

PERSONAL HEARING

THE FOOTBALL ASSOCIATION

and

Mr NATHAN ABBEY

Arlesey Town FC

THE DECISION AND REASONS
OF THE FA REGULATORY COMMISSION

| <u>Content</u> | <u>Page</u> | <u>Paragraphs</u> |
|------------------------------------|--------------------|--------------------------|
| Introduction | 3..... | 1 – 3 |
| The Charge | 3..... | 4 – 9 |
| The Reply | 4..... | 10 – 11 |
| The Regulatory Commission | 5..... | 13 |
| The Hearing & Evidence | 5..... | 14 – 25 |
| Burden of Proof | 8..... | 26 |
| Our Findings | 8..... | 27 – 35 |
| Previous Disciplinary Record | 9..... | 36 – 37 |
| The FA’s Representations | 10..... | 38 – 39 |
| Mr Abbey’s Representations | 10..... | 40 |
| The Sanction | 10..... | 41 – 49 |

Introduction

1. Mr Nathan Abbey is a joint Manager of Arlesey Town FC (“Arlesey Town”, the “Club”).
2. It was alleged that Mr Abbey posted derogatory comments, two of which included a reference to sexual orientation, on his Twitter account.
3. The Football Association (“The FA”) investigated the allegation and Mr Abbey provided his observations in relation to these postings.

The Charge

4. On 18 February 2016, The FA charged Mr Abbey with misconduct for two breaches of FA Rule E3(1) in respect of the media comments posted on his Twitter account.
5. It was alleged that the following comments, made by Mr Abbey, were abusive and/or insulting and/or improper:

“@MikeWhittakerH defo not a shit stabber”

“As for the shit stabber batty boys comments about she just wants chicken. Flipping Liberty.”

6. It was further alleged that these breaches of FA Rule E3(1) are “Aggravated Breaches” as defined in FA Rule E3(2), as it includes a reference to sexual orientation (paras 4 to 6 collectively, the “Charge”).
7. The FA included the following evidence it intended to rely on in support of the Charge:
 - 7.1. screenshot of Mr Abbey’s Twitter comment, dated 09 January 2016 at 00:13 hours;
 - 7.2. screenshot of Mr Abbey’s Twitter comment, dated 12 January 2016 at 23:03 hours;

- 7.3. screenshot of Mr Abbey’s Twitter profile page, dated 28 January 2016;
 - 7.4. letter from Mr Stephan Smith, FA Investigations Manager, to Mr Abbey, dated 14 January 2016;
 - 7.5. EMail from Mr Abbey intended for Mr Stephan Smith, dated 19 January 2016, which was subsequently forwarded to Mr Stephan Smith by Mr Chris Sterry, the Club Secretary, on 21 January 2016;
 - 7.6. copy of the news article published by *standard.co.uk*, dated 08 January 2016; and
 - 7.7. copy of the news article published by *mirror.co.uk*, dated 13 January 2016.
8. The relevant sections of FA Rule E3 (p. 112 of the FA Handbook Season 2015-2016) 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...”*
9. Mr Abbey was required to respond to the Charge by 6pm on 26 February 2016.

The Reply

10. On 20 February 2016, Mr Abbey responded by denying the Charge and requested an opportunity to attend a Commission for a Personal Hearing (the “Reply”).
11. In support of his denial of the Charge, Mr Abbey included with his Reply:
 - 11.1. EMail of his submissions, dated 19 February 2016; and

- 11.2. definitions from *dictionary.com* on “batty boy”, from *phrasehq* and *probertencyclopaedia.com* on “shit stabber”.
12. We also received further exchange of EMail between Mr Abbey and Mr Joel Wallace, FA Regulatory Legal team, dated 01 March 2016 and 04 March 2016.

The Regulatory Commission

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

Mr Thura KT Win JP (Chairman);

Mr Chris Reeves; and

Mr Marvin Robinson.

Mr Paddy McCormack, The FA Judicial Services Manager, acted as Secretary to the Commission.

The Hearing & Evidence

14. We convened at 10am on 18 April 2016 at Wembley Stadium for this Personal Hearing (the “Hearing”).
15. We had received and read the bundle of documents from both parties prior to the Hearing.
16. The FA was represented by Mr Joel Wallace and supported by Ms Amina Graham, Head of Regulatory Advocates Department.
17. Mr Abbey attended and represented himself, with Ms Verity Parker observing.
18. In addition to the submissions already included in the bundle, Mr Wallace addressed some of the points raised by Mr Abbey in his submission.
19. Mr Wallace told us that:
- 19.1. the guidance to the Participants and Clubs on disciplinary matters, including on the social media usage, were issued to the Clubs prior to

the beginning of each Season – for the current Season, we received in the bundle an EMail from Mr Mark Ives, The FA’s Head of Judicial Services, dated 03 August 2016;

