

**IN THE MATTER OF THE FOOTBALL ASSOCIATION  
FA DISCIPLINARY APPEAL BOARD PROCEEDINGS**

**COMMISSION MEMBERS:**

**ELLIOTT KENTON (CHAIR)  
ROGER BURDEN  
DANIEL MOLE**

**THE FOOTBALL ASSOCIATION**

**and**

**ANTHONY CANAVAN**

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**WRITTEN REASONS OF THE APPEAL BOARD**

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**SECTION A – BACKGROUND**

**The Appeal Board**

1. The Appeal Board heard this appeal on 16 January 2024 as a paper hearing following the appeal by the Football Association (the “**FA**” or the “**Appellant**”) of a decision made on 10 November 2023 by a Disciplinary Commission (the “**First Instance Commission**”) in respect of Mr Anthony Canavan (the “**Respondent**”).
2. The Appeal Board comprised of Elliott Kenton who acted as Chair, Roger Burden and Daniel Mole.
3. At that hearing, the Appeal Board unanimously allowed the Appellant’s appeal based on two grounds, that the First Instance Commission misinterpreted or failed to comply with the Rules and / or Regulations of the FA and the First Instance Commission imposed a penalty, award, order or sanction that was so unduly lenient as to be unreasonable.
4. Having allowed the FA’s appeal, the Appeal Board amended the sanction to impose the following on the Respondent:
  - 4.1 An 84 day based suspension from football and all football related activities;
  - 4.2 A fine of £100;
  - 4.3 The remainder of the sanction remains as originally imposed by the First Instance Commission, including the terms of the suspension and the requirement to complete an online education course.

- 4.4 The Appeal Board made clear in their directions that the increased sanction imposed by the Appeal Board in respect of the suspension and fine are inclusive of any suspension or fine already served or paid by the Respondent.

## SECTION B – THE FIRST INSTANCE HEARING

### The Charges

5. On 23 October 2023, the Respondent was charged by Liverpool FA for breaching the following FA Rules:
- (a) FA Rule 3.1 – Improper Conduct (including foul and abusive language); and
  - (b) FA Rule E3.2 – Improper Conduct aggravated by a persons ethnic origin, colour, race, nationality faith, gender, gender reassignment, sexual orientation or disability. (the “**Charges**”).
  - (c) The Respondent did not formally respond to the Charges. Therefore, in accordance with the FA Regulations, this was deemed as a denial of the Charges and remitted to a correspondence hearing to a Chairperson sitting alone (the “**First Instance Commission**”).

### First Instance Commission’s Decision

6. The First Instance Commission comprised of a Chair sitting alone, Steve Francis who determined liability and sanction.
7. After consideration of the evidence before him, the First Instance Commission found the Charges proven on the balance of probability.
8. Accordingly, the First Instance Commission imposed the following sanction on the Respondent:
- 8.1 A 42-day suspension which is a 6-match suspension converted to a time-based suspension by virtue of the Respondent’s role as a Match Official;
  - 8.2 A fine of £70; and
  - 8.3 A mandatory online education course.
9. The First Instance Commission took into account the Respondent’s previous disciplinary history and stated in his written reasons that the Respondent’s “*offence history contains no other misconduct or any nature and is considered to be exemplary*”. The “*exemplary offence history*” is referred to again by the First Instance Commission in determining sanction.
10. On 22 November 2023, the First Instance Commission emails the Senior Disciplinary Manager for Grassroots Division and states that having reviewed the written reasons for the Respondent, he has noticed an error when reviewing the Respondent’s disciplinary history. Having now rechecked, he noted two previous incidents of misconduct which he would have considered as serious aggravating features which would have led him to exceed the guidelines and place sanction at 105 days (equivalent to 15 matches), a fine of £150 and the imposition of a face-to-face education course.

