

# NATIONAL COUNTY FOOTBALL ASSOCIATION SERIOUS CASE PANEL

On behalf of Gloucestershire Football Association

Non-Personal Hearing

of

Colton HARRIS [67662654]

Case ID: 11019872M

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## THE DECISION AND REASONS OF THE COMMISSION

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### **Introduction/Background**

1. On 30 October 2022, Borussia Bristol First played Avonmouth Sunday First in the Beaufort Cup, (collectively 'the match').
2. On 30 October 2022 Christopher Wilmot, the referee, submitted an Extraordinary Incident Report Form to Gloucestershire Football Association ('Gloucestershire FA') alleging misconduct.

### **The Charges**

3. On 21 November 2022, Gloucestershire FA charged Colton Harris ("CH") a player for Avonmouth Sunday, with Misconduct for a breach of FA Rule E3 – Improper Conduct (including foul and abusive language) ("charge 1") and that this Improper Conduct was aggravated by a person's Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Sexual Orientation or Disability, contrary to FA Rule E3.2 ("charge 2") [Charge 1 and 2 collectively known as "Aggravated Breach Charge"].
4. The FA Rules of the Association are contained in The FA Handbook Season 2022-23 at page 141. Rule E3 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.*

*E3.2 A breach of Rule E3.1 is an “Aggravated breach” where it includes a reference, whether expressed 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.*

### **The Allegation**

5. It was alleged that CH used abusive and/or insulting language, and that this language was aggravated, as it included reference to nationality. It was alleged that CH made the comment, “fucking cheating Indian bastard” or similar, to the referee, which constituted a breach of FA Rule E3.2.

### **The Reply**

6. On 4 December 2022, CH responded, via the whole game system confirming he accepted both the charges and requesting that the matter be dealt with at a correspondence hearing.

### **The Commission**

7. This case was determined by the Football Association (“The FA”) as suitable to be dealt with by a Chair from the National CFA Serious Case Panel, sitting in alone, acting in accordance with the guidance issued. Accordingly, the FA appointed the following National Panel Member: Loraine Ladlow (Chair).
8. The Role of the Chair is to determine the participants liability and decide sanction. In this case the Chair, having considered all the documents provided, determined that this case was not unduly complex and agreed that the matter could be dealt with by her sitting alone as the Commission.

### **Documents Received**

9. The Commission had received and read the bundle of documents prior to determining the case, which included:

#### **Gloucestershire FA Evidence**

- (i) Misconduct Charge Notification dated 21 November 2022;

- (ii) Extraordinary Incident Report Form from the referee, Christopher Wilmot, dated 30 October 2022;
- (iii) Email statement from Christopher Wilmot the referee, dated 8 November 2022;
- (iv) Statement of Samuel James Wilmot, a spectator and son of the referee, dated 17 November 2022;
- (v) Further statement from Samuel James Wilmot, appending a screenshot from his mobile phone, dated 18 November 2022;
- (vi) Statement of Jonathan Wilmot, a spectator and son of the referee, dated 17 November 2022;

Participant charged Evidence

- (vii) Email exchange between Ollie Powell, Regional Discipline Manager at the FA and Declan Smith, of Avonmouth Sunday, written on behalf of the Management Team of Avonmouth Sunday, dated between 8-14 November 2022;
- (viii) A copy of the Whole Game System confirming charges admitted and requesting matters be dealt with at a correspondence hearing.

10. 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, or to all the statements and information provided, however the absence in these reasons of any point, or submission, should not imply that the Commission did not take such point, or submission, into consideration when it determined the matter. For the avoidance of doubt, the Commission have carefully considered all the evidence and materials furnished in this case.

11. The Commission having considered all the evidence, had regard to the following:

- (a) In his report, the referee Christopher Wilmot stated that, having sent CH off, as CH left the field of play, he shouted “fucking cheat and Indian bastard”. He stated that CH was near the entrance of a swimming pool when he shouted the words and that this facility was being used by

parents and small children. He stated that he had no doubt that the CH was directing this comment to him. In a further statement, he confirmed that CH was approximately 40-50 yards from him when CH shouted the words and, as the game had restarted, he only clearly heard the word “bastard”, so he made a note of it in his notebook. He stated that his three sons were watching the game and at half time, his son Sam Wilmot, asked if he had heard what CH had called him. He confirmed to his son he had heard CH call him a “bastard” and his son informed him that CH had actually said, “fucking cheat and Indian bastard”. He confirmed that his sons had been 10-15 yards from CH when he shouted his comments. He confirmed that he is a white English male, but his skin tans easily and that people have previously commented on his skin colour.

- (b) Samuel Wilmot stated that he attended the match as a spectator and that after 20 minutes or so of the first half, the referee cautioned/sin binned CH for dissent. He stated that CH then shouted further insults towards the referee and refused to approach the referee when asked to do so and was shown a red card. He stated that CH went to the dugout but was asked to leave the pitch side by the referee. He stated that as CH was walking off the pitch, heading towards the changing rooms, he turned towards the referee and shouted, “you cheating Indian bastard”. He stated that he was certain the words were directed at the referee. He confirmed that CH was 15 yards from him when this was shouted and that he recorded the exact words used on his phone, which he provided a screenshot of as part of his evidence.
- (c) In his written statement, Jonathan Wilmot stated that he was a spectator at the game, when, during the first half, an Avonmouth player was sent off by the referee. He stated that after exiting the field of play, whilst walking to the changing rooms, the player had an interaction with a teammate, then the player turned to face the field of play and shouted, “fucking, cheating Indian bastard”. He stated that the comment was directed at the referee. He confirmed that at the time the comment was made, he was a maximum of 30 yards away from the player.

