

## Tom Pope

### Preliminary Application – Ruling

1. Tom Pope ('the Player') is charged with a breach of Rule E3(2). The said charge relates to his posting of a tweet alleged to include (express or implied) reference to race and/or religion and/or ethnic origin. He denies the charge.
2. The issue for me to resolve concerns evidence of the Player's character. The Player wishes to rely upon four statements speaking to his character. They are at pp36-46 of the substantive bundle ('the contentious statements'). I have read them. The FA has indicated that if he does rely on those statements, then it will seek to adduce evidence of his previous breaches of FA Rule E3 on four previous occasions. Each related to his posting of tweets.
3. The starting point is Regulation 9 Disciplinary Regulations A: General Provisions<sup>1</sup> which given the admissibility of evidence in these proceedings. It provides:

*"A panel to which these General Provision apply:*

*9.1 shall not be obliged to follow the strict rules of evidence;*

*9.2 shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before a court of law;*

*9.3 may admit such evidence as it thinks fit and accord such evidence such weight as it thinks appropriate in all the circumstances..."*

4. Therefore, the Regulatory Commission may admit such evidence as it thinks fit. That is the sole rule, subject to the usual test of relevance. The proposed evidence must be relevant, otherwise a Regulatory Commission would not admit it.
5. The second issue is whether evidence of the previous findings is relevant. If the Player adduces the contentious statements, then he makes an issue of his character. It becomes

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<sup>1</sup> page 139 of The FA Handbook 2019/20

an issue in the case. The evidence of the previous findings of misconduct is obviously relevant to that issue. If evidence of positive character is relevant, then so is the converse.

6. Further, I do not agree with Mr Harris's analysis of the effect of the contentious statements as drafted. To take two examples from the contentious statements relied upon by The FA:

*"... I have seen how, rather than abstain from tweeting he has a tendency to react instantly to people who he considered were 'taking the mickey out of him' by responding in the same way back. When I have discussed this with him in the past, he was clear he always sought to avoid being offensive, but that he saw his responses as a reasonable way of responding to critics."*

And

*"As with any public figure, he is subject to constant scrutiny and the abuse that goes with a profile on social media. He has always handled this with a mixture of good humour and sangfroid. What I can say with absolute certainty is that there is no malice of intent in anything Tom says or does. He is an honest, decent person."*

7. To place those before the Regulatory Commission without the facts and circumstances of the previous breaches, would be to present a partial, inaccurate, misleading and therefore unfair picture of the Player's character. That is especially so given the nature of this charge and his previous offending. The evidence of his findings is also admissible on that basis (should the Player lead the contentious statements).
8. Although I was content to deal with this as a preliminary application (as the Judicial Panel Chairman) I do not agree with Mr Harris's assertion in paragraph 6 of his written submissions dated 5 June 2020. An experienced professional Regulatory Commission (which I shall appoint) would be well able to safely exclude from its mind irrelevant material.

9. The FA's position was clear: it will not seek to admit evidence of the previous findings before the Regulatory Commission has decided whether the charge is proved, unless the Player adduces the contentious witness statements. At the end of the hearing Mr Harris indicated that he may wish to take instructions in that respect, depending upon my ruling. I understand why. This case will not be fixed for 7 days.
10. I am grateful to the advocates for their succinct and helpful submissions.



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Judicial Panel Chairman

23 June 2020