

# **THE FOOTBALL ASSOCIATION**

## **APPEAL BOARD**

### **NON-PERSONAL HEARING**

*of*

**GARY PARSONS (Appellant)**

**&**

**HAMPSHIRE FA (Respondent)**

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### **REASONS OF THE APPEAL BOARD**

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These are the written reasons of the decision of an appeal board (the “Appeal Board”), having considered the matter as a non-personal hearing held online via the video platform MS Teams on 18<sup>th</sup> February 2025.

#### **Introduction**

1. The Football Association (“The FA”) had received an appeal against a decision of the Hampshire Football Association (“Hampshire FA”) finding a charge proven against the Appellant.
2. The charge had concerned an alleged breach of FA Rule 3.1, Improper Conduct (including violent conduct and threatening and/or abusive language/behaviour). The alleged misconduct had occurred in a match (“the match”) played on 5<sup>th</sup> October 2024 between New Milton Town FC Development v Fawley AFC Reserves in the Hampshire Combination & Development Football League. The Appellant had been running the line as a club assistant referee for New Milton Town Development (“New Milton”) in the match.

3. The charge had been dealt with by the Southern region Regional Disciplinary Panel and had been heard by a three person commission (“the commission”) sitting on behalf of the Respondent 15<sup>th</sup> January 2025 (“the Decision”).
4. The Appellant was appealing against the Decision.

### **The Appeal Hearing**

5. The Appeal Board convened on 18<sup>th</sup> February 2025 to consider the appeal. The Appeal Board comprised:

Paul Tompkins (Chair)  
Chris Goodman (Panel Member)  
Daniel Mole (Panel Member)

The Appeal Board was assisted by Conrad Gibbons of FA Judicial Services acting as secretary to the Appeal Board.

6. No parties were in attendance as the Appellant had opted for a non-personal hearing; in other words the appeal was to proceed on consideration of the papers alone.

### **The Appeal Documentation:**

7. The Appeal Board had before it the full appeal bundle comprising:

- The Appellant’s Notice of Appeal
- The Respondent’s Response to Notice of Appeal
- Papers of First Instance
- Appellant’s Offence History
- Results Letter & Written Reasons
- Supplementary Correspondence

8. All members of the Appeal Board were fully conversant with the appeal bundle. Absence of specific reference to any part of the appeal bundle in these written reasons does not mean they were not considered; they were considered in full. These written reasons quote from the papers of first instance only if and when necessary. Absence of wholesale reference to the papers of first instance should not be taken as an inference that they were not considered by the Appeal Board.

### **Submissions by the Appellant:**

9. The Appeal Board carefully considered the appeal notice and its covering correspondence as set out in the bundle.
10. The Appellant was appealing against the decision on the grounds that the Respondent:
- Came to a decision to which no reasonable such party could have come,
  - Failed to give the Appellant a fair hearing,
  - Imposed the penalty, award, order or sanction that was excessive,
  - Misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision.
11. The Appellant claimed that no reasonable body would have come to the decision of the commission. The Appellant submitted that the main CFA witness had withdrawn from the Hearing and two further witnesses whose statements supported the allegation of misconduct had not appeared to give evidence to the commission. The Appellant submitted these witnesses had all chosen not to attend having previously agreed to do so. The Appellant also submitted that the match referee had stated he could always see the Appellant and did not see him strike anybody. Furthermore, there was no report of such misconduct during the match. The witness, Mike Barry, had changed his evidence in the course of the hearing and, it was submitted, was further away from the incident than he claimed to have been. This affected the credibility of Mr Barry and the commission had placed disproportionate weight on his evidence. The appellant also cited the conflicting and contradictory evidence as being in his favour as There was no consistency in the evidence The Appellant submitted that the cumulative effect of the different evidence rendered the decision one which not only could not have been reached but rendered it incorrect.
12. It was further claimed that the Appellant had not had a fair hearing. The Appellant submitted that the composition of the commission had been changed at short notice; he did not consider members of the commission would have had time to familiarise themselves with the case papers; CFA witnesses were not in a private location, they had all waited in the same location; he alleged “*that they would have openly discussed what was discussed and how to respond*”.
13. The Appellant was appealing against the sanction of a seven match ban and a one hundred pounds (£100) fine. His argument was that he was not affiliated to a club and therefore there was no reason to measure the length of his suspension by the number of matches new Milton had played. There was also a danger that New Milton could fold or take an inordinately long

time to play seven matches the surrendering his suspension disproportionately long. The Appellant also submitted that his suspension should be measured in days and not matches and, with him being the subject of a safeguarding suspension pending investigation, he believed the Decision to suspend him should have been backdated to allow for time already served.

