

IN THE MATTER OF A REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

Applicant

- and -

KAREN CARNEY

Participant

WRITTEN REASONS FOR THE DECISION OF THE
REGULATORY COMMISSION FOLLOWING
THE HEARING ON 14TH OCTOBER 2014

1. Background

- 1.1 On 16th July 2014, a Football Association Women's Super League fixture took place between Birmingham City Ladies FC ("BCLFC") and Bristol Academy Women's FC ("BAWFC").
- 1.2 Towards the end of the match, an exchange took place between Karen Carney, a BCLFC player, and Natalia Pablos Sanchon, a BAWFC player. During the course of it, Ms. Carney is alleged to have told Ms. Pablos Sanchon to "*Fuck off back to Spain*". The circumstances surrounding the incident will be amplified in due course. The following day, a complaint was made on behalf of Ms. Pablos Sanchon to The Football Association ("The FA") by her Club.

1.3 On 27th August 2014, Ms. Carney was interviewed by The FA as part of its investigation into the complaint. During the interview, Ms. Carney admitted saying to Ms. Pablos Sanchon "*Go back to Spain*", but denied telling her to "*Fuck off back to Spain*".

2. The charge

2.1 On 12th September 2014, following its investigation, The FA charged Ms. Carney with misconduct for using abusive and/or insulting words towards Ms. Pablos Sanchon, contrary to FA Rule E3(1). It was further alleged that the breach of that particular Rule was aggravated as it included a reference to nationality, as defined in Rule E3(2). It was not The FA's case that the words used by Ms. Carney were racist.

2.2 Ms. Carney denied the charge and requested a personal hearing.

2.3 A Regulatory Commission of The FA convened on 14th October 2014 to consider the charge against Ms. Carney. The FA's Case Outline submitted that even on Ms. Carney's account of what she had said, the charge was made out as the words "*Go back to Spain*" were insulting, implying that Ms. Pablos Sanchon did not belong, or was not welcome, in England and should go back to where she comes from.

3. The application on behalf of Ms. Carney to adjourn the substantive hearing

3.1 Before any live evidence was heard, it transpired that Ms. Carney's Representative, Mr. Dickson, had not seen the third page of the witness statement of Ms. Pablos Sanchon. A brief adjournment was allowed to enable him to read the document and to take instructions, following which Mr. Dickson applied to adjourn the hearing to another date so that at least one witness who had provided a witness statement, but whose evidence we were told had previously been agreed, could attend to give oral evidence and be cross-examined.

3.2 The basis for the application was that the witnesses in question had allegedly colluded with others in connection with the allegation made by Ms. Pablos Sanchon. It appeared to be suggested that the collusion was related in some way to a previous unconnected incident of abuse that had been made against another BAWFC player of Spanish nationality. This had led Ms. Pablos Sanchon to pursue her allegation against Ms. Carney when the former had intimated to the latter after the match in question that the incident between them would go no further.

3.3 The application was rejected by the Commission for the following reasons:

- (i) There was nothing in the final three paragraphs of Ms. Pablos Sanchon's witness statement that added anything to what both Parties' already knew about their respective cases. In particular, reference was made to the other incident involving a Spanish player in an interview of Ms. Pablos Sanchon that was conducted by BAWFC's Welfare Officer, Mark Humphreys, the day after the match against BCLFC. Prior to the substantive Regulatory Commission hearing on 15th October 2014, Ms. Carney had applied unsuccessfully to the Chairman of the Commission to exclude the latter evidence on the ground of collusion.

- (ii) If Ms. Carney seriously intended to pursue the allegation of collusion, it is extremely difficult to understand why the evidence of a key witness had been agreed, instead of being required to attend the hearing so that the allegation could be put to her.

- (iii) It was still open to Mr. Dickson to cross-examine the three witnesses who were called by The FA, including Ms. Pablos Sanchon and Mr. Humphreys, regarding the circumstances that led to the complaint being made to The FA.

(iv) In any event, the factual issue to be tried before the Commission was a very narrow one, namely whether Ms. Carney said “*Fuck off back to Spain*” (The FA’s case), or “*Go back to Spain*” (Ms. Carney’s case). None of the other potential witnesses who were implicated in the alleged collusion were capable of giving any direct evidence as to what Ms. Carney did or did not say to Ms. Pablos Sanchon.

4. The evidence heard by the Commission

4.1 On behalf of The FA, the Commission heard live oral evidence from Ms. Pablos Sanchon, Frankie Brown (another BAWFC player) and Mr. Humphreys. Ms. Carney then gave oral evidence in her defence.

