

BEFORE THE GLOUCESTERSHIRE FA NATIONAL DISCIPLINE PANEL
IN THE MATTER OF A MISCONDUCT CHARGE NOTIFICATION AGAINST
PARTICIPANT GAVIN FISHER [169132]

WRITTEN REASONS

Introduction

1. These are the written reasons of Lydia Banerjee (the “**Chair**”), sitting alone on this Non-Personal case.

The Charges

2. By a Misconduct Charge Notification dated 12 October 2021 issued by the Gloucestershire FA against Gavin Fisher (“**Mr Fisher**”), it was alleged that (collectively referred to as “the Charges”):
 - 2.1. Mr. Fisher engaged in Improper Conduct (including foul and abusive language), pursuant to FA Rule E3 (“**Charge 1**”)
 - 2.2. Mr Fisher engaged in Improper Conduct – aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability, pursuant to FA Rule E3.2 (“**Charge 2**”).
3. The Charge arises from a match between Churchdown Panthers Youth U16 Colts and Prestbury Phantoms Youth in the U16 Division two - Cheltenham Youth League on 12 September 2021 (the “**Match**”).

Response

4. The Misconduct Charge Notification set out a Reply Due Date of 12 October 2021.

5. A response was received denying the Charges. The Response requested consideration on the papers.

Liability

6. For the issue of liability, the applicable standard of proof is the balance of probabilities; i.e. is it more likely than not that the Charges as alleged are proven to have taken place?
7. I have received evidence from:
 - a. Chris Isaac, the Match Official;
 - b. Andrew Moore, Coach for Churchdown Panthers U16 colts;
 - c. Huw Roberts, Club Secretary for Prestbury Phantoms AFC;
 - d. Mr Fisher; and
 - e. Dan Blenkinsopp, an individual associated with Prestbury Phantoms AFC.
8. Mr Isaac reported that he issued Mr Fisher with two yellow cards for dissent, he also reported that after the game while walking to his car Mr Fisher said: *“I have seen blind referees have a better game than you” “you’re aJenk”*. Mr Isaac was also contacted by Mr Powell at the FA and asked a number of questions about the Match. Of relevance to the Charges he confirmed his report in relation to the comment after the Match. In addition, he was asked whether he heard or was made aware of any potentially discriminatory remarks made by Mr Fisher. Mr Isaac confirmed that he did not hear any discriminatory remarks and nor were any reported to him.
9. Mr Moore provided a report later adopted into a statement in which he said:

“At halftime I noticed that he was arguing with the ref. I couldn’t hear what was being said but the parent was very agitated and the ref calm. The ref said something like “I can make it 2 yellow cards if you like” in response to a comment made by the parent. The ref then walked

*away to start the second half. At this point I distinctly heard the parent say “You black c**t” to the ref. The ref did not appear to hear this comment, but the Prestbury Coach did and asked his own young son who was standing near the parent to come over to him as he shouldn’t hear things like that.*

I must stress that the Prestbury Coach was not part of this incident and was not arguing with the ref at halftime. However, he did not reprimand the parent or ask him to leave the technical area.

...

The comment made by the parent was audible to me (and the Prestbury Coach) and I was approx. 15 yards away. I do not know if any of the players heard it although there were Prestbury subs in their technical area at the time.”

10. Mr Roberts confirmed that no committee member was present at the Match and provided general evidence as to expectations at the club and the steps taken by the club to remind parents, players and coaches of expectations. He also outlined the steps the club take in relation to reports of inappropriate behaviour. He confirmed that actions were taken in relation to the first yellow card but indicated that the club were not aware of any second yellow card and nor was any complaint made to them about wider conduct and so no further action had been taken.
11. Mr Fisher denied making either comment. He suggested Mr Moore would not have been able to hear any comment from 15 yards away if he could not hear the discussion which had taken place before it. He also challenged the account of Mr Isaac on the basis that Mr Isaac said that he had issued two yellow cards and only one is on the system. At the same time Mr Fisher relied on Mr Isaac’s statement that he had not heard any discriminatory comments and nor had any been reported to him. Mr Fisher admits that he said to Mr Isaac “jank”, ‘you are a jank referee’. Which he said was not ‘the end of the world’. Mr Fisher admits that he shouted at Mr Isaac and referred to him as a jank. He says sorry for shouting, it is not clear if that applies also to describing him as ‘jank’.
12. Mr Blenkinsopp confirmed that he was present when Mr Isaac was speaking to Mr Fisher at half time. He confirms that Mr Fisher was shouting in an aggressive manner and that he told him to

calm down to no avail. He also states that he did not hear him swear or use any language that would be considered of a racist nature.

