

**THE FOOTBALL ASSOCIATION NATIONAL SERIOUS CASE PANEL
DISCIPLINE COMMISSION**

Sitting on behalf of Gloucestershire County Football Association

CORRESPONDENCE HEARING

of

Kevin Ashwood

[Case ID: 10622942M]

THE DECISION AND REASONS OF THE COMMISSION

Introduction

1. On 27 November 2021, Mendip Broadwalk Reserves played against Wick Reserves (“the Club”) in a Bristol Premier Combination League, Division One fixture (collectively “the match”).
2. Gloucestershire County Football Association (“Gloucestershire FA”) subsequently became aware of an alleged incident occurring in the match of a discriminatory nature.
3. Gloucestershire FA investigated the reported incident.

The Charge

4. On 3 December 2021, Gloucestershire FA charged Kevin Ashwood [511347] (“the player”), as a participant:
 - i. with misconduct for a breach of FA Rule E3 - Improper Conduct (including foul and abusive language); and
 - ii. with misconduct for a breach of FA Rule E3.2 - Improper Conduct - aggravated by a persons Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability;
 - iii. it was alleged that Kevin Ashwood used abusive and/or indecent and/or insulting language/gestures contrary to FA Rule E3.1, and it was further alleged that this was an aggravated breach as defined by FA Rule E3.2

because it included a reference to a person's gender. This refers to the comment(s) "It's a man's game", "Female refs are shit", "What do woman know about football" and "Fucking shit ref" (or similar) directed to Referee Mandy Kerfoot during the match.

5. The relevant sections of FA 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 express 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".

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

7. The player was required to respond to the charges by 17 December 2021.

The Reply

8. A response to the charges were received on 17 December 2021 which indicated that the player wished to deny (plead "not guilty") both charges. The player requested that the case be dealt with in his absence at a correspondence hearing.

The Commission

9. The Football Association ("The FA") convened a Disciplinary Commission ("the Commission"), on behalf of Gloucestershire FA.

10. The Commission was constituted of a single member, Mr Lea Taylor, a member of The FA National Serious Case Panel, a Chair sitting alone to adjudicate on this case.

The Hearing and Evidence

11. The Commission adjudicated this case on 22 December 2021 as a correspondence hearing (“the hearing”).
12. The Commission had received and read the bundle of documents prior to the hearing which contained the following:
 - i. Bundle Cover Sheet
 - ii. Misconduct Charge Notification dated 3 December 2021
 - iii. Extraordinary Incident Relating to Misconduct Report by Mandy Kerfoot (Match Referee) dated 27 November 2021
 - iv. Extraordinary Incident Relating to Misconduct Report by Thomas Kerfoot dated 28 November 2021
 - v. Screenshot of Charge Response
 - vi. Letter to Gloucestershire FA from Wick FC (Dave Beer Secretary/Vice Chairman) dated 17 December 2021
13. These written reasons are a summary of the principal submissions considered by the Commission. It does not purport to contain reference to all points considered, however the absence of any particular point, or submission, should not imply that the Commission did not take such point, or submission, into consideration when determining this matter. For the avoidance of doubt, the Commission carefully considered all of the evidence and materials furnished with regard to this case.

Standard of Proof

14. The Commission reminded itself that the burden of proving a charge falls upon the County FA, in this matter, Gloucestershire FA.
15. The applicable standard of proof required for this case is the civil standard of proof namely, the balance of probability. This standard means the Commission would be satisfied that an event occurred if it considered that, on the evidence, it was more likely than not to have happened.

The Findings and Decision

16. The assessment of the evidence in this case is entirely a matter for the Commission. The Commission must assess both the credibility and the reliability of the evidence placed before it at the hearing.
17. Where there are discrepancies between the evidence, it is a matter for the Commission to decide which evidence to accept and which to reject. Even where there are discrepancies between evidence or within evidence itself, it is the Commission's role to assess if the discrepancy is important. In doing this, it is for the Commission to decide how much weight it chooses to place on the evidence.
18. In considering this case, the Commission was required to ask itself the following questions:
 - i. Were the words, as alleged, said by the player?
 - ii. If so, did the words/conduct amount to a breach of FA Rule E3.1?
 - iii. If so, was this an aggravated breach?

Were the words, as alleged, said by the player?

