

**THE DISCIPLINARY COMMISSION**

**Sitting on behalf of Amateur Football Association**

**NON-PERSONAL HEARING**

**of**

**Thomas Longhurst**

**Old Suttonians**

**[CASES REFERENCE 10582110M]**

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**THE DECISION AND WRITTEN REASONS OF THE COMMISSION**

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**Disclaimer:**

These written reasons contain a summary of the principal evidence before the Commission and do not purport to contain reference to all the points made, however the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Commission did not take such a point, piece of evidence or submission, into consideration when determining the matter. For the avoidance of doubt, this Disciplinary Commission has carefully considered all the evidence and materials furnished with regard to this matter.

## I. INTRODUCTION

1. The Football Association (“**The FA**”) convened a Disciplinary Commission (the “**Commission**”), on behalf of the Amateur Football Association (“**AFA**”) on 29 November 2021 to adjudicate upon disciplinary charges levied against Mr Thomas Longhurst (“**Mr Longhurst**”) (Case ID number: 10582110M).
2. The Disciplinary Commission was constituted of a single member, Mr André Duarte Costa, an Independent FA appointed Chair.

## II. THE CHARGES

3. In summary, by a Misconduct Charge Notification dated 10 November 2021 (the “**Charge Notification**”) issued by AFA against Mr Longhurst, Mr Longhurst was charged with two charges relating to comments allegedly made in a match against Old Meadonians Reserves on 23 October 2021:
  - a) it was alleged that Mr Longhurst used abusive and/or indecent and/or insulting language contrary to FA Rule E3.1 (“**Charge 1**”); and
  - b) it was further alleged that Charge 1 amounted to an aggravated breach as defined by FA Rule E3.2 because it included a reference to Sexual Orientation (“**Charge 2**”).
4. The Charge Notification did not refer to the comments, but the Commission noted from the evidence within the case bundle that the alleged comment was “*get up you faggot*” (the “**Alleged Comment**”).
5. The Charge Notification also referred to the Standard Sanctions and Guidelines for Aggravated Breaches. Furthermore, a reference to an administration fee and/or a potential fine was also made.
6. Ollie was required to submit a response by 24 November 2021. On 22 November 2021 Mr Longhurst submitted on the Whole Game System a guilty plea accepting the charge and asking for his case to be dealt with by correspondence, *i.e* Non-Personal Hearing.

### III. THE RULES

7. The Rules of the Association are foreseen in Part 10 of The FA Handbook 2021/2022<sup>1</sup>.
8. Under the title "Misconduct" Section E of the Rules of the Association sets out the rules to be observed by Participants<sup>2</sup>.
9. Bearing in mind the charges levied against Mr Longhurst the relevant rule to take into account for the purpose of the present case is FA Rule E3, in specific FA Rules E3.1 and E3.2.
10. According to FA Rule 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.*
11. According to FA Rule 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.*

### IV. EVIDENCE

12. The following is a summary of the principal evidence provided to the Commission. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or evidence, should not imply that the Commission did not take such point, or evidence, into consideration when the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished with regard to this case.
13. The evidence which the AFA relied upon in support of the charges consisted of:

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<sup>1</sup> Available at: <https://www.thefa.com/football-rules-governance/lawsandrules/fa-handbook>.

<sup>2</sup> means an Affiliated Association, Competition, Club, Club Official (which for the avoidance of doubt shall include a Director), Intermediary, Player, Official, Manager, Match Official, Match Official observer, Match Official coach, Match Official mentor, Management Committee Member, member or employee of a Club and all persons who are from time to time participating in any activity sanctioned either directly or indirectly by The Association, as per The FA Handbook 2021/2022, Part 10, Section A, para. A2.

- a) Statement from the Mr Nick Barclay, the Match Official, sent by email dated 27 October 2021 to the AFC Secretary<sup>3</sup> which stated, *inter alia*:

“After the match the Meadonian Captain/Manager came up to say that the Suttonian Goalkeeper said an unpleasant comment to one of his players. I suggested he mentioned this to a Suttonian senior Club Person which he did and I also recommended he put this in his match report to the LOB Cup organisers.”;

- b) Statement from Mr Martin Armstrong, Chairman for Old Suttonians FC, sent by email dated 27 October 2021 at 09:54 to the AFC Secretary and Mr Rob Tanner (“**Mr Tanner**”)<sup>4</sup> which stated, *inter alia*:

«I confirm that the matter was brought to my attention by the referee (Nick Barclay). (I had a slightly earlier ko so I was in the bar when Nick arrived. When Nick Barclay brought the matter to my attention I spoke to the Meadonians captain and team concerning the incident and advised that it was against our club code of conduct and that both I personally and Old Suttonians considered the use of such language unacceptable, irrespective of the context. I offered Meadonians and their players our clubs apologies and my own apologies (which I re-iterate in this e-mail). I confirmed that I would take action.

