

FA NATIONAL SERIOUS CASE PANEL
DISCIPLINARY COMMISSION
CHAIRPERSON SITTING ALONE
on behalf of The Amateur Football Alliance
Non-Personal Hearing
of
Nick Cawood
[Case ID: 11270279M]

THE DECISION AND REASONS OF THE COMMISSION

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Amateur Football Alliance and Nick Cawood Decisions and Reasons of The
Commission

FA National Serious Case Panel Written Reasons

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Introduction

1. On 15 April 2023 Nick Cawood of Old Strand Academicals (OSA) played an Intermediate South Fixture against London Welsh (LWFA) - collectively "The Match".
2. An incident of abuse was reported to the Association on 16 April 2023.
3. The Amateur Football Alliance (AFA) investigated the reported incident.

The Charge

4. On 12 May 2023 The Amateur Football Alliance, charged Nick Cawood as a participant, with the following;
 - 4.1. Charge 1; A Misconduct for a breach of FA Rule E3 - Improper Conduct (including foul and abusive language).
 - 4.2. Charge 2; A Misconduct for a breach of FA Rule E3.2 - Improper Conduct - aggravated by a persons Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability. (Aggravated charge).

It is alleged that Nick Cawood used abusive and/or indecent and/or insulting language contrary to FA Rule E3.1, and it is further alleged that this is an aggravated breach as defined by FA Rule E3.2 because it includes a reference to race/ethnic origin/colour. This refers to the comment "I bet you can't wait to get back to your council estate" or similar.

5. The relevant sections of FA Rule E3.1 states;
 - 5.1. E3.1 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.
 - 5.2. 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.
 - 5.2.1. Pg 141 2022/2023 Handbook.
6. The Association included with the charge the evidence that was intended to rely upon in this case.
 - 6.1. Statements from London Welsh.

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- 6.2. Statements from Old Strand Academicals.
7. The participant was required to submit a response by 26 May 2023.

The Reply

8. A response via the FA Whole game system was received on 26 May 2023, acknowledging that the participant charged, Nick Cawood, **Denied** the charges and wished for the case to be adjudicated on written submissions as a Non-Personal Hearing.
9. By responding to and requesting the case be heard by correspondence the participant charged, Nick Cawood, acknowledges the following statement.
- 9.1. I am pleading not guilty to the charge and I wish the case to be dealt with in my absence. I request any correspondence that I have submitted to be considered and I await the decision of the Disciplinary Commission.

The Commission.

10. The Football Association ("The FA") appointed me, Mrs. Victoria Fletcher, as a chair member of the National Serious Case Panel, to this Discipline Commission as the Chairperson Sitting Alone to adjudicate in these cases in accordance with Regulation 119 of the 2022/2023 FA Handbook.

The Hearing and Evidence

11. I adjudicated this case on 01 June 2023 as a Non-Personal (the "Hearing").
12. I had received and read the bundle of documents prior to the Hearing.
- 12.1. The bundle consisted of 21 A4 pages.
13. The following is a summary of the principal submissions provided to me. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or submission, should not imply that I did not take such point, or submission, into consideration when I determined the matter. For the avoidance of doubt, I have carefully considered all the evidence and materials furnished with regard to these cases.
14. The following evidence was provided in the case bundle.
15. James Thomas LWAFC Club Secretary submitted a digitally signed email to the County Association dated 16 April 2023 stating ["... about 10 mins from the end of the game player number 7 from Old Strand Academicals after an innocuous challenge said to one of our black players "go back to your council estate". We understand the game includes "words" between players but the specific choice
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of words was specific to the target and completely inappropriate. The target of the comments in our team (who remained dignified throughout) said “He would not have said that to me if I was a white guy” when he explained his feelings to Old Strand’s captain after the game. All credit to Old Strand Academicals as a club. Their captain and another 2 or 3 of their senior players went out of their way to listen to the target of the abuse, they apologised and said the conduct of their player was completely unacceptable and that they would reprimand him. But the number 7 refused to apologise for his comments even after the match...”] (sic).

