IN THE MATTER OF

THE APPEAL BOARD OF THE FOOTBALL ASSOCIATION

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WILLIAM WILSON (APPELLANT)

-v-

HAMPSHIRE FOOTBALL ASSOCIATION (RESPONDENT)

Note - these written reasons contain reference to offensive/abusive language.

INTRODUCTION

1. These are written reasons for the findings of an FA Appeal Board which met via videoconference (Microsoft Teams) on Wednesday 2nd October 2024. The Appeal Board heard an appeal brought by William Wilson (WW), a Club Welfare Officer/coach with Southampton Aztecs Futsal Club (SAFC), against a decision of the FA's National Serious Case Panel acting on behalf of Hampshire FA (HFA).

2. The Appeal Board, all independent members of the FA's Appeals Panel, were Anthony Rock (Chair), Nolan Mortimer and Robert Purkiss.

3. The Appeal Board was assisted by Jack Mason, a member of the FA's National Secretaries Panel.

4. The Appellant represented himself. The Respondent was represented by Mrs Debbie Sowton, HFA's Discipline Manager.

5. This is the decision and written reasons of the Appeal Board. It is a summary document and is not intended to be a record of all submissions and evidence adduced. For the avoidance of doubt, the Appeal Board carefully considered all the evidence and submissions made in this case. Following notification of the Appeal Board's findings, published on 3rd October 2024, the Appellant requested written reasons.

BACKGROUND

6. On 15th August 2024, the Appellant received an e-mail from the Respondent stating that they were in receipt of a social media comment he is alleged to have posted on his X account (formally known as Twitter). The Appellant was asked to provide any written observations and advised to remove

the post. The Appellant immediately removed the post and then on 18th August 2024, following further e-mail exchanges with the Respondent, submitted written observations. Following his submission, the Appellant claims he received no further instructions from the Respondent.

7. On 20th August 2024, the Respondent issued a Misconduct Charge Notification (MCN) to the Appellant's Club (SAFC), notifying them that the Appellant was charged under (1) FA Rule E3.1 - Improper Conduct (including foul and abusive language) and (2) FA Rule E3.2 - Improper Conduct - aggravated by reference to a person's Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability. The charges alleged that the Appellant posted the following comment on his social media account: "*I have such a boner for this trip you could actually use me to play ring toss. Bring some cones for the ferry trip in case we get bored"* - or similar.

8. Neither SAFC nor the Appellant responded to the charges. Consequently, in accordance with FA Regulations, on 4th September 2024, the Appellant was informed that due to his lack of response he would no longer be permitted to request a personal hearing. The Appellant informed the Respondent that neither he nor the Club had received any MCN on the FA's Whole Game System (WGS) and were not aware that he was being charged. The Appellant further added that he had responded within the timescale he had been given, believing his written observations, dated 18th August 2024, was a formal response and no further submission was required.

9. On 9th September 2024, the charges were considered by a Chair of the FA's National Serious Case Panel, Sitting Alone - further referred to as the Disciplinary Commission (DC). The charges were found proven and the Appellant was sanctioned to an immediate suspension from all football and football activities for 21 days, and directed to complete an online mandatory education programme. Written reasons were produced by the DC on 13th September 2024. The written reasons, and supporting decision letter, were sent via the WGS to the Appellant and his Club on 16th September 2024. The decision letter detailed the categories of football from which the Respondent was suspended, and confirmed that the suspension was from 'All Football CFA Only'.

10. On 16 September 2024, the Respondent submitted a Notice of Appeal. He also requested that the sanction be set aside pending the outcome of his appeal. On 17th September 2024, Chair of the Judicial Panel granted the application solely on the ground that the Appellant would have served the sanction before his appeal could be heard. The sanction was set aside on the 18th September 2024, meaning that the Appellant had already served 2 days of his suspension.

APPEAL GROUNDS/APPEAL BUNDLE

11. The Appellant lodged his appeal on three grounds; the Respondent, (1) failed to give the Participant a fair hearing; (2) came to a decision to which no reasonable such body could have come and (3) imposed a penalty, award, order or sanction that was excessive.

