

BEFORE THE FOOTBALL ASSOCIATION REGULATORY COMMISSION

BETWEEN

THE FOOTBALL ASSOCIATION

- and -

TOM POPE

Regulatory Commission & Secretariat

David Casement QC (Chair) – Independent Specialist Panel Member

Marvin Robinson – Independent Football Panel Member

Lawrence Selby – Independent Legal Panel Member

Paddy McCormack – Regulatory Commissions and Appeals Manager – Secretary

Date of hearing: 17 July 2020

Player

Tom Pope – Player, Port Vale Football Club

Craig Harris – Counsel for the Player

Colin Garlick – Chief Executive Officer, Port Vale Football Club (observer)

Marian Humphreys – Legal Director, Port Vale Football Club

David Durose QC – Counsel & advisor to Port Vale Football Club (observer)

Regulatory Legal – The FA

Sam Shurey – Regulatory Advocate

Professor David Feldman – Witness

REASONS OF THE FOOTBALL ASSOCIATION REGULATORY COMMISSION

Introduction

1. By charge letter dated 4 February 2020 The Football Association charged Tom Pope who plays for Port Vale Football Club with making comments that were abusive and/or insulting and/or improper and/or brought the game into disrepute contrary to rule E3(1). The charge relates to a statement made by the Player on his Twitter account in the early hours of the morning on 5 January 2020. It is contended by The Football Association that the statement amounted to an Aggravated Breach as defined in rule E3 (2) as it includes (express or implied) reference to race and/or religion and/or ethnic origin. In the event that such Aggravated Breach is made out The Football Association invites the Regulatory Commission to consider the imposition of a sanction in accordance with regulation 48 page 145 of The Football Association handbook 2019-2020.
2. A personal hearing was requested by the Player. As a result of the ongoing pandemic and the health risk associated with holding hearings in person the Chairman decided that the hearing would take place using video-conference facilities for a hearing on 17 July 2020. The hearing took place and lasted for one day.

The Statement

3. It is common ground that the Player made the statement in question on his Twitter account in the early hours of the morning on 5 January 2020 in response to a question posed by another Twitter account user. The question posed to the Player was “please predict the #WWIII result you king.” To that question the Player replied, “We invade Iran then Cuba then North Korea then the Rothchilds are crowned champions of every bank on the planet 😊😊😊the end 👍👍👍” (“the Statement”).
4. There then followed a series of exchanges between the Player and other Twitter account users as to whether the statement was in fact racist or antisemitic. The Player

contended it was not and/or that he certainly did not intend it to be such. In response to a Twitter user who challenged the Player as to the antisemitic meaning of the Statement, the Player replied "...sort your life out mate! It was saying they own every bank on the planet except them mentioned! That's a fact and there's nothing else to it! Stop making up nonsense that wasn't its purpose." In another tweet the Player said "how is it racist?? Seriously is someone out to destroy me or what? Someone asked how does WW3 end and I replied when said countries were invaded and they have all the banks!! What's the problem with that? Seriously??" After various exchanges with other account users the Player indicated that he did not know that the statement could be seen as antisemitic nonetheless he continued to maintain that the Rothschild family owned all of the banks apart from those in the three countries he mentioned.

5. The Football Association invited the Player to make his written observations prior to charge. The Player provided his written observations in which he asserted: "following from the game I was engaged in Twitter exchanges regarding the (hopefully) hypothetical outcome of world war three. I made reference to the Rothschild bank and was accused of being racist and specifically anti-Semitic. Ruth Smeeth, who was our local MP until the recent election, has offered to provide education to me as to why the Rothschild reference could be offensive and I'm very happy to take up that offer. I am not a racist. I am not anti-Semitic. I am genuinely and deeply sorry if I have caused any offence to anyone by that reference. It was absolutely not intentional. I have previously enjoyed social media but I have come off Twitter."

Rules and Regulations

6. 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 anyone, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behavior".
7. Under Rule E3(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. 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."

8. The relevant principles are not substantially in dispute as between the parties. It is accepted that the test is an objective one to discern whether a reasonable person reading the statement in context would consider that the charge was made out. The position was set out clearly in the Suarez case at §369 "*We remind ourselves that the test for a breach of Rule E3(1) is an objective test. That means that it is for us to form our own view as to whether Mr Suarez's words or behaviour were abusive or insulting. It is not necessary for the FA to prove that Mr Suarez intended his words or behaviour to be abusive or insulting.*" The objective test has been applied in many other cases some of which are referred to below.
9. The burden of proof rests upon The Football Association to establish the Aggravated Breach on the balance of probabilities bearing in mind that the more serious the allegation the more cogent the evidence must be to establish the charge.

