

THE FOOTBALL ASSOCIATION
DISCIPLINARY COMMISSION
(on behalf of the Surrey FA ('SFA'))

Participant: Martin Coughlan (a Match Official)

Hearing: Personal Hearing

Date: 18 October 2023

Incident: WhatsApp Comments

THE DECISION AND REASONS OF THE COMMISSION

Disciplinary Commission

1. The following members were appointed to the Disciplinary Commission:
 - a. Mr Alan Darfi (Independent Chairman appointed by The Football Association);
 - b. Ms Karen Hall (Independent Member appointed by The Football Association); and
 - c. Ms Victoria Fletcher (Independent Member appointed by The Football Association).

(the 'Commission')
2. The Commission was assisted by Ms Ella Broad of Wiltshire FA, who acted as Secretary.

Charges

3. In correspondence dated 13 September 2023, SFA issued a charge letter alleging that Mr Coughlan had engaged in Improper Conduct including the use of foul and abusive language, in breach of FA Rule E3. Rule E3.1 states '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 disrepute or use any one, or combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behavior' ('Charge 1').
4. It was separately specifically alleged that the foul and abusive language was aggravated by reference to ethnic origin, colour, race, nationality, faith, gender, sexual orientation or disability, in breach of FA Rule E3.2. Rule E3.2 states 'A breach of Rule E3.1 is an "Aggravated Breach" where it includes reference, whether express or implied, to any one or more of the following:- ethnic origin, colour, race, nationality, faith, gender, gender, sexual orientation or disability' ('Charge 2') (together with Charge 1, the 'Charges').
5. It was alleged that Mr Coughlan had written the comment 'oh to be a shirt lifter ey' or similar in a refereeing WhatsApp group.
6. Mr Coughlan denied the Charges, and requested the matter be considered at personal hearing.

Evidence

7. The Commission had received and reviewed the following documents, in advance of the Hearing:
 - a. SFA charge letter, dated 13 September 2023;
 - b. Evidence in support of the Charges; and
 - c. Response to the Charges.

Preliminary Matters

8. The Commission were advised at 10:10am on 18 October 2023 that the Association Witness was no longer able to attend but was able to proffer a further written statement in support of the statement obtained during the inquisitorial process. This was accepted by the Commission and it was further requested the statement be sent to the Participant charged. At the Hearing Mr Coughlan confirmed he had received the additional statement and had previously received the case bundle. Mr Coughlan was content to proceed.

Decision

9. The following is a summary of the principal submissions considered by the Commission. It does not purport to contain reference to all points considered, however the absence in these reasons of any particular point, or submission, should not imply that the Commission did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, the Commission carefully considered all the evidence and materials furnished with regard to these cases.
10. The burden of proof was on SFA. The applicable standard of proof is the balance of probability. The balance of probability standard means that the Commission is satisfied an event occurred if the Commission considers that, on the evidence, the occurrence of the event was more likely than not.
11. The Commission heard live evidence from Martin Coughlan and Richard Blackwood (referee).
12. The Commission considered a written statement from Lucy Clark (referee) confirming that the comments were written in a refereeing WhatsApp group with over 100 members. The Commission noted Ms Clark confirmed she and other members of the group found the comment 'oh to be a shirt lifter ay' to be homophobic as the term 'shirt lifter' is used as a slur against Gay men. The Commission gave appropriate weight to the written statement.
13. Mr Coughlan stated that:
 - a. He had been a referee for 35 years and was currently a level 5 referee. Mr Coughlan confirmed he remained an active referee refereeing 6 matches a week. Mr Coughlan confirmed he was also involved in 3 local leagues including in the roles of Chair, Treasurer and Referee's Secretary.
 - b. In the WhatsApp group people had been discussing the fact that sometimes when a player lifted their shirt in celebration this was seemingly deemed to be ok, whereas sometimes it resulted in a yellow card. It was confirmed that if the shirt is lifted above head height this is a cautionable offence, whereas if it is to the neckline, it is not, which he did not previously know.
 - c. He wrote the comment 'oh to be a shirt lifter eh?' referencing the fact that lots of players seem to do this on a regular basis. He did not mean for the comment to cause offence.
 - d. He then did not look at the WhatsApp group until the following day, when he was made aware that people were insinuating he had meant to cause offence by his comment. He was very surprised at this and 'put them right straight away' as this was certainly not the case.
 - e. He may well have been aware of people 'in years gone by' using the term 'shirt lifter' to cause offence but not recently. Mr Coughlan stated he was old enough to be aware that the comment was previously used in that way but this was not his intention in this case.
 - f. It 'didn't even enter his head' that the comment could have been taken as causing offence. All he was stating was that he did not know why players lifted their shirts on a regular basis when you could get cautioned for it. In hindsight he could have said this in a different way such as 'what's the point of lifting shirts' but instead he made the comment that he did.
 - g. The comment was not meant as 'banter' or as a joke. He was simply referring to the fact that players lifted their shirts.
 - h. He wasn't very happy at all when he received the Charges from the SFA. He wanted to know who had made the complaint and asked Ms Clark personally via direct message if it was her. The reason for this was that, if Ms Clark had confirmed