Following this I asked our 2nd XI captain (Ryan Clark) and the 2nd XI goalkeeper (Tom Longhurst) to join me in a vacant changing room. Tom Longhurst did not dispute that when a Meads player went down what he considered too easily he said “get up you f\*\*\*\*t”. I made it clear that the use of such language was unacceptable under any circumstances, was against the clubs code of code of conduct and would not be tolerated. Tom Longhurst said that he understood that the use of such language, even as a throw away remark, is offensive and unacceptable. I further explained that any repeat would almost certainly result in the termination of his membership. I also advised Tom that the matter would be considered by our executive.

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<sup>3</sup> P. 9 of the case bundle.

<sup>4</sup> P. 10-11 of the case bundle.

I subsequently discussed the matter with my fellow Old Sutts EC members. We considered whether or not a club suspension was appropriate in the circumstances but on balance we decided that it was better to arrange an e-learning course on Football v Homophobia.»;

- c) Statement from Mr Tanner, Secretary for Old Meadonians FC, sent by email dated 27 October 2021 at 08:32 to AFC Secretary<sup>5</sup> which stated, *inter alia*:

«Unfortunately, we need to report the conduct of the Old Suttonians goalkeeper during our 2nd team fixture on 23rd October 2021.

Midway through the first half there was a contentious call and a bit of an argument between the sides. Nothing out of the ordinary during a competitive game of football, however, during that argument the goalkeeper aimed a homophobic slur at one of our players calling him a “faggot”.

None of the Old Suttonians players called him out for it and the referee appeared not to hear it.

Whilst shaking hands at the end of the game, the goalkeeper told our 2nd team captain to “smile mate”. At which point, he advised him that he was going to report him for the homophobic insult used in the first half. He then lost control, shouting and swearing at our player, telling him he would physically assault him. The only further action our captain took was to again advise him that he’d be reported.

It took 5 Suttonians players to restrain him and drag him off the pitch. All the while he tried to break loose and fight. His conduct was disgraceful and a poor reflection on his club.

Our captain approached the referee after the game and he said he would mention it in his report (whether he did or not, I’m not sure). Our 2nd team Captain also approached the Suttonians chairman in the clubhouse after the game, told him what had happened and, to his credit, he apologised and agreed it was unacceptable and said he would take action accordingly. He was also informed by

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<sup>5</sup> P. 11-12 of the case bundle.

members of the Suttonians team that "he didn't mean it like that". I'm not entirely sure how else it could have been taken.

We feel this matter needs investigating as behaviour like this is completely unacceptable.»;

- d) Statement from Mr Andrew Reid, Player for Old Meadonians FC, dated 8 November 2021<sup>6</sup> which stated, *inter alia*:

«I am the captain of the Old Meadonians second XI. I am currently unable to play due to injury so I was managing the team for the above fixture.

Midway through the first half there was a contentious call on the far side of the pitch and a bit of an argument between the sides. This is nothing new and something that happens all the time. However, during that argument, I clearly heard the Suttonians goalkeeper call one of our players a "faggot". I was not aware at the time who the comment was directed to but I believe, having spoken to Meadonians players afterwards, that it was made towards our defender Benjamin Jermain.

The referee appeared not to hear the comment and no action was taken at that time. Ben heard it but did not think it worthwhile reacting.

Whilst shaking hands at the end of the game, the goalkeeper sarcastically told me to "smile mate". I then told him that he would be reported for calling one of our players a faggot. At that point, the goalkeeper lost control and began shouting and swearing at me, threatening me with violence. It took 4 or 5 Suttonians players to restrain him and take him off the pitch. All the while he tried to break loose and start a fight.

Shortly after this confrontation, another Suttonians player approached me and told me "he didn't mean it like that", while another told me they would "talk to him about it". As such, there is no doubt that his teammates heard what he said and knew it was wrong.»; and

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<sup>6</sup> P. 13 of the case bundle.