Submissions on behalf of The Football Association

10. Mr Shurey for The Football Association relied upon several cases to emphasise the objective test and its application. He referred to the case of Harvey Elliot where a term of abuse was used in respect of a Player. The term was understood by Mr Elliott to mean one thing but he had no idea that the phrase also related to a protected characteristic. Nonetheless it was found that the term was unequivocally discriminatory and related to disability. The mere fact that some people might be ignorant of the meaning did not detract from its discriminatory meaning.
11. Likewise in the Nicolas Anelka case it was accepted that the "quenelle" has several potential meanings and that some people may have used it who had no idea of its

meaning. Nonetheless the Commission in that case found the person with whom the “quenelle” most associated, Dieudonné, was himself strongly associated with antisemitism and it was not possible to divorce that association from the gesture:

“We concluded that the quenelle is strongly associated with Dieudonné. We further concluded that Dieudonné is strongly associated with anti-Semitism and, as a result, we found that the quenelle is strongly associated with anti-Semitism. We agreed with the FA that it is not possible to divorce that association from the gesture. When NA performed the quenelle on the 28 December 2013, it had that association; it was strongly associated with and contained a reference to anti-Semitism.” (§93)

Submissions on behalf of the Player

12. Mr Harris on behalf of the Player submitted “for the matter to be objectively anti-Semitic ought only to be considered made out if the FA have proved to the requisite standard that it would, as a freestanding comment, be seen as such by the ordinary reasonable person. We accept that some people will potentially construe anti-Semitic meaning into the tweet, but that, we submit, it’s not enough – as, arguably, more people would not.”

13. It was further submitted that there must be a distinction drawn between those words or actions which are unequivocally offensive and related to the protected characteristics and those which are equivocal and which lend themselves to different interpretations. By way of example in the Anelka case the Quenelle gesture was inextricably linked with Dieudonné who was strongly associated with antisemitism. In the Commission’s decision it was said “*it is simply not possible to divorce that association from the gesture [of the Quenelle].*”

14. It was also submitted on behalf of the Player that there is no express reference in the Statement to the Rothschild family being Jewish. The statement contains no reference to Jewish people and whilst there is reference to the Rothschild family having

substantial connections with banking that is insufficient on its own to engage one of the protected characteristics. Some may imply there is a relationship with a protected characteristic. Others may not. It is therefore equivocal language and in the absence of it being established that the comment was intended to be antisemitic the charge cannot be made out. It is submitted again on behalf of the Player that context is crucial and reliance is placed upon those passages such as that in the Hennessey decision, in particular paragraph 58, suggesting that the objective test occasionally requires a degree of subjective analysis.

Evidence

15. The Football Association called Professor David Feldman who is a distinguished Professor of History at Birkbeck College, University of London and also a director of the Pears institute for the Study of Antisemitism. His expertise as well as his historical account of the Rothschild family and the antisemitic attacks on that family and on Jews generally was unchallenged. He set out by reference to historical texts and materials how slurs on the Rothschild family have for centuries been linked to antisemitic denigration of Jews in general.
16. During the course of cross-examination by Mr Harris it was put to Professor Feldman that historically the Rothschild family were an extremely wealthy and influential family entirely unrelated to them being Jewish and therefore it was possible that someone might erroneously think that such wealth and influence continued to the present day, again unrelated to them being Jewish and perhaps not even knowing they were Jewish. Professor Feldman agreed that such was a possibility but one had to ask where does that error come from when it is clear the Rothschild banking business is but a niche part of modern banking compared to many other bigger and more well-known banking companies. As he asked, why are the Rothschild family being singled out in the twenty-first century in conspiracy theories?
17. In respect of the allegations and conspiracy theories, statements about the Rothschilds' alleged hold over the banking system in all but three (or seven) countries have no

foundation in truth. In his well-reasoned and well-referenced analysis, he concluded *“Moreover, this is not just a lie, it is an antisemitic lie which draws on a reservoir of untruths about the Rothschilds. This reservoir is inextricably connected to the Rothschilds’ Jewishness and the sediment of prejudice attached to it.”*

18. In respect of the Statement in the instant case he said *“Mr Pope attests that none of the videos he watched mentions the Rothschilds’ “Jewish faith”. This may well be true. It is also irrelevant for two reasons. First, as I have shown above, antisemitism often makes no mention of the Jewish religion. Second, antisemitism often functions by synecdoche: the Rothschild family stands in for the Jews more widely; the part signifies the whole.”*

19. The reference to synecdoche is a technical term for a rhetorical manoeuvre which names a phenomenon by just one of its parts. The part is used to represent the whole. To take some basic examples, a reference to someone’s “wheels” is used to represent the whole, namely the car. The expression “all hands on deck” is used to represent the whole, namely all sailors on the ship. Historically antisemitic tropes and defamations have used the Rothschild family to represent the whole, that is all Jewish people. There are many examples of synecdoche such as the Nazi propaganda film *Die Rothschilds* of 1940 which was one of a series of propaganda films designed to prepare the German population for harsher anti-Jewish measures. In that film Jews were portrayed as the unacceptable face of capitalism and the Rothschilds’ alleged amorality was used to cast a lethal slur on Jews as a whole. It was pointed out that even in politics in Britain today in certain quarters antisemitic slurs use the Rothschild name to attack the Jewish people. The part is used to represent the whole.

