to an Appeal Board under the Rules and regulations of The Association only where the Rules and regulations of The Association expressly provide for such an appeal or in any other case where The Association, acting by the Chief Executive Officer (or his or her nominee), agrees to an appeal taking place.

H2 There shall be no right of appeal to an Appeal Board under the Rules and regulations of The Association where an appeal has been heard by the Premier League, or the EFL, or an Affiliated Association in respect of a decision of a Competition, or in respect of decisions arising out of competitions of Affiliated Associations where the rules and regulations provide that such decisions are final.

H3 An Appeal may be made only by:

H3.1 the person or body who is the subject of the original decision appealed against;

H3.2 The Association; or

H3.3 in respect of certain decisions made under and prescribed by the Anti-Doping Regulations, FIFA, WADA, or the NADO.

H4 An appeal shall be dealt with under the relevant regulations of The Association from time to time in force.

Regulation 14 *The chairman of an Appeal Board may upon the application of a party or otherwise, give any instructions considered necessary for the proper conduct of the proceedings, including but not limited to:*

14.1 extending or reducing any time limit;

14.2 amending or dispensing with any procedural steps set out in these Regulations;

14.3 instructing that a transcript be made of the proceedings;

14.4 ordering parties to attend a preliminary hearing;

14.5 ordering a party to provide written submissions.

The decision of the chairman of the Appeal Board shall be final.

A - GENERAL PROVISIONS

4 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.

APPEAL BOARD DECISIONS

General

19 A decision, order, requirement or instruction of the Appeal Board shall (save where to be made under the Rules by the Chairman of the Appeal Board alone) be determined by a majority. Each member of the Appeal Board shall have one vote, save that the Chairman shall have a second and casting vote in the event of deadlock.

20 The Appeal Board shall notify the parties of its decision to the parties as soon as practicable in such a manner as it considers appropriate; and unless it directs otherwise, its decision shall come into effect immediately.

21 The Appeal Board shall have power to:

21.1 allow or dismiss the appeal;

21.2 exercise any power which the body against whose decision the appeal was made could have exercised, whether the effect is to increase or decrease any penalty, award, order or sanction originally imposed;

21.3 remit the matter for re-hearing;

21.4 order that any appeal fee be forfeited or returned as it considers appropriate;

21.5 make such further or other order as it considers appropriate, generally or for the purpose of giving effect to its decision.

21.6 order that any costs, or part thereof, incurred by the Appeal Board be paid by either party or be shared by both parties in a manner determined by the Appeal Board.

22 Decisions of the Appeal Board shall be final and binding and there shall be no right of further challenge, except in relation to appeals:

22.1 to CAS brought by FIFA or WADA pursuant to the Anti-Doping Regulations; or

22.2 concerning the amount of costs any party is ordered to pay by the Appeal Board (which is considered in paragraph 24 below).

Other Costs

23 Any costs incurred in bringing, or responding to, an appeal shall normally be borne by the party incurring the costs. In exceptional circumstances the Appeal Board may order one party to pay some or all of the other party's costs. Such costs will not include any legal costs. Any applications for such costs must be made at the Appeal Board and must include details of the exceptional circumstances.

24 An appeal against only the quantum of costs ordered to be paid shall be heard and determined by either:

24.1 a single person appointed by Sport Resolutions (UK) (or a similar independent body as determined by The Association from time to time). That person shall decide all matters of procedure for how such an appeal will be conducted; or

24.2 where the appeal proceedings relate to a decision of an Affiliated Association; or a league operating at Step 5 or below of the National League System; or a league operating at Tier 3 and below of the Women's Football Pyramid, it shall be determined by the Judicial Panel Chairman, who shall decide all matters of procedure for how the appeal will be conducted.

Guidance: with regard to costs appeals under Paragraph 24.2, the Judicial Panel Chair may invite submissions from the National Game Disciplinary Chair (as defined in the National Game Chair Terms of Reference) when determining the matter.

Written Decision and Written Reasons

25 As soon as practicable after the hearing, the Appeal Board shall publish a written statement of its decision, which shall state:

25.1 the names of the parties, the decision(s) appealed against and the grounds of appeal;

25.2 whether or not the appeal is allowed; and

25.3 the order(s) of the Appeal Board.

26 The Appeal Board shall, upon the request of the appellant or the respondent (such request to be received at Association within three Business Days of the date of the notification of the decision), give written reasons for the decision.

THE APPEAL HEARING

I. The Board composition

6. The Panel is grateful to both parties for their review of the disclosure from panel members. The parties agreed that all panel members were able to sit on the panel impartially. The parties noted and agreed and there was no perception of a conflict of interest.