4.2 A lot of time was spent investigating the sequence of the exchange that took place between Ms. Pablos Sanchon and Ms. Carney. The Commission had the benefit of video footage of the match from which we were able to observe the passage of play and the context in which the exchange took place. In summary, it happened in this way:

(i) In the final minute of normal time, Ms. Pablos Sanchon was fouled. She lay on the ground. Ms. Carney proceeded to pick her up by the shirt as she was concerned that, by Ms. Pablos Sanchon staying down, the BCLFC player who committed the foul might be cautioned.

- (ii) Ms. Pablos Sanchon took exception to being pulled by the shirt and it is agreed that she said *"Don't touch me"* to Ms. Carney in English. It is not possible to tell from the footage, but Ms. Pablos Sanchon is alleged by Ms. Carney to have added offensive words in Spanish. According to Ms. Carney, the word *"puta"* (prostitute or whore) was used although Ms. Pablos Sanchon denies using that word at this stage of the interchange between them.
- (iii) It was then that Ms. Carney said either *"Fuck off back to Spain"* or *"Go back to Spain"* (and on her case in response to the serious insult that had just been levelled at her in Spanish).
- (iv) In response, Ms. Pablos Sanchon can be seen on the video footage using the word *"puta"* as Ms. Carney runs past her, and she accepts that what she in fact said was *"puta madre"* (mother fucker). She denies using the word *"puta"* earlier than this, but whether she said it once or twice is not directly relevant to the factual issue that we have to decide in determining the charge against Ms. Carney. In fact, if Ms. Pablos Sanchon had seriously insulted her first, it would be all the more explicable why Ms. Carney responded in kind.

- (v) Approximately two minutes later, during stoppage time, Ms. Pablos Sanchon committed a foul on Ms. Carney. The former leant over the latter and said *"Now I go back to Spain"*. On the video footage, Ms. Carney can be seen smiling as she lay on the ground. Whether that was a wry smile in recognition of a retaliatory act by Ms. Pablos Sanchon, or relief that the delay favoured her team who were winning, is not material. Of much more significance is the fact that the footage shows Ms. Brown approaching the Referee and saying something to him following this incident. This will be elaborated upon in due course.
- (vi) Following the last-mentioned incident, Ms. Carney followed Ms. Pablos Sanchon and said sorry to her - despite the fact that it was Ms. Carney who had just been fouled. Ms. Pablos Sanchon associated the apology with the earlier exchange between the pair and, in particular, Ms. Carney telling her to *"Fuck off back to Spain."*
- (vii) At the full-time whistle, Ms. Carney approached Ms. Pablos Sanchon to again apologise for what she had said. When she left the pitch, Ms. Pablos Sanchon was visibly upset. Ms. Carney was approached by the BAWFC captain, Corrine Yorston, and an exchange took place between them about what had happened. Mr. Humphreys then became aware of a problem, although not its precise nature immediately.

- 4.3 Those are the salient background facts. The FA bears the burden of proving its case to the civil standard of proof, namely the balance of probabilities.
- 4.4 The Commission found Ms. Pablos Sanchon to be a reliable and credible witness. She gave evidence through an independent interpreter but did not prevaricate with her answers to questions, which were consistent with her witness statement. On the key factual issue, she was not moved by the cross-examination of her. Ms. Pablos Sanchon only saw the video footage for the first time on the morning of the hearing. Although her witness statement described one seamless incident while she remained on the ground following the initial foul on her, the reality was that there were three phases to it, the second being after she had got to her feet and the third a couple of minutes later. This did not cause us to doubt the reliability of her evidence. In terms of who said what and in which order, she was clear.
- 4.5 When she gave evidence before the Commission, Ms. Carney strenuously maintained - as she had in interview - that she did not tell Ms. Pablos Sanchon to *"Fuck off back to Spain"*. She did not know where the words *"Fuck off"* had come from. She referred to her upbringing and the family aversion to swearing. When she said *"Go back to Spain"* all that she meant was *"get lost"*. The words were not said maliciously in any way and she did not intend that Ms. Pablos Sanchon should get on a boat or plane back to Spain. Ms. Carney simply wanted her to stop abusing her in Spanish.

