

THE DISCIPLINARY COMMISSION

Sitting on behalf of Gloucestershire Football Association

NON-PERSONAL HEARING

of

Lewis Frazer-Holland

Blakeney FC

[CASES REFERENCE 10451845M]

THE DECISION AND WRITTEN REASONS OF THE COMMISSION

Disclaimer:

These written reasons contain a summary of the principal evidence before the Commission and do not purport to contain reference to all the points made, however the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Commission did not take such a point, piece of evidence or submission, into consideration when determining the matter. For the avoidance of doubt, this Disciplinary Commission has carefully considered all the evidence and materials furnished with regard to this matter.

I. INTRODUCTION

1. The Football Association (“**The FA**”) convened a Disciplinary Commission (**the “Commission”**), on behalf of the Gloucestershire Football Association (“**GFA**”) on 26 August 2021 to adjudicate upon disciplinary charges levied against Mr. Lewis Frazer-Holland (“**Mr. Frazer-Holland**”) (Case ID number: 10451845M).
2. The Disciplinary Commission was constituted of a single member, Mr André Duarte Costa, an Independent FA appointed Chair.

II. THE CHARGES

3. In summary, by Misconduct Charge Notifications dated 19 August 2021 (the “**Charge Notification**”) issued by GFA against Mr. Frazer-Holland, Mr. Frazer-Holland was charged with two charges relating to alleged misconduct in a match against Mushet & Coalway First on 3 August 2021.
4. It was alleged that Mr. Frazer-Holland used violent conduct and/or threatening and/or abusive and/or indecent and/or insulting language contrary to FA Rule E3.1 and it was further alleged that it constituted Assault or Physical Contact or Attempted Physical contact Against a Match Official as defined in FA Regulations (the “**Charge 1**”).
5. Mr. Frazer-Holland was also charged, in the alternative, with a breach of FA Rule E3 – Improper Conduct against a Match Official (including physical contact or attempted physical contact and threatening and/or abusive language/behaviour) (the “**Alternate Charge 1**”).
6. The Charge Notification referred to the allegation that Mr. Frazer-Holland directed improper language and gestures and spat water at the Match Referee, Mr. Steven Ryan (“**Mr. Ryan**”), following the player’s dismissal from the field of play.
7. The Charge Notification also referred to the Standard Sanctions and Guidelines. Furthermore, a reference to an administration fee and/or a potential fine was also made.
8. Mr. Frazer-Holland was required to submit a response by 26 August 2021. On 25 August 2021 Mr. Frazer-Holland submitted on the Whole Game System a not guilty plea denying

the charge and asking for his case to be dealt with by correspondence, *i.e* Non-Personal Hearing.

III. THE RULES

9. The Rules of the Association are foreseen in Section 10 of The FA Handbook 2021/2022¹.

10. Under the title “Misconduct” Part E of Section 10 sets out the rules to be observed by Participants².

11. Bearing in mind the charges levied against Mr. Frazer-Holland the relevant rule to take into account for the purpose of the present case is FA Rule E3, in specific FA Rule E3.1.

12. According to FA Rule 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.*

13. The Disciplinary Regulations are foreseen in Section 11 of the FA Handbook.

14. Under the title “Offences Against Match Officials” Section Three: Provisions Applicable to Category 5 paragraph 96 provides the following: *The three categories of offence against Match Officials are as follows:*

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.

96.2 Physical contact or attempted physical contact: physical actions (or attempted actions) that are unlikely to cause injury to the Match Official but are nevertheless

¹ Available at: <https://www.thefa.com/football-rules-governance/lawsandrules/fa-handbook>.

² means an Affiliated Association, Competition, Club, Club Official (which for the avoidance of doubt shall include a Director), Intermediary, Player, Official, Manager, Match Official, Match Official observer, Match Official coach, Match Official mentor, Management Committee Member, member or employee of a Club and all persons who are from time to time participating in any activity sanctioned either directly or indirectly by The Association, as per The FA Handbook 2021/2022, Section 10, Part E, para. A2.

confrontational, examples include but are not limited to: pushing the Match Official or pulling the Match Official (or their clothing or equipment); and

96.3 Assault or attempted assault: acting in a manner which causes or attempts to cause injury to the Match Official (whether or not it does in fact cause injury), examples include, but are not limited to, causing and/or attempting to cause injury by spitting (whether it connects or not), causing and/or attempting to cause injury by striking, or attempting to strike, kicking or attempting to kick, butting or attempting to butt, barging or attempting to barge, kicking or throwing any item directly at the Match Official.

IV. EVIDENCE

15. The following is a summary of the principal evidence provided to the Commission. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or evidence, should not imply that the Commission did not take such point, or evidence, into consideration when the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished with regard to this case.

