

THE FOOTBALL ASSOCIATION DISCIPLINARY COMMISSION

Sitting on behalf of Gloucestershire Football Association

NON-PERSONAL HEARING

of

BENJAMIN HEMMINGS (Case ID: 11050403M)

THE DECISION AND REASONS OF THE COMMISSION

These are the written reasons of Paul Tompkins (“Chair” or the “Commission”), having considered the matter on papers as Chair alone on a Non-Personal Hearing basis.

Introduction

1. On 5th December 2022 Gloucestershire County Football Association (“Gloucestershire FA”) received a report of alleged misconduct by Benjamin Hemmings (“Mr Hemmings”) as defined in FA Regulations. The report was in the format of an Extraordinary Incident Report (“the Report”) dated 5th December 2022 from the match official, Mark Perry-Smith (“the referee”), reporting the conduct of Mr Hemmings during a match between Charfield First and Cheltenham Athletic First on Saturday, 3rd December 2022 (“the Match”).
2. The Report alleged conduct by Mr Hemmings amounting to an allegation of threatening and/or abusive language/behaviour against a match official.
3. Gloucestershire FA investigated the reported incident.

Investigation

4. By way of investigation, Gloucestershire FA notified the Participant’s club, Charfield AFC (“the Club”), that they were investigating an allegation against Mr Hemmings arising from an incident in the Match and requested anyone who witnessed the incident to provide a witness statement as the County FA attempted to investigate the report. By way of response on 21st December 2022 an email was received from the secretary of the Club with observations from

“Jeremy”, the secretary also quoting a response from Mr Hemmings. Details of this email and the observations are dealt with later in this document.

5. The Gloucestershire FA also sought further information from the referee, which information was received on 14th December 2022 and is referred to below.

6. Having investigated the allegation, the Gloucestershire FA proceeded to charge the Participant.

The Charge

7. On 21st December 2022 Gloucestershire FA charged Mr Hemmings (“the Participant”) with a breach of FA Rule E.3 – Improper Conduct against a Match Official (including threatening and/or abusive language/behaviour).

8. It is alleged that Mr Hemmings used threatening and/or abusive and/or indecent and/or insulting language/behaviour towards a match official contrary to FA Rule E3.1.

9. The relevant section of FA Rule E3.1 states:

*“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”.*¹

10. Gloucestershire FA included with the charge letter the evidence that it intended to rely on in this case.

11. The Participant was required to respond to its charge by 4th January 2022.

The Reply

12. On 4th January 2023 an online response was filed on behalf of Mr Hemmings pleading guilty to the charge and asking for the case to be dealt with in his absence.

13. On 5th January 2023 the FA issued instructions to the Commission to consider this case on the correspondence alone.

14. On 5th January 2023 the Participant emailed the Gloucestershire FA with a written response to the charge including a denial of the charge but still not requesting a personal hearing. This has caused some confusion as it is at odds with the guilty plea. In an effort to exercise the duty of fairness to all parties contained within FA Regulation 4² the Commission has treated this as

¹Page 141 of the FA Handbook 2022/2023

²Page 169 of the FA Handbook 2022/2023

a denial of the charge and has treated the case as “Deny – Correspondence”.

The same email also confirmed that Mr Hemmings had received the charge letter of 21st December 2022 but had not actually received it until 24th December 2022.

The Commission

15. The Football Association (“The FA”) appointed me, Paul Tompkins, as a Chair Person Member of the Football Association National Serious Case Panel, to this Discipline Commission, as the Chair Person Sitting Alone to adjudicate in this case.

The Hearing & Evidence

16. I adjudicated this case on 8th January 2023 as a Correspondence Hearing (“the Hearing”).

17. I had received and read the bundle of documents prior to the Hearing. As the charge is to be heard as a correspondence hearing the Commission is denied the opportunity of testing the evidence of the Participant or any witnesses and can only deal with the matter on the basis of the papers comprising the bundle.

18. The following is a summary of the principal evidence before the Commission and does 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 that the Commission did not take such point, piece of evidence or submission 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.

19. The following evidence in support of the charge was provided in the case bundle:

19.1 The referee’s Report. In his Report, the referee, Mark Perry-Smith, described sending off incident in the 65th minute of the game. Mr Hemmings had been sent off for a “reckless and dangerous” tackle which the referee considered to have been made “with no clear intention of playing any ball.” The referee “immediately stopped the game and showed him the red card and asked him to leave the FOP immediatly. he refused instead taking a threatening stance towards myself in an attempt to challenge myself.he was then told a further 2 times to leave the field immediatly or he would be shown another red card for threatening behaviour.he was grabbed ny a team mate and forced against his will to walk off”. Later, once the Match had finished, “The same player then attempted to walk back onto the Field after the game had completely finished in a further attempt to intimidate myself but was told to go away immediatly. i had to make this known very loudly so that there was no misunderstanding at all from

anyone what his intention was and to draw attention to this persons behaviour. He was forced away from my by the home team secratary.”

