

IN THE MATTER OF A REGULATORY COMMISSION  
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

Applicant

- and -

SIR ALEX FERGUSON

Respondent

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DECISION AND REASONS OF  
THE REGULATORY COMMISSION  
HELD ON 16<sup>TH</sup> MARCH 2011

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**Background**

1. On 1<sup>st</sup> March 2011, Manchester United FC played Chelsea FC in a Premier League fixture at Stamford Bridge. Chelsea won the match 2-1. In a post-match interview with his Club's internal TV service, MUTV, Sir Alex Ferguson, the Manchester United first team coach, made the following statements about the match referee, Martin Atkinson:

*“You hope you get a really strong referee in games like this. It was a major game for both clubs. You want a fair referee, you know, and you want a strong referee anyway – and we didn't get that.”*

*“I don't know why he's got the game. I must tell you, I must say, when I saw who the referee was I did fear it. I fear, I feared the worst.”*

2. The interview took place shortly after the match ended (within 5 or 10 minutes). Sir Alex also gave an interview to Sky TV, but, for the purposes of these proceedings, nothing that he said during the course of it really adds to the interview with MUTV.

### **The charge**

3. After reviewing the interview, which was subsequently widely reported in the media, the Football Association charged Sir Alex with misconduct for an alleged breach of FA Rule E3. Specifically, it alleged that the comments in question constituted improper conduct in that they called into question the integrity of the match referee, Mr. Atkinson and/or brought the game into disrepute. For the FA, Mr. Giovannelli submitted that the word "*fair*" should be given its ordinary, normal meaning. He further contended that, by implication, Sir Alex had said that Mr. Atkinson's officiating of the match had not been fair, in the sense that he had been biased towards Chelsea, thereby calling his integrity into question.
4. Sir Alex denied the charge. Whilst he clearly disagreed with a number of the decisions that were made during the match, his case was that he did not, at any time, state or suggest that the Referee had not been "*fair*". Contrary to the interpretation that has been placed on his use of the word "*fair*" by the Association, Sir Alex denied that he intended to imply that Mr. Atkinson was biased, or did not referee the game in a fair way. According to his witness statement, dated 8<sup>th</sup> March 2001, Sir Alex claimed to have simply stated that Mr. Atkinson did not officiate the game in a "*strong*" manner, based upon the decisions that he should have made (in Manchester United's favour), but failed to give. In games of this magnitude, he asserted that a "*strong*" referee is required and, based on his previous experience of Mr. Atkinson, Sir Alex does not

believe that he is what can be described as a “*strong*” referee. He claimed that in the MUTV interview, he stressed the word “*strong*” and having used the word “*fair*” only once retracted it almost immediately.

5. As a separate line of defence/mitigation, Sir Alex pointed to instances of other managers/coaches who have made post-match media comments which he claimed were no less serious than those that are the subject of the charge against him, but where the Association had not taken any action, for whatever reason.
6. At the request of Sir Alex, the Commission carefully considered both the post-match interviews and selected incidents from the match itself. It is right to say that during the interviews he did not lose his temper and remained calm. Further, the word “*fair*” was both preceded and followed by the “*strong*” referee theme. As to the latter, it clearly conveyed Sir Alex’s opinion that Mr. Atkinson was not competent to be put in charge of high profile Premier League games. However, the way in which the misconduct charge was framed meant that the Commission had to decide whether the integrity of Mr. Atkinson had been called into question, alternatively whether the comments made by Sir Alex had brought the game into disrepute. The comments were not alleged to have amounted to misconduct on the basis that they were personal in nature. Mr. Giovannelli, for the FA, relied on the use of the word “*fair*” in the overall context of what Sir Alex said, and whether the charge would have been brought or framed differently in the absence of his use of the word “*fair*” is not something upon which the Commission was required to speculate. Nevertheless, the hearing and submissions concentrated on the use of the word “*fair*” in its context.