(d) In an email, Declan Smith from Avonmouth Management Team stated that he would like to apologise for the poor discipline shown by some players this season and the game in question. He stated that the club were trying to stamp out dissent from happening and recognized that it cannot be justified. He stated that since the match in question they had implemented internal fines to players who receive cautions for dissent as a greater deterrent. In a further email, Declan Smit stated that the allegation should be denied as no-one from their team heard what the referee alleged. He confirmed that he was not alleging the referee was wrong, simply that no one heard it. He confirmed that CH had denied it too and that he apologises for his behaviour that gave rise to the sending off. He confirmed that CH denies using racial language.

### **Burden and Standard of Proof**

12. The burden of proof rests with the County FA. The applicable standard of proof required for this case is the civil standard of proof namely, the balance of probability. In simple terms, this means that the Commission must be satisfied, based on the evidence, that it was more likely than not that an event occurred.

### **Findings of Fact**

13. The Commission found the following facts on the relevant evidence:

- a) The referee confirmed in his written statement that he had not heard discriminatory language at the time but did hear CH shout “bastard”.
- b) Two other witnesses heard the comment, “fucking, cheating Indian bastard” made by CH as he was walking towards the changing rooms. The referee confirmed that he was informed by Samuel Wilmot of the comment he had heard CH say.
- c) The Commission note that these witnesses were closer to CH than the referee, at the time the alleged comment was made.
- d) The Commission note that both these witnesses are the sons of the referee.
- e) The Commission considered the independence of this evidence, given the family connection to the referee, and whether their evidence could be considered impartial. The Commission considered the further evidence provided by Samuel Wilmot, via a screenshot,

showing that Samuel Wilmot had made a note of the comment made by CH on a family WhatsApp group, moments after the comment made. This evidence has not been challenged by CH. The Commission found this evidence corroborated the written evidence of Samuel Wilmot and conclude that it gives credibility to the evidence provided by Samuel Wilmot.

- f) The written evidence of Jonathan Wilmot corroborates that of Samuel Wilmot, although the Commission note that his evidence does not provide any further detail.
- g) CH has not provided evidence himself, but in a statement provided by Declan Smith on behalf of the club, it is stated that CH denies making the comment as alleged and denies racism. This denial is proffered on the basis that no one from the club heard the words as alleged. However, the Commission note that subsequent to this statement, guilty pleas have been indicated, via the whole game system, to both charges by CH.
- h) The Commission note that no further evidence or information about the incident has been provided by CH or the club.
- i) Whilst noting the admissions made on the whole game system, the Commission considered that the initial denial could make the subsequent admission equivocal and proceeded on that basis.
- j) The Commission noted that neither CH or the club challenged the credibility of the referee's evidence; indicating their denial on the basis that no one from the club had heard the comment. The Commission found this was a missed opportunity for CH and the club to provide more detailed evidence.
- k) The Commission found the referee's evidence to be credible and reliable and, based on the corroborative evidence of Samuel Wilmot written evidence and screenshot evidence, the Commission were satisfied that the comment, as alleged, was made by CH.
- l) The Commission were further satisfied that the words used were abusive, indecent and insulting and that they were aggravated by reference to race.

- m) The Commission noted that the comment related to race, although the referee is white British, with tanned skin. The Commission were satisfied that the comment still amounted to an aggravated breach.

### **Decision**

14. After considering all the evidence and the standard of proof, the Commission found there was sufficient evidence to support the charge, that CH had used foul and abusive language amounting to improper conduct and that such language was aggravated by reference to race therefore found the charges PROVEN.

### **Previous Disciplinary Record**

15. The Commission, having found the first charge proven, sought the participant's previous disciplinary record, and noted that he had no previous misconduct charges.

### **The Sanction**

16. The Commission noted the Disciplinary Regulations of the FA Handbook Season 2022-23 on sanction, which state:

*Where a Participant commits an Aggravated Breach for the first time, a Regulatory Commission shall impose an immediate suspension of at least six matches on that Participant, The Regulatory Commission may increase this suspension depending on any additional aggravating factors present.*

*Whether or not a suspension has been imposed by the Regulatory Commission in respect of an Aggravated Breach, that Regulatory Commission must order that the Participant who commits an Aggravated Breach be subject to an Education Programme and may impose a financial penalty or any other sanction that it considers appropriate.*

17. The Commission also considered the Football Association Sanction Guidelines, as set out in the FA Handbook 2022/23. The sanction was dependent on the Commission's assessment of the case, including the aggravating and mitigating features present.

18. Having regard to the aggravating features, the Commission found that the word used by CH were foul and abusive and that the referee was

disappointed and frustrated with the incident and questioned whether he would continue refereeing, before deciding that he would do so.

19. Whilst the Commission noted that the charges had initially been denied then admitted via the Whole Game System, the Commission were content to give CH credit for his admission.

20. The Commission noted that CH had a clean disciplinary record with no previous misconduct charges.

21. CH did not put forward any mitigating factors, although the Commission took into consideration the actions being taken by the club in general terms, to mitigate dissent in the future.

22. After taking all the aggravating and mitigating factors present, the Commission assessed the level of seriousness and imposed the following sanctions:

(1) A fine of £75.00

(2) A six-match suspension from all football activities.

(3) Ordered to complete the FA's Equality Education Course, online, the details of which will be provided to him in due course by the FA. The online course must be completed before the match-based suspension is served. In the event that CH fails successfully to undertake the course within 3 months, he will be further suspended from all footballing activity until such time as this course is completed.

(4) 6 Club Disciplinary points

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

Signed

Lorraine Ladlow

15 December 2022