

THE FOOTBALL ASSOCIATION DISCIPLINARY COMMISSION

Sitting on behalf of Berks & Bucks Football Association in the case of

JACK SEAR

THE DECISION AND REASONS OF THE COMMISSION

Discipline Commission: Ifeanyi Odogwu, Independent Legal Panel
Member.

Date: 25 November 2020

Introduction

1. This is my decision and written reasons acting as sole Chair of the Discipline Commission considering the non-personal hearing of Jack Sear ("JS").
2. This is necessarily a summary document, and does not purport to rehearse all the evidence and submissions that were considered.

Background

3. At all material times JS was a Player for Chilton FC, who played a Upper Thames Valley League 'Critchleys' competition match against The Village Inn First on 18 October 2020.
4. Following the match, Berks and Bucks Football Association (The County/The CFA) received a Extraordinary Match Incident Report from the Referee, Chris Pettis. He stated "[...] I sent off Charlie Brooks for violent conduct for kicking in the 27th minute. He and manager Richard Hinkin asked to speak to me at half-time and Charlie said he reacted to being called 'a black cunt'. I did not

hear anything and am unable to confirm or deny this was said as I was not close enough to be able to hear the alleged provocation occur”

5. The Village Inn player, Charlie Brookes, provided a short statement on 6 November 2020, stating " I had a scuffle with there number six he grabbed hold of me and called me a black cunt so I kicked him in the shin and got sent off I reported this to the ref at half time”.
6. I also note an additional statement on the dame date from a spectator at the match, Katie Bowler. Her statement reads, “I am writing a letter of complaint regarding a racist comment made to a footballer in a march at berinsfield a team member got sent off after he was called a black cunt by a chiltern player number six this upset me a lot I heard the comment with my own ears so I have put this in writing to complain as I find this disgusting”
7. JS’ statement, dated 23 October 2020, denies using any discriminatory language. It refers to a number of on-the field altercations between himself and a player from Village Inn, who I understand must be Charlie Brookes. This culminated in an incident in the first half: “A ball has been played down the wing in which I have then ran into the player who was also running for the ball in which the ball has then ran out of play. I turned around with the player in question behind me where he has said what I believe to be “so this is how you want to play number 6” in which I have then been kicked and the player receiving a red card. The player has then made comments about how he will be waiting for me after the game was finished. At this point or the time of the red card I have not spoken to the player in question. I have then continued to play the game as I was not aware of anything further.”
8. JS denies the allegation.
9. Chilton FC player Kieran Ayres provided a detailed statement that was submitted on 11 November 2020, where he mentioned: “There was a large

gathering from the home team and bunched together on the halfway line, not too far away from where the incident leading to the red card occurred. I was on the same side chasing back as The Village Inn attacked – there left winger (red card recipient) tussled with Jack Sears – both had a hold of each other shirts, but nothing more than you would expect in a battle for the ball. At this stage the ball went out of play, the left winger believed the referee to have blown for a free kick and threw his hands up gesticulating his innocence and without provocation simply kicked Jack whilst running back into position. At this point the referee with both eyes on the offence, produced the red card [...]"

10. I also considered the statement of Chilton FC player Joe Hickman submitted on the same date. The statement included "[...] From what I heard/saw Jack Sear and the Village Inn player were kicking out at each other, pulling each other's shirts and winding each up for the first 25/30minutes of the game(or however long it was until the bloke got sent off). Not once did jack saying anything racist or even about the blokes appearance, he only decided that something racist was said as soon as he got sent off as he thought it would help him out in my opinion. This is because even when he kicked jack he didn't say anything to him then, and the last thing I saw/heard before the village inn player kicked jack was jack trip him up as he was walking, so the bloke retaliated in the way he did and got sent off [...]"
11. By charge letter dated 9 November 2020, JS was charged with FA Rule E3 - Improper Conduct (including foul and abusive language) and FA Rule E3(2) - Improper Conduct - aggravated by a person's Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Sexual Orientation or Disability.
12. The Charge sheet specified: "[...] It is alleged that during the above mentioned fixture, you used abusive and/or insulting towards Charlie Brookes, an opposition player, contrary to Rule E3(1). It is further alleged that these

comments are considered "aggravated" within the meaning of Rule E3(2), due to reference, whether explicit or implied, to a person's ethnicity.