16. The evidence which the GFA relied upon in support of the charges consisted of:

a) Referee Mr. Ryan Extraordinary Incident Relating to Misconduct Report Form dated 5 August 2021³, which stated, *inter alia*:

"I was refereeing the above game when in the 91st minute Blakeney had scored but there was a bit of confusion about the goal as the ball went in the net and then out the side the netting as I never blew for it straight away number 5 for blakeney now know as Lews Frazer Holland started using abusive language towards me calling me a fucking prick and sticking up his middle at me as I called him over he refused and kept walking away with his finger in the air calling me a fucking wanker a prick and more he has still at this time refused to give me his name and told me to fuck off he walked to the touchline where he just stood there I asked him to leave and go back to changing room which he refused he kept telling me to fuck off and still giving me

³ P. 7 of the case bundle.

the finger that is when he took a drink out of a water bottle and spat it at me I was luck enough just to be back far enough for it to miss me still refusing to give me his name he then went away I felt intimidated by this event and also loads of kids there after discussing the dispute with goal between mushet and Blakeney and the linesman I decided to award the goal which both teams accepted by this time there was approximately 4 minutes of time added on for the delay can I please state Blakeney did try controlling it thank you”;

- b) Assistant Referee Andrew Wilce (“**Mr. Wilce**”) Extraordinary Incident Relating to Misconduct Report Form dated 8 August 2021⁴, which stated, *inter alia*:

“The incident the referee has reported happened in the 90th minute. A Blakeney player had taken a shot which looked like it had gone inside the post but the goal net had become loose and the referee was unsure if the goal had been scored. Before the referee had chance to consult with myself the Blakeney player approached the referee and used foul and abusive language towards him as he thought the goal had not been awarded and had been disallowed. I cannot tell u [sic] what was actually said but it was certainly foul and abusive language directed towards a match official. The referee had no option but to send the player off for this offence. The referee asked the player to move away from the touch line which he did. I didn’t see the player spit water at the referee. Most of the people near the incident were Blakeney substitutes and supporters so there were no witnesses from our club apart from myself. After the incident the goal was awarded and the last couple of minutes of injury time were played out without any further issues”.

17. The evidence submitted in defence of the charge consisted of a Statement from Mr. Andrew Rowles (“**Mr. Rowles**”), secretary for Blakeney FC dated 25 August 2021⁵, which stated, *inter alia*:

«At around approximately the 85th minute of the match, one of the Blakeney FC players was threw on goal, they scored but the net hadn’t been pegged down. At first, the referee, Steve Ryan, signalled for a goal kick, then Lewis Fraser-Holland told the

⁴ P. 8 of the case bundle.

⁵ PP. 12-13 of the case bundle.

*referee to “F*** off” and said the ball went in the goal. Lewis was not the player who scored the goal, he was the closest player to the referee.*

The referee sent Lewis off the pitch and rightly so if he had used inappropriate language towards him. After being sent off the pitch, Lewis was stood directly behind me (on the side line) having a drink from the water bottle when the referee approached him and told him he had to leave the field completely. With that, Lewis put his water bottle down, went to the changing rooms to get changes and left the venue to go home. Lewis left the venue completely before the match had even concluded. At the same time, the situation got heated and Ryan Smith (Blakeney FC Captain) was booked after trying to discuss the situation with the referee.

The referee then spoke to the linesman regarding the goal and changed his decision to award the goal.

After the match, the referee spoke to me directly regarding the situation and said “I’m going to throw the book at him and make sure he gets at least a season long ban”, referring to Lewis. I responded to the referee to say that in my opinion this comment was petty as I believe Lewis only swore at the referee, nothing else. I agree with the decision to send Lewis off the pitch for swearing if this was the case, I was out of earshot on the side line so can not 100% confirm this.

After hearing that he will be getting at least a season long ban, Lewis has given up football completely even though his sanction has not yet been decided [...]».

V. THE STANDARD OF PROOF

18. The Disciplinary Regulations are foreseen in Section 11 of The FA Handbook 2021/2022.

19. Under the title “General Provisions” Part A of Section 11 sets out in Section One the provisions applicable to All Panels and in Section Two the provisions applicable to Regulatory Commissions.

20. Paragraph 8 of the above mentioned “General Provisions” states that *[s]ave where otherwise stated, the applicable standard of proof shall be the civil standard of the balance of probabilities.*

21. Therefore, the applicable standard of proof required for this case is the civil standard of 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.

