

**THE FOOTBALL ASSOCIATION DISCIPLINARY
COMMISSION**

Sitting on behalf of Essex County Football Association & Amateur Football Alliance

PERSONAL HEARING

of

**JOHN KIRWAN
Case ref: 11488874M**

and

NON-PERSONAL HEARING

of

**MARK FISHER
Case ref: 11452731M**

THE DECISION AND THE REASONS OF THE COMMISSION

Regulatory Commission Constitution

Ruth Mann (Chair – Independent Panel Member)

Jane Hodge (Independent Panel Member)

Ian Davies (Independent Panel Member)

Megan Harley-Buller (Secretary)

Date of Hearing: 15.01.2024

Attendees

(1) Essex County Football Association

Edward Levene

(2) John Kirwan

Jamie Brunt

Andrew Purser

Gary Doodes

1. This document sets out the written reasons for the decision in this independent Regulatory Commission (“the Commission”).
2. The Commission dealt with consolidated proceedings in these cases that arise out of the same facts by Microsoft Teams.
3. These written reasons contain a summary of the principal evidence before the Commission and do not purport to contain reference to all points made. The absence in these reasons of any particular point, piece of evidence or submission should not imply the Commission did not take such point, piece of evidence into consideration when determining the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished in this matter.

The charges:

(i) John Kirwan

4. By a Misconduct Charge Notification dated 24th November 2023 issued by the Essex Football Association (“Essex FA”) alleged that John Kirwan (“JK”) used threatening and / or abusive and / or indecent and / or insulting words or behaviour contrary to FA Rule E3.1 and it is further alleged that this constitutes Threatening Behaviour Against a Match Official as defined in FA Regulations. This refers to the allegation that JK told the referee “he wanted to see me in the ref changing” and / or “ I should hang my whistle up” and or a “cunt”, or similar, after the match had ended.
5. Accordingly, Essex FA charged JK with:
 - i) Breach of FA Rule E3.1 – Improper Conduct against a Match Official – (including threatening and/or abusive language/behaviour).

6. JK was required to submit a response to the charge by 8th December 2023. The Commission was informed that JK denied the charge and requested a Personal Hearing.

(ii) Mark Fisher

7. By a Misconduct Charge Notification dated 24th November 2023 issued by the Amateur Football Alliance (“Amateur FA”) alleged that Mark Fisher (“MF”) used threatening and / or abusive and / or indecent and / or insulting words or behaviour contrary to FA Rule E3.1 and it is further alleged that this constitutes Threatening Behaviour Against a Match Official as defined in FA Regulations. This refers to the allegation that MF approached the referee in an aggressive manner and threatened to knock them out and / or it is also alleged that MF said to the match official that they would “ sort them out after the game ended” or similar.

8. Accordingly, the Amateur FA charged MF with:
 - i) Breach of Rule E3. Improper Conduct against a Match Official – (including threatening and / or abusive language / behaviour).
9. MF was required to reply to the charge by 8th December 2023. MF admitted the charge and requested a Non-Personal hearing.
10. As the offences were alleged to have been committed during and after the same match (being the fixture between Chigwell Veterans Reserves and Hale End Athletic Veterans Reserves on 28th October 2023 (“the match”)) and there was related or common Association evidence, the proceedings against each of the parties were consolidated, as per Regulation 13 of FA Disciplinary Regulations, and were therefore considered, by the Commission at a joint hearing.

The facts.

Evidence adduced by Essex FA re JK.

11. Essex FA adduced evidence from the following witness.

(i)Edward Levene

12. The Commission had an Extraordinary Incident Report from Edward Levene (“EL”) dated 3rd November 2023. The Commission asked questions of the witness to seek clarification of the relevant facts.
13. The evidence of the witness can be summarised as follows:
 - i) Witness was the Match Official (referee) during the match.
 - ii) Around the 92nd minute an incident occurred on right hand side of the field of play (near to corner flag). Witness did not see a foul and did not have a clear angle due to too many players being in the way.

- iii) JK challenged decision by witness. JK had been playing in the first half of the match but was now on the side of the pitch Managing the Chigwell team.
- iv) JK had been stood where the Chigwell player had allegedly been fouled.
- v) There had been no issues with JK prior, although other incidents had occurred with other players during the match.
- vi) JK was shouting words to the effect of “you were miles out”. He swore at witness and called him a ‘cunt’. This was said at least once but maybe twice.
- vii) Witness responded by booking JK for dissent and gave a red card for the foul and abusive language.
- viii) After red card given JK eventually gave witness his name. This was after the game had ended. JK shouted over to the witness and directly to him “I want to see you in the referees changing room”. JK was getting quite “riled up”. They were about 2 to 3 feet away from each other.
- ix) It was said and directed toward the witness and JK was facing the witness. There were around 4 to 5 players stood with JK at the time. JK was aggressive in his tone as he was shouting the words. Witness was “worried as to what might happen”.
- x) Witness replied with “no you haven’t got the right to see me” or similar.
- xi) Witness was scared at this point. There were no other Match Officials in the vicinity and the witness had been the single Match Official assigned to the match.
- xii) Witness ‘got changed as quickly as possible’ but cannot recall exactly how long this took. He when left the facility.
- xiii) Whilst walking (witness does not drive and relies on public transport) down the “small little” road near to the entrance of the carpark to the Power League facility JK pulled up by the side of him and said “I should hang up my whistle” and that I was a “cunt”.
- xiv) No one else was around, it as a clear day and view not obstructed. Was approximately 3 to 4 feet from the window of the car (driver’s side).
- xv) The window of the red car was down, and it was “definitely” JK. This interaction was about 5 / 10 seconds.

Evidence adduced by Amateur FA re MF

14. As per Paragraph 9 above it is noted by the Commission that MF requested a Non-Personal Hearing and had admitted the charge. For the sake of completeness, the written evidence relating to the charge against MF is summarised below.
15. EL provided an Extraordinary Incident Report Form on 3rd November 2023 re MF.¹ This stated, *“Mark Fisher who red carded earlier who threatened to knock me out the first half of the game whist on side on field of play tried approach me in aggressive manner and threatened again to knock me out.and said he sort me out after the game ended.I then told told hale end to removers player from ground or I would abandon the fame the player left the ground”*.
16. In a clarification email² to the Amateur FA re MF, EL stated, inter alia, *“he came towards myself in fied of play only a few feet on half way line mark fisher had be pulled away by team mates.He wa told leave the area but stood by corner flag.At the half time interval he came towards me and threaten to knock me out within a few feet his was pulled away from his team mates still continued to stand by corner flag I warned hale end to remove this player or I would avandin the game he left before second half started. he also said he sort me out as well mark fisher”*.³

Evidence adduced by John Kirwan

JK adduced evidence from the following witnesses.

(i)Jamie Brunt

17. The Commission had a written account from Jamie Brunt (“JB”) dated 14th November 2023. The Commission asked questions of the witness to seek clarification of the relevant facts.

¹ Page 6 of 23 of the Case Bundle 11452731M relating to Mark Fisher.

² Page 8 of 23 of the above Case Bundle.

³ Page 8 of the above Case Bundle. Typographical errors as per EL reply.

18. The evidence of the witness can be summarised as follows:

- i) Present at the match. Unused substitute for Chigwell. Witness was running the line. Witness was on the line the whole game.
- ii) Heard a few “shouty words” from JK. However, could not make out what they were as was on other side of pitch.
- iii) Saw a red card being given by Referee to JK and could see a verbal exchange taking place. This was near the end of the match.
- iv) Everyone went their separate ways.
- v) Witness went to the changing rooms. Met with other players. Was in the changing room for approximately 15 to 20 minutes.
- vi) Did not see JK dropping anything off at his car.
- vii) Witness admits that he was always not with JK.

(ii) Andrew Purser

19. The Commission had a written account from Andrew Purser (“AP”) dated 9th December 2023. The Commission asked questions of the witness to seek clarification of the relevant facts.

20. The evidence of the witness can be summarised as follows:

- i) Witness was a spectator at the match. Did not watch the whole match as was also watching another match that was ongoing at a similar time.
- ii) After the match walked to JK’s car to put equipment in the boot. JK drives a blue car.
- iii) Witness did not see JK speak to the Referee.
- iv) Witness did not go to the club house.

(iii) Gary Doodles

21. The Commission had a written account from Gary Doodles dated 13th November 2023. The Commission asked questions of the witness to seek clarification of the relevant facts.

22. The evidence of the witness can be summarised as follows:

- i) Witness Goalkeeper for Chigwell. Present at the match.
- ii) Witnessed JK receive a red card. However, could not hear what was being said as this occurred at the opposite end.
- iii) According to the Misconduct Report Form witness was also booked during the match.
- iv) It was a close game with Chigwell pushing for an equaliser.
- v) When walking towards the changing room JK asked Referee if he could 'have a minute'. Heard JK say 'sorry for what I said'.
- vi) JK was about 10 metres or so away from Referee when this was said.
- vii) After being in the changing room witness states, he helped JK with the equipment. They took this to JK's dark blue car.
- viii) Witness did not go to the club house. He went home in his own vehicle.
- ix) JK went to the club house having loaded his car boot with equipment.

(iv) John Kirwan

23. The Commission had two written statements from JK dated 14th November 2023 and 1st December 2023 respectively. The Commission asked questions of the witness to seek clarification of the relevant facts.

24. The evidence of JK can be summarised as follows:

- i) Is the Manager / player for Chigwell. Played the first half of the match.
- ii) When came off the score was 1-0 to Hale End. Hale End were down to 10 men as one of their players had been sent off earlier in the game.
- iii) In the second half JK states he was stood near the corner flag. He shouted to EL 'you can't see it'.

- iv) EL came over and gave JK a yellow card. JK states he told EL to 'fuck off'.
- v) JK did not use the word 'cunt'. This word is not in his vocabulary.
- vi) There was about a minute left of the match. JK states he walked onto the pitch and said to EL, "I want to speak to you in there" - referring to the changing rooms.
- vii) JK admits he was angry. His team had lost, and he agrees the comment, and the tone in which it was said could have been perceived as threatening.
- viii) JK accepts that having told EL to 'fuck off' and then asking to see / speak to him alone in a changing room could intimidate and be considered threatening.
- ix) The interaction lasted no more than 30 seconds. JK was approximately 10 to 15 yards away from EL when the exchange took place.
- x) JK accepts that his two written accounts submitted to the County FA contain inconsistencies. JK admits that the 14th November 2023 statement does not reference the admitted verbal exchange re the changing rooms.
- xi) JB is mistaken and JK states he did not go to his car immediately after the match. Instead, he went to the changing room, when he remained for approximately 20 minutes.
- xii) It was at this point JK states he went to his blue car and put all the equipment in the boot. He then went to the club house where he remained for approximately 1.5 hours.
- xiii) JK is adamant he did not see EL again after the exchange regarding the changing rooms.
- xiv) There were other players 'booked' during the match not just JK. There were others who looked similar in appearance to JK.
- xv) JK states it is the case of mistaken identity and EL has 'got mixed up' regarding the incident described by EL (someone telling EL to hang up his whistle and 'cunt'). This person was not JK.
- xvi) JK states that had the Charge Notification referenced the 'he wanted to see me in ref changing' only he would have accepted the charge. The denied part of the allegation is the alleged comment re 'I should hang my whistle up' and 'or cunt'.

Evidence adduced by Mark Fisher

25. MF provided a statement dated 14th November 2023.⁴ This was considered by the Commission. MF had admitted the charge and that plea had been accepted by the Commission. Whilst MF does not reference in his statement the use of the alleged threats to EL it is noted he has pleaded guilty. In doing this he does not dispute the evidence of EL.

The Commissions factual findings.

26. The burden of proof is borne by Essex FA and Amateur FA to prove the alleged misconduct separately in the case of each participant upon the balance of probability.

27. The test to be applied is that the Commission is satisfied an event occurred if the Commission considers that, on the evidence, the occurrence of the event was more likely than not.

28. The Commission noted that each form of misconduct alleged against each participant is a serious allegation and cogent evidence is required upon the balance of probability to establish the allegation. The Commission was mindful that some evidence was submitted in written format only and therefore had not been 'tested' during the oral hearing proceedings.

(i) John Kirwan

29. Having considered all the evidence before the Commission, the Commission concluded as follows on the balance of probability:

⁴ Page 14 of the Case Bundle 11452731M

- i) The charge raised by the Essex FA had a number of elements or ‘phases’. The use of the words ‘and’/ ‘or’ allow the Commission to look at each allegation individually. This was important in this instance as JK, in his evidence did not dispute that, on balance the comment ‘see you in the ref changing room’ or similar could have been considered or perceived to be threatening. JK admitted saying those words or similar. It was clear that the words said by JK would have made someone feel ill at ease.
- ii) The Commission determined, to the requisite standard and considering the reasonable bystander (objective) test that JK’s comments re the changing room effectively meant that the charge, E3.1 of threatening a match official was **PROVEN**.
- iii) The Commission went on to determine the facts that were in dispute. It was disputed by JK that he was the person responsible for shouting at the referee from a vehicle. The Commission found the evidence of EL to be clear. It was accepted by EL that there had been some time lapse from the incident to the initial report to the FA and that his memory may have been impacted due to the passage of time from the incident and the hearing. The Commission were in agreement that it is possible that EL was honest but mistaken in his identification of JK in a vehicle.
- iv) The Commission listened carefully to all the evidence including that of JK himself. He was insistent that he had been misidentified. It is a fact that others were booked by EL during the match and it is a fact there were more than one disgruntled player that game.
- v) The Commission were not satisfied to the requisite standard that JK was in fact the male who made the comment about ‘hanging up your whistle’.
- vi) The Commission were unanimous in their decision that in actual fact the main threat was in fact the comments which had been accepted by JK in his evidence.
- vii) The above was clearly communicated to JK by the Secretary. It was made abundantly clear to JK that sanction would focus solely on what had been found proven by the Commission as referenced above.

ii Mark Fisher

30. The Commission were satisfied the plea of guilty was the correct plea.

Sanction

31. The Commission went on to consider sanction.

i)John Kirwan

32. The Commission were provided with the offence history for the last 5 years of JK. To his credit JK has no previous serious misconduct history. JK addressed the Commission with regarding to the finding and explained that he had already received a 3-match ban due to the red card.

33. The Commission reminded themselves of the 2023/24 FA sanction guidance regarding Threatening and abusive language / behaviour towards a Match Official (FA Rule E3.1):

i) Suspension from all football activities for a period of between 56 days and 182 days. (The recommended entry point, prior to considering any mitigating or aggravating factors is 112 days.)

ii) a fine of up to £100, with a mandatory minimum fine of £50.

iii) an order that the Participant completes an education programme before the time-based suspension is served.

34. The Commission found no other aggravating features other than the offence charged being one of serious misconduct. In finding the charge part proven it can not be said there were a number of 'phases' to the incident which would have been an aggravating feature.

35. The Commission considered the mitigating features and noted the match was not abandoned because of the misconduct. In addition, it was a relatively short-lived incident. In addition, this is JK's first serious misconduct offence (and hopefully the last). That is to his credit.

36. The Commission impose the following sanction:

- i) Suspension from all football related activity for 90 days.
- ii) Fine of £50.
- iii) JK shall attend a compulsory online FA Education Course, to be completed before the suspension is served, failing which he will be suspended from all football activity until such time as he has completed the course.
- iv) Chigwell to receive 8 penalty points.
- v) JK is warned as to his future conduct.

37. The Commission departed from the recommended entry point of 112 days on this occasion. The reasons for this are due to the mitigating features as noted above. In addition, JK served a three week ban for the initial use of the foul and abusive language.

38. Whereby the participant fails to comply with the order, a Sine-Die (indefinite) suspension shall be imposed until such time as the participant becomes compliant with the order of the Disciplinary Commission

ii)Mark Fisher

39. The Commission were provided with the offence history for the last 5 years of MF. To his credit MF has no previous serious misconduct history.

40. The Commission identified the following aggravating factors:

- i) Number of phases / repeated threats. It is noted that MF made threats on more than one occasion.

41. The Commission determined the following as mitigating factors:

- i) Early guilty plea/ admitted charge.
- ii) No previous misconduct history.

42. The Commission impose the following sanctions:

- i) Suspension from all football related activity for 112 days.
- ii) Fine of £75.
- iii) MF shall attend a compulsory online FA Education Course, to be completed before the suspension is served, failing which he will be suspended from all football activity until such time as he has completed the course.
- iv) Hale End to receive 9 penalty points.
- v) MF is warned as to his future conduct

43. Whereby the participant fails to comply with the order, a Sine-Die (indefinite) suspension shall be imposed until such time as the participant becomes compliant with the order of the Disciplinary Commission.

44. These decisions are subject to the right of appeal under the relevant FA rules and Regulations.

Ruth Mann

18th January 2024

Independent Panel Member Chair

Ian Davies

Independent Panel Member

Jane Hodge

Independent Panel Member

