

**IN THE MATTER OF THE REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION
BETWEEN:**

THE FOOTBALL ASSOCIATION

-and-

ELLIOT WHITEHOUSE

DECISION AND WRITTEN REASONS OF THE COMMISSION

Regulatory Commission: Ifeanyi Odogwu (Chair) – Independent Legal Panel
Member
Marvin Robinson – Independent Football Panel
Member
Faye White – Independent Football Panel Member

Secretary: Michael O’Conner – Regulatory Commissions &
Appeals

Date: 12 May 2020

Introduction

1. By charge letter 17 April 2020, Mr. Elliot Whitehouse (“EW/the Player”) of Grimsby Town FC (“GTFC”) was charged with misconduct for a breach of FA Rule E3. The charge related to the allegation that EW called a Northampton Town FC player, Alan McCormack (“AM”), a “pikey” during a League Two fixture between Northampton Town FC and Grimsby Town FC (“GTFC”) on

Saturday 23 November 2019 ('the fixture'). It is alleged that this breach of FA Rule E3(1) is an "Aggravated breach" as defined in Rule E3(2), as it included a reference to race and/or ethnic origin and/or nationality.

2. The Regulatory Commission ('the Commission') was appointed to hear and determine proceedings brought against EW following his being charged with Misconduct. This is the decision and written reasons of the Commission which met via 'WebEx' video conference on 12 May 2020. This is a summary document of our decision, and is not intended to be a record of all submissions and evidence adduced. For the avoidance of doubt, the Commission carefully considered all the evidence and submissions made in this case. We are unanimous on the sanction, the order we made on 12 May 2020 and on all our reasons.

Background Facts

3. The Player is a professional footballer registered with GTFC . He is 26 years of age. The only disciplinary matter recorded against him is the finding arising out of this case. At the start of the fixture he had clean disciplinary record.
4. At all material times the Player was a professional footballer and was bound by the Rules of the Football Association ('the Rules').
5. In around the 72nd minute of the fixture, EW was involved in a verbal confrontation with AM. EW is alleged to have said words which included, 'That's all you fucking do is moan, you pikey' and 'shut up you pikey'
6. The FA relied upon footage from the Match. The sound was limited to the crowd and surrounding noise; nothing can be heard of what is said by players. It does show a confrontation and something of AM's reaction.

7. The FA also relied upon the evidence of AM, who says :

"9. As everyone started getting into position for the goal kick to be taken, I walked towards EW, seen on AM1 at 00:06. As I approached him, I was laughing and then said 'You're fucking having one'. I can be seen making this comment on AM1 at 00:10.

10. EW replied to me saying 'That's all you fucking do is moan, you pikey'. It can be seen on AM1 at 00:14 that we are talking and this is when EW said the comment. I was certain I had heard EW correctly, but couldn't believe someone would use a discriminatory term so openly. We were within 2 yards of each other and I clearly heard the comment.

11. In a state of disbelief, I asked him 'What the fuck did you say?' and he responded 'Shut up you pikey'. This exchange can be seen on AM1 between 00:17 -00:20."

8. Statements from NTFC players Chris Lines, Nicky Adams and Jake Hesselchaler also alleged EW said the word pikey.
9. Andy Haines, the Referee at the fixture, mentions in his statement that he became aware of the incident when "AM came running towards me while pointing his fingers towards EW. Straightaway AM said, 'He's just called me a pikey and I want it reported'. AM repeated this allegation to the Referee at the end of the match in the changing room. This was put to EW who offered no response.
10. EW was interviewed by David Matthews (Senior Integrity Investigations Manager) and Sunny Uberoi (Integrity Investigator) of The FA, on 18 December 2019. The interview lasted just over 45 minutes and a full transcript is in evidence before this Commission. EW denied the allegation during the interview.
11. The charging letter alleged:

“You are hereby charged with misconduct for a breach of FA Rule E3 in respect of the above fixture. It is alleged that around the 72nd minute of the fixture, you used abusive and/or insulting words towards a Northampton Town FC player, Alan McCormack, contrary to Rule E3(1). It is alleged that this breach of FA Rule E3(1) is an “Aggravated breach” as defined in Rule E3(2), as it included a reference to race and/or ethnic origin and/or nationality.”