20. In his evidence Mr Pope asserted that he was not antisemitic and he was not racist. During the course of cross-examination it was not put to him that he was. However when challenged as to the context in which he wrote the Statement and why he wrote it he explained that he had watched hundreds of conspiracy theory videos about the 9/11 attacks. He explained that he found the videos convincing in predicting the invasions of four countries - Afghanistan, Iraq, Libya and Sudan. He believed, based on those videos, that the Rothschild banking business had funded the invasions of those

countries so as to be able to take over their banks. The videos he watched further predicted the invasion of three other countries where, according to the videos, the Rothschilds had no banks, namely Cuba, Iran and North Korea. He believed that the Rothschilds would fund those invasions so as to expand their control of the banks in those countries.

21. To some extent Mr Pope sought in his oral testimony to go back on what he said in the Statement and the other tweets referred to above. When asked how he came to believe all banks, which must be taken to mean all banks including central banks, deposit banks and investment banks, were owned or controlled by any single family let alone the Rothschild family he said there were obviously some they did not own. However, he accepted that is not what was said in the Statement nor his subsequent tweets. He was unable to properly explain why he was departing from what he said in the tweets.

22. Mr Pope consistently insisted that he never knew that the Rothschild family were Jewish at the time he made the Statement. He maintained that, despite his belief in their power and influence, he never enquired into anything specifically about the family. He said he did not even look up information about them on Wikipedia. In addition he maintained that he was not even being critical of the Rothschild family, he was simply acknowledging they were the best at what they do although he was also clear that he disapproved of the invasions and wars he was referring to.

Regulatory Commission Findings

23. Rule E3(1) and (2) require that the Statement must be read objectively and in its context. It is common ground that the context includes the question that was posed to Mr Pope and to which he answered by posting the Statement. It also includes the other postings that followed in the conversation as a result of the Statement being posted and in which Mr Pope further set out his position. We find that the context also includes knowledge of the history of antisemitism including the old tropes and defamations published in respect of Jewish people in general and the Rothschilds in

particular, that the ordinary reasonable person must be taken to be aware of.

24. The Commission begins by considering the text of the Statement together with the question that preceded it. The question posted to Mr Pope was “please predict the #WWIII result you king.” There is no dispute that this was a reference to what the outcome would be following a third world war. In response Mr Pope made the Statement: “We invade Iran then Cuba then North Korea then the Rothchilds are crowned champions of every bank on the planet 😏😏😏the end 👍👍👍”.
25. Therefore the immediate context to the Statement was a question about a third world war and what would be the outcome of that terrible scenario in which, no doubt, there would be enormous suffering and death. In that context and by way of answer, the Statement linked a number of elements: (1) a world war with its inevitable untold suffering and death; (2) the invasion of three countries; (3) the Rothschilds profiting from that world war and the subsequent invasion of three countries thereby enabling them to take over the banks of those countries; and (4) total dominance of all of the world’s banks by the Rothschilds.
26. The ordinary reasonable person reading utterances such as these is not ignorant of the history of antisemitism and the suffering and deaths that have resulted from it. They would be aware of the subtle and not so subtle methods deployed to advance antisemitism including defamations, myths and tropes as well as the deliberate ambiguity sometimes adopted so that the antisemitic nature is not so obvious. The “quenelle” is but one example of deliberate ambiguity. The ordinary reasonable person when interpreting such utterances would ask, rhetorically, why are the Rothschilds being referred to in the context of war, profiting from suffering and death and domination of the world’s banks? The ordinary reasonable person knows very well that the Rothschild family have been used for centuries as a synecdoche for the Jewish people – maligning the family in discourse in order to malign all Jewish people.