12. The bundle of documents before the Appeal Board included:

    a. Notice of Appeal
    b. Response to Notice of Appeal
    c. Papers of First Instance
    d. Appellant's Offence History
    e. Results Letter and Written Reasons
    f. Supplementary submissions from both parties (requested by the Appeal Board four days before the appeal hearing)
    g. Various correspondence between the FA's Judicial Services and both parties

13. The Appeal Board noted the following within the FA's Disciplinary Regulations, Appeals, Non Fast Track (page 189 of the FA Handbook 2024/2025):

    a. Regulation 12: "*An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above."*

    b. Regulation 21: *"sets out the powers of the Appeal Board, including the power to allow or dismiss the appeal".*

FIRST GROUND OF APPEAL – FAIR HEARING

14. The Appellant detailed in his Notice of Appeal the reasons why he did not get a fair hearing. He argued that, in his initial correspondence with the Respondent, he was not given the details of the alleged offence which made it impossible for him to respond fully. He did provide written observations on 18th August 2024, explaining to the Respondent that if more was required then he would provide it. The Respondent did not ask for further submissions and neither he nor his Club received notification, either by e-mail or via the WGS, that he had subsequently been charged with an offence (20th August 2024). He was then informed on 4th September 2024 that, due to his failure to respond to the charges, he would not be afforded the opportunity to attend a personal hearing. He told the Respondent that this was totally unfair. As expressed to the Respondent, he wanted the opportunity to represent himself at a personal hearing and felt that, for the sake of full transparency and co-operation, clubs should be made fully aware of the process and what is required of them.

15. In his verbal submission, the Appellant said that he had been compliant throughout the process. He informed the Appeal Board that he used the WGS a lot and did not receive notification that he had been charged. He was under the impression that his written statement was all that was required. As expressed to the Respondent during the exchange of e-mails, he was keen to represent himself at a personal hearing. Whilst now understanding the process better, he did not agree with it. He had owned up to posting the Tweet and had removed it when first made aware of the complaint. He didn't initially know the full grounds of the complaint and was merely told by the Respondent to refer to the FA Guidelines/FA Handbook. It was not until 4th September 2024 that he was aware of the specific charges. He then went into the WGS to view it. Had he known the full details of the charges then he would have contested them on the basis that his Tweet was not, in his view, discriminatory.

16. In the Respondent's verbal submission, Mrs Sowton briefly summarised how the WGS operates, differentiating between the discipline process and that of player registration. She explained that the MCN in this case was uploaded to the Club's WGS portal on 20th August 2024. As a 'closed' notification, the Secretary would have to access the system in order to open it. The notification was, as per the FA process, not sent to the Appellant. It was for the Secretary of the Club to view the MCN and to inform the Appellant that he had been charged and was required to submit a formal response. Mrs Sowton also confirmed that the DC's findings/sanction letter was sent to both the Club and the Participant charged, as per standard practice. She said that the Club was not new to the discipline process and was fully aware of the actions required.

SECOND GROUND OF APPEAL - CAME TO A DECISION TO WHICH NO REASONABLE SUCH BODY COULD HAVE COME

17. In regard to the second ground, the Appellant submitted in his Notice of Appeal that, in his opinion, '*the charges were unreasonable because my post on Twitter did not include any reference to gender, and did not discriminate against any person's gender'.* The Appellant submitted that he was the target of his own joke; a submission that was accepted by the DC. He drew attention to the fact that, in their written reasons, the DC stated that the Appellant's intent was to be self-referential and there was no genuine intent to be discriminatory.

18. In his verbal submission, the Appellant claimed that such language/comment was heard '*out on the pitch'* every day throughout the season. He had not targetted a specific group, club or team, and any suggestion that the Tweet was indecent or insulting was open to debate. He questioned whether or not people would find it offensive. He suggested that the use of such language or similar remarks could be heard on the television most nights before 9pm. In specific reference to FA Rule E3.2 (aggravated offence) he claimed to be bewildered, believing that his Tweet didn't

discriminate against women or gender. The Appellant added that he was excited to be involved in the first women's Futsal team tour to Africa. On reflection, he felt the Tweet may have been immature and perhaps in bad taste.

19. During questions from the Appeal Board, the Respondent was asked if he felt the Tweet could be seen to be improper and/or that his conduct was improper. He responded by saying that none of the female players were U18 and that the joke did not reference them. His reference was to a sexual reaction and excitement associated with the upcoming tour. It was to protect himself from such discriminatory views that he used a fake profile to '*hide'* his identity, also believing his account to be private. He added that he was clearly wrong in thinking that to be the case. His intention was not to offend, it was, as agreed by the DC, to be self-referential. People who knew him would know that to be the case and was why he Tweeted the comment on his private account. He initially agreed that no female could have made the statement, but on further reflection suggested that some females do make similar comments. He added that, irrespective of his view, it didn't mean that the Tweet was discriminatory.