13. I have to apply the balance of probabilities. Mr Fisher clearly acted inappropriately in relation to his shouting at the referee leading to a yellow card.
14. Charge 1 has a number of parts, it is phrased as *“this is in reference to him receiving a Non-Playing Participant Red Card for receiving a second Caution in the same match, and/or comments to the Match Official after the game of “I have seen blind Referees have a better game than you” or similar, and/or “you’re jenk” or similar. It is further alleged that this is an aggravated breach as defined by FA Rule E3.2 because it includes a reference to colour. This refers to the comment(s) “black cunt” or similar.”*
15. Taking these points in turn. It is clear that there is an issue over whether a second caution was formally issued. I am told that it does not appear on the system and that the Club were not made aware of it. Mr Fisher has denied being given a second yellow card and states that he was not removed from the technical area as one would expect had the card been issued. It seems to me that the report of the match official has been called into question. Given that this point has been put in dispute by both the Club and Mr Fisher and there is no evidence presented from the County FA to demonstrate that the second card was issued I have concluded that the charge has not been proven. I appreciate that the normal course is for the County FA to raise a misconduct charge in relation to a non-playing participant receiving a red or second yellow card. I also appreciate that the report of the match official would usually be determinative of the issue. However, in circumstances where that report has clearly been objective evidence to support the match official should be provided. That has not happened and therefore the balance of probabilities threshold has not been passed.
16. The comment after the game about being a ‘jenk’ or ‘jank’ referee is proved as it is admitted by Mr Fisher. ‘Jank’ is defined as *‘anything that is of poor quality, broken or just rubbish’*¹. Mr Fisher is silent as to whether he said *“I have seen blind Referees have a better game than you”* or similar. On balance I consider it more likely than not that he did. It is consistent with his

¹ Collins Dictionary online

aggressive behaviour witnessed by Mr Blenkinsopp, his consistent challenges to Mr Isaac's decisions and his admitted reference to him being a 'jank' referee.

17. On balance I have concluded that the comment 'black cunt' has not been proved. The following facts are relevant to this conclusion:
 - a. The distance between the witness and Mr Fisher;
 - b. The fact that Mr Moore could not hear the earlier conversation despite Mr Fisher being animated during that exchange;
 - c. The fact that Mr Isaac neither heard, nor had any comment reported to him; and
 - d. Mr Blenkinsopp did not hear anything and he was candid that Mr Fisher's conduct was inappropriate.
18. All these factors lead me to conclude that the balance of probabilities has not been satisfied in relation to the comment 'black cunt'.
19. I therefore conclude that Charge 1 is proven in relation to the comments after the match and that Charge 2 is not found proven.

Sanction

20. I have had regard to the County FA Disciplinary Sanctions Guidelines, in force for the 2021/2022 season ("**the Guidelines**").
21. The sanctioning range for improper conduct against a Match Official in Youth League is up to 6 matches and up to £60.
22. I take into account the circumstances and seriousness of the incident in deciding whether this is a low, mid or high offence and where within the range to impose the sanction. In so doing, I consider the following relevant aggravating and mitigating factors.
23. In terms of aggravating factors:

- a. Mr. Fisher's behaviour towards Mr Isaac took place over a number of phases;
- b. Mr Fisher had been formally warned about his conduct by Mr Isaac issuing at least one yellow card;
- c. Mr Blenkinsopp had informally warned Mr Fisher about his behaviour towards Mr Isaac;
- d. Mr Fisher clearly considers it acceptable to insult the match official;
- e. The events took place at an under 16 game

24. In terms of mitigating factors:

- a. Mr. Fisher has partially apologised; and
- b. Mr. Fisher has no previous history of misconduct.

25. On balance I consider it appropriate to treat this as a high level offence and therefore I impose a 4 match suspension and a £40 fine.

Outcome

26. For the reasons set out above:

- a. The Charges against Mr. Fisher are found proven.
- b. Mr. Fisher is to receive the following sanctions:
 - (i) A 4 match suspension from all football activity;
 - (ii) A £40 fine; and
 - (iii) A warning as to his future conduct.
- c. Prestbury Phantoms Youth shall receive 5 club disciplinary points.

27. The decision above may be appealed in accordance with the relevant regulations within the prevailing FA Handbook.

Lydia Banerjee (Independent Chair alone)

1 December 2021