14. The Appellant was submitting that Hampshire FA had misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to the Decision. His argument was that he had no affiliation to New Milton other than as a parent and by volunteering to act as an assistant referee he should be classed as a match official and therefore his suspension should be measured in days and not matches.

#### **Submissions by the Respondent:**

15. The Appeal Board considered the formal response to the notice of appeal as well as the written reasons as to how the Decision had been reached. The Respondent explained that the principal witness to which the appellant referred had not withdrawn from the process but was a youth witness, was away on an apprentice course and had been unable to provide an appropriate adult for him. This meant that arrangements were unable to be made to satisfy the youth protocol for giving evidence to such hearings and therefore his evidence could not be taken. The Respondent also explained how the composition of the commission had changed prior to the Hearing but that the case papers had been issued to the commission members on 10<sup>th</sup> January 2025 in time for the hearing on 15<sup>th</sup> January 2025.

#### **Deliberation**

##### **Legal test for all grounds of appeal**

16. As is clear from Regulation 12 of the Non- Fast Track Appeal Regulations<sup>1</sup>, the task of the Appeal Board is to conduct a review of the first instance Decision, and not a new hearing. In other words, the appeal board is not considering the matter afresh but, instead, reviewing the first instance Decision.

17. Guidance on how this review should be carried out is to be found in:

(a) The FA v Bradley Wood, 20 June 2018, which states, at paragraph 23:

*“When considering evidential assessments, factual findings and the exercise of a*

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<sup>1</sup> The FA Handbook 2024/2025 at P.191

*judicial discretion in the context of an appeal by way of review, a Commission must be accorded a significant margin of appreciation. Accordingly, such evidential assessments and factual findings should only be disturbed if they are clearly wrong or wrong principles have been applied. That threshold is high and deliberately so. When assessing whether a sanction is unreasonable the same margin of appreciation applies. It is not for the Appeal Board to substitute its own opinion or sanction unless it finds that the Commission's decision was unreasonable."*

and

(b) The FA v José Mourinho, 18 November 18, which states, at paragraph 54:

*"It is not open to us to substitute our decision for that of the Commission simply because we might ourselves have reached a different decision. If the Commission has reached a decision which it was open to the Commission to reach, the fact that we (or a different Regulatory Commission) might have reached a different decision is irrelevant. To put it another way, it is not for us to 'second guess' the Commission; ...*

*... We are permitted to 'intervene' only when there has been an error of principle by the Commission. To put it another way, we are not permitted to interfere with the decision of the Commission unless we are satisfied that the Commission has gone 'plainly wrong'."*

18. Accordingly, the appeal board applied the following principles in its approach to the grounds of appeal:

- An appeal such as this proceeds by way of review of the Decision of the Respondent. It is not a rehearing of the evidence and arguments at first instance;
- It is not open to the appeal board to substitute its own decision for that of the Respondent simply because the appeal board might themselves have reached a different decision at first instance;
- If the Respondent has reached findings of fact which it was reasonably open to the Respondent to reach, the fact that the appeal board might have reached a different factual finding is irrelevant;
- The appeal board will be slow to intervene in evidential assessments and factual findings made by the Respondent. Evidential assessments of the Respondent should only be interfered with if they are clearly wrong ("Wednesbury" unreasonable and/or

- irrational and/or perverse) or if the wrong legal principles were applied to the making of those factual findings;
- The only likely scenario for the appeal board to interfere with factual findings of the Respondent is where there is no proper evidential basis for a finding of fact that has been made and/or where the evidence was overwhelmingly contrary to the finding of fact that has been made;
  - The test for the appeal board in determining whether the Respondent acted irrationally and/or perversely and/or “Wednesbury” unreasonably, or came to a decision to which no reasonable such body could have come, is essentially the Wednesbury unreasonableness test applied in administrative law to cases of judicial review;
  - Any Appellant who pursues an appeal on the ground that a Disciplinary Commission 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 overcome.

### **Discussions on the grounds submitted**

19. In accordance with the principles set out immediately above, the Appeal Board considered all the parties’ submissions.

20. The Appeal Board was satisfied that on the basis of the papers before it the original commission had not come to a decision to which no reasonable such body could have come. Therefore, this limb of the appeal fails.

21. It was clear from the written reasons of the commission that they had correctly identified all of the issues on which they were expected to decide and had considered all of the evidence before it. The commission had described the case as “*difficult*” but the appeal board could find no fault in the commission’s decision making process.

22. The commission’s assessment of the individual witnesses was noted and it was clear from the written reasons that the commission could find insufficient evidence to substantiate the allegation that the Appellant had struck the Fawley player known as GSB. Conversely, on the balance of probabilities they were able to find that there was sufficient evidence that the Appellant had struck the Fawley player AD. The Appellant’s submission appeared to be that because his evidence had remained consistent this therefore had to be the definitive version of events but this was to oversimplify matters. The commission had correctly identified the diversity of evidence and from that evidence it had concluded what it believed to have been more likely to have happened than not.