20. The Appellant was asked about the DC's written reasons and specifically the findings in paragraph 20 - '*the test here is whether the reasonable observer, being a person of reasonable fortitude, would have found the Post to be foul, abusive and aggravated language. In this regard I found that the evidential threshold is met and the reasonable observer would find it to be so, especially given graphic response to the original comment'.* The Appellant disagreed with the DC's statement, saying that this is a grey area, open to interpretation. It is not a black and white scenario. When asked if he would have made such a comment on his open account, the Appellant replied, *'probably not'.* He added that having completed the education programme, plus having previously attended safeguarding courses, he believed his initial view of the Tweet was correct. Whilst not condoning it, he thought the content was, at worst, immature, but certainly not discriminatory.

21. The Respondent made no specific comment to the second ground of appeal.

THIRD GROUND OF APPEAL – IMPOSED A PENALTY, AWARD, ORDER OR SANCTION THAT WAS EXCESSIVE

22. In regard to the third ground of appeal, it was clear from the outset that the Appellant was confused as to the sanction imposed and the categories of football included within the sanction. In his Notice of Appeal, the Appellant identified that the DC's written reasons stated that he is to serve, '*an immediate suspension from all football and football activities for 21 (twenty-one) days, the equivalent of 3 (three) matches'.* The Appellant said that due to his involvement in a number of areas of the game, particularly coaching and refereeing, a 21 day suspension was not equivalent to 3 matches. During any period of 21 days throughout the season he was involved in 7 games, 9 training sessions and refereeing for possibly 6 youth league games. In his opinion this was far in

excess of the 3 match suspension imposed by the DC and felt that the suspension should be related solely to the team referred to in his Tweet. He also noted that, in their decision letter dated 13th September 2024, the Respondent made reference to, '*All Football, CFA Only',* and then identified the specific categories for which he is suspended - '*playing, refereeing, coaching, touchline, ground/venue'.* The Appellant asked if clarification could be provided regarding each of these categories and what the suspension actually entailed. He also asked about his training role and if he was allowed to train/coach the teams outside of match days. **Note:** clarification as to these categories was requested by the Appeal Board both prior to the appeal hearing (paragraph 12f above) and again during the hearing (paragraph 25 below).

23. During his verbal submission, the Appellant said that his suspension will cause significant problems for the Club and that it would take much time and effort to cover his absence. Without a qualified coach in attendance at games the Club may be charged. In addition, some youth games may have to be postponed because of a lack of referees. He didn't understand why '*kids'* should be punished and suffer because of his sanction. He said that he had already paid the fine and attended the education programme, and that his '*ban should not affect other people, that was unfair'.*

24. He requested clarification in regard to whether or not the Respondent (and County FA's across England) had responsibility for dealing with discipline matters within Futsal. He specifically asked if he could attend venues at which his teams were playing. He made reference to Premier League Managers going to games and being able to participate in match days. He said that it would be a logistical nightmare to try and cover his absence, adding there are very few coaches within Futsal. He asked why the sanction was for all teams and not specific to the team referenced in his Tweet. The Appellant concluded by saying that he has been refereeing for 18 years and coaching for 16 years. During this period he has received 2 yellow cards and no misconduct. He urged the Appeal Board to consider his history and to take account of the impact his sanction will have on others.

25. The Respondent said that the sanction imposed by a DC, in this case a suspension from all football and football activity, is then uploaded on to the WGS. All football and football activity is defined within the WGS as playing, refereeing, coaching, touchline and ground/venue. The Respondent stated how the sanction is to be applied and clarified that any reference to 'non safeguarding' in the WGS is reference to the fact that the case is deemed to be a disciplinary issue, rather than one related to safeguarding. Although there was some initial confusion regarding the training and coaching of teams outside of match days, the Respondent confirmed that, under the terms of the suspension, this was not allowed. The suspension is from all football and all football activities.

26. In regard to Futsal discipline and where it lies within the Football Pyramid, the Respondent confirmed that, in accordance with FA Regulations, such discipline is dealt with by County FA's.

Futsal is part of Category 5 football which covers, amongst others, Step 5 of the Football Pyramid, the FA Women's Leagues and Futsal. It was therefore correct that the Appellant was charged and his case dealt with by HFA. **Note:** the Appeal Board noted that under FA Disciplinary Regulations, Section 3: Provisions Applicable to Category 5 (page 214 of the FA Handbook 2024/2025), it is only players who are able to submit an application to the relevant CFA that suspensions are disproportionately harsh. Accordingly, the Appellant in this case is not able to submit such an application to HFA. This Regulation does not preclude the Appeal Board from considering if the sanction imposed by the DC is excessive.