7. Despite his denial of any intention to state or suggest that Mr. Atkinson had been biased, the Commission had no hesitation in finding that any reasonable person, hearing the post-match interview given by Sir Alex, would have understood his use of the word “*fair*” to imply that Mr. Atkinson had been “*unfair*”, in the sense that he had failed to act impartially when he made, or failed to make, certain decisions during the course of the match. In our view, only one reasonable interpretation of the word “*fair*” is possible in the overall context of what was said by Sir Alex and it was not necessary for the Association to call any witnesses or evidence to satisfy us of that. No alternative meaning of the word “*fair*” was advanced on his behalf. The members of the Commission were entitled to use their own experience of the world in deciding what the objective ‘reasonable man’ would have understood by his remarks, and this one in particular. They clearly called into question the integrity of Mr. Atkinson and brought the game into disrepute by suggesting that a particular referee lacked impartiality.
8. As to the second line of defence, the Commission was required to consider this alleged offence on its own merits and no other instance of potential misconduct involving other managers/coaches which had not been the subject of any charge of improper conduct. It was therefore not necessary for us to make any judgment or finding in this regard, but even if we were to accept the argument that the Association had not been not consistent in its disciplinary charging, that cannot amount to a defence to a particular charge that is brought. Accordingly, the Commission also rejected this line of defence/argument.
9. For the sake of completeness, Mr. Bean, on behalf of Sir Alex, reminded us that the appropriate standard of proof was the civil standard, namely the balance of probabilities. He further submitted that the more serious the charge, the higher the

standard of proof should be (on a sliding scale), or the strength of the evidence required in order to prove the charge. Although we found that questioning the integrity of a referee is a more serious allegation than questioning his ability/fitness to officiate, the Commission did not consider that this meant that a higher standard of proof was required in order to prove the former. The charge remained one of misconduct. However, even if we had concluded otherwise in relation to a charge of questioning a match official's integrity, we were more than satisfied that a higher standard of proof would have been met on the particular facts of this case. The Commission therefore found the charge of misconduct against Sir Alex to have been proved.

### **Sanctions**

10. The Commission accepted that at the highest level of professional football, the stakes are very high indeed. When decisions go against teams that are considered by them to be patently wrong, and which may influence the outcome of a game, if not a season, it is inevitable that a sense of injustice will be felt. Managers and coaches are also expected to give interviews at a time when emotions often run high. The Commission viewed the incidents in the Chelsea match about which Sir Alex was particularly aggrieved, but it was not our function to retrospectively judge the Referee's performance. Moreover, whatever view one may take about the performance of Mr. Atkinson, or any other, respect for their integrity is essential for the integrity of the game. His vast experience ought to have left Sir Alex in no doubt as to how any sense of injustice he may have felt about the decisions made in a match, or the performance of an official, should properly be channelled and expressed.

11. The Commission was referred to Sir Alex's previous disciplinary record, which included several misconduct charges. Although it was his entitlement to do so, he denied the present charge in the face of a strong, if not compelling, case against him. Although he denied any intention to question Mr. Atkinson's integrity, he should, at the very least, have realised the import of what he said. It follows that any credit to which Sir Alex may have been entitled by admitting the charge, and reduction in sanction, was lost. In addition, it follows from his denial of the charge that no clarification or retraction of any of his comments has been made by Sir Alex and no apology given to Mr. Atkinson, even after the charge had been brought. The Commission regarded this as a serious aggravating feature and rejected Sir Alex's case that his use of the word "*fair*" was effectively retracted during the interview itself. The Commission also took the view that Sir Alex's comments undermined the attempts by the Association, through its 'Respect Campaign' to encourage higher standards of behaviour within the game, including respect for officials.
12. For this particular offence, which we regarded as serious, and taking into account all of the factors referred to above, the Commission concluded that an appropriate penalty would be to impose a touchline ban of three matches relating to all domestic and cup competitions, together with a fine of £30,000.
13. The attention of the Commission was also drawn to a previous hearing of a Regulatory Commission in August 2009 at which Sir Alex admitted a charge of misconduct for media comments he had made regarding the fitness of the referee, Alan Wiley. For that offence, a touchline ban of four matches was imposed, two of which were suspended. The Commission on that occasion ordered that the suspended element should be

automatically invoked for any further offence of misconduct committed by Sir Alex before the end of the 2010/11 season.