27. This Regulatory Commission unanimously finds that on an objective reading the Statement, whether on its own or taken together with the question it was responding to, was an obviously antisemitic statement. There is no other reasonable objective interpretation. It is clearly an old trope and myth drawn from the same poisonous reservoir of hatred and lies that all antisemitism comes from.
28. It is hardly necessary to consider the other tweets in the conversation, but we do so for the sake of completeness. Mr Pope was challenged by some of the readers in particular by one Twitter user who said “Rothschild???” Notorious antisemitic rhetoric.” Mr Pope doubled down on his belief on their domination of all world banks: “...sort your life out mate! It was saying they own every bank on the planet except them mentioned! That’s a fact and there’s nothing else to it! Stop making up nonsense that wasn’t it’s purpose.” (underlining added). Again, when challenged by the Twitter user, Mr Pope said “How is it racist?? Seriously is someone out to destroy me or what? Someone asked how does WW3 end and I replied when said countries were invaded and they have all the banks!! What’s the problem with that? Seriously??” (underlining added). He then posted the following tweet “of course I didn’t [know it could be seen as antisemitic] hence I can’t believe you think it is 😞😞 I mentioned them owning the banks which is fact and now I’m facing all this 😞” (underlining added).
29. Therefore in three tweets made after the Statement Mr Pope asserted that it was a fact that the Rothschild family owned every bank in the world save for those in three countries. Although not the direct subject of the charge, which is only concerned with the Statement, these further tweets asserted Mr Pope’s belief that the Statement was factually accurate.
30. The Football Association has not made an allegation that Mr Pope was intentionally antisemitic in posting the Statement. He denies even knowing that the Rothschild family is Jewish at the time he made the Statement. He says that in the videos he watched there was no such reference to their Jewishness and he never did any research into the family whereby he might find out any information about them. The Regulatory

Commission is unable on the present evidence to find that Mr Pope was being intentionally antisemitic in making the Statement neither does the Commission need to. It is clear that such intention or lack of intention is irrelevant to whether the Aggravated Breach is made out. It is an objective test which the Commission finds to have been made out.

31. For the reasons set out the Regulatory Commission finds on the balance of probabilities:

31.1 that the Statement consisted of words that were abusive and/or insulting and/or improper and/or brought the game into disrepute contrary to Rule E3(1);

31.2 this is an Aggravated Breach with the meaning of Rule E3(2) because the Statement included a reference, whether express or implied, to ethnic origin, race, religion or belief.

Sanction

32. The Regulatory Commission regards this as a serious offence. The Statement made was completely unacceptable and represented a clear Aggravated Breach. Further, by posting the Statement on Twitter it was obviously going to be read, and was intended to be read, by a very large number of people and would remain available to be read for some time until Mr Pope eventually deleted it which he did. It was also a post which could have had the effect of encouraging others to adopt similar views and perhaps explore and adopt the antisemitic conspiracy theories that underpinned the Statement.

33. Mr Pope decided to contest the charge as is his right. He does however lose the credit that would otherwise have been available for an admission of breach. The hearing did however serve as an opportunity for Mr Pope to explain his continuing views and also why he made the Statement in the first place. It is of particular concern that even now Mr Pope does not acknowledge the antisemitic message that is conveyed by the Statement. It is also of concern that he has not seriously questioned the conspiracy theories that he has allowed to inform his views.

34. The Regulatory Commission takes into account that Mr Pope has previously been sanctioned on no less than three occasions all of which relate to his use of social media. All of those events occurred in 2019 and in respect of two events, as well as a fine, he has received a sporting sanction namely a one match suspension on each occasion. It is correct to also point out that none of those breaches were Aggravated Breaches, that is to say they did not relate to protected characteristics as this case does. However, notwithstanding that the previous incidents were not Aggravated Breaches they show that he has breached the rules on several occasions using social media and the present offence represents an escalation in seriousness. That must be taken into account when assessing the seriousness of the present offence and the appropriate sanction. It is noted that under the current rules there is no automatic or minimum suspension for Aggravated Breaches where the statement made is in writing including on social media.

35. The Regulatory Commission has taken into account all submissions that have been raised on behalf of Mr Pope by way of mitigation and considered his character references. The Commission also takes into account the Player's level of income, his commitments and the effect of a period of suspension in arriving at a proportionate sanction.

The Player Tom Pope is:

- (i) suspended from all domestic club football with immediate effect until such time as Port Vale Football Club has completed six First Team competitive Matches in approved competitions;
- (ii) fined the sum of £3500;
- (iii) ordered to pay the full costs of the Regulatory Commission which sum shall be notified to the Player;
- (iv) ordered to attend a mandatory face-to-face education programme the details of which will be provided to the Player by The Football Association. That programme is to be completed within a four month period commencing with the date of these Written Reasons. If the Player fails to satisfactorily complete the

programme in that period, he will be immediately suspended from all domestic club football until such time as the mandatory programme is so completed. Given the ongoing pandemic if, for any health and safety related reason, the programme cannot be delivered face-to-face within the four months indicated then, with the permission of The Football Association, the programme may be undertaken by means of video-conference and/or there may be a reasonable extension of the time period allowed for completion.

36. This decision may be appealed in accordance with the Non-Fast Track Appeal Regulations.



DAVID CASEMENT QC (Chairman)

MARVIN ROBINSON

LAWRENCE SELBY

22 July 2020