

NON-PERSONAL HEARING

THE FOOTBALL ASSOCIATION

and

Mr LEON METTAM

Tamworth FC

THE DECISION AND REASONS
OF THE FA REGULATORY COMMISSION

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Introduction

1. The Football Association (“The FA”) received a complaint concerning a number of comments posted on a Twitter account believed to be belonging to Mr Leon Mettam of Tamworth FC (“Tamworth”).
2. On 06 May 2015, Mr Richard Berry, The FA Football Regulation Coordinator, had written to Mr Mettam, who is a registered player at Tamworth, inviting Mr Mettam’s observations in relation to these comments and requested the response by 13 May 2015.
3. On 09 May 2015, Mr Mettam replied back to Mr Berry with his observations.

The Charge

4. On 18 May 2015, The FA charged Mr Mettam with misconduct for a breach of FA Rule E3 in respect of the comments posted on his Twitter account on 02 May 2015 at 9.35pm (the “Charge”).
5. The FA alleged that Mr Mettam’s comment, which included the text “...*anyway lads see u next year... I’m busy in Jamaica enjoy ur holiday to wisbech!! Mongs*”, was abusive and/or insulting and/or improper, contrary to FA Rule E3(1).
6. It was further alleged that this breach of Rule E3(1) was an “Aggravated Breach” as defined in Rule E3(2), as it included a reference to disability.
7. The relevant part of FA Rule E3, p.113 of FA Handbook Season 2015-2015, states:
 - “(1) *A participant shall at all times act in the best interest of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.*
 - (2) *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...”

8. The FA enclosed, the following evidence that it intended to rely on:
 - 8.1. Screenshot of Mr Mettam’s Twitter comment in question;
 - 8.2. Letter from Mr Berry to Mr Mettam, dated 06 May 2015; and
 - 8.3. EMail reply from Mr Mettam to Mr Berry, dated 09 May 2015.
9. Mr Mettam was required to reply to the Charge by 6pm on 27 May 2015.

The Reply

10. On 25 May 2015, Mr Mettam responded via EMail by admitting to the Charge and requested the matter to be dealt with at a Paper Hearing, on the content of the documents served upon him/the Club and any documents he/the Club supply to The FA with the Reply Form.
11. Mr Mettam explained the reason he was responding via EMail, rather than via the formal Reply Form, as he was away on holiday and he did not have access to a scanner.
12. Mr Mettam included a submission in his EMail responding to the Charge.

The Regulatory Commission

13. The following members were appointed to the Regulatory Commission (“the Commission”, “We/us”) to hear this case:

Mr Thura KT Win, JP (Chairman);

Mr Tom Finn; and

Mr Alan Hardy.

Mr Robert Marsh, The FA Judicial Services Manager, acted as Secretary to the Commission.

The Hearing

14. We convened at 11.00am on 05 June 2015 via videoconference for this Non-Personal / Paper Hearing (the “Hearing”).
15. We had read the bundle of documents prior to the Hearing.
16. As Mr Mettam had admitted to the Charge, we sought Mr Mettam’s previous disciplinary record and Mr Marsh advised us that Mr Mettam has no relevant previous disciplinary record.
17. Mr Mettam’s Twitter comment contained the word “Mongs”, which has a meaning as a derogatory term for someone with Down’s syndrome (a form of disability).
18. We noted the observations from Mr Mettam in his initial response to The FA, which stated (we quote the relevant text):

“... the tweets were light hearted banter with supporters of [an opposition club] and were never intended to offend any person in particular.

... I have been on the receiving end of an amount of similar abuse from their tweets and in hindsight my responses were, I now realise, a misjudged reaction.

On receipt of your e-mail/letter via Tamworth’s Club Secretary, I deleted the tweets in question and sincerely apologise for any offence that my tweets may have caused.

I will also take more care as to what I respond with in the future whatever the provocation may be.”

19. We also noted Mr Mettam’s following submission in his EMail when he responded to the Charge (we quote the relevant text):

“... I have decided to look up the word in question and it has come back with two meanings, 1 [being] a derogatory term for those that suffer from Down’s syndrome and 2 a general term to denote someone who is stupid. As my posting was on Twitter I wouldn’t have known the person was a sufferer of Down’s syndrome or not and was definitely posted as general slang for someone been stupid!

Having said that I do accept responsibility for posting the tweet but did not use the word in any way to refer persons who suffer from that condition, or to upset or cause offence to anyone, my use of the word was never intended to be held in that context with those that may suffer from Down's syndrome. Now that I do fully understand the nature of the phrase I will never use it again, I wish to apologise unreservedly to anyone who has been caused offence by the matter which I regret deeply."