19.2 An email exchange dated 14th December 2022 between the referee and Ollie Powell, the Regional Discipline Manager for the Gloucestershire FA. The referee had been asked whether he felt threatened by Mr Hemmings behaviour and if he could describe Mr Hemmings actions in greater detail. These are then answered “*Yes, Ben was threatening in his body language and posture and his intentions were clear in that he was looking for confrontation.*” “*After he was shown the red card he immediately turned towards me and clenched his fists with a stare on him that only someone who is looking for violence has in their eyes. The manner in which he spoke was aggressive , direct and threatening with the way he spoke at me.*” (Emphasis added by the referee himself). “*The culmination of his stance ,the way he straight away walked towards myself with an aggressive tone, the appearance on his face with the use of his language and the way it was directed at me added with the threatening look on his face and clenched fists left me immediately in no doubt what his intentions were and that was a physical confrontation*” (Emphasis added by the referee himself). “*After the first verbal warning from me he continued to attempt confrontation by continuing to close the gap making himself as big as possible with each step to try and intimidate me*”.

“The 3rd warning left him in no doubt I was not messing or about to be frightened of his actions. It was only then that his team mate grabbed him away. I had no choice but to wait for him to leave the area completely”. And later on, after the Match, “*he again attempted confrontation after the game had finished and again very loudly he was told by me " No, Go away " He was dragged away by the home team secretary”*.

Evidence in response to the Charge

20. While there was no formal evidence received in response to the Charge or the allegation, the email of 21st December referred to at paragraph 4 above and Mr Hemmings’s email of 5th January 2023 were taken into account by the Commission.

21. The following evidence was considered by the Commission:

21.1 An email dated 21st December 2022 from Jeremy, the club secretary of Charfield AFC. Jeremy’s full name is not known but as this is a correspondence hearing there is no difficulty taking his evidence at face value. Jeremy’s email is concerned with the performance of the referee in the lead up to and including the incident with Mr

Hemmings but the only reference to Mr Hemmings is, *“Minutes after the restart Ben is send off for a rash challenge with his frustration levels extremely high, and he is displeased that he has allowed himself to do this”*. There is no reference to anything that happened after Mr Hemmings’ sending off for *“a rash challenge”*.

21.2 Comments in Jeremy’s email dated 21st December 2022 attributed to Mr Hemmings as *“Thoughts from Ben”*. This is not direct evidence but Jeremy’s reporting (in Jeremy’s own words) of what Ben had said to him. Mr Hemmings denies any foul and abusive language to the referee and Jeremy states, *“His recollection of comments towards the referee were not foul and abusive, although he remembers calling the referee ‘a joke’. Ben would like to place on record an apology to the referee, and will do his utmost to kerb his frustration towards fellow players and referees in future”*. On behalf of the Club, Jeremy states, *“Charfield AFC also wish to apologise to the referee for the behaviour of both players dismissed. The club strives to abide by The FA RESPECT campaign and our record over the last few season is testament to that with all players having signed the club’s Code of Conduct statement”*.

21.3 Written response of Mr Hemmings dated 5th January 2023. Mr Hemmings explains the lateness of the response as he had been notified of the charge on 24th December, had *“been away during the Xmas/New Year period”* and had not been able to respond during the *“very narrow window to reply”*. He states *“there was never any threatening behaviour during this match”*. He maintains that there was *“bewilderment”* on both sides at refereeing decisions. Referring to his sending off Mr Hemmings states, *“My sending off was a late challenge on An opponent which in every other game would of resulted in a yellow card-but because of the disgruntled comments made by everyone during the game it was deemed a red”*. Referring to the allegation of threatening behaviour, if *“he was going to give me another red for threatening behaviour-no one was aware of this and I never received one. After the incident I walked straight back to the changing room and got dressed.”* After the Match he had asked *“for a reason from the referee for the dismissal -but he ignored me”*. Finally, he denies having to be pulled away from the referee and denies the allegation and that *“there was never any threatening behaviour”*.

22. That concludes all the evidence that was provided to the Commission.

Standard of Proof

23. The applicable standard of proof required for this case is the civil standard of the balance of probability. This standard means, I am satisfied that an event occurred if I consider that, on the evidence, it was more likely than not to have happened.

