

In the matter of a Regulatory Commission of The Football Association

Mr Nicholas Stewart QC (chairman), Mr Philip Rainford and Ms Alison Royston

Between:

The Football Association

and

Stevenage Football Club

**Reasons for Regulatory Commission decision made on 1
July 2019**

Introduction: The admitted charge and the hearing

1. Stevenage Football Club (“the Club”) is a professional football club which is currently playing in League Two of the English Football League. This case concerns events at a League Two match at Stevenage between the Club and Bury FC on 9 March 2019.
2. By a letter from The Football Association dated 18 March 2019 the Club was charged with misconduct for a breach of FA Rule E20. The breach alleged was that the Club had failed to ensure that its spectators, and all persons purporting to be its supporters or followers, conducted themselves in an orderly fashion and refrained from using

abusive and/or insulting words which included a reference, whether express or implied to gender, whilst attending a match in which it was involved.

3. The Club signed and returned the required Reply Form to the FA on 25 March 2019, admitting the charge, attaching relevant correspondence and requesting a personal hearing.
4. That hearing took place on Monday 1 July 2019 at Wembley Stadium. The Regulatory Commission members are: Nicholas Stewart QC (Chair), Mr Philip Rainford and Ms Alison Royston. The FA's case was presented by Ms Rebecca Turner, FA Regulatory Advocate. The Club was represented by its Chief Executive Officer Mr Alex Tunbridge and its Safety Officer Mr Steve Reed. It was very helpful to the Regulatory Commission that Mr Tunbridge and Mr Reed attended in person on the Club's behalf, which enabled us to explore the events of that match day 9 March 2019 more thoroughly than would have been possible on the written materials alone.
5. These are the written reasons for the Regulatory Commission's decision on penalties for the admitted misconduct, provided under paragraph 66 of the FA Disciplinary Regulations 2018/2019¹. The members of the Regulatory Commission are unanimous on the decision and our reasons.

The misconduct under FA Rule E20

6. FA rule E20 states²:

Each Affiliated Association, Competition and Club shall be responsible for ensuring:

- (a) that its directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability) whilst attending at

¹ FA Handbook 2018-2019 p.145

² FA Handbook 2018-2019 p.118

- or taking part in a Match in which it is involved, whether on its own ground or elsewhere; and
(b) [*not relevant here*]

7. FA Rule E21 states³:

Any Affiliated Association, Competition or Club which fails effectively to discharge its said responsibility in any respect whatsoever shall be guilty of Misconduct. It shall be a defence in respect of charges against a Club for Misconduct by spectators and all persons purporting to be supporters or followers of the Club, if it can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control, or for reasons of crowd safety, and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged.

This defence shall not apply where the Misconduct by spectators or any other person purporting to be a supporter or follower of the Club included a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.

8. There is no dispute that what happened at the match on 9 March 2019 (supported by video evidence) was:
- (1) The designated fourth official was Ms Lisa Rashid.
 - (2) Around the 18th minute of the game, one of the (male) assistant referees was unable to continue and Ms Rashid had to take his place.
 - (3) As Ms Rashid was preparing to come on the pitch, a group of around 75 to 100 standing spectators on that side of the ground started offensive chanting.
 - (4) Those spectators were home supporters. Bury FC fans were placed in the South Stand, well away from the offending section of the crowd.
 - (5) The offensive chanting continued for some 7 or 8 minutes overall and included specific chants:
 - “We’d shag the lino” (as Ms Rashid put on her communication system in preparation to take over as Assistant Referee)
 - “Get your tits out for the lads” (as Ms Rashid ran across the pitch to take up her position)
 - “If you’d all shag the lino clap your hands” (after Ms Rashid had taken up her position on the East side and play had restarted)

³ FA Handbook 2018-2019 p.118

9. That was a plain breach of FA Rule E20 as charged. Moreover, as that chanting clearly referred to Ms Rashid's female gender, the second paragraph of Rule E21 defence excludes all reliance on a defence under the first paragraph of Rule E21. The Club is strictly liable for that conduct of the spectators, supporters or followers, regardless of whether it did or could have done anything to prevent that behaviour. That is accepted by the Club. Accordingly, the task of this Regulatory Commission was to decide the appropriate penalty and order.
10. We note that the Club has been found in breach of FA Rule E20 three times since the beginning of 2015, for which it was fined the increasing amounts of £1,000, £1,500 and £2,000. Those breaches related to player conduct and did not involve any aggravating element of a reference to ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability. We do not regard them as making any difference either way to the penalty in the present case.
11. While it also has no relevance either way to the penalty, we note that it was particularly unfortunate that this match day had been designated as the Club's Women in Football Day.