it was her, then he would have apologised for hurting her feelings and explained that the comment was not meant to cause offence. As Ms Clark did not confirm the complaint was made by her he did not do so.

- i. He thought his explanation as to what he meant by the comment would have been enough to satisfy any concerns. He felt it was tough enough for referees anyway without other referees making complaints about them.
- j. He did not apologise to the WhatsApp group as he did not feel that he had done anything wrong. He accepted that comments could be taken as offensive by one person and not another and noted that seemed to be the case here, with a couple of other referees then following behind that person.
- k. It was difficult to say anything without someone being able to take offence.
- l. Whilst he did not intend at all for the comment to be offensive, he accepted with hindsight that it could have been taken as offensive. However, he just said what came into his head at the time. People that lift their shirt up are shirt lifters, so this is why he used those words. He did not check the dictionary every time he said something.

14. Mr Blackwood stated that:

- a. He is a referee and saw the message in the WhatsApp group.
- b. He did not really know Mr Coughlan and only met him for the first time recently when they refereed together. When he saw the responses to the comment in the WhatsApp group, he did not think the comment was offensive and said to Mr Coughlan that he was happy to support him when he heard that he had been issued with a charge by the SFA.
- c. The comment had been said following a discussion about whether a player who lifted their shirt following the England v Spain match should have been issued with a yellow card. A photo was posted of a player lifting their shirt. Mr Coughlan responded to this discussion with the comment 'oh to be a shirt lifter eh?'.
- d. He was really confused where the allegation that this comment had been a derogatory homophobic slur had come from. Another referee messaged him directly afterwards explaining that the term shirt lifter was offensive and provided him with a wikipedia definition. However, he advised he was not old enough to remember this definition. He '100%' believed that Mr Coughlan did not intend for the comment to have been taken this way.
- e. The comment fell in line with the ongoing discussion, and he could not think of another way in which Mr Coughlan could have said the comment. He stated that many words had duplicate meanings and context should always be considered. He used the example of "fag". If a person said they were going outside to smoke a fag you wouldn't think someone was setting alight to a homosexual. As such why should a person think just because the word "shirt lifter" has been said when discussing the topic of the lifting of shirts the author is referring to a homosexual.
- f. He took the comment as simply being sarcastic about players circumventing the laws of the game by lifting their shirt but not all the way up.

15. In summary Mr Coughlan stated that:

- a. He felt that Mr Blackwood had explained the situation perfectly.