- 19.2. the guidance is not issued to each Participant personally but The FA relies on the Clubs to pass on the information to their players and members;
 - 19.3. the guidance is also publicly publicised and published on the FA’s website (we noted from Mr Ives’s EMail, in para 19.1, that there are also Apps available to download for smartphones and tablets);
 - 19.4. The FA can, and does, regulate on the social media comments;
 - 19.5. the words used by Mr Abbey were abusive, insulting or improper which need to be tested objectively in context;
 - 19.6. the personal intention on the usage is only a mitigation;
 - 19.7. on 09 January 2016, Mr Abbey’s Twitter comment included “*shit stabber*”, which is a profanity, vulgar, abusive and the phrase refers to a male homosexual; and
 - 19.8. on 12 January 2016, Mr Abbey’s Twitter comment included “*shit stabber*” and “*batty boy*”, which is also an offensive term for a male homosexual and even the definitions provided by Mr Abbey states that it is a “taboo”.
20. Mr Abbey told us that:
- 20.1. he was not aware of the guidance and this incident has been an education for him;
 - 20.2. the Club did not receive the guidance and he has not kept knowledge of any other social media cases dealt with by The FA previously;
 - 20.3. he acknowledged that the regulations on the social media comments are not new for this Season and had been in place since around 2012/2013

Season;

- 20.4. he felt that not enough support on such matters have been given to the level of football he is at and he does not know what to say or what not to say;
- 20.5. the meanings of the words are down to interpretation and he used the words as a “slang” – like “*black*” or “*colour*”;
- 20.6. he accepted that the words he used were poor choice of words and he did not intend to harm anyone;
- 20.7. he also accepted he is accountable for every word he uses and he did not use them in a malicious manner – he used them in tongue-in-cheek; and
- 20.8. he would not use these words with his own players and, whilst he did not intend to cause offence, he accepted that some people may be offended by these words and that “*it would be stupid to think that no one would be offended*”.
21. Based on his submissions, we explained and sought clarification whether Mr Abbey was making a *plea in mitigation* rather than a *not guilty plea* but Mr Abbey maintained that he was pleading *not guilty* and denying the Charge.
22. Mr Abbey added that he had requested to attend this Hearing in order that he would be educated.
23. In closing submissions, Mr Wallace stated that: in objectively testing the comments used, it was very clear and there were no grey areas; and even the definitions supplied by Mr Abbey supported that these comments as abusive, insulting or improper.
24. Mr Abbey confirmed that he had a fair hearing and stated in his closing submissions that he did not intend to be insulting or abusive, and it was down to interpretations.
25. We thanked both parties for their submissions and assistance.

The Burden of Proof

26. In this case, the burden is on The FA to prove the Charge on the civil standard of the balance of probability.

Our Findings

27. For this offence to be made out in this case, there are two tests to be satisfied:
- 27.1. Firstly, did Mr Abbey conduct in a manner which is deemed to be *improper* through the use of “*any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour*” ..? (Rule E3(1) in para 8, emphasis added); AND
- 27.2. Secondly, whether this improper conduct is *aggravated* by the *inclusion* of “*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*” ..? (FA Rule E3(2) in para 8, emphasis added).
28. Mr Abbey did not dispute he made these comments on his Twitter account nor the actual words used were as alleged. Mr Abbey’s contentions were what he did not mean to be offensive and that he was not aware of the guidance.
29. Dealing with Mr Abbey’s last point first, we made the observations that the specific rules have been in existence over a number of years and not new for this Season; The FA had dealt with a number of Participants over the years on similar charges, including some high profile Participants which attracted extensive media coverage; and we also agreed with The FA’s submission in an EMail reply to Mr Abbey on 04 March 2016 (mentioned in para 12) that “*Mr Abbey’s alleged lack of knowledge of the rules does not amount to a defence and can only be relied on in mitigation.*” We, therefore, dismissed this argument from Mr Abbey as a defence.
30. Turning to the comments made, our task was to assess them in an objective

manner with how it would be perceived by a reasonable neutral observer and not in a subjective manner with what Mr Abbey had, or had not, intended.

31. We noted that Mr Abbey himself had acknowledged and accepted that some people may be offended by these words and that “*it would be stupid to think that no one would be offended*” (in para 20.8).
32. Mr Abbey had used “*shit stabber*” twice and “*batty boy*” once on two separate occasions and had been charged with two breaches of FA Rule E3(1) and E3(2).
33. We noted Mr Abbey’s explanations that it was poor choice of words, he did not intend to harm anyone (in para 20.6) and did not make the comments in a malicious manner (in para 20.7). These factors did not amount to a defence but we would consider them under mitigation.
34. We also noted that Mr Abbey’s Twitter comments were part of the exchange of comments on the events in Celebrity Big Brother show.
35. After taking everything into consideration, we unanimously agreed that Mr Abbey’s comments were abusive, insulting and improper, contrary to FA Rule E3(1), and they included a reference to sexual orientation, contrary to FA Rule E3(2). We, therefore, found the Charge proved.

