

DISCIPLINARY COMMISSION

Sitting on behalf of The Berks & Bucks FA

In the matter of a Personal Hearing of Michael HARPER
– Case Number 9742831M

Decision and Written Reasons of the Disciplinary Commission

Background & Hearing:

- 1 The Disciplinary Commission (“the commission”) convened on Thursday 7th March 2019 by way of a Personal Hearing. The Commission adjudicated in respect of a charge brought by The Berks & Bucks FA against Michael Harper as a result of alleged Misconduct in a match between Risborough Rangers First V Aston Clinton on Tuesday 5th February 2019.

The Commission

- 2 Mr. John Horsley (Council Member of Berks & Bucks FA and appointed as Commission Chairman), Mr. Chris Hodges (Independent Member) and Mr. Michael McStraw (Council Member Berks & Bucks FA). Mr. Chris Penny (Berks & Bucks FA) acted as Secretary to the Commission.

The Charge

- 3 The Berks & Bucks FA charged Michael Harper on 8th February 2019 as follows:-
 - i) Breach of FA Rule E3 – Improper Conduct against a Match Official (including physical contact and threatening and/or abusive language/behaviour)
- 4 The particulars of the charge against Michael Harper were that on 5th February 2019 during a High Wycombe Football Challenge Cup Competition game between Risborough Rangers First V Aston Clinton FC “Michael Harper” in an act of physical contact against the match official Mr David Cox in addition to using threatening and/or abusive language/behaviour during the match.
- 5 The misconduct charge was made against Michael Harper in accordance with FA Regulations for the above charge and Michael Harper was required to submit a response to the charge by 15th February 2019.

The Reply

- 6 There was a “Denial” to the charge from Michael Harper and therefore the case was dealt with as a Not Guilty plea. In doing so the case was heard in his presence. Prior to the hearing Michael Harper made no formal statement in response.

The Rules

7 Pursuant to the FA Handbook 2018-2019 Season, FA Rule E3 (1) provides as follows:

“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 or physical conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.”

The Burden And Standard of Proof

8 In this instance the burden of proof is on the Berks and Bucks County FA. The applicable standard of proof is the civil standard of the balance of probability. The balance of probability standard means 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. Therefore, if the evidence is such that the commission can say ‘we find it more probable than not’ the burden is discharged, but if the probabilities are equal it is not.

The Evidence

9 The following is a summary of the principal submissions 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 submission, should not imply that the Commission did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, the Commission carefully considered all the evidence and materials furnished with regard to this case.

10 The documents before the Commission comprised of:
A Referees report from David Cox dated 6th February 2019;
An Assistant Referees Report from Tom Lathey dated 6th February 2019;
A Statement from Assistant Referee Matthew Green dated 6th February 2019;

11 The Referees report contained the following;
“In the 32nd minute, Aston Clinton FC were attacking near the edge of the Risborough Rangers box, a 1 footed challenge was made by a Risborough player winning the ball, I had a clear and unobstructed view and deemed it a fair tackle, so play continued with a fast counter attack and Risborough scored a goal to go 1 nil up. The Aston Clinton team felt the tackle was a foul and as soon as the goal was scored I heard players shouting at me and I saw I was being chased by 4 or 5 Aston Clinton players. I was then pushed in the back in an aggressive manner by Michael Harper who was the player closest to the incident. This meant he had run the length of the pitch to commit this act of violent conduct. He also said “That’s fucking shit ref that’s a fucking free kick”. David Cox went on to report he knew straight away that I had seen him do it as his face dropped. I therefore pulled him aside and showed him the red card and dismissed him from the field of play. He added that after the match in the bar Michael Harper came over to me and apologised for his actions and shook my hand, this was witnessed by Tom Lathey and Matthew Green. David Cox during questioning by Michael Harper and Members of the Commission confirmed the account of his statement made prior to the hearing. In addition he

demonstrated the incident with two hands being placed in the middle of his back which moved him forward no more than 1 yard. During questioning he confirmed that Michael Harper had sworn at him during the incident as recorded in his statement and that he was surrounded by 4/5 players from Aston Clinton including Michael Harper. He confirmed that Michael Harper was the player that had pushed him in the back. Michael Harper questioned David Cox on whether he was sure that Michael had chased him from one incident to the other at the other end of the pitch. David Cox although not quite as sure as other statements made thought this was still the case. David Cox also confirmed that after the game in the clubhouse Michael Harper had approached all 3 officials and apologised for his actions without directly referring to the 'push' and hoped that there were no hard feelings and that he hoped it would be a 3 match ban.

A match board was produced and the referee confirmed the positions of Michael Harper and himself.