ROLE OF THE APPEAL BOARD

27. The role of the Appeal Board is to exercise a supervisory jurisdiction. It is not the role of the Appeal Board to substitute its own decision for that of the DC simply because it would have made a different decision at first instance. Therefore, the Appeal Board must apply the following principles to the grounds of appeal:

    a. An appeal such as this proceeds by way of review of the decision of the DC, it is not a re-hearing.

    b. It is not open to the Board to substitute their decision for that of the DC simply because the Appeal Board might themselves have reached a different decision. If the DC has reached a decision which it was open to them to reach, the fact that the Appeal Board might have reached a different decision is irrelevant.

    c. The Appeal Board should be slow to intervene with evidential assessments and factual findings made by the DC. It should only be interfered with if they are clearly wrong or if wrong principles were applied. This is likely to be where there is no evidential basis whatsoever for a finding of fact that had been made, and/or where the evidence was overwhelmingly contrary to the finding of fact that had been made.

    d. Any appellant who pursues an appeal on the ground that a Regulatory/DC has come to a decision to which no reasonable such body could have come has a high hurdle to clear or a high threshold to pass.

FINDINGS OF THE APPEAL BOARD

28. The Appeal Board, having taken into account the submissions of both parties and having given the Appeal Bundle careful consideration, make the following findings. For clarity, the Appeal Board has referenced each individual ground of appeal.

29. **First Ground - failed to give the Participant a fair hearing.** The processes followed by the Respondent in issuing the charges via the WGS were correct and the DC proceeded in accordance with the rules and regulations for a hearing. Having failed to respond to the charges, the DC correctly dealt with the case as a deny by correspondence. The Appellant's submission that they did not receive a fair hearing because they were not informed that charges had been raised was not supported by the Appeal Board. In this case it was the responsibility of the Club to inform the Appellant that he had been charged, and the Appeal Board concluded that they failed to do that.

30. **Second Ground - came to a decision to which no reasonable such body could have come.** Applying the test often referenced in these cases (Associated Provincial Picture Houses Ltd v Wednesbury Corporation), the Appeal Board found that the DC decision was fair and reasonable. The decision was neither perverse nor unlawful. The DC considered the evidence available to them at the time and detailed their findings as to why they did not agree with the Appellant's submission that no offence had been committed as the comment makes no reference to gender and therefore cannot be aggravated. The Appeal Board concluded that the DC came to a decision that they were entitled to make.

31. **Third Ground - imposed a penalty, award, order or sanction that was excessive.** A Disciplinary Commission has the right to use their discretion to make sure a fair outcome is achieved. On this occasion they deemed it appropriate that the sanction is a suspension from all football and football activity, and the suspension is for a number of days rather than a number of matches. For clarification, the suspension is from all teams the Appellant is involved with and not just the team referred to in his Tweet. The Appeal Board considered the DC's conclusion that there was no genuine intent by the Appellant to be discriminatory or offensive and that he could not reasonably have known that any such offence would be caused. The Appeal Board considered the sanction imposed and whether it was too lenient. They came to the conclusion that the DC, having found no genuine intent, was entitled to reduce the sanction. The Appeal Board noted that the DC did not consider, or at least did not document, if they found the Appellant's role as a Club Welfare Officer an aggravating factor.

32. The Appeal Board found the DC's reference to a 21day suspension being equivalent to 3 matches unhelpful. Such equivalence was introduced by the FA some years ago. With the amount of football being played it is probably not relevant to the current era and can cause confusion. That said, the Appeal Board noted the amount of football the Appellant would be involved in over a period of 21 days and did not find the sanction excessive. The Appeal Board also noted that, as a consequence of the DC's decision, the Appellant is not able to referee. This is within the scope of the sanction and again was not considered by the Appeal Board to be excessive.

OUTCOME

33. The Appeal Board determined that:

a. The appeal is unanimously dismissed on all three grounds.

b. There is no order as to costs and the appeal fee is to be forfeited.

c. Following a decision of the Judicial Panel Chair, issued on 19th September 2024, to stay the suspension two days after its start date, the Appellant still has to serve 19 days of the 21day suspension. The Appeal Board noted the Appellant's submission (in paragraph 23 above) that it would take much time and effort for the Club to organise cover during his absence. As such, the Appeal Board determined that the Club/Appellant should be given 7 days to address this issue and directed that the sanction is to return into effect on 9th October 2024.

d. Although not directly part of the appeal hearing, on 4th October 2024 the Appellant requested further clarification as to the sanction categories and specifically what he is allowed to be involved in during the suspension. The Respondent replied on the same day, clarifying the position. It is not the role of the Appeal Board to become involved in such matters. Any further clarification should be directed to HFA and not the Appeal Board.

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

Anthony Rock (Chair) Monday 7th October 2024

Nolan Mortimer

Robert Purkiss