19. The Commission noted that the evidence in support of the charges arises from the evidence of match referee, Mandy Kerfoot, and witness, Thomas Kerfoot.
20. The report submitted by Mandy Kerfoot, stated:

"I blow my whistle for Half Time whistle. Kevin Ashwood came over to me to say it was him he was shouting, it was a man's game. He shouted this when a foul was given against is team. I explained this is a sexism comment he replied it's a man game. He walked away and walked towards the dressing room as half time. Kevin Ashwood was a sub named on the team sheet"

21. The statement of Thomas Kerfoot reads:

"27/11/21 – I was a supporter at the mendip Broadwalk Res v Wick Res at Creswicke Park Knowle, Bristol Premier Combination Div 1 2pm ko.

I was standing between the dug outs (approx 10 yards apart), where Kevin Ashwood, sub Wick Res where he was shouting at the referee Mandy Kerfoot,

throughout the match. He was saying “it’s a man’s game ref”, “Female refs are shit”, “What do woman know about football!” “Fucking shit ref” ‘don’t make it about you ref’. These statements were repeated throughout the match.

I witnessed the Kevin Ashwood walk onto the pitch towards the referee at half time. He was standing near the referee, I was unable to hear what was said as this was distance away, he walked away after approx. 10 seconds back to the dug out area. There were several Mendip Broadwalk and Wick players nearby walking past heading towards the changing room”.

22. The Commission noted that there had been no direct evidence received in response to the charge from the player himself. The letter to Gloucester FA from the Club, did however state:

[...]

Kevin and the team all admit that he did say ‘come on ref this is a man’s game’.

[...]

Kevin admits to the fact he said it is a man’s game and the referee confirms this.

[...]

We as a club accept that he made the ‘this is a man’s game comment’

[...]”.

23. Based upon the clear evidence of the referee and the acceptance of such by the Club (paragraph 21 above), the Commission concluded that it was more likely than not that the player had used the words *“it is a man’s game”* (or similar).

24. Turning to the other alleged comments made by the player, the Club in the response letter made the following observations:

[...]

1) Referee report - ...there is no mention of any other misconduct or remarks made by the referee. If there had been, I would expect a referee to deal with this at the

point of happening to ensure it does not continue. No card issued, no word with the player or managers?

2) Independent Witness – There is confusion here. Is the statement from an assistant referee or a supporter at the game who was stood in-between the dugouts? We assume it is the latter. This appears to be the only person to hear the alleged comments. This then becomes a hearsay situation, and we have 4/5 people who say that these comments were not made.

3) Alleged comments – why was this not raised during or after the game for the official to handle? If these comments were made, we would expect a referee or assistant to deal with this asap. Kevin was not booked or spoke too about this alleged incident either during or after the game.

[...]”.

25. In the opinion of the Commission, the evidence of Thomas Kerfoot was clear and concise. The Commission was unable to accept the assertions made by the Club in respect of this evidence, namely:

- i. there was no confusion in the mind of the Commission that the evidence of Thomas Kerfoot came from a supporter/spectator who was located between the dug outs during the game. The Commission noted that Thomas Kerfoot has the same surname as the referee, Mandy Kerfoot, and this is likely to explain the reason for Thomas Kerfoot being in attendance. Indeed in his statement, Thomas Kerfoot refers to himself as “a supporter”;
- ii. the Commission was satisfied that the further alleged comments had not been heard by the match referee and this explained why no further action/they were not detailed in the referee’s report. The absence of such, did not, in the opinion of the Commission mean that they did not occur;
- iii. the Commission would not have expected a supporter/spectator to raise matters of this nature to the referee during the game. There was no

evidence before the Commission that Thomas Kerfoot was acting in any official capacity as a match official (that otherwise would have given him a duty to report incidents of misconduct to the match referee);

- iv. the lack of any disciplinary action being taken against the player did not mean the alleged comments were not capable of having been said, and;
- v. whilst the Clubs submitted that 4/5 people could say the alleged comments were not made, there was no evidence from any such individuals before the Commission. The Commission was however mindful that the assessment of evidence is not necessarily a matter of 'numbers' but was one of credibility.

26. In assessing the credibility of Thomas Kerfoot's evidence, the Commission noted that Thomas Kerfoot had stated that he was "*unable to hear what was said*" by the player at half-time when the player approached the referee. Taking into account the evidence of Thomas Kerfoot, and the earlier finding (paragraph 22 above), the Commission concluded that it was more likely than not that the player had also used the words "*it's a man's game ref*", "*Female refs are shit*", "*What do woman (sic) know about football!*" "*Fucking shit ref*" "*don't make it about you ref*".

Did the words/conduct amount to a breach of FA Rule E3.1?