Matters relevant to the penalty

12. Although not a defence, it is relevant to penalty to examine whether or not the Club had any control over the offensive behaviour or exercised due diligence before, during and since the event. A club which had fallen short on those points could expect a heavier penalty than a club which showed a Regulatory Commission that it had met the standards set out in the first part of rule E21 even though that would not constitute a defence in the particular case.
13. The Club already had in place two versions of a written Crowd Disorder & Anti-Social Behaviour Policy: a more detailed Internal Version and a much shorter External Version. The Regulatory Commission accepts that this written policy had been carefully prepared and covered the relevant ground in a responsible way. We note that "Racist, indecent or homophobic chanting" is included as a specific item of Supporter Behaviour" with Medium Likelihood, with an express note of section 3 of

the Football (Offences) Act 1991 and the Public Order Act 1986. While there was no specific mention of sexist chanting, that can fairly be regarded as covered by this item in the policy (though express mention might be considered an improvement for the future). Overall, the Regulatory Commission makes no significant criticism of that written policy.

14. On the day, the Club's response to the offensive chanting was immediately to move additional stewards to that part of the ground. There is no reason to regard the overall stewarding as inadequate, either in numbers or in their initial or reactive deployment. Stewards and their supervisors attempted to identify ringleaders but there were no obvious leaders of the chanting. It was decided not to attempt to remove or eject any individuals. The Regulatory Commission accepts that as a reasonable decision, as random picking out of a few individuals would have been likely to aggravate the situation.
15. A further decision by the Club was to make no announcement over the PA system either during the chanting or when it stopped. The concern was that public announcements would have been likely to incite continued or renewed offensive chanting. That strikes the Regulatory Commission as a realistic view of the likely reaction of that part of the crowd. We therefore do not criticise that judgment.
16. The Club has also attempted to identify offending individuals from CCTV footage. However, entry to that part of the ground is by cash at the gate, which makes such identification impossible or at least very difficult except where individuals are already known to the Club. Although there are a number of individuals known to the Club as actual or potential troublemakers, there has been no match with those individuals from the CCTV footage. Accordingly, the Regulatory Commission accepts that the Club is not to be faulted for the fact that no individual has been brought to account.
17. Our conclusion is that the Club would have established a defence under FA Rule E21 if this had been a case of abusive and insulting words and behaviour in breach of Rule E20 but without the aggravating reference to gender.

18. However, as that defence is not available to the Club, because of the plainly sexist content of the chanting, in judging the penalty we have to weigh all relevant factors in the light of this being a breach for which the Club must be held strictly liable.

19. In favour of the Club are:

- (1) Our conclusion that the Club was not itself at fault either for the offensive crowd behaviour or in the way it dealt with it on and after the match day.
- (2) Its early admission of the charge (although in the light of the second part of Rule E20 it had no realistic choice).
- (3) Its cooperative approach through its two senior officials who came to the hearing, including the provision of a draft action plan directed to this type of crowd behaviour.

20. The Regulatory Commission takes those matters fully into account. However, they have to be weighed against the facts that:

- (1) The chanting came not just from a few individuals but from a large section of the crowd.
- (2) It was directed against one person, Ms Rashid.
- (3) The content was extremely offensive, both blatantly sexist and in vulgar indecent language.
- (4) The offensive gender-related chanting continued for several minutes.

21. The clear policy of Rules E20 and E21, when read together in relation to this type of offence, is that a club is held responsible for such misconduct by its supporters. The Regulatory Commission's finding that the Club had acted responsibly and diligently does not mean that there should be only a trivial punishment. That would be a flawed application of the FA Rules. The serious nature of the crowd misconduct, as summarised in paragraph 18 above, requires a serious penalty. That also should communicate to the Club's supporters that it is their club which will suffer the penalties from the supporters' misconduct, with the fairly obvious extra consideration that a repetition is practically bound to lead to a still heavier penalty.