13. DS denied the Charge and requested that the case was determined by correspondence.

Rules

14. The Rule provides.

FA Rule E3

“(1) A participant shall at all times act in the best interest 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.”

“(2) A breach of Rule E3 (1) is an “Aggravated Breach” where it includes a reference to any one, or a combination of the following:- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.”

15. The FA’s Disciplinary Regulations at Appendix 1, Part A, General Provisions are applicable to all levels of football. 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”).
16. A 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.

17. The lowest end of the Sanction Range (i.e. 6 Matches) shall operate as a standard minimum punishment (the "Standard Minimum").
18. Where a finding of an Aggravated Breach is against a Participant who is not a Player, Manager or Technical Area Occupant, a Commission may assess that a Match-based suspension is not appropriate. In such circumstances, a Regulatory Commission shall impose an appropriate time based suspension that is commensurate with the breach, having regard to the specific roles and responsibilities of the Participant.
19. A Commission may impose an immediate suspension in excess of 12 Matches in circumstances where aggravating factors of significant number or weight are present.
20. A 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:

- (1) Where the 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
- (2) 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
- (3) The age of the offence (e.g. a social media post made a considerable time ago).

21. 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.

Decision

22. In assessing the evidence, I am mindful of the issues to be determined in the case. The Commission were wholly satisfied that the alleged phrase, “black cunt” is abusive and insulting, and did make reference to race.

23. The allegation therefore met the threshold for the aggravated element of the Charge. The determinative issue therefore was whether the Commission was satisfied on the balance of probability that JS made the comments as alleged.

24. After careful consideration by the Commission, I am not satisfied that the Charge is proved.

25. There appeared to be no issue as to identification.

26. Ultimately, the charge turned on credibility of the main witnesses. I recognise that I did not have to opportunity to test the evidence of the witnesses in a hearing setting, and therefore could only to consider each witnesses account against the totality of the documentary evidence.

27. Mr Brookes’ account was very brief at only once sentence. It was lacking in sufficient detail about what occurred immediately before, during and after the

alleged comments were made. There is no evidence as to how loud the comment was made, when it occurred, any previous incidents between the players, or where on the pitch it occurred. It is disappointing further observations did not appear to have been sought by the County FA.

28. I also note that Mr. Brooke's statement was not received by the County FA until almost three weeks after the fixture. It is unclear why there was such a delay given the seriousness of the Charge.

29. Whilst the allegation was reported to the Referee at half-time by Mr. Brookes and his manager Richard Hinkin, there is no explanation as to why the complaint had not been made immediately on the pitch, particularly as Mr. Brookes was immediately dismissed for kicking out at JS.

30. It is disappointing that there is no statement from Richard Hinkin. His description of Mr. Brookes' demeanour and how the matter was reported to him would have been highly relevant to credibility.

31. The statement from Katie Bowler was again brief and lacking in detail. It is not clear how far away from the incident she was, or where she was stood in relation to the pitch as a spectator. Whilst Ms. Bowler claims to have heard a player being called a "black cunt", she does not provide any description as to what she saw occur or any other detail.

32. In comparison, JS' statement was clear, and sufficiently detailed. His account was corroborated by his teammates Me Ayres and Mr. Hickman who also each provided detailed statements. JS firmly denied the allegation.

33. I found the evidence in defence to the Charge credible.

34. I am not satisfied that JS made the comment "black cunt" to Mr. Brooke. The Charge was therefore found not proved.

35. The decision is subject to the right of appeal under the relevant FA Regulations.

Ifeanyi Odogwu (Chairperson)

25 November 2020