The Burden of Proof

20. The applicable stand of proof required for this case is the civil standard of the balance of probability.

Our Findings & Decision

21. We noted that Mr Mettam had accepted the Charge – albeit the screenshot of the comment and it belonging to Mr Mettam's account were hard to deny – and he deleted the comment that contained the offending phrase.
22. Mr Mettam had recognised in his submission that the word "Mongs" he used has one of the meanings as "*a derogatory term for those that suffer from Down's syndrome*" (in para 19). He also stated "*the tweets were light hearted banter with supporters of [an opposition club] and were never intended to offend any person in particular*" (in para 18) and "*was definitely posted as general slang for someone been stupid!*" (in para 19).
23. Mr Mettam added "*[a]s my posting was on Twitter I wouldn't have known the person was a sufferer of Down's syndrome or not*". We agreed with this. By the very nature of his comment being posted on Twitter, anyone could have seen the comment and, as he had admitted, Mr Mettam did not know whether the intended recipient is, or is not, suffering from Down's syndrome or, for that matter, anyone else seeing his tweet.
24. Mr Mettam stated that "*[n]ow that I do fully understand the nature of the phrase I will never use it again, I wish to apologise unreservedly to anyone who has been caused offence by the matter which I regret deeply."*

25. The FA Rule E3(2) simply states that “... it *includes a reference*, whether express or implied,...” (see para 7 and emphasis added) and does not require a Participant’s intention, to prove the “Aggravated Breach”.
26. For avoidance of doubt, we found Mr Mettam’s comment to be abusive, insulting and improper, AND included a reference to disability.
27. We noted Mr Mettam had apologised – albeit, there was no evidence to suggest that he had apologised publicly on his Twitter account – and had learnt a lesson from this experience. We would consider these as mitigation to give some credit.

The Sanction

28. This was Mr Mettam’s first “Aggravated Breach” and, as it was made on social media, FA Rule E3(4) would apply in this case.
29. The relevant FA Rule E3(4) states:

“(4) Where an Aggravated Breach of Rule E3(1) is committed –

(i) In writing only; or

(ii) Via the use of any communication device, public communication network or broadcast media only; or

(iii) By reference only to nationality,

a Regulatory Commission will not be bound to impose an immediate suspension of at least five matches for a first such breach, or of more than five matches for a second or further such breach. Instead the Regulatory Commission may impose any sanction that it considers appropriate, taking into account any aggravating or mitigating factors present.”

30. Furthermore, FA Rules E3(8) and E3(9) applies to all Participants committing an Aggravated Breach of FA Rule E3(1). The FA Rules E3(8) and E3(9) state:

“(8) A Regulatory Commission may impose a financial penalty or any other sanction that it considers appropriate in respect of an Aggravated Breach of Rule E3(1)

whether or not it has imposed a suspension in respect of the same breach.

(9) *A Participant who commits an Aggravated Breach of Rule E3(1) will be subject to an education programme, the details of which will be provided to the Participant by The Association."*

31. We assessed Mr Mettam's offence to be at a medium level of seriousness and culpability.
32. FA Rule E3(4) stating "an immediate suspension of at least five matches for *a first such breach*" (emphasis added) has already reflected a Participant having no previous relevant disciplinary record. And, this was Mr Mettam's first such breach.
33. We would, however, give some credit for Mr Mettam's early admission to the Charge (in para 21) and mitigation present in this case (in para 27).
34. We also received information on Mr Mettam's weekly football income, which we gave regard to when deciding an appropriate and proportionate financial penalty.
35. We noted that, in accordance with FA Rule E3(4), we would not be bound to impose an immediate suspension of at least five matches for Mr Mettam's first Aggravate Breach.
36. After considering all above, and based on the nature and seriousness of the offence we assessed, we ordered that Mr Mettam:
 - 36.1. be suspended from all domestic club football until such time as Tamworth have completed 2 (two) First Team matches in approved competitions;
 - 36.2. be fined a sum of £500 (five hundred pounds);
 - 36.3. be warned as to his future conduct; and
 - 36.4. to satisfactorily complete a mandatory education programme, in accordance with FA Rule E3(9), within 4 (four) months or Mr Mettam be

suspended until such time he successfully completes the mandatory education programme, the details of which will be provided to Mr Mettam.

37. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed...

Thura KT Win, JP (Chairman)

Mr Tom Finn

Mr Alan Hardy

12 June 2015