## SECTION C – THE APPEAL

### *The Grounds of Appeal and Respondent's Submissions*

11. The Appeal Board were in receipt of a Notice of Appeal on behalf of the Appellant.
12. The Appellant has noted that as part of the First Instance Commission's assessment as to the appropriate sanction, the First Instance Commission noted that the Respondent's five-year offence history contained no other misconduct of any nature and was considered to be exemplary, which was incorrect. The Respondent in fact had one previous E3.1 for improper conduct following a post on his Twitter page, and of greater concern, a previous E3.2 also arising from a post on his Twitter account.
13. The Appellant refers to the First Instance Commission confirming that he had missed the previous offences and had they not been missed, he would have imposed a greater sanction.
14. Therefore, the Appellant appealed on two grounds:
  - 14.1 The First Instance Commission misinterpreted or failed to comply with the Rules and / or Regulations of the FA because the First Instance Commission failed to comply with Regulation 131 of the Disciplinary Regulations which state that it must consider *'the Player's disciplinary record during the current playing season and the previous five playing seasons and any plea in mitigation'* and the Respondent fell to be sanctioned for a second Aggravated Breach which, as prescribed by the sanction guidelines, ought to have attracted a sanction of no less than 7 matches.
  - 14.2 The First Instance Commission imposed a penalty, award, order or sanction that was so unduly lenient as to be unreasonable because the Respondent has two similar breaches on his disciplinary record, one of which includes an Aggravated Breach. The matters that form part of that record are therefore highly relevant to the determination of the appropriate sanction and it is inconceivable that the Respondent's disciplinary record would not have been treated as a serious aggravating factor in respect of the sanction had the First Instance Commission not misread the offence history.
15. The Appellant invites this Appeal Board to allow the appeal and impose an appropriate sanction or alternatively remit the matter for a re-hearing before a new Disciplinary Commission.
16. The Appeal Board also received written submissions from the Respondent. He states that he was not notified of the Charges through the Whole Game System (WGS) and therefore did not have an opportunity to respond. He was not notified until after the First Instance Commission had determined the matter. Therefore, the Respondent states he did not have a fair hearing. The Respondent refers to the Appeal Board's power to impose a higher sanction and states that this would be unreasonable. He refers to the original sanction being imposed being unduly severe when compared to the recommended guidelines for aggravated breaches.
17. The FA have responded to this to confirm that the Respondent was properly notified of the Charges on 20 October 2023, and have provided a screenshot of the correspondence as evidence. The FA also observe that their appeal relates solely to the issue of sanction and the Respondent has not made a cross-appeal in respect of the decision to find the charge against him proven.

### *Appeal Board Decision*

18. The Appeal Board unanimously allowed the Appellant's Appeal on both grounds. In doing so, they had regard to the FA Disciplinary Regulations which state that a Disciplinary Commission will consider a player's disciplinary record during the current playing season and the previous five playing seasons.
19. The Appeal Board considered that there was unequivocal evidence directly from the First Instance Commission that the Respondent's previous disciplinary history was misinterpreted, as it was considered *exemplary* when in fact, there were two previous instances of misconduct. To the First Instance Commission's credit, he notified the FA on realising his mistake.
20. The Appeal Board also considered that the sanction imposed was unduly lenient. The suspension imposed by the First Instance Commission was the minimum suspension to be imposed for a match-based suspension and disregarded Appendix 1 of the FA Disciplinary Regulations stating that second or further offences will be treated with the utmost seriousness and there will be a presumption that the sanction will be the higher than the top end of the sanction range (i.e. 12 matches).
21. Having allowed the Appeal, the Appeal Board determined the appropriate sanction to impose. The Appeal Board considered remitting the matter for a re-hearing but determined that there was nothing to indicate that the Respondent had been denied a fair hearing, or that he was contesting his liability. The issue central to the appeal was one of sanction.
22. Therefore, the Appeal Board determined that they should use their powers under Regulation 21 of the Appeal Regulations to amend the sanction. In doing so, the Appeal Board took into account the guidance at Appendix 1 and the First Instance Commission's commentary as to what they would apply as a sanction had they not made their error. The Appeal Board determined that a 84 day suspension (equivalent to 12 matches) would be proportionate and commensurate to the level of offending when considering the Respondent's previous disciplinary history. They further ordered a fine of £100 and that the education course should be completed.
23. The Appeal Board directed that the sanction they imposed is inclusive of any suspension or fine already imposed. There was an indication from the submissions that the Respondent had already served part or the whole of his previous suspension period. If for example, the Respondent had already served a 42-day suspension imposed by the First Instance Commission, he must serve a further 42 day suspension in light of the Appeal Board's direction.

Elliott Kenton (Chair) on behalf of the FA Appeal Board  
22 January 2024