- e) Statement from Mr Longhurst, the Participant and a Player for Old Suttonians FC, dated 2 November 2021<sup>7</sup> which stated, *inter alia*:

*«The incident occurred in around the 10th minute, it was their RB diving in their own box. I am the Old Suttonians Keeper and I said to the Meadonians Player, which is not denied “oh get up you faggot”. The referee was some distance from the incident and would not have heard the comment. Nothing happened at the time of the incident and it was only made an issue when a sub come on the pitch in the second half. The new right back came on at about the 65th Minute called me a homophobe... then after the game their manager got in my face pointed in my face and said I’m reporting you, you fucking homophobe. Not a single player on the pitch barring the long haired right back had a problem at all.”*

*Following the conclusion of the match when I was leaving the changing room after showering, our club Chairman, Martin Armstrong, said he wanted to speak to me and the team captain, Ryan Clark. Martin Armstrong took us both into a vacant changing room in order to establish the facts, which are set out above. Martin Armstrong made it clear that the use of such language is inappropriate, offensive and unacceptable. I confirmed that I understood that it was inappropriate, offensive and unacceptable. Whilst it was a throwaway comment said in the heat of the moment I recognise that it was wrong, I have learnt from the incident and I am remorseful.*

*Martin Armstrong also explained that he had spoken to the referee, Nick Barclay, who confirmed he had not heard the comment. Martin Armstrong further advised he had spoken to the Meadonians captain and their players to apologise on behalf of me and Old Suttonians.F.C. Martin Armstrong also advised me that he would be discussing the matter with fellow members of Old Suttonians Executive Committee. I was subsequently advised that the club had warned me as to future conduct and required me to attend an e-learning course Football v Homophobia as a means of rehabilitation, which I willingly accepted.*

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<sup>7</sup> P. 14 of the case bundle.

*I spoke to the referee after the game and he said he would mention it in his report (whether he has or not I don't know) and advised that he would speak to the Suttonians chairman and ask him to talk to me. In the clubhouse after the game, the Suttonians chairman approached me and told him what had happened. To his credit, he apologised, agreed it was unacceptable and said he would take action accordingly.*

*Thereafter, I reported the incident to the Old Meadonians committee and have been asked to provide this witness statement accordingly.»*

14. There was no evidence submitted in defence of the charge.

## **V. THE STANDARD OF PROOF**

15. The Disciplinary Regulations are foreseen in Part 11 of The FA Handbook 2021/2022.
16. Under the title "General Provisions" Part A of the Disciplinary Regulations sets out in Section One the provisions applicable to All Panels and in Section Two the provisions applicable to Regulatory Commissions.
17. Paragraph 8 of the above mentioned "General Provisions" states that [s]ave where otherwise stated, the applicable standard of proof shall be the civil standard of the balance of probabilities.
18. Therefore, the applicable standard of proof required for this case is the civil standard of the balance of probability. This standard means, the Commission would be satisfied that an event occurred if it considered that, on the evidence, it was more likely than not to have happened.

## **VI. FINDINGS & DECISION**

### **A. GENERAL CONSIDERATIONS**

19. The Commission reminded itself that the burden of proving a charge falls upon the AFA.



20. In a Commission such as this, the assessment of the evidence is entirely a matter for the Chair sitting alone to consider. I have to assess the credibility of the witness (that is whether a witness is attempting to tell the truth) and the reliability of the witness (that is whether, even though a witness may be attempting to tell the truth, their evidence might not be relied upon).
21. Where there are discrepancies between witnesses, it is for me to decide which witnesses to accept and which to reject. Even where there are discrepancies between witnesses or within a witness's own evidence, it is for me to assess if the discrepancy is important. Having considered which evidence I accept and reject, I then have to decide if, on the balance of probabilities, the alleged breach of the FA Rules is established.
22. In assessing liability, the Commission was mindful of the issues to be determined in the present case. The issues were whether the Commission was satisfied to the requisite standard that the evidence before it proved that the comments were either:
- a) Foul and/or abusive, for the purposes of Charge 1; and/or
  - b) Made reference to Sexual Orientation so as to satisfy the aggravated Charge 2.
23. The terms "foul" and "abusive" are not strictly defined by the Regulations, therefore the Commission considers that they should be given their ordinary meaning.
24. The ordinary meaning of abusive language generally refers to offensive and insulting words directed at another person. In respect of foul language its meaning does not appear to be contentious.
25. The appropriate test is an objective one, commonly known as the "reasonable observer" test. In other words, the Commission was to consider how a reasonable observer would perceive the words used in the given context. The objective person would be someone of reasonable fortitude.
26. In regard to the wording of Charge 1 as set out in the Charge Notification, specifically to the word "and" in "foul and abusive language", the Commissions found it important, for the sake of clarification, to address such wording as it can lead one to understand that both foul and the abusive language must be present for a charge to