16. The Match Official Neil Hagger submitted an email dated 18 April 2023 in response to questions from the investigating County FA in which he stated [“... In answer to what action I took None as no one spoke to me during and neither team talked to me or really acknowledged me after the match and I did,t hear any thing during the match so I can,t help with this alacation...”] (sic).
17. Omar Austin Player of LWAFC, submitted a typed, digitally signed, AFA witness statement form dated 05 May 2023 which stated [“... The opposition had just had a free kick that went over the bar to which I laughed and as soon as I laughed the No7. on the opposition said to me - ‘I bet you can’t wait to get back to your council estate’ - initially, I was taken back by it and because we were in such control, I just laughed it off. It only took me until the end of the game to really deep what he said to me...”] (sic).
18. Lance Digby 1st team Manager & Captain of LWAFC, submitted a typed, digitally signed, AFA witness statement form dated 26 April 2023 which stated [“... The Old Strand Academicals player then turned to Omar and said, “go back to your council estate”. I’m not sure if this was said immediately after the tackle or whether it was as he was collecting the ball, but it was certainly on the pitch so occurred almost immediate after the tackle. Omar did not react physically to this and simply said “there’s not need to say that””] (sic). [“...After the game I approached their captain and pulled him aside for a conversation reiterating what had happened and that we were going to report the incident. He explained that he didn’t think the player meant it in the way we thought but acknowledged that it was wrong and agreed that it shouldn’t have been said. I stated that the comment would not have been said to myself as a white male...”] (sic).
19. Osian Jones Vice Captain of LWAFC, submitted a typed, digitally signed, AFA witness statement form dated 01 May 2023 which stated [“... Towards the end of the second half (20-10mins before the end), I was in around the penalty box when I heard no.7 (I believe) of Old Strand Academicals, who was medium in height (roughly 5’7 – 5’10), stocky build and had short light brown hair bickering

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with Omar Austin of London Welsh about a challenge that had just happened (but I did not see), I then clearly saw and heard the Old Strand Academicals player no.7 say to Omar Austin, “why don’t you go back to your council estate” to which Omar Austin did not react physically, but questioned why he had said that to him. I also questioned the Old Strand Player by asking him, “did you really say that?” The game played on, and on the full-time whistle, Omar was clearly upset with no.7’s comment and refused to shake his hand after the match. Omar reiterated that he was unhappy with the comment, and said that comment would not have been targeted at him if he was white...”] (sic).

20. Nick Cawood, player of Old Strand Academicals submitted a typed, digitally signed, AFA witness statement form dated 24 April 2023 which stated [“... I can only apologise both to the individual and the rest of the London Welsh team for the comment itself. It should not have been said at all, but was never about race, or intended to be taken as such in any way whatsoever. It stemmed from an earlier incident where the Welsh #7 was booked for raising his arms to me and overreacting to a tackle, which was correctly given as a foul. Their other player and I had an exchange of words about London v the North...”] (sic).
21. Alex Morgan player of Old Strand Academicals submitted a typed, digitally signed, AFA witness statement form dated 01 May 2023 which stated [“... After around 70 minutes of the game I heard the OSA #7 make the alleged comment to a London Welsh player. He said "go back to your council estate". I believe that this was directed at the London Welsh #4, who is black. I did not hear the exchanges before this comment (if there were any) so cannot speak to context...”] (sic).

Response to the Charge

22. No further submissions were made after the inquisitorial process and Mr. Cawood had submitted his response of a not guilty plea via the Whole Game System to both charges 1 and 2.

Standard of Proof

23. The applicable standard of proof required for this case is the civil standard of the balance of probability. This standard means, I would be satisfied that an event occurred if I considered that, on the evidence, it was more likely than not to have happened.

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The Finding and the Decision

24. The Commission reminded itself that the burden of proving a charge falls upon the County FA, in this case it falls upon the The Amateur Football Alliance.
25. The Match Official Neil Hagger did not hear the alleged comment, neither was it reported to him.
26. The recipient of the alleged comment, Omar Austin stated the comment was made as the opposition had just had a free kick that went over the bar, to which Mr Austin laughed. As soon as Mr Austin laughed the participant charged, playing as OSA Nbr 7 said to him 'I bet you can't wait to get back to your council estate'.
27. Three other witnesses also gave statements confirming they heard the comment "why don't you go back to your council estate" or similar. The comment was said by the OSA Nbr 7 to LWAFC player Omar Austin. The witnesses consisted of players from both teams.
28. The participant charged, Mr Nick Cawood submitted a statement during the inquisitorial process and confirmed that he had made the comment towards the LWAFC Nbr7, however whilst he appreciated the comment should never have been said, it was not about race, or intended to be taken as such in anyway whatsoever.
29. The commission noted all witness, including the participant charged Mr Nick Cawood concurred he had made the comment "I bet you can't wait to get back to your council estate" or similar to a LWAFC player, who was more likely than not the number 7 Omar Austin. Whilst the recipient and witnesses found the comment to be insulting and abusive the recipient and witnesses also attributed the protected characteristics of race and/or ethnic origin and/or colour to the comment. Whereas the participant charged did not, and stated whilst he understood, he should not have made the comment. It never was, nor was intended to be, about race. The commission notes there may have been an earlier exchange and whilst this may have given a degree of context, all parties other than the participant charged appeared to have interpreted the comment made by Mr Cawood in the same context and that is; that the comment was unacceptable, not just because of the nuance of the words but because of the profiling of the player. The Commission notes that the Office for National Statistics, published relevant data to the basis of this charge on 15 March 2023 with data collected from the England and Wales 2021 census. The Commission concluded that whilst there may have been no intent by the participant charged for the comment to be interpreted as a comment that may be attributed to race and/or ethnic origin and/or colour there is justifiable evidence as to why the recipient and any witnesses of the comment may be offended.