THE APPLICATION

The Grounds of Appeal

7. **The Appellant in the written application states:** *'The appeal is on the grounds that I did not have a fair opportunity of a hearing where I would have been able to advise of misidentification. And also on the grounds that this sanction is excessive. I would like to appeal the decision which has seen me issued with a suspension for three games. The appeal is on the grounds that I did not have a fair opportunity of a hearing where I would have been able to advise of misidentification. And also on the grounds that this sanction is excessive. I was advised of the disciplinary charge originally on the 8th December and my club secretary had accepted this on the 4th December to what I believe the event happening not the person who had done so. The actual person who committed the alleged offence was our captain, KC. She has submitted the attached statement declaring it was herself and that her decision to pull the team off the pitch was in the best interest of players safety. Having already wrongly served 1 of the 3-match ban and given that this appeal is a result of misidentification I would like to request that this ban is lifted.'*
8. In oral evidence the Appellant made it clear that she was not aware of the charge sheet until the notification of sanction was brought to her attention via a letter dated 8 December 2023.
9. The Appellant was adamant that she would not have accepted the charge had she had known its contents.
10. The Appellant further confirmed that she did not give consent or permission for the club to enter a plea on her behalf.

Respondent's response

11. In response the Respondent states

'a. The Appeal Board are respectfully reminded that an appeal such as this one proceeds by way of a review of the decision of the Commission; it is not a rehearing.

b. The appeal is against a decision of the CFA Commission who could only deal with the papers they had before them.

Ground 1

c. The Appellant is at this late stage trying to argue a case of mistaken identity.

d. At no stage have the Club submitted any suggestion of mistaken identity until after the conclusion of the hearing and once the result has been known.

e. The charge was raised against the Manager, Samantha Smith, and the charge was accepted.

f. Whilst not totally applicable to this Ground of appeal, the Respondent will make further submissions to the validity of the argument submitted by the Appellant.

g. The referee is perfectly clear who made the decision which was the Player/Manager. It is not in dispute that the Manager is Samantha Smith and is in fact listed as such on her own Notice of Appeal, clearly submitted by Miss Smith.

h. Even if the words were said by another player, and even if that player was the captain, the Manager is in sole charge of the team and takes responsibility.

i. The Club has not assisted the CFA in this matter as when asked to name the Manager to raise the charge, Mr Bill Webster, the CWO, tried to take responsibility when clearly from the referee evidence, this was not the case.

j. The Club are now trying to state that it was Katie Cornford who made the decision.

k. The CFA rejects that submission in so far as at no stage has Katie Cornford been mentioned until now and even if that were the case, which the County rejects, the Manager, Samantha Smith is the person responsible for the Team actions.

l. Furthermore, this submission was not before the Commission in the first instance, and it is not a further opportunity to rehear the case and the Board should reject that submission.

m. Furthermore, there has been no application to submit New Evidence in accordance with the regulations.

14. On that basis, the Appeal Board are invited to dismiss this limb of the appeal.

GROUND 2 – Imposed an award or sanction that was excessive.

15. The range open to the Commission as outlined in the charge letter and by the CFA is outlined in para 14 to 16 of the written reasons.

16. The Commission justify their approach to the sanction, and it is not for the Board to interfere with this sanction unless it is so excessive it should not have been awarded, which we submit is not the case.

17. The sanction imposed is reasonable and cannot be considered as excessive.'

12. In oral submissions The Respondent submitted that *'the manager is ultimately responsible for the game being abandoned'*.

NEW EVIDENCE UNDER REGULATION 10

13. There was no formal application to present new evidence.

THE APPEAL PANELS REASONS

15. The Panel concluded that the County Football Association discharged their obligations without fault by notifying the club about the charge.

16. However, it is clear from the whole game system that the entry states **'club acknowledge/accepted'**.

Fair Hearing

17. The Panel considered Regulation 4 of the General Provisions in the context of achieving the paramount object of being just and fair to all parties.

18. In doing so the Panel considered the Appellants submissions that she was not:

- i. Personally informed about proceedings.
- ii. able to be present at proceedings.
- iii. Able to personally to respond to allegations.
- iv. able to 'participant' to consider or challenge documents or information, and to present her views in an effective manner.

19. The Panel concluded that the Appellant on the evidence presented during the hearing:

- i. Was not informed about the charge against her.
- ii. Was not present or involved in the process when the entry on the whole game system was made.
- iii. Did not respond to the allegations.
- iv. Did not '*participate*'; in the original proceedings.

20. Therefore the Panel conclude that the Appellant did not have a fair hearing. To this extent the appeal is upheld.

21. Given the conclusion for ground one (1) of the appeal, ground two (2) does not require determination.

ANSWERS TO THE ISSUES TO BE DETERMINED

22. Principally there were two (2) grounds of appeal which required determination at the hearing:

- I. Did the Appellant have a fair hearing? **NO**, and
- II. Did the Commission impose a sanction that was excessive? ***In light of above no determination required.***

THE FINAL DECISION'S OF THE APPEAL PANEL

23. The Appeal Board, in relying on Regulation 4 of the General Provisions, allowed the appeal on the ground that the Appellant was not given a fair hearing.

24. In order to give effect to this decision, the Appeal Board, in accordance with Regulation 21 of the Non-Fast Track Appeal Regulations, order the following:

- I. *Remit the charge for rehearing by a different Disciplinary Commission.*
- II. *There is no order as to costs and the appeal fee is to be returned.*

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

26. Decisions of the Appeal Panel shall be final and binding and there shall be no right of further challenge.

Signed The Commission:

26 January 2024