22. Stevenage FC is a League Two club. Balancing all relevant considerations in the light of the evidence before us, the Regulatory Commission imposes a fine of £5,000, under paragraph 40.2 of the FA Disciplinary Regulations 2018/2019⁴.
23. Under paragraph 40.9 of those regulations the Regulatory Commission has power to make such further order as it thinks fit. There was no resistance by the Club's representatives at the hearing to the proposal that the Regulatory Commission should direct the Club to implement an Action Plan to be monitored by the Football Association. Although technically a "penalty" under paragraph 40, in substance it is more in the nature of a cooperative plan. We have taken the Club's draft action plan as the basis and made some changes using relevant expertise and experience of members of the Regulatory Commission.

Regulatory Commission order

24. The Regulatory Commission's order is that Stevenage Football Club:

- (1) is fined £5,000;
- (2) shall implement the Action Plan in the Annex to this decision as soon as practicable and at all times cooperate fully with the On-Field Football Regulation Department of The Football Association ("the OFRD") to enable the OFRD to monitor that implementation. The Action Plan shall be imposed until 30 June 2020 and during that period any changes will need the prior approval of the OFRD;
- (3) shall pay £2,000 towards the costs incurred in relation to the holding of this Regulatory Commission (under paragraph 54.2⁵ of the FA Disciplinary Regulations 2018/2019); and
- (4) forfeits its personal hearing fee of £100.

⁴ FA Handbook 2018/2019 p.141

⁵ FA Handbook 2018/2019 p.144

Right of appeal

25. Stevenage FC has the right of appeal to an FA Appeal Board in accordance with paragraph 68 of the FA Disciplinary Regulations 2018/2019.⁶

Nicholas Stewart QC
Chairman

Philip Rainford

Alison Royston

9 July 2019

⁶ FA Handbook 2018/2019 p.145

Annex: Action plan

1. Proactively increase awareness of unacceptable behaviour by supporters by the introduction of anti-discriminatory prevention, deterrent and detection initiatives, including supporter education programmes especially in the areas of :
 - racist, sexist or homophobic words or conduct:
 - any improper words or conduct referring to ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability
2. Designate a senior officer or employee of Stevenage FC (“the Club”) as the person with primary responsibility for the development, implementation and monitoring of this Action Plan.
3. Enhance and develop existing “Inclusion & Diversity” steward training to improve reaction to such issues, including ways to prevent or deal with such misconduct if it occurs. Consideration should be given to the involvement of Kick It Out in the development of these initiatives.
4. Review and develop all match day operational planning, and steward briefing processes and documentation, to ensure its strategies and contents address the prevention and detection of discriminatory behaviour.
5. Continue close dialogue with Kick It Out and enhance relationships by seeking advice and ratification of all new anti-discrimination policies and procedures
6. Establish an “Inclusion Advisory Group” with internal and external terms of reference, which will work closely with Kick It Out. This Group to work collaboratively with the Football Association, the EFL, Police, local Members of Parliament, other football clubs, and suitable outside agencies, in achieving the aims of this Action Plan
7. Facilitate proactive PA announcements, scoreboard messages, LED board messaging, match day programmes, stadium signage, social media platforms & Club website, to target the prevention, usage and detection of any potential discriminatory words or behaviour, and to convey and reinforce the Club’s policies and practices with regard to discriminatory words and behaviour.
8. Continuously review ticket sales policies and compliance with Ground Regulations to ensure such policies minimise the risk of discriminatory supporter behaviour.
9. Seek ways to enhance and increase awareness and usage of Club channels of communication (such as the text line), and the Kick It Out reporting procedures, for anyone wishing to report (anonymously if they wish) misconduct of others.

10. Ensure that match officials are actively briefed on how they should report and otherwise deal with sexist or other discriminatory behaviour in conjunction with the Safety Officer.
11. Update the Customer Charter section on inclusion and diversity to set out principles in relation to offensive words or conduct.
12. Improve and expand the Club's Crowd Disorder & Anti-Social Behaviour Policy to include reference to sexist chanting, and promote the Policy's existence to supporters through the match day programme, social media platforms & Club website
13. Utilise the Football League's Code of Practice for "inclusion and anti-discrimination" by promoting its success to supporters and associating initiatives with it.
14. Develop a corporate risk policy to include equality and anti-discrimination
15. Work closely with the Club's Supporter Liaison Officer and the Club's Supporters Association to educate supporters on the aims of this Action Plan, and assist in the identification of people misbehaving at the Club's home matches and its supporters misbehaving at away matches. Develop and publicise a robust Club Sanctions Policy towards supporters committing acts of discriminatory behaviour.