27. Having made the above findings of fact, the Commission proceeded to consider whether the comments amounted to a breach of FA Rule E3.1. The Commission was satisfied that the player's conduct had been insulting and was thereby improper and contrary to FA Rule E3.1. In reaching this decision, the Commission:

- i. noted the referee had challenged the player at half-time in response to his comment saying "*this is a sexism (sic) comment*";
- ii. considered the culminative effect of the comments to be derogatory towards the referee;
- iii. there was more than one comment that was said throughout the game;

- iv. rejected any implication that the comment *“it’s a mans game”* could not be insulting because it is *“made hundreds of times every weekend towards referee’s”*. The Commission found that these comments had been directed towards a female referee including *“when a foul was given against his [the player’s] team”*. In the opinion of the Commission, the context in which these comments were made, was a significant and probative factor;
- v. rejected the notion that the comment *“it’s a man’s game”* is *“never normally picked up when a male ref is in charge”*, and;
- vi. according to the evidence of the Club, noted that the player *“apologised to the referee after the event”*.

Was this an aggravated breach?

28. The Commission reminded itself of the objective test to be applied in this case and that the intention of the player was not determinative when reaching this conclusion. For the avoidance of doubt, the Commission was not required to assess the player’s intentions or beliefs when considering the aggravated charge contrary to FA Rule E3.2, simply whether the conduct contained a reference to one of the protected characteristics, in this case a person’s gender. It was not for the Commission to consider and/or determine whether the player holds, or has, sexist views and/or opinions.
29. It was clear that the comments, having been found to have been said, both implied reference to a person’s gender (*“it’s a mans game”* had implicit reference to the referee’s female gender) and expressed reference to a person’s gender (*“Female refs are shit”, “What do woman know about football”*).
30. Therefore, the Commission was also satisfied that the player’s conduct, which was improper, was aggravated by reference to a person’s gender which was contrary to FA Rule E3.2.

Conclusion

31. For the above reasons, the Commission found both charges proven.

Previous Disciplinary Record

32. Having found the charges proven, the Commission sought the player's offence history for the previous 5 years which was duly provided.
33. The Commission noted that the player's disciplinary record included the following:
- i. 13/10/2018 – sending-off for the use of offensive, insulting or abusive language and/or gestures which resulted in an automatic 2 match suspension and £40 fine (case ID 9560313); and
 - ii. 24/09/2016 – improper conduct (including threatening and/or abusive language/behaviour) which resulted in a 3 match suspension and £30 fine.
34. In respect of the improper conduct offence (referenced at paragraph 33.ii above), the Commission noted that this offence was not committed against a match official.
35. The Commission observed that the player is 40 years of age.

Sanction

36. Prior to determining sanction, the Commission referred to FA Rules, the FA Disciplinary Regulations ("the Regulations") and the County FA Disciplinary Sanction Guidelines (Season 2021/22) issued by The FA.
37. The Commission noted that paragraph 47 of the Regulations requires a Commission, when dealing with a proven case of FA Rule E3.2, to apply the sanction guidelines contained within Appendix 1 to Part A: Section One: General Provisions (the Guidelines").
38. The Guidelines contained within Appendix 1 provide the following:
- i. 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").

- ii. 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.
 - iii. The lowest end of the Sanction Range (i.e. 6 Matches) shall operate as a standard minimum punishment (the “Standard Minimum”).
 - iv. Any Participant who is found to have committed an Aggravated Breach shall be made subject to an education programme.
39. It is at the Commission’s discretion to increase or decrease a sanction where there are aggravating and/or mitigating factors present.
40. The Commission considered if there were any aggravating or mitigating factors that should be taken into account when deciding the sanction in this case. The Commission noted the following to be of significance:
- i. aggravating factors
 - i. more than one improper comment was made by the player
 - ii. the player’s comments were directed towards the match referee
 - ii. mitigating factors:
 - i. the player’s disciplinary record
41. With both charges having been denied, the player had not advanced any additional points in mitigation. After balancing all the relevant factors, the Commission concluded that a sanction in accordance with the standard minimum would be appropriate in this case.
42. Kevin Ashwood is therefore:
- i. **Suspended for a period of 6 matches**
 - ii. **Fined a sum of £45 (forty-five pounds)**

- iii. **Ordered to complete an education programme before the match-based suspension (as per paragraph 42.i above) is served**
 - i. **This programme shall be completed online.**
 - ii. **Failure to comply with this order will result in a Sine-Die suspension being issued against the player until he has fulfilled this order in its entirety.**
- iv. **6 (six) Disciplinary Penalty Points shall be recorded against the record of Wick Football Club**

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

Lea Taylor
FA National Serious Case Panel (Chair sitting alone)
23 December 2021