- 12 The report of the Assistant Referee Tom Lathey contained the following;
In the 33rd minute of the game between Risborough Rangers First V Aston Clinton First after a goal had been scored by the opposing side, Mr Michael Harper pushed the referee (David Cox) in the back with two hands. This was a clear act of anger and done so with aggression. The player had chased David Cox down the field of play to complete this. Tom Lathey during questioning by Michael Harper and Members of the Commission confirmed the account of his statement made prior to the hearing. In addition he demonstrated the incident between David Cox and Michael Harper. During questioning he told the Commission that the Number 4 had pushed David Cox in the back with two hands. He was asked why the number of the player had not been included in his report. He did not know why, but confirmed the number 4 to be Michael Harper. He confirmed no other player was behind Michael Harper at the time of the push. When questioned on the 'aggression' used during the incident surely he would have been pushed to the ground or moved further forward than the one to two yards, Tom Lathey could only confirm what he had said earlier. In addition he was asked to confirm that Michael Harper had chased after David Cox from one penalty area to the other which he confirmed. Tom Lathey also confirmed that after the game in the clubhouse Michael had approached all 3 officials and apologised for his actions without directly referring to the 'push' and hoped that there were no hard feelings and he had hoped it would be a 3 match ban. A match board was produced and Tom Lathey confirmed his position on the field of play and also the positions of Michael Harper and the referee David Cox. He confirmed that he had a clear view of the incident.
- 13 The report of the Assistant Referee Matthew Green contained the following;
Whilst acting as the bench side assistant to the referee David Cox at the Risborough Rangers V Aston Clinton game, a dismissal occurred in the 33rd minute of the first half. I was aware of a challenge made outside of the 16 yard box in the Risborough Rangers half. There were calls for a foul but I could not comment as I was concentrating on the back line and the incident occurred across the pitch from me. I was aware that David Cox was only maybe 5-8 yards away from the incident at the time. This challenge gave Risborough Rangers possession of the ball followed by a quick counter attack resulting in a goal for Risborough Rangers. I was writing the goal in my match card, I looked up and saw 4 or 5 players including the goalkeeper surrounding the referee. I did not see a push from the number 4 player from Aston Clinton Michael Harper on the referee; however I did notice him

running towards the crowd of players surrounding the referee. Matthew Green also reported that after the match in the club house Michael Harper came to the table to apologise to David Cox. He shook all our hands and stated that it wasn't the way he wanted to have ended his game.

Matthew Green did not attend the hearing and Michael Harper and members of the commission were not able to ask him any questions on the statement made. The statement therefore was weighted accordingly.

- 14 Michael Harper appeared before the commission and stated the following "I was not the closest player to the alleged foul, and I did not chase after the referee, in fact I was only 10 yards away from him when the goal was scored. I was a defensive central midfielder and was shielding the back four. When the goal was scored together with approximately five members of my team we disputed the decision. I was disputing the decision with two hands raised (Michael demonstrated this), other players came running in behind me and I was pushed forward and one hand brushed the referee on the shoulder". Michael Harper was then questioned by Members of the Commission, he confirmed that he did not know which player had pushed him and disputed the fact that the referee could see it was him who pushed him as he had approached him from behind. He was asked whether he had used the language recorded by David Cox and he said he was not sure but in the heat of the moment I probably did. Michael confirmed that he had apologised to the officials in the clubhouse after the game for his actions as he did not want his game to end like that. He further confirmed that in my mind I brushed the referee on the shoulder after being pushed into him by another player as his arms were in the air contesting the decision. He did not believe that the assistant Tom Lathey could have had a clear view of the incident. Michael told the Commission that he knew he should not have acted in the manner that he did and had readily accepted a being sent from the field of play. The positioning of all parties was confirmed with the use of the pitch board.

Prior to the closing of the evidence Michael Harper confirmed that he was satisfied that he had had a fair hearing and that all the evidence had been heard and that he had asked all the questions that he had wanted to. He was then asked if he wanted to make a closing submission to the panel before they retired. Michael Harper said "I was the closest player to the referee, there was a melee and I was pushed in the back and with one hand I touched him on the shoulder. It was not done aggressively. I knew the situation and left the field straight away. I dispute the Assistant Referees position and in what he said. He did not have a clear view. I don't know how the referee could know it was me. If I had of done so he would have been pushed further than one yard. It was a very slight brush on the shoulder".

- 15 The Witness Michael Dedman who is Vice Chairman of Aston Clinton FC and also part of the management team confirmed that he was in the dug out on the day of this match. He confirmed that Michael Harper was a defensive central midfield player whose job was to screen the back four. He added that Michael was the closest player to the Risborough Rangers FC player who had scored the goal and had not chased the length of the pitch after the referee David Cox. He confirmed to members of the commission that after the goal was scored a number of his players had surrounded the referee and a heated discussion was taking place. He went on to say that that the referee turned away from the players so that they were behind him and it looked like Michael got bungled into the back of the referee from behind. During questions put to him by members of the commission he accepted that his

team had acted poorly surrounding the referee and that a sending off was deserved for this. He had not heard from his position any abusive language being used to the referee as he had been too far away on the touchline. He added that the picture painted by the officials in their statements was nothing like the incident was. It was clear from the positioning of the players and that of Michael Dedman as shown to the commission that he was not in a position to see whether any player had pushed into the back of Michael Harper or not. He confirmed that he did not see any push at all by Michael on the referee and added I am guessing that the only contact made must have been another player bungling into him.