23. The appeal board reminded itself of the guidance and principles set out in paragraphs 17 and 18 above. The appeal was not to proceed on the basis of a rehearing nor of what the appeal board itself might have decided had it sat in place of the commission but rather whether the commission in reaching the decision had come to a decision to which no reasonable such body could have come. In other words, to allow the appeal the appeal board would need to be satisfied that the commission had reached a decision which on the facts it was not entitled to reach. The appeal board found that this was very far from the case and that the Decision was well within the scope of decisions the commission was entitled to make.

24. The appeal board also considered the sanction which had been imposed, subject to the charge having been proven, was in line with FA regulations and could potentially be regarded as lenient in the circumstances of violent conduct against and under 18 footballer. However, the appeal board also noted the commission had carefully considered the imposition of the suspension taking into account the ISO suspension having been in place since 21<sup>st</sup> October 2024. The appeal board considered the commission to have been very careful and clear in its thinking process when deciding upon the sanction and the appeal board found no fault in that process and therefore did not interfere with the sanction imposed.

25. As for the argument that the Hampshire FA had misinterpreted or failed to comply with the rules and or regulations of the Association relevant to its Decision the appeal board noted that no specific Regulation had been quoted by the Appellant. The appeal board was able to consider FA Regulations applicable to the Decision as a result of which the appeal board concluded this limb of the appeal also fails.

26. The appeal board found the following regulations to be of assistance:

- *FA General Disciplinary Regulation 27<sup>2</sup>*

*“27 In addition, the following paragraphs of this Section Two shall apply to matters of Misconduct proceeding before Disciplinary Commissions: paragraphs 28, 31, 39 to 43, 47 and 48 and 50 to 52.1 and Appendix 1 to Part A: Section One: General Provisions. The content of those paragraphs shall be construed accordingly (e.g. references to The Association shall be taken to mean the relevant Affiliated Association).”*

The relevance of this Regulation is that, whilst it is in a section of the FA Disciplinary Regulations relating to regulatory commissions, regulation 27 confirms that regulation 41

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<sup>2</sup> The FA Handbook 2024/2025 at P.175

below is to apply to all matters of misconduct preceding before disciplinary commissions, such as the original commission.

- *FA General Disciplinary Regulation 41*<sup>3</sup>

*“41 Save where expressly stated otherwise, a Regulatory Commission shall have the power to impose any one or more of the following penalties or orders on the Participant Charged:*

*41.1 a reprimand and/or warning as to future conduct;*

*41.2 a fine;*

*41.3 suspension from all or any specified football activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of Matches”*

The appeal board noted that regulation 41.3 permitted the commission to impose a suspension measured either in matches or from a specific date. The appeal board could find no specific regulation differentiating between participants and match officials. Therefore, the commission was within its power to impose a suspension measured in matches rather than a time-based suspension.

27. The Appellant had sought to establish that he should have been sanctioned on the basis that he was a match official. Notwithstanding the entirely proper basis of the match-based suspension, the appeal board also considered this argument and did not find favour with it. The Appellant may well have been attending the match as a spectator but by running the line he was acting as a club assistant referee. In the absence of any other evidence it is reasonable to assume that he was running the line which had been run by the New Milton assistant referees throughout the match and that his attendance at the match was not entirely neutral.

28. On the ground of appeal whether the Respondent had failed to give the participant a fair hearing, the appeal board also found that this limb of the appeal fails.

29. The composition of the commission appeared to have been entirely proper and notification from Hampshire FA that the case papers had been submitted to the commission members on

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<sup>3</sup> The FA Handbook 2024/2025 at P.176



10<sup>th</sup> January 2025, four clear days before the hearing, was in accordance with FA Regulations. FA Regulations, Part G appendix II<sup>4</sup> states:

*“16 Case papers shall ordinarily be distributed:*

*16.1 in the case of a personal hearing, to the Participant Charged and the Disciplinary Commission at least three days prior to the hearing;”*

Furthermore, the Appellant’s allegation that county witnesses had colluded in giving their evidence to the commission was not substantiated other than by an allegation in the notice of Appeal and the appeal board was unable to take this matter any further.

### **Conclusion**

30. In summary, the appeal board unanimously dismissed the Appeal on all four grounds.

31. The appeal board therefore ordered:

- The appeal was dismissed the appeal on all grounds raised
- There was no order as to costs and the appeal fee is to be forfeited

32. This decision of the Appeal Board is final and binding and there shall be no right of further challenge.

Paul Tompkins

Chris Goodman

Daniel Mole

24th February 2025

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<sup>4</sup> The FA Handbook 2024/2025 at P.276