- 4.6 Mr. Dickson also pointed to numerous testimonials as to Ms. Carney's good character, together with her disciplinary record, which consists of just two cautions for minor transgressions in a lengthy and highly distinguished career, including 99 caps for England.
- 4.7 Ultimately, though, the pivotal evidence in the case is the corroboration of Ms. Pablos Sanchon's account that was provided by Ms. Brown. In the video footage, Ms. Brown can be seen in very close proximity to the initial shirt-pulling incident. She then moved a little further away. She said in her statement that she was not close enough to hear everything that was said, but heard Ms. Pablos Sanchon say "*Don't touch me*" and Ms. Carney then saying "*Fuck off back to Spain*". Ms. Brown is once again seen in very close proximity to both Ms. Pablos Sanchon and Ms. Carney just after the offending words were said.
- 4.8 Furthermore, when Ms. Pablos Sanchon committed a foul on Ms. Carney two or so minutes later, Ms. Brown can be seen approaching the Referee, Mr. Massey-Ellis, to tell him what Ms. Carney said. Ms. Brown wanted him to understand why Ms. Pablos Sanchon had reacted as she did. Mr. Massey-Ellis noted the complaint in his post-match report and said this in his witness statement:

"As the free kick was about to be taken, a BAWFC player with a Scottish accent approached me and told me that one of the BCLFC players had told one of the Spanish BAWFC players to return back to Spain" (emphasis added).

4.9 Mr. Massey-Ellis was not called to give oral evidence, and so the question arose whether the words underlined above in his statement represented the actual words used by Ms. Brown, or merely their gist. We incline towards the latter as the use of the word “*return*” seems somewhat staid and formal in context. For “*return*”, the use of the word “*go*” would seem more natural. Although that would be consistent with Ms. Carney’s case, the direct evidence of Ms. Brown is that when she informed the Referee what had happened, she told him that Ms. Pablos Sanchon had been told to “*Fuck off back to Spain*”. That represented the best evidence before the Commission.

4.10 The Commission formed a favourable impression of Ms. Brown as a reliable witness who gave her evidence in a straightforward, consistent and uncomplicated manner.

4.11 We also concluded that Mr. Humphreys’ acted in a professional and conscientious manner in dealing with the incident, in accordance with his duties as the Welfare Officer for BAWFC. As he was waiting to report the matter to the Referee a short while after the game, Ms. Pablos-Sanchon informed Mr. Humphreys that she had been told by Ms. Carney to “*Fuck off back to Spain*”. In other words, a further contemporaneous account and record of the complaint contended for.

4.12 Furthermore, it was clear to the Commission that, with the consent of Ms. Pablos Sanchon, it was Mr. Humphreys who drove the complaint process forwards. The following day, he prepared a number of questions that Ms. Pablos Sanchon answered with the assistance of an interpreter. Despite the interpreter being the Spanish player who had allegedly been the subject of abuse of a very similar nature in the past (not by Ms. Carney), the answers that Ms. Pablos Sanchon gave were consistent with what she had told Mr. Humphreys shortly after the game and, critically, with the recollections of Ms. Brown. Accordingly, there were no grounds for saying that the answers that Ms. Pablos Sanchon gave to Mr. Humphreys' questions had been misinterpreted or exaggerated in any way by the influence of others.

4.13 If Ms. Pablos Sanchon had been encouraged behind the scenes to see the matter through, there would be nothing objectionable in that provided her evidence is truthful, which we find it is. She said that it was "*okay*" after the game, in response to Ms. Carney's further apology. It does not follow that she must have subsequently been subjected to some sinister influence by others, and saying that it was "*okay*" in response to Ms. Carney's timely and contrite apology certainly does not preclude her from pursuing a complaint. As for Ms. Brown, the crucial witness, it was not put to her that she was part of any conspiracy to falsely attribute words to Ms. Carney. She would have to have been at the centre of it for the collusion/conspiracy theory to have any basis.

4.14 The Commission also noted the description of Ms. Pablos Sanchon immediately after the match had ended. She is said to have been crying and visibly upset. Her team-mates had to comfort her. She said in her witness statement that her distress was motivated more by her inability to articulate her feelings in English than the words themselves. Her distress is therefore consistent with both factual cases, although the more forcible insult that she and Ms. Brown allege could reasonably be expected to provoke greater upset.

4.15 When she gave evidence, Ms. Carney said that before the word "*puta*" was allegedly used for the first time, she had told Ms. Pablos Sanchon "*we don't dive here*" (a reference to the initial foul on her). It was put to Ms. Pablos Sanchon that what Ms. Carney had in fact said to her was: "*We don't dive here; if you want to dive go back to Spain.*" Ms. Pablos Sanchon denied that that is what Ms. Carney had said. When she was recalled to give evidence to clarify the number of times she had used the word "*puta*", Ms. Pablos Sanchon said that she had told Ms. Carney after the game "*I don't dive*". She said that Ms. Carney had not expressly accused her of diving, but that she (Ms. Pablos Sanchon) had inferred as much from being pulled from the ground by her shirt.

