

DISCIPLINARY COMMISSION

Sitting on behalf of the Amateur Football Alliance

IN THE MATTER OF A NON-PERSONAL HEARING OF

RYAN MARSDEN

CASE ID 10952956M

(OLD WOKINGIANS FOOTBALL CLUB)

DECISION AND WRITTEN REASONS OF THE DISCIPLINARY COMMISSION

BACKGROUND AND HEARING

1, The Disciplinary Commission, in the form of an FA appointed Chair sitting alone, adjudicated on 14th November 2022 upon charges brought by the Amateur Football Alliance (“AFA”) against Ryan Marsden (an Old Wokingians Football Club player) in respect of alleged misconduct by him during a match between Old Wokingians Football Club Sixth (“Old Wokingians”) and Clissold Park Rangers Second (“Clissold Park”) on 8th October 2022.

THE COMMISSION

2. The Chair appointed to the Commission was Mr Michael Weeks (member of the National Serious Cases Panel).

THE CHARGES

3. AFA charged Ryan Marsden as follows:

Charge 1: FA Rule E3 – Improper Conduct (including foul and abusive language).

Charge 2: FA Rule E3.2 0 Improper Conduct – aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability.

The particulars of the charge supplied to Ryan Marsden and his Club were as follows:

“It is alleged that Ryan Marsden used abusive and/or indecent and/or insulting language contrary to 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 Sexual Orientation. This refers to the comment(s) “Faggot” or similar”.

CONSOLIDATION.

4. Old Wokingians had also been charged by AFA under Case number 10942717M with an offence under FA Rule E20 as follows: that the Club had “failed to ensure that directors, players, officials, employees, servants, representatives conduct(ed) themselves in an orderly fashion whilst attending any Match”.

In accordance with FA Rules, guidance and practice, the Commission Chair consolidated the matter of Ryan Marsden with that of Old Wokingians:

- (1) The evidence was common to both matters.
- (2) The allegations arose from the same match.
- (3) It was fair and just that the same Commission decided both sets of matters.

NOTE: The evidence and submissions referred to within these written reasons specifically relate to the allegations brought against Ryan Marsden. The charge brought against Old Wokingians may be alluded to or mentioned but the written reasons do not relate to the Club’s charge. However, for completeness, the decision made in respect of Old Wokingians’ charge is set out at paragraph 13 below.

THE PLEA.

5. Ryan Marsden had entered a plea of “Not Guilty” and requested that the matter be heard in his absence. Likewise, Old Wokingians had entered a plea of “Not Guilty” and requested that the Club’s matter be heard in the Club’s absence.

THE EVIDENCE

6. The following is a summary of the principal evidence and submissions provided to the Commission Chair. It does not purport to contain reference to all the points made. However, the absence in these reasons of that point or submission does not mean that the point or submission was not taken into consideration when the Commission Chair determined the matter. For the avoidance of doubt the Commission Chair has carefully considered all the evidence submitted with regard to this case.

7. The Commission Chair was supplied with the following documents:

Misconduct Charge Notification Form (Ryan Marsden) dated 21st October 2022.

Extraordinary Incident Report Form dated 10th October 2022 from Benjamin Anderson (“original” FA appointed Referee).

Email correspondence dated 10th October 2022 and 11th October 2022 between the Referee and AFA.

Witness Statement dated 12th October 2022 from Richard Littlechild (Clissold Park vice-captain).

Witness Statement dated 12th October 2022 from George Lake (Clissold Park captain).

Email correspondence between 10th October 2022 and 19th October 2022 between Clissold Park, the “AFC Secretary”, and the AFA.

Email dated 20th October 2022 from George Lake to AFA.

Witness Statement dated 14th October 2022 from Steve Godman (Old Wokingians player and “stand-in” Referee on the day).

Witness Statement dated 12th October 2022 from Michael Hulse (Old Wokingians captain).

Witness Statement dated 10th October 2022 from Richard Martin (Old Wokingians vice-captain).

Email correspondence dated 12th October 2022 to 14th October 2022 between Old Wokingians and AFA.

Email dated 17th October 2022 from Neill Johnstone (presumed to be an Old Wokingians official) and AFA enclosing an email/statement from Ryan Marsden.

Response to charges brought against Old Wokingians and Ryan Marsden dated 31st October 2022 from John Stent (Old Wokingians Chairman).