The positioning of all parties was confirmed with the use of the pitch board.

Michael Dedman was with Michael Harper when he apologised to the referee and his assistants in the clubhouse afterwards. He confirmed that Michael had apologised for his actions and between them an amicable chat had taken place. He confirmed that he, Michael Harper and the referee David Cox had all thought that a 3 match ban was likely to be the punishment for his actions. It was explained and understood the reasons now for the charge and the seriousness of the incident.

- 16 The Witness Lemar Mason-Williams a player in the match for Aston Clinton FC confirmed that Michael Harper was a defensive midfield player for Aston Clinton FC and had been nowhere near the incident of the alleged foul and had not ran the length of the pitch to remonstrate with the referee David Cox. He confirmed that players had surrounded the referee and that Michael Harper had been pushed into the referee by one of our players. During questions put to him by members of the commission he confirmed also that he had not heard any abusive language being used by Michael during this incident. He could not identify which player had pushed Michael into the referee and added that following the contact with the referee, the referee had only moved a yard or so forward. The positioning of all parties was confirmed with the use of the pitch board. It was put to Lemar that from his position on the pitch as he had shown the commission he could not have seen whether any player had pushed Michael forward into the referee David Cox. In addition the commission were surprised that he had heard no abusive language being directed at the referee from his position shown on the match board.

Findings

- 17 The Commission studied the evidence very carefully, being conscious of the burden and standard of proof. The Commission members reminded themselves that for the charge to be proven, on the balance of probabilities, the following must be taken into consideration:

Did Michael Harper “push the referee”? If he did so, did his actions amount to a breach of FA Rule 3? In addition was there any ‘Physical Contact’ between Michael Harper and the referee? If he did so, did his actions lead to a breach of FA Rule 3?

- 18 The Commission first considered whether a 'push' by Michael Harper on the balance of probabilities had occurred. The Commission based on the evidence presented to them at the hearing considered the evidence submitted by the Referee David Cox and his Assistant Tom Lathey which had corroborated the 'push' reported by the referee and was therefore weighted accordingly. The witness Matthew Green had not attended the hearing and his statement had been read at the hearing and therefore was weighted accordingly.

In his evidence Michael Harper told the commission that he had been pushed by an unknown player forward and as his hands were in the air at the time, one hand had brushed the shoulder of the referee David Cox. Michael Harper could not remember exactly what language he had used at the referee during this incident but had said "He was not sure but in the heat of the moment I probably did".

The witness Mr Tom Lathey had confirmed he had a clear view of the incident. The Commission unanimously does find the report from the referee David Cox and statement by Mr Lathey to be significantly more persuasive than the account given by Michael Harper. In contrast, the Commission finds the account of the incident as detailed by Michael Dedman and Lemar Mason-Williams to be significantly less persuasive.

- 19 For these reasons the Commission finds it more likely than not that the physical contact with the referee by Michael Harper in the fact of a deliberate 'push' into the referee did occur and that abusive language had been used by Michael Harper against David Cox.
- 20 In Summary, the Commission unanimously found the charge against Michael Harper as proven.

Previous Disciplinary Record

- 21 The Secretary confirmed that Michael Harper had no previous misconduct cases on his record. He had received two yellow cards in one match during the 2017/18 season, which until this incident was his only ever dismissal from the field of play. He had a small number of cautions on his record almost all for foul tackles.

Sanction

- 22 The Commission carefully considered all the relevant FA Rules and the Sanction Guidelines issued by The FA.

23 The Commission found this to be unacceptable physical contact with the referee. The Commission listened to the mitigation given by Michael Harper who told the commission that he was not an aggressive person; he had a nice family and a good home, job and lots of friends. He added that he loves football and watches it all the time. He was not proud of himself to be in this situation and that he will learn from it.

Under the circumstances, the Commission took into account his previous good conduct, the apology given to the referee David Cox and his assistants, the manner that he had conducted himself during the hearing plus the level of aggression used as determined by the commission, the commission deemed it appropriate to deviate from the sanction recommended for a breach of this nature and unanimously decided to impose a reduced sanction for this offence as laid down by The FA Regulations.

The following sanctions were applied;

- i) Michael Harper is suspended from all football for a period of 120 days commencing from 8th February 2019.
- ii) Michael Harper is fined £100.
- iii) Aston Clinton FC receives 8 penalty points on their club disciplinary record.

Appeal

24 This decision is subject to appeal in accordance with the relevant FA Appeal Regulations.

John Horsley – Berks & Bucks FA Chairman
Chris Hodges – Independent Panel Member
Mick McStraw – Berks & Bucks Council Panel Member

Dated 10th March 2019