14. Mr. Bean argued that the invocation of the suspended two-match ban was not mandatory on two grounds, namely: (i) it conflicted with the FA's Disciplinary Regulations for the current season which provided a discretion to a Regulatory Commission whether to invoke an earlier suspended penalty, and (ii) the previous Commission did not have power to bind a future one. However, it was not necessary for us to adjudicate upon Mr. Bean's submission as the Commission was satisfied that, in the exercise of its discretion, the previous suspended two-match touchline ban should be activated. We came to that conclusion for the following reasons:

- (i) The subject-matter of the previous misconduct charge in October 2009 was of a similar nature to the present one, namely adverse media comments made by Sir Alex about a match referee following a Manchester United match that he had officiated in;
- (ii) The present charge was more serious than the previous one in that the integrity of Mr. Atkinson had been called into question;
- (iii) The suspended touchline ban was no doubt intended by the earlier Commission to act as a deterrent against future misconduct;
- (iv) Sir Alex knew that the suspended touchline ban was 'hanging over him' until the end of the current season. Despite this, he has committed a further offence;
- (v) The two misconduct charges that are relevant to this particular aspect of our decision are obviously separated in time and no good reason was argued against the sanctions applicable to each one running consecutively.

15. The Commission also concluded that a cumulative five-match touchline ban, as a result of activating the suspended ban, would not be unfairly disproportionate or excessive, having regard to all of the circumstances.
16. Accordingly, the Commission ordered that the previous two-match suspended touchline ban would be activated and should follow on immediately after the three-match suspension that we have imposed for the present offence has been completed.

### **Decision of the Commission**

17. The Regulatory Commission found the charge of misconduct against Sir Alex under FA Rule E3 to have been proved and imposed the following sanctions:
  - (i) For the misconduct offence arising out of media comments made on 1<sup>st</sup> March 2011, there should be a three-match touchline suspension in respect of all domestic league matches and cup competitions, together with a fine of £30,000;
  - (ii) The suspended two-match touchline ban imposed for a previous misconduct offence in October 2009 should be activated;
  - (iii) The two touchline suspensions referred to above should run consecutively, resulting in a touchline suspension of five matches in total;
  - (iv) Sir Alex was also ordered to pay the FA's costs in the sum of £1,200.
18. In anticipation of this written decision and reasons being provided to the Parties by the end of Thursday 17<sup>th</sup> March 2011, and to enable Sir Alex time permitted under the FA Rules to consider whether to appeal, we directed that the five-match touchline suspension would take effect on Tuesday 22<sup>nd</sup> March 2011. Payment of the fine,

together with the costs, shall be made 14 days thereafter (*i.e.* by Tuesday 5<sup>th</sup> April 2011).

19. The Commission would like to thank the Representatives of both Parties for their assistance.

Craig Moore

Chairman of the Regulatory Commission

17<sup>th</sup> March 2011

Appearances:

The Regulatory Commission

Mr. C. Moore (Barrister, Independent Chairman)

Mr. R. Burden (FA Council Member)

Mr. B. Jones (FA Council Member)

Mr. P. Raven (FA Football Panel Member)

Mr. M. Ives (FA Disciplinary Manager and Secretary to the Commission)

Mr. R. Marsh (Senior Disciplinary Assistant)

For the Football Association

Mr. D. Giovannelli

For Sir Alex Ferguson

Mr. G. Bean

Sir. A. Ferguson

Mr. R. Bevan (Observer) LMA Chief Executive