4.16 Ms. Carney told the Commission that the sequence of the words that she exchanged with Ms. Pablos Sanchon was as follows:

KC: *"We don't dive in this country"*

NPS: *"Putá"*

KC: *"Go back to Spain"*

NPS: *"Putá madre"*

On balance, we find that the word *"putá"* was used only once by Ms. Pablos Sanchon, and that it followed Ms. Carney telling her to *"Fuck off back to Spain"*. However, it is quite conceivable that Ms. Pablos Sanchon may have spoken words in Spanish in addition to her initial *"don't touch me"* in English. If Ms. Carney thought she was being abused in Spanish, it would provide motivation for an abusive response. Ultimately, though, the number of times that Ms. Pablos Sanchon may have used inappropriate language towards Ms. Carney is not central to the factual issue that we must resolve.

4.17 For all of the reasons set out above, we prefer the evidence of The FA to that of Ms. Carney. Although she was convinced of the correctness of what she had said, and endeavoured to assist the Commission with her evidence, we find that she is mistaken in her recollections. On the balance of probabilities, we find that Ms. Carney did tell Ms. Pablos Sanchon to *"Fuck off back to Spain"*. At the risk of repetition, the evidence of Ms. Brown is crucial to the outcome.

4.18 In the light of our finding on the factual issue, the Commission further concludes that the words used by Ms. Carney were both insulting and abusive within the meaning of FA Rule E3(1), and that the breach was aggravated as defined in Rule E3(2), in that it included a reference to nationality. Objectively, the words “*Fuck off back to Spain*” convey the clear sense that a person from that country is not welcome in England and should, to use more neutral language, return home. Whether that is what Ms. Carney subjectively intended to say is only relevant to the question of mitigation.

5. Sanctions

5.1 If the Referee had heard Ms. Carney use the words that we have found she did use, he would have been required to issue her with a red card (see [*insert relevant Rule Regulation*]). An automatic two-match playing suspension would have followed (see [*insert relevant Rule/Regulation*]).

5.2 However, as the Referee did not witness the incident and took no action, the fact that subsequent disciplinary action has been taken by The FA means that the Commission has unfettered discretion in terms of the range of sanctions at our disposal.

5.3 For the sake of consistency, our starting point was a two-match playing suspension (*i.e.* the sanction that would have flowed from a red card issued by the Referee). Although, there would have been no discretion to reduce the length of the ban if that is what had happened, the discretion that we have means that we are able to reflect the mitigating circumstances in Ms. Carney's favour. They have already been referred to and are significant.

5.4 We are also satisfied that the offending words were spoken by Ms. Carney in the heat of the moment, and in response to what she perceived or understood to be abuse of her. She apologised for upsetting Ms. Pablos Sanchon even while the game was still in progress and again immediately after it had ended. Ms. Carney told us that she is *"a good person, a good human being, and that [she tries] to be"* in her dealings with others. She does not want people to be angry with her. We have no cause to doubt any of that and her disciplinary record throughout a long career for club and country speaks for itself.

5.5 At the same time, though, the Commission recognises that the incident itself and subsequent 'trial' will have been a distressing experience for Ms. Pablos Sanchon.

5.6 Taking into account all of the mitigating factors, the Commission concluded that a one-match suspension was the appropriate playing sanction in this case. In addition, there will be a financial penalty of £450. Ms. Carney is required to undertake an appropriate educational course. We further order her to make a contribution of £350 towards the costs of the Commission.

5.7 The Order that we make is as follows:

- (i) Ms. Carney will serve a one-match suspension from playing football which will apply to the next competitive game involving Birmingham City Ladies FC (or any other club with whom she may be registered to play).
- (ii) There will be an additional financial penalty of £450.
- (iii) Ms. Carney is required to attend an appropriate course of education relating to nationality.
- (iv) Ms. Carney will make a contribution to the costs of the Regulatory Commission in the sum of £350.
- (v) Ms. Carney has a right of appeal against any aspect of this decision within 14 days of the date upon which she is notified of these written reasons.

Craig Moore

Chairman of the Independent Regulatory Commission

16th October 2014

Composition of the Regulatory Commission

Mr. Craig Moore – Barrister, Independent Chairman

Mr. Peter Powell – Independent Member of The FA Judicial Panel

Mr. Stuart Ripley – Independent Member of The FA Judicial Panel

Appearances

For The FA – Ms. Amina Graham

For Ms. Carney – Mr. Terry Dickson