The Findings & Decision

24. The Commission reminded itself that the burden of proving a Charge falls upon the County FA, in this case it falls upon Gloucestershire FA.

25. In a Commission such as this, the assessment of the evidence is entirely a matter for the Commission. I must assess the credibility of the witness, that is whether the 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.

26. Where there are discrepancies between witnesses, it is for the Commission to accept 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 the Commission to assess if the discrepancy is important. Having considered which evidence to accept and which to reject, the Commission then has to decide if, on the balance of probabilities, the alleged breach of the FA Rules is established.

27. It should be noted that where direct speech is quoted in a witness statement, I have recorded it exactly in the wording and grammar in which it appears in the witness statement, without making any grammatical or typing alterations to obvious typographical errors.

In summary:

28. I am satisfied that the charge was properly raised by Gloucestershire FA and that the charge letter was sent to the Club through Whole Game System on behalf of the Participant. FA Regulations were followed when raising the charge.

29. I am also satisfied that a formal response to the charge was submitted but it not clear by whom. Nonetheless the plea was one of "Guilty". No-one has sought to explain this discrepancy which almost certainly came from within the Club itself. As a result, the charge fell to be considered as an accepted charge. Mr Hemmings's email of 5th January 2023 appeared to change his plea and caused the charge to be heard on the correspondence evidence.

30. The referee is clear in his evidence that after having received a red card for a "*reckless and dangerous*" challenge Mr Hemmings:

30.1 refused to leave the field of play

30.2 took "*a threatening stance towards myself in an attempt to challenge myself*".

30.3 “*was then told a further two times to leave the field immediately or he would be shown another red card for threatening behaviour*”

30.4 “*was grabbed by a team mate and forced against his will to walk off*”

30.5 “*attempted to walk back onto the Field after the game had completely finished in a further attempt to intimidate myself but was told to go away immediately*”

30.6 “*was forced away from my by the home team secretary*”

31. Additionally the referee explicitly states that Mr Hemmings had been “*aggressive , direct and threatening*” to him and that the referee was “*in no doubt what his intentions were and that was a physical confrontation*”. The referee describes two occasions when other members of Mr Hemmings’s club had to take him away.

32. By contrast, Jeremy, the club secretary is presumably the home team secretary referred to by the referee in his Report yet Jeremy makes no reference to this allegation at all and does not deny that he had to restrain Mr Hemmings at full time, as was alleged by the referee. In his own evidence he ignores the allegation of threatening behaviour which Gloucestershire FA was investigating, instead choosing to concentrate on the referee’s performance during the Match. His only reference to Mr Hemmings is to mention the sending off offence and to seek to explain this. The Commission is unable to take any evidence on the current charge from Jeremy as he offers none.

33. However, Jeremy apparently quotes Mr Hemmings as accepting the three match ban and fine for the rash challenge but this is at odds with Mr Hemmings’s own pronouncement that in any other game this would have been a yellow card, not a red one. Even when quoting Mr Hemmings, Jeremy, as club secretary, is brief in his evidence, dealing with a serious allegation of threatening a match official with the words “*His recollection of comments towards the referee were not foul and abusive, although he remembers calling the referee ‘a joke’*”. At this stage Jeremy was aware that Mr Hemmings was being investigated for allegedly threatening a match official and would have seen the referee’s Report but treats the allegations extremely lightly and does not address the questions of threat, refusal to leave the field of play, attempting to come back on to the field of play, having to be removed by team mates or approaching the referee after the Match, either himself or on behalf of Mr Hemmings.

34. Jeremy apologises to the referee on behalf of the club and on behalf of Mr Hemmings even though Jeremy states that all Mr Hemmings said to the referee was to call him a joke when he was sent off.

35. The Commission considered the email of the club secretary contributed nothing other than to highlight the matters which he did not address when, presumably, “*as a spectator*” he was

in a position to have seen any incidents. There was no attempt by him to deny the allegations and it was noticeable that his evidence stopped at the point where it should, in reality, have started. The Commission regards this as significant.

36. The Commission also cannot ignore the initial guilty plea. Without being able to test the evidence the Commission is unable to understand why the plea was changed but, on the face of it, Mr Hemmings was prepared to accept the charge one day but then wrote to the Gloucestershire FA the next day seeking to deny it but without explaining why.

37. For his part, Mr Hemmings denies that there was any threatening behaviour and the Commission needs to consider his evidence against that of the referee. Mr Hemmings denies he was shown a second red card but the referee does not state that a second red card was shown. He reports that he warned Mr Hemmings that he was in danger of receiving a second red card but in cases such as this, the reporting of misconduct is sufficient for a charge to be raised.