be found proven, that is not correct. As put forward in The FA v. Neil Fishman heard on 15<sup>th</sup> February 2021<sup>8</sup>: *“For the sake of completeness, the Commission considers it prudent to address the issue in any event. The E3 Charge [...] is not intended to be conditional on both elements being found proven, namely foul and abusive language. Indeed, the Rule E3 does not even contain a provision dealing with "foul language" per se, although this can be implied into the extremely wide scope of the Rule. To find otherwise and require foul language to be proved would be contrary to the actual Rules, it would lead to a triumph of form over substance and further, open the way to an array of irregularities where obvious abhorrent language may circumvent sanction. This is entirely inconsistent with the General Provisions of the Disciplinary Regulations.”*<sup>9</sup>. This is an approach with which this Commission respectfully agreed.

27. Furthermore, in cases such as this the success of an FA Rule E3.2 – Aggravated charge is dependent on the prior success of an FA Rule E3.1 – Improper Conduct (including foul and abusive language) charge. Whereas the latter could be found proven on its own merits if a Commission finds, on the balance of probabilities, that foul and/or abusive language was indeed expressed by a Participant, that cannot happen with the former. This is because the reference to a person’s ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability does not constitute, *per se*, discriminatory behaviour, but needs to be subjected to the objective test previously mentioned. Therefore, if a Commission, when considering the charges, finds that there was no foul and/or abusive language expressed by a Participant, the Commission is barred from considering the aggravated charge, unless the reference is itself, considering the context in which it was made, of an abusive nature.

## **B. FINDINGS ON MR LONGHURST’S CASE**

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<sup>8</sup> Available at: <https://www.thefa.com/football-rules-governance/discipline/written-reasons>.

<sup>9</sup> Para. 16 of the Written Reasons.

28. In the present case the allegation was that Mr Longhurst, the Participant and a player for Old Suttonians FC, had made a discriminatory comment based on Sexual Orientation.
29. According to the evidence provided to the Commission the allegation was that Mr Longhurst had told a Old Meadonian's player "*get up you faggot*".
30. The Commission was satisfied that the referred words were improper, abusive and offensive and made a reference to Sexual Orientation. The Commission considered the comment not to be contentious in terms of its meaning. The word "*faggot*" is an offensive and pejorative term used to refer to a gay person, especially a gay man.
31. The Commission noted Mr Longhurst's guilty plea in relation to both Charges and for that reason considered that there was no requirement to consider his liability and moved on to consider the appropriate sanction to be imposed for the offence.

## VII. SANCTION

### A. GENERAL CONSIDERATIONS

32. The use of discriminatory language has no place in society, and football is no exception. Its use should be considered with the utmost seriousness and should be dealt accordingly.
33. The FA's revised standard sanctions and guidelines for Aggravated Breaches came into force on 10<sup>th</sup> August 2020.
34. Paragraph 27 of Part A "General Provisions" of the Disciplinary Regulations provides as follows: *In addition, the following paragraphs of this Section Two shall apply to matters of Misconduct proceeding before Disciplinary Commissions: paragraphs 28, 31, 38 to 42, 47 and 48 and 50 to 51 and Appendix 1 to Part A: Section One: General Provisions. The content of those paragraphs shall be construed accordingly (e.g. references to The Association shall be taken to mean the relevant Affiliated Association).*
35. Paragraph 47 of Part A "General Provisions" of the Disciplinary Regulations provides that: *Where an Aggravated Breach is found proven, a Regulatory Commission shall*

*apply The Association's sanction guidelines for Aggravated Breaches set out at Appendix 1 to Part A: Section One: General Provisions.*

*Appendix 1 – Standard Sanction and Guidelines for Aggravated Breaches (in part) further provides that:*

*“A finding of an Aggravated Breach against a Player, Manager or Technical Area Occupant will attract an immediate suspension of between 6 Matches and 12 Matches (“Sanction Range”).*

*A Regulatory Commission shall take all aggravating and mitigating factors into account, including but not limited to those listed in these guidelines when determining the level of sanction within the Sanction Range.*

*The lowest end of the Sanction Range (i.e. 6 Matches) shall operate as a standard minimum punishment (the “Standard Minimum”)*

*A Regulatory Commission may impose an immediate suspension in excess of 12 Matches in circumstances where aggravating factors of significant number or weight are present.*