VI. FINDINGS & DECISION

A. GENERAL CONSIDERATIONS

22. The Commission reminded itself that the burden of proving a charge falls upon the GFA.

23. In a Commission such as this, the assessment of the evidence is entirely a matter for the Chair sitting alone to consider. I have to assess the credibility of the witness (that is whether a 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).

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

25. In assessing liability, the Commission was mindful of the issues to be determined in the present case. The issues were whether the Commission was satisfied to the requisite standard that the evidence before it proved that Mr. Frazer-Holland conduct constituted:

- a) Assault or Attempted Assault on a Match Official for the purposes of Charge 1; and, in the alternative, if not proven
- b) Improper Conduct against a Match Official (including physical contact or attempted physical contact and threatening and/or abusive language/behaviour), for the purposed of Alternate Charge 1.

26. The appropriate test is an objective one, commonly known as the "reasonable observer" test. In other words, the Commission was to consider how a reasonable observer would

perceive the words used in the given context. The objective person would be someone of reasonable fortitude.

B. FINDINGS ON MR. FRAZER-HOLLAND'S CASE – CHARGE 1

27. In the present case the allegation was that Mr. Frazer-Holland, the Participant and a player for Blakeney FC, used violent conduct and/or threatening and/or abusive and/or indecent and/or insulting language contrary to FA Rule E3.1. And it is further alleged that it constituted Assault or Physical Contact or Attempted Physical contact Against a Match Official as defined in FA Regulations.
28. According to the evidence provided to the Commission the allegation was that Mr. Frazer-Holland directed improper language and gestures and spat water at the Match Official Mr. Ryan following the player's dismissal from the field of play.
29. The terms "*assault*" and "*attempted assault*" are defined in the FA Handbook 2021/2022 as *acting in a manner which causes or attempts to cause injury to the Match Official (whether or not it does in fact cause injury)*. It then provides some examples of what can constitute assault or attempted assault: *examples include, but are not limited to, causing and/or attempting to cause injury by spitting (whether it connects or not), causing and/or attempting to cause injury by striking, or attempting to strike, kicking or attempting to kick, butting or attempting to butt, barging or attempting to barge, kicking or throwing any item directly at the Match Official.*
30. The Commission took due note of the evidence adduced either by GFA and Mr. Frazer-Holland. Although the Commission was grateful for the evidence within the case bundle, the Commission also felt that, considering that the game was paused and the incident happened in a location where more witness should be standing, more evidence could presumably be presented. However, it is the duty of the Commission to decide the present charge considering the available evidence.
31. The Commission noted the inconsistencies between Mr. Ryan's and Mr. Wilce's reports. Although both coincide in that Mr. Frazer-Holland used foul and abusive language, Mr. Wilce could not state what was said by Mr. Frazer-Holland, whereas Mr. Ryan pointed out a number of expletives said by Mr. Frazer-Holland along with abusive gestures

namely "*sticking up his middle finger*", which Mr. Wilce apparently did not see, according to his report as reproduced above at paragraph 16(b). The Commission found this particular important as Mr. Wilce would have been looking to the incident as it unfolded, as he described Mr. Frazer-Holland approaching Mr. Ryan and questioning him in relation to the goal decision and then moving away from the touchline after being asked to by Mr. Ryan, as a consequence of being sent off. The Commission was, therefore, satisfied that Mr. Wilce witness the incident in its full plenitude and that he did not witness Mr. Frazer-Holland spitting water at the referee.

32. The Commission also noted that Mr Rowles' statement goes in line with that of Mr. Wilce's as he witnessed the initial verbal confrontation between Mr. Frazer-Holland and Mr. Ryan where, according to Mr. Rowles' statement, Mr. Frazer-Holland told Mr. Ryan to "*fuck off*". Mr. Rowles then proceeds to state that after being sent off Mr. Frazer-Holland "*stood directly behind me (on the side line) having a drink from the water bottle when the referee approached him and told him he had to leave the field completely. With that, Lewis put his water bottle down, went to the changing rooms to get changes and left the venue to go home.*" Once again, the Commission wished to emphasize, there was no mention of water being spat.
33. The Commission considered both Mr. Wilce and Mr. Rowles to be credible and reliable witnesses. As to Mr. Wilce, the Commission did put considerable weight on his report. Mr. Wilce, as a referee, has the responsibility to protect the integrity of the Game through his authority on the pitch while maintaining an independent and impartial stance towards both set of teams, and the Commission had no reasons why not to believe in his account of the incident.
34. Therefore, the Commission found, on the balance, that Mr. Frazer-Holland did not spit water at the Match Official Mr. Ryan.
35. As a result of the aforementioned, the Commission found, on the balance of probabilities, Charge 1 not proven.

C. FINDINGS ON MR. FRAZER-HOLLAND'