Previous Disciplinary Record

36. As we found the Charge proved, we sought Mr Abbey’s previous relevant disciplinary record.
37. Mr McCormack advised us that Mr Abbey has two previous breaches of FA Rule E3:
 - 37.1. in February 2015, 1-match suspension and a fine of £150; and
 - 37.2. in February 2016, £100 standard penalty fine.

The FA’s Representations

38. Mr Wallace submitted that these phrases are vulgar and repugnant metaphors; one phrase repeated in the second comment; Mr Abbey has 898 Twitter followers and is in a position of trust as a joint Manager at the Club; it is alarming that Mr Abbey is unable to differentiate between acceptable and unacceptable words; Mr Abbey had shown lack of contrition for use of the language and adamantly deny the Charge.
39. As possible mitigation for Mr Abbey, the Club being at Step 4 of the National League System does not attract much attention and there was no direct victim. The FA cannot confirm that the Club did not receive the guidance at prior to the beginning of the Season and possibly give the benefit of the doubt.

Mr Abbey's Representations

40. Mr Abbey submitted that this incident has been educational for him; his apology is within to help others; Rio Ferdinand received 3 matches and £25,000 fine for his social media comment; he did not make these comments to any individuals or directed at anyone; he did not intend to be offensive to anyone; it was poor choice of words; he apologises but the job is not finished yet.

The Sanction

41. We reminded ourselves that Mr Abbey had denied the Charge which had subsequently found proven. Therefore, Mr Abbey would not be eligible for any applicable credit for an early guilty plea.
42. The relevant sections of FA Rule E3 (p. 112 of the FA Handbook Season 2015-2016) for sanctions states:

“(3) Subject to sub-paragraphs E3(4) – E3(6) below –

- (i) Where a Participant commits an Aggravated Breach of Rule E3(1) for the first time, a Regulatory Commission shall impose an immediate suspension of at least five matches on that Participant. The Regulatory Commission may increase this suspension depending on any additional*

aggravating factors present.

- (4) *Where an Aggravated Breach of Rule E3(1) is committed –*
- (i) *By a Participant for whom a match-based suspension would be inappropriate due only to that Participant's particular role in football; or*
 - (ii) *In writing only; or*
 - (iii) *Via the use of any communication device, public communication network or broadcast media only; or*
 - (iv) *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. For the avoidance of doubt and without limitation, E3(4)(i) shall not apply to a Manager, coach or Player.

...

- (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."*

43. We noted that this "Aggravated Breach" being Mr Abbey's first such offence, and in accordance with FA Rule E3(3)(i) (see para 42), it would attract an immediate suspension of at least 5 (five) matches.

44. However, as this offence has been committed via the use of any communication device, public communication network or broadcast media only, in accordance

with FA Rule E3(4), we were not bound to impose an immediate suspension of at least 5 (five) matches.

45. Mr Abbey had been charged with two “Aggravated Breaches” for two separate comments.
46. We would consider the aggravating and mitigating factors outlined by Mr Wallace (in paras 38 and 39). Furthermore, we would consider the mitigation presented by Mr Abbey (in para 40).
47. After having denied the Charge which was subsequently found proven, based on the level of seriousness and culpability we assessed, taking into consideration of Mr Abbey’s previous disciplinary record, aggravating and mitigating factors present, the financial penalty appropriate for the level of football the Club play at, Mr Abbey’s declared weekly football income, we decided unanimously that an immediate suspension of 3 (three) matches sporting sanction and a fine of £250 (two-hundred-and-fifty pounds) would be an appropriate and proportionate sanction.
48. In summary, we ordered that Mr Abbey is:
 - 48.1. to serve immediate suspension, with a touchline ban, from all domestic club football until such time as Arlesey Town have completed 3 (three) First team competitive matches in approved Competitions (see para 47);
 - 48.2. fined the sum of £250 (two-hundred-and-fifty pounds), in accordance FA Rule E3(8) (see paras 41 and 47);
 - 48.3. to satisfactorily complete a mandatory one-to-one FA education programme, in accordance with FA Rule E3(9) (see para 41), within 4 (four) months or Mr Abbey be suspended until such time he successfully completes the mandatory education programme, the details of which will be provided to Mr Abbey;
 - 48.4. to pay a contribution of £200 (two-hundred pounds) towards the costs;
 - 48.5. warned as to his future conduct; and

- 48.6. to forfeit the Hearing fee.
49. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed...

Thura KT Win JP (Chairman)

Chris Reeves

Marvin Robinson

18 April 2016