- b. Nothing offensive had been meant by the comment. He had been shocked and hurt when the Charges were issued against him.
 - c. He would have liked to have been able to ask questions of those who felt offended and if necessary, apologise for this. However, he didn't mean anything by the comment, it was just said based on what he saw in the fixture in question.
 - d. He was happy the hearing had been a fair one.
- 16. The Commission reviewed the WhatsApp messages in question, noting Mr Coughlan's comment 'oh to be a shirt lifter eh?' was in response to a comment 'shirt has to be lifted over players head'. The Commission reviewed the Wikipedia definition of 'shirt lifter' this being British slang for an offensive term against Gay men. The Commission noted Mr Coughlan admitted that he was aware that, at least in the past, this term had been used offensively.
- 17. The Commission noted Mr Coughlan admitted that he could have used other words to describe the point that he was trying to make. On that, the Commission agreed that Mr Coughlan's explanation that he was simply trying to make a comment about players lifting their shirt was not credible, in that the words themselves that were used did not seemingly go to this point. The Commission also noted Mr Coughlan admitted he was aware of the (in the opinion of the Commission) much more usual use for the words, which is to cause offence, agreeing that these words continued to do so and the meaning and use of them had not changed.
- 18. The Commission noted Mr Blackwood stated he did not believe the comments were meant to cause offence, but noted the wording of the Charges did not require a subjectivity test to be applied. Simply, that the Charges would be proven if firstly foul and abusive language was used and secondly if this foul and abusive language was aggravated by reference to a protected characteristic. The Commission agreed therefore that it was irrelevant as to whether or not one person was offended by the words, and another was not. Notwithstanding the above point, the Commission noted that at least 3 individuals raised an issue with the comments.
- 19. Taking all of the above into account, the Commission found it more likely than not that Mr Coughlan was aware of the meaning of his words, in that they are used to cause offence to Gay men. The Commission found it more likely than not that Mr Coughlan had intended these words to have been taken as a joke, however agreed this was irrelevant as to whether or not the Charges should be found proven or not, in that the words clearly constituted foul and abusive language and were also clearly aggravated by reference to a protected characteristic.
- 20. Taking the above into account, the Commission unanimously found the Charges proven.
- 21. Having found the Charges proven, the Commission was advised that Mr Coughlan's previous discipline record indicated a previous similar aggravated offence from February 2023, where he was given a 49-day suspension from football and all football activities and ordered to pay a fine of £70. The Commission was advised Mr Coughlan was also ordered to complete an FA Education course. The Commission was advised this was as a result of him using the words 'rent boy'.
- 22. The Commission referred to Appendix 1 of the FA Disciplinary Regulations General Provisions, which state:
 - 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 Commission 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 Commission may only consider imposing a suspension below the Standard Minimum where the following specific (and exhaustive) circumstances arise such that the Regulatory Commission 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 Commission 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).
- 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.
- A Regulatory Commission may assess that a Match-based suspension is not appropriate due to the specific circumstances of a case; the nature of the role of a Participant, and/or whether they are currently engaged by a Club. A Regulatory Commission should have regard to the Sanction Range as set out in this Appendix as well as the mitigating and aggravating factors when determining sanction. However, a Regulatory Commission shall be entitled to impose an appropriate time-based suspension that is commensurate with the breach, having regard to the specific roles and responsibilities of the Participant.
- 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 Commission shall in any event impose an immediate suspension of no fewer than 7 Matches. Where a Regulatory Commission deems it appropriate to issue a time-based suspension it should consider all relevant factors including but not limited to the number and severity of any previous offences when determining sanction. A Regulatory Commission should have regard to the Sanction Range as set out in this Appendix as well as the mitigating and aggravating factors when determining sanction. However, in all cases a Regulatory Commission shall be able to impose any punishment it deems appropriate and proportionate in the circumstances.

23. The Commission referred to Regulation 40.2 of the FA Disciplinary Regulations General Provisions which state '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...a fine'.
24. The Commission noted Mr Coughlan had only recently resumed participation following a lengthy suspension for a very similar offence. The Commission noted Mr Coughlan held a number of senior roles in addition to his role as a Match Official. The Commission noted Mr Coughlan was a Match Official. The Commission noted that, whilst Mr Coughlan stated he was willing to apologise for his actions, he had continually stated that he had done nothing wrong. The Commission noted the Charges were denied.

25. The Commission agreed it was not appropriate to consider a sanction below the Standard Minimum as, whilst the offence was committed in writing, it had found Mr Coughlan (by his own admission_ would reasonably have known that there was the potential for offence to be caused. The Commission agreed the age of the Participant and the age of the offence were also not applicable. The Commission noted therefore that the starting point for the sanction was in excess of 12 matches. The Commission however agreed a time-based suspension was appropriate given his various roles. The Commission noted Mr Coughlan had previously been issued with a fine of £70.
26. Taking all of the above into consideration, the Commission agreed a suspension of 98 days from football and all football activities was appropriate. The Commission agreed that a fine of £100 was appropriate and that Mr Coughlan should be ordered to complete a face-to-face education course prior to being eligible to resume participation, due to the fact this was a second proven aggravated charge.
27. For the avoidance of doubt, the Commission was not tasked with confirming whether or not Mr Coughlan was 'homophobic', simply whether, on this occasion, it was felt that his comments had been aggravated by reference to a protected characteristic.

Outcome

28. The Commission ordered that Mr Coughlan be:
- a. Ordered to serve a 98-day suspension from football and all football activities.
 - b. Fined the sum of £100; and
 - c. Ordered to attend a face-to-face education programme before the time-based suspension is served or be suspended until such time as this course is completed.
29. There is the right to appeal these decisions, in accordance with FA Regulations.

Alan Darfi
Victoria Fletcher
Karen Hall

23 October 2023