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- 29.1. In respect of charge one; The commission was satisfied that the comment made by the participant charged were, foul and abusive and;
- 29.2. On an objective basis concluded that a reasonable bystander would consider the comment to have been improper and contrary to accepted societal norms;
- 29.3. In respect of charge two; The commission was satisfied the comment used by the participant charged contained reference to race and/or ethnic origin and/or colour, within the meaning of FA Rule E3.2.
30. Therefore, I find the charge of: FA Rule E3 - Improper Conduct (including foul and abusive language). PROVEN and;
31. I find the charge of: FA Rule E3.2 - Improper Conduct - aggravated by a persons Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability, PROVEN.

For the avoidance of doubt, when considering the second (aggravated) charge, the Commission was not required to determine, or tasked to adjudicate on, whether the participant holds views of a discriminatory nature. The Commission made no such findings. The test to be applied is one of reference, whether expressly or implied, to a characteristic as detailed in paragraph 5 (inclusive) above.

Previous Disciplinary Record

32. After finding the charge proven, I sought the offence history of the participant charged.
- 32.1. Nick Cawood has no prior misconducts to show on record in the current 2022-2023 season nor the previous five seasons.

Aggravating & Mitigating Factors

33. p. 178 of FA Handbook 2022/23 - A regulatory commission will have due regard to the circumstances and seriousness of the incident when determining the appropriate sanction and whether (and to what extent) to depart from the sanctioning range. In so doing, the regulatory commission shall give consideration to any aggravating and mitigating factors.
- 33.1. Aggravating factors are any relevant circumstances, supported by the evidence provided, that increase the potential sanction against the offending party.
- 33.2. Mitigating factors are any evidence presented regarding the participants character or the circumstances of the incident which might cause the Disciplinary Commission to apply a lesser sanction.

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Aggravating Factors

34. The commission may take the following into consideration.
- 34.1. The overall reputation and integrity of the game.

Mitigating Factors

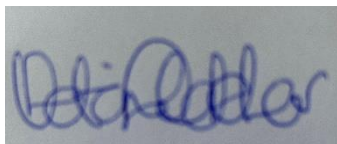
35. The commission may take into consideration the following;
- 35.1. The clean discipline history of the participant charged.

The Sanction

36. I noted that the FA Recommended Sanction Guideline for FA Rule E3 - Improper Conduct (including foul and abusive language) & FA Rule E3.2 - Improper Conduct - aggravated by a persons Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability.
37. If the case is found Proven the commission will refer to the standard sanctions and guidelines. The sanctioning range for any breach of Rule E3.1 resulting in an E3.2 charge are as follows;
- 37.1. The sanctioning range is 6-12 matches. 6 matches is the standard minimum, a Commission may impose a suspension in excess of 12 matches where there are significant aggravating factors. A participant found to have committed an aggravated breach will be subject to an education programme. A fine is at the discretion of the Disciplinary Commission.
38. After taking into consideration all circumstances in this case, Nick Cawood is: Suspended from All Football activities for a period of 6 (six) Matches.
- 38.1.1. The commission initially imposed a sanction of 7 (seven) Matches, having considered the participants clean disciplinary record, the sanction was reduced to that of 6 (six) matches from All Football Activities.
- 38.2. Fined a sum of £0 (Zero Pounds).
- 38.2.1. The Commission has carefully considered its position and concluded that on this occasion a fine will not be imposed.
- 38.3. An online FA Equality Education Course which must be completed before the suspension is served.
- 38.4. 8 (Eight) Club Disciplinary Points to be recorded.
39. Failure to comply with this order will result in a Sine-Die suspension being issued against the participant until they have fulfilled this order in its entirety.
40. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

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Signed...

A rectangular box containing a handwritten signature in blue ink. The signature appears to be 'Victoria Fletcher' written in a cursive, slightly stylized font.

Victoria Fletcher (Chairperson)

01 June 2023

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