12. By his Reply Form dated 30 April 2020 the Player changed his position and admitted the charge. He requested that the case was determined on the papers.
13. The Player did not argue, quite rightly in our view, that use of the word pikey in the context alleged was anything other than an aggravated breach of Rule E3(1) within the meaning of Rule E3(2). It therefore follows from our factual conclusions that we accept the admission of the charge of Misconduct.
14. Given the Player’s admission, the task of this Regulatory Commission was to decide the appropriate sanction and order.

The Rules

15. Part E of the Rules is headed “*Misconduct*”. By Rule 1 the Football Association (‘FA’) may act against a participant in respect of any “*Misconduct*” which is defined as including a breach of “*the Rules and Regulations of The Association and in particular Rules E3 to 28*”¹.
16. The relevant Rule is Rule E3. Rule E3(1) provides:

“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 a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.”

¹ Rule E1(b)

17. Rule E3(2) provides:

“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. Mandatory minimum sanctions are applicable to certain Aggravated Breaches. Further provisions as to sanctions applicable to Aggravated Breaches are found in The Association’s Disciplinary Regulations.”

18. Rule E3(2) provides mandatory minimum sanctions. Those are set out in Disciplinary Regulation 46, which provides:

“Whether or not a suspension has been imposed by the Regulatory Commission in accordance with paragraphs 47 to 50 below, in respect of an Aggravated Breach that Regulatory Commission:

46.1 must order that the Participant who commits an Aggravated Breach be subject to an education programme, the details of which will be provided to the Participant by The Association;

46.2 may impose a financial penalty or any other sanction that it considers appropriate.

19. Disciplinary Regulation 47 provides:

“Subject to paragraphs 48 and 49 below:

47.1 where a Participant commits an Aggravated Breach for the first time, a Regulatory Commission shall impose an immediate suspension of at least six Matches on that Participant. The Regulatory Commission may increase the suspension where additional aggravating factors are present.

47.2 [does not apply]....”

20. Regulations 48 and 49 do not apply.

21. This is the Player's first Aggravated Breach. The starting point is a suspension of at least six matches. Regulation 41 provides that in imposing penalties, a Commission shall consider any applicable standard sanctions or sanction guidelines and have regard to mitigating and/or aggravating factors.
22. There are no applicable guidelines. There is no relevant tariff.

Decision on Sanction

23. There were no representations from the FA before us.
24. In written submissions filed on his behalf, the Player confirmed the content for the question of sanction to be determined on the papers. He submitted that he 'has no issue with the Irish Traveller Community and is not in any way a racist'. He stated, 'These were not pre-meditated comments and there was no intention [...] to cause upset or deep offence. Verbal jousting is part of the background in the competitive environment of professional football and EW seeks to stay on the right side of the line with his conduct on the field.'
25. The Player says that 'pikey' was not the term he would use, ordinarily, to describe a member of the travelling community. He thought the term was simply an alternative to gypsy and he had no idea until the interview with the FA that it was particularly offensive or insulting. He admitted to using the word and apologised.
26. EW is out of contract in the summer. EW's earnings are said to be modest. We were invited to impose the minimum sanction.
27. We assess the aggravating feature of this case to be that the word 'pikey' was said twice.
28. As for relevant mitigating features:

- a. At the time of the Misconduct he had no disciplinary findings against him.
 - b. He admitted the Charge (notwithstanding an initial denial during interview).
29. We have balanced the competing factors and assessed all that we have read and heard. In doing so we are alive to the risk of, and guard against, double-counting: The FA has reflected the gravity of such offences by, *inter alia*, providing for a minimum of a six-match suspension. Such conduct undermines campaigns to promote inclusivity, equality and diversity. On the other hand, there are the features of mitigation identified above. Balancing those matters and having regard to facts and circumstances of the Player's conduct, we concluded that the appropriate sporting sanction was a suspension of six matches. That is what we impose.
30. We order the Player to undergo and complete to The FA's satisfaction an education course, face to face, the details of which will be provided to him by The FA.
31. We were provided with details of his weekly salary. In light thereof, we fine the Player £2,000, a sum which reflects his means and is both appropriate and proportionate to his misconduct.
32. We also warn the Player as to his future conduct.
33. The decision is subject to the right of appeal under the relevant FA Regulations.

Ifeanyi Odogwu (Chairperson)

Marvin Robinson
Faye White

20 May 2020