38. The Commission has to decide whether, on the balance of probabilities, misconduct has occurred. The referee has been detailed and precise and cannot have expected such a detailed account of an incident of this sort to have gone unchallenged if incorrect. Mr Hemmings's own denial is clear but comes on the back of a guilty plea. The lack of corroborating evidence on either side is unhelpful but the email from Jeremy is compelling for what it does not say. Ollie Powell is a discipline manager, not a referees' officer of any sort. While I have not seen the email to which Jeremy is replying, Mr Powell would not have been asking for comments on the referee's performance but on the referee's Report and Jeremy quite pointedly ignores everything other than the first two paragraphs of the Report. Given the detail in his email, this is an omission which is difficult to ignore and does not help Mr Hemmings's case.

39. The referee is credible and consistent in his Report and follow up email and is clear that he was threatened by Mr Hemmings. While Mr Hemmings denies the allegations, he does not go into anything like the sort of detail that would be expected for such a serious charge and Jeremy ignores the allegations altogether.

40. As has already been stated, the burden of proving the charge falls upon the Gloucestershire FA and the Commission is content that the Gloucestershire FA has provided sufficient evidence to establish the charge in the first instance. The question that follows is whether Mr Hemmings's evidence is sufficient to rebut the charge and on the balance of probabilities the Commission finds that it does not.

41. The charge is one of Improper Conduct against a Match Official - (including threatening and/or abusive language/behaviour). Threatening behaviour is defined in the FA Regulations as:

*96.1 Threatening behaviour: words or action that cause the Match Official to believe that they are being threatened. Examples include but are not limited to: the use of words that imply (directly or indirectly) that the Match Official may be subjected to any form of physical abuse either immediately or later, whether realistic or not; the raising of hands to intimidate the Match Official; pretending to throw or kick an object at the Match Official.*³

The referee states that Mr Hemmings “*was aggressive, direct and threatening*” and he explains specifically how Mr Hemmings threatened him.

42. It is the Commission’s decision that Mr Hemmings’s behaviour was intentionally threatening and it is realistic to accept that Mr Perry-Smith felt threatened by Mr Hemmings’s actions.

43. The Commission finds the actions to have been threatening. Mr Hemmings’s behaviour amounts to improper conduct against a match official and therefore **the Commission finds the charge of FA rule E3 Improper Conduct against a Match Official - (including threatening and/or abusive language/behaviour) proven**

Previous Disciplinary Record

44. After finding the Charge proven the Commission sought the Participant’s offence history. The Participant has no other proven misconduct charges in the last five years but does have a history of dissent to match officials. To his credit this does appear to have died down in more recent seasons but cannot be ignored.

Aggravation and Mitigation

45. No formal mitigation was submitted following the Charge.

46. No credit can be given for a guilty plea as the charge was eventually denied and the two different pleas was confusing.

47. Aggravating factors include the Participant’s prolonged confrontation with the referee, particularly when asked to leave the field of play and his attempt to re-enter the field of play. There was plenty of time during the confrontation for the Participant to reconsider his actions but it does not appear that he took the opportunity to do so.

The Sanction

³Page 215 of the FA Handbook 2022/2023

48. FA Regulations set the relevant sanctions for Improper Conduct against a Match Official (including threatening and/or abusive language/behaviour) as follows:

- 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.
- a fine of up to £100, with a mandatory minimum fine of £50.
- an order that the Participant completes an education programme before the time-based suspension is served or within 28 days of the Disciplinary Commission's decision, whichever is the later.

49. The Commission considers the offence sits in the mid-range of severity. The actions of the Participant were clearly intended and prolonged and the Commission can find no sufficient mitigation to depart from the recommended entry point. A modicum of credit will be given for the relatively clean recent record. Therefore the Commission orders the following sanction against Ben Hemmings:

- i. A suspension from all football activities for 98 days with immediate effect.
- ii. A monetary fine of £50.00 (Fifty pounds).
- iii. The Participant must attend an online Education programme before the time-based suspension is served, details of which will be provided to the Participant by The Gloucestershire FA.
- iv. Failure to comply with this order will result in a Sine-Die suspension being issued against the Participant until he has fulfilled this order in its entirety.
- v. He is formally warned as to his future conduct.
- vi. Seven (7) disciplinary penalty points are awarded against his club, Charfield AFC

50. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed: Paul Tompkins

FA National Serious Case Panel Chair

9th January 2023