8. The Commission Chair’s summary of the written evidence is as follows:

On 8th October 2022 Old Wokingians Sixth travelled to Barns Elms, London from Old Woking to play Clissold Park Second team in an Amateur Football Combination match. The match was scheduled to kick-off at 2pm. Old Wokingians players were delayed by traffic resulting in their late arrival at Barn Elms. There is a dispute within the evidence as to the exact time that the players arrived, but the “upshot” was that the game could not be started by 2.30pm which, according to the appointed Referee’s interpretation of the League rules, was the time at which he was, he stated in his statement, entitled “not to officiate the match”. This he decided to do at 230pm. He stated that “the main reason” for this decision was because, only four players from Old Wokingians having arrived by that time, he, the Referee, was aware that certain players from Clissold Park could not remain for the full 90 minutes.

When the Referee made his decision, there was some disagreement expressed by Old Wokingians players who were arriving and being informed of the decision. The alleged behaviour within the response by the Old Wokingian players to the news is the subject of the FA Rule E20 charge brought against the Club.

The Referee mentioned that he had some contact with George Lake after the match and that George Lake had said that a “homophobic slur” took place within the match that followed his, the Referee’s, departure. This would have been a reference to the allegation brought against Ryan Marsden. The Referee added that he would not have been surprised (if such behaviour had occurred) “due to the behaviour of the team when I was at the venue”.

Richard Littlechild provided a detailed statement of events after the departure of the Referee. “Steve, a Woking player refereed the match”. The Commission Chair understood from later statements that this person was Steve Godman, an Old Wokingians player, who told others at the match that he had a refereeing qualification, and who volunteered to take charge “in the absence of anyone from the Home team willing to volunteer” (Steve Godman’s statement).

The first half contained no notable incidents, it appeared, because Richard Littlechild made no reference to the first half in his statement (neither did his captain – see below). During the second half, Richard Littlechild described how, following a free kick award to Clissold Park, “a Woking player (Woking Player 2) directed a homophobic slur at the CPR player who had been fouled (CPR Player 1), calling him a “faggot”. Richard Littlechild stated that the CPR player was from Brazil and may not have appreciated the significance of the use of the word “faggot”. The alleged offending player was described as “short, slim, and had curly/frizzy blonde-ish hair. He had a curly beard, with little in the way of a visible moustache”. Richard Littlechild said that he did not recall the shirt number that “Woking Player 2 was wearing”. He, Richard Littlechild, went on to say that the “slur” prompted a reaction from several Clissold Park players, most notably the Clissold Park striker, “CPR Player 2 who began remonstrating with Woking Player 2”. Richard Littlechild complained to Steve Godman who did not acknowledge Richard Littlechild. Richard Littlechild said: “I am of the view that he (Steve Godman) was trying to calm tempers and did not hear me”.

The game continued, according to Richard Littlechild, until a further free kick was awarded in favour of the same Clissold Park player. “Again I witnessed Woking Player 2 use the same homophobic slur to CPR Player 1. This again prompted remonstrating from CPR Player 2 who objected to the language being used”. Richard Littlechild spoke to Steve Godman saying that the Woking player “cannot say that”; Steve Godman replied that the Clissold Park player was “winding up” the Wokingians player. When it was put to Steve Godman that “winding up” should not lead to the use of the word “faggot” twice, Steve Godman replied “I did not hear him say that, if I hear it I will send him (Woking player 2) off”. Steve Godman then spoke to the Clissold Park player (“CPR Player 2”) who was still complaining about the language. The match finished without further incident.

George Lake made no mention of any notable incident occurring in the first half and confirmed that “Steve” from Wokingians refereed the match. However, “during the second half a Clissold player won a free kick by Woking’s penalty area. I saw that the offender (who was of short-medium height with blonde hair and a beard, and, I believe, wearing #11) said something to the fouled player and instantly two Clissold players turned to remonstrate. This caused more Woking players to get involved and I ran over to calm the situation. As I was speaking to my players I understood that Woking #11 had used the term “faggot” at the fouled player. Shortly after, a similar incident occurred between the same Clissold and Woking players. Again I tried to calm the situation and understood that the same slur had been used. My vice-captain, Richard, who was nearer the situation and heard the slur, spoke to Steve and complained about the language. The remainder of the game passed without incident”.

George Lake had, on 10th October 2022, via email to Ciaran Fitzgibbon, the “AFC” Secretary, stated that “the unsavoury incident related to uses of offensive, homophobic language from one Woking player to a Clissold player, on two occasions, following free kicks being awarded to Clissold Park. The second of these resulted in some escalation from players of both sides and took a while to settle. One of our players spoke with the referee about the language; the referee said that he had not heard the term used on either occasion but would send the Woking player off if he heard it again”.

