

The Football Association Discipline Commission

(on behalf of Surrey FA)

In the Matter of Nathan Upton

Case ID: 11427175M

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Reasons for the decision made by the Panel on 22 November 2023

The independent Discipline Panel appointed by the FA were: Hollie Ball (Chair), Jairo Marin and Andrew Saunders
Sam Anderson assisted as Secretary.

The panel considered this matter on correspondence only basis.

The following is a record of the salient points which the Panel considered and is not intended to be and should not be taken as a verbatim record of the decision.

Charges

By a Misconduct Charge Notification dated 19 October 2023 Mr Upton was charged with the following:

Charge 1: FA Rule E3 – Improper Conduct (including foul and abusive language)

Charge 2: FA Rule E3.2 Improper Conduct aggravated by a persons Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Sexual Orientation or Disability.

The charge arose from a game played of Parkside FC First v Timoth FC 71 First on 23 September 2023. Mr Upton was a player and captain of Parkside. It is alleged that Mr Upton used the language "fucking virgin faggot" towards an opposition player during the game.

The Relevant Football Association Rules

Rule E3.1 reads:

A Participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into dispute or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.

Rule E3.2 reads:

A Breach of Rule E3.1 is an "Aggravated Breach" where it includes a reference, whether express or implied, to any one or more of the following :- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.

The Standard Sanctions and Guidelines for Aggravated Breaches provides a "Sanctioning Range" for proven Aggravated Breaches of Rule E3.1. The Guidance states:

A finding of an Aggravated Breach against a Player, Manager or Technical Area Occupant will attract an immediate suspension of between 6 Matches and 12 Matches ("Sanction Range").

A Regulatory Chair shall take all aggravating and mitigating factors into account, including but not limited to those listed in these guidelines when determining the level of sanction within the Sanction Range.

The lowest end of the Sanction Range (i.e. 6 Matches) shall operate as a standard minimum punishment (the "Standard Minimum").

A Regulatory Chair may impose an immediate suspension in excess of 12 Matches in circumstances where aggravating factors of significant number or weight are present.

Where an Aggravated Breach of Rule E3.1 is committed in youth football by a Player aged 12-15 (inclusive), a Regulatory Chair shall impose a suspension of at least 6 Matches on that Player. The Regulatory Chair may increase the suspension where aggravating factors are present. A minimum of 1 Match shall come into effect immediately, however the Regulatory Chair may suspend such number of the remaining Matches on terms and for such period as it considers appropriate.

Education

Any Participant who is found to have committed an Aggravated Breach shall be made subject to an education programme, the details of which will be provided to the Participant by The Association.

Other Penalties

A Regulatory Chair may impose any one or more of the other penalties as provided by paragraph 40 of Part A to the Disciplinary Regulations.

Second or further offences

Second or further offences will be treated with the utmost seriousness.

There will be a presumption that the sanction for a second or further offence will be higher than the top end of the Sanction Range (i.e. 12 Matches), however the Regulatory Chair shall in any event impose an immediate suspension of no fewer than 7 Matches.

Exceptions to the Standard Minimum

A Regulatory Chair may only consider imposing a suspension below the Standard Minimum where the following specific (and exhaustive) circumstances arise such that the Regulatory Chair determines that the Standard Minimum would be excessive:

Where the offence was committed in writing only or via the use of any communication device and:

- Where the Regulatory Chair is satisfied that there was no genuine intent on the part of the Participant Charged to be discriminatory or offensive in any way and could not reasonably have known that any such offence would be caused; or*
- The age of the Participant at time of the offence (e.g. where the Participant was a minor at the time the offence was committed); or*
- The age of the offence (e.g. a social media post made a considerable time ago).*

Plea

The Panel considered the plea of Mr Upton. Mr Upton pleaded not guilty to both charges on the 26 October 2023. The panel went on to consider the evidence.

Evidence

The Panel considered the following written evidence:

Reports from County Officials

1. Investigation Report from Richard Garland (Surrey FA)
2. Extraordinary incident report from Brian Clark (Referee)
3. Extraordinary incident report from Brian Clark (Referee)

Parkside FC

1. Email statement from Nathan Upton
2. Witness statement from Nathan Upton (Player)
3. Witness statement from Joshua Allen (Player)
4. Witness statement from Rhys Waul (Player)
5. Witness statement from Steven Aldridge (Player)
6. Witness statement from Jayme Caen (Player)
7. Witness statement from Jerard Cabey (Player)

Timoth FC

1. Witness statement from Gideon Troy (Player)
2. Witness statement from Mark Barwis (Manager)
3. Witness statement from Harvey Barwis (Player)
4. Witness statement from Graeme Hodge (Club Official)

Appendices

1. Emails from Surrey FA & Timoth FC
2. Emails from Surrey FA & Parkside FC
3. Response to Charge
4. Screenshot taken from Whole Game System
5. Response to Charge from Nathan Upton

Conclusion

The Panel reminded themselves that the standard of proof is the civil standard of the 'balance of probability'. That means the Panel are to be satisfied, on the available evidence, that the charges made against Mr Upton were more likely than not to have occurred.

The witnesses that dealt with this charge in their statements were as follows:

Nathan Upton – Mr Upton denied any discriminatory comment and stated that the referee had not been informed of any alleged incident. He felt that the statements of Timoth had been dramatised.

Gideon Troy – Mr Troy was the player whom it was alleged homophobic comments were said to. Mr Troy stated that Mr Upton had called him a "virgin" saying something homophobic but not making much sense. He stated something was said about fucking his girlfriend referring to a spectator who was his friend. Mr Troy was not able to identify what had been said.

Harvey Barwis – Mr Barwis is a Timoth player. He stated that Mr Upton was intimidating and that he had made a homophobic slur towards a young Timoth player calling him a "fucking virgin faggot" and asking him whether he wanted him to fuck his girlfriend.

Graeme Hodge – Mr Hodge is the Assistant Manager, Secretary and Welfare Officer of Timothy. Mr Hodge stated that he witnessed Mr Upton put in a hard tackle on their young player who had reacted in anger. It was clear to Mr Hodge that he had been subjected to negative slurs which he was later told was homophobic. Mr Hodge was not close enough to hear what was said.

The Panel considered the relevant evidence in respect of this charge. There was only one player who was able to identify what Mr Upton allegedly said. However, this was not corroborated by others as no one else was able to identify specific words used. The allegation appears not to have been reported to the referee. On the balance of probabilities having considered all the evidence available the Panel unanimously found both charges made against Mr Upton not proven. The Panel felt that the evidence in respect of this matter was insufficient to satisfy the burden of proof.

The Charges against Mr Upton are therefore dismissed.

This decision is subject to the relevant Appeal Regulations.

Hollie Ball (Chair)

Jairo Marin

Andrew Saunders

22 November 2023