#### *Exceptions to the Standard Minimum*

*A Regulatory Commission may only consider imposing a suspension below the Standard Minimum where the following specific (and exhaustive) circumstances arise such that the Regulatory Commission determines that the Standard Minimum would be excessive:*

*Where the offence was committed in writing only or via the use of any communication device and:*

- Where the Regulatory Commission is satisfied that there was no genuine intent on the part of the Participant Charged to be discriminatory or offensive in any way and could not reasonably have known that any such offence would be caused; or*
- The age of the Participant at time of the offence (e.g. where the Participant was a minor at the time the offence was committed); or*

- *The age of the offence (e.g. a social media post made a considerable time ago).*

*For the avoidance of doubt, the existence of the circumstances above will not necessarily result in a departure from the Standard Minimum. A Regulatory Commission must be satisfied that the unique circumstances and facts of a particular case are of such significance that a departure from the Standard Minimum is justified to avoid an unjust outcome for the Participant Charged. In reaching a decision, the Regulatory Commission must also consider whether or not it is in the best interests of the game in tackling all forms of discrimination to depart from the Standard Minimum. In any event, a Regulatory Commission shall impose a suspension of no less than 3 Matches.”*

36. Accordingly, the starting point for the Commission’s consideration is that a first aggravated offence would ordinarily attract a suspension between 6 to 12 matches and the imposition of an FA Education Course with a fine being at the discretion of the Commission, pursuant to the provisions of Appendix 1 set out, in part, above and the Recommended Sanction Guidelines.
37. In turn, for a second aggravated offence a suspension of more than seven matches with an entry point of 11 matches and an FA Education Course must be imposed by the Disciplinary Commission, as per the Recommended Sanction Guidelines.

#### **A. MR LONGHURST’S SANCTION**

38. As the offence was not committed in writing only or via the use of any communication device, the Commission excluded the applicability of the provisions related to the Exceptions to the Standard Minimum to the present case.
39. The Commission was informed about Mr Holmes' disciplinary history<sup>10</sup>:
- a) 2018/2019 Season:
    - i) Cautioned for Unsporting Behaviour – Handball;
    - ii) Cautioned for Showing Dissent by Word or Action – Sin Bin;

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<sup>10</sup> Unless specified otherwise all offences relate to Non-Step competition.

- iii) Suspended for 2 matches and fined £40.00 for Using Offensive, Insulting or Abusive Language and/or Gestures; and
- iv) Suspended for 1 match and fined £40.00 for Improper Conduct Against a Match Official (Including Abusive Language/Behaviour).

b) 2016/2017 Season:

- i) Cautioned for Showing Dissent by Word or Action; and
- ii) Suspended for 1 Match and fined £15.00 for Receiving a Second Yellow Card in the Same Match.

40. As this was Mr Longhurst's first aggravated offence, the minimum sanction is an immediate suspension of at least six matches, which may be increased where additional aggravating factors are present and the imposition of a mandatory education programme with a fine being at the discretion of the Commission.

41. With respect to aggravating factors, the Commission considered that there were none. Despite the reference to Sexual Orientation by Mr Longhurst in his comment constitute itself an aggravating factor, it is already reflected on the minimum sanctions to be imposed as per the recommended sanction guidelines. For this reason, the seriousness of the offence should not be taken into account for the purpose of aggravating the sanction.

42. In relation to mitigating factors, the Commission born in mind Mr Longhurst's admission of guilt and the fact that his comments were not intended to cause harm. Although this is the first aggravated offence committed by Mr. Longhurst, the Commission noted that he had been sanctioned in the past for using offensive, insulting or abusive language and/or gestures and for improper conduct against the match official. In this respect, even though Mr Longhurst does not have any aggravated offence in his offence history, the Commission considered that his disciplinary history could not be taken into account for the purposes of mitigation as he was sanctioned for committing similar offences, although with an inferior degree of seriousness.

43. Having considered all of the circumstances in the case, the sanction guidelines and the aggravating and mitigating factors present, the Commission imposed the following sanction:

- a) A 6-match suspension;
- b) A £75 fine;
- c) Compulsory attendance of an online FA Education Course to be to be completed before the match-based suspension is served. Whereby the Participant fails to comply with the order, a *Sine Die* suspension shall be imposed until such time the Participant becomes compliant with the order of the Disciplinary Commission;
- d) A Warning as to future conduct; and
- e) 6 Club Disciplinary Points.

#### **VIII. RIGHT TO APPEAL**

44. This decision is subject to the right of appeal under the relevant FA rules and Regulations.

**André Duarte Costa (Chair sitting alone)**

29 November 2021