George Lake also stated by email to AFA on 20th October 2022 that he did not think a statement from the player who was the subject of the alleged abuse would add value to the matter because the player was from Brazil and believed not to be familiar with the term “faggot”.

Steve Godman, the “stand-in” Referee, assisted by providing a statement. He stated that the first half was competitive, with few problems. However, as the score “continued to advance to the final 5 – 1 outcome, a level of angst and additional physicality ensued”. On two occasions there were disputes between the same two Wokingians and Clissold Park players in which Steve Godman had to intervene. In the first, the Clissold Park player complained that he had been fouled, but Steve Godman disagreed: “A verbal dispute then proceeded between the two involved players”. As the situation calmed, a Clissold Park player who was not involved in the relevant play informed Steve Godman that “the Away team player had called someone a Faggot”. Although in close proximity to the players, Steve Godman had not heard this. The second dispute arose later in the half when Steve Godman did award Clissold Park a free kick; a verbal argument arose between the same two players; the same (uninvolved) Clissold Park player informed Steve Godman that the “Away team player had called someone a Faggot”. Steve Godman did not hear the word used although he was “in close proximity to the players involved”. With suitable warnings the play resumed.

Michael Hulse, the Wokingians captain, denied that any homophobic language was used by a member of the Wokingians team. The allegation was completely untrue – the use of such language as was alleged would result in the user not playing for the team again. Michael Hulse stressed that Wokingians had fulfilled the fixture despite an “awful” experience with the traffic; Wokingians had provided the (“stand-in”) Referee in Steve Godman; the team played very well and the accusation by Clissold Park stained the reputation of Wokingians.

Richard Martin, the Wokingians vice-captain, agreed in his statement that “there were a couple of moments in the game where players of both sides became agitated” “and were dealt with quickly and fairly by the referee”. “There was no mention of any untoward incidents or homophobic remarks being made by anyone and I did not hear anything like that from either side during the game”.

An email dated 14th October 2022 from AFA to Wokingians requested that the player wearing #11 on the day consider making a statement about the match as that player had been “identified as allegedly making the homophobic remark”.

Following the request above, Ryan Marsden made a statement. He was shocked to be the subject of the accusation. He agreed he was wearing #11 on the day but denied emphatically using any offensive or homophobic language. “The accusation is completely false”. He agreed that he did “have a bit of a battle with one of their players on the day. I believe no 7 was trying to get me to bite. I scored a goal in the first half from 30 yards and obviously I celebrated”. “Since the goal went in he tried to put me off by excessive tackles and general verbal comments”.

John Stent emphasised in his report that Steve Godman was an experienced Referee (and the ex-Chairman of Old Wokingians) who would have instantly sent off the user of homophobic language if he, Steve Godman, had heard such language; despite being nearby on both occasions, such language was not heard by Steve Godman. This was in direct contrast to the statements from Clissold Park players, according to John Stent, who asked that the League (presumably meaning the Commission) should “uphold the decision of the on-field official”.

John Stent had been Chairman of Old Wokingians for 12 years and could only remember two other misconduct allegations against members of the Club and “both were treated with leniency by the AFA due to mitigating circumstances. “We have a zero-tolerance attitude towards it (homophobic language)”.

THE STANDARD OF PROOF.

9. In order for the Commission Chair to find Ryan Marsden guilty of either or both of the charges, the Commission Chair would have to be satisfied that it was more likely than not, that Ryan Marsden was guilty ie on the balance of probabilities.

THE HEARING

10. The Commission Chair would decide first whether Charge 1 was proved against Ryan Marsden ie the use of foul and abusive language towards the opposition player. If such language was proved to the required standard, the Commission Chair would then move to decide if the language proved to have been used contained a reference to a person's sexual orientation (as alleged on the Misconduct Charge Notification). If such a reference was proved to have been contained within the use of the language, Charge 2 (the "aggravated" Charge) would also be found proved. In that event no separate sanction would be imposed in respect of Charge 1.

The Commission Chair would adjudicate the matter by adopting the standards and beliefs of a reasonable member of contemporary society.

The Commission Chair took time to consider all the evidence in the matter, mindful throughout of the standard of proof set out at paragraph 9 above.

THE DECISION.

11. The Commission Chair found Ryan Marsden "Not Guilty" of both Charge 1 and Charge 2.

REASONS FOR THE DECISION.

12.

By way of preamble the Commission Chair would state that the use of the word "faggot" towards an opposition player within the context of a football match would, if the players were involved in an altercation, in normal circumstances amount to foul and abusive language; further, such language, again within such a background, would imply in a derogatory manner that the recipient of the language was homosexual. The word "faggot" has been adopted in the United Kingdom in recent years as such a derogatory term. Further, the use of the term towards another person may be offensive and as such, foul and abusive, even if the person to whom the remark is addressed is not aware of the use of the word and/or its meaning. If the use of the word is perceived by another as being derogatory towards the sexual orientation of the original recipient, that use will still be regarded as referring to the intended recipient's sexuality.

Having stated the above, the Commission Chair was not satisfied that Charge 1 and Charge 2 were proved for the following reasons:

1. The evidence that the person who was alleged to have used the word “faggot” was Ryan Marsden was not sufficiently clear for the Commission Chair to find that he, Ryan Marsden, had used such language. Richard Littlechild, who heard the alleged language, said that he “did not recall the shirt number that Woking Player 2 was wearing”. George Lake, who was aware of abuse, although not of the precise language, said that the “offender” was “I believe, wearing #11”. The use of the expression “I believe” suggested to the Commission Chair that George Lake was not prepared simply to say “the offender was wearing #11” because George Lake was conceding impliedly that the identification by shirt number might be erroneous (for completely understandable reasons).
2. Although George Lake and Richard Littlechild describe the “offender” as having blonde hair and a beard, there was no evidence that Ryan Marsden had such personal characteristics. Such evidence would have provided support for the belief of George Lake that the “offender” was wearing #11.
3. Ryan Marsden agreed that he was wearing #11 during this match. He also agreed that he had had a “bit of a battle” with the opposition number 7 on the day. It was not stated within the evidence if the alleged victim of the homophobic abuse was wearing number 7. If that had been proved, Ryan Marsden’s admission that there had been a “battle” with the number 7 might have provided support for the contention that he, Ryan Marsden, was involved in some way.
4. It is not unknown for more than one set of players to “have a battle” with an opposite number during a match. The Commission Chair was not satisfied to the required standard that the “battle” referred to by Ryan Marsden was the same “battle” which required Steve Godman’s intervention. Ryan Marsden did not refer to any intervention by the Referee. Ryan Marsden referred to the opponent making comments; however, George Lake and Richard Littlechild speak of the recipient of the alleged abuse being Brazilian and being unlikely to appreciate the significance of the word “faggot”. Such a person may well have been unable, because of language difficulties, to articulate “comments” which would anger or “wind up” an opponent. The Commission Chair was not able to say that it was more likely than not, that the “battle” referred to by Ryan Marsden was the ongoing altercation referred to by George Lake, Steve Godman, and Richard Littlechild.
5. Ryan Marsden cooperated with the investigation by identifying himself as the number 11 but denied utterly the use of offensive language. Steve Godman heard no such language despite being in close proximity to the “protagonists”. His refereeing appeared to be beyond reproach and there was no reason to doubt his credibility. Richard Martin heard no offensive language. The words were heard allegedly twice by Richard Littlechild but by no other players who were able to provide statements. The recipient of the alleged abuse provided no confirmatory statement of what was said (even if he did not appreciate its significance). In particular there was no statement from the Cissold Park player (“CPR Player 2”) who was vociferous in his complaints about the language allegedly being used against his team- mate “CPR Player 1”.
6. In general terms, the Commission Chair was not satisfied so that he was able to decide that it was more likely than not, that Ryan Marsden was guilty of the use of the language alleged. The lack of formal proof (such as “he was wearing no 11” rather than “I believe”) combined with a lack of evidential support for the identification by way of an independent description of Ryan Marsden weighed heavily in the mind of the Commission Chair in reaching his decision. The Commission Chair would also have been surprised if the term “faggot” had been used twice by the same “offender”, particularly if the matter had already been reported vociferously to Steve Godman. The “offender” would take a great risk uttering the word again. The disparity in the evidence as to how the alleged abuse took place and who did or did

not hear it added to the difficulty in forming a view that it had been proved to the required standard that Ryan Marsden had abused an opponent in the way described.

LINKED CONSOLIDATED MATTER

13. The Commission Chair found Old Wokingians “Not Guilty” of the Charge brought against the Club under FA Rule E20.

APPEAL

14. These decisions are made subject to the relevant FA Appeal Rules.

Michael Weeks (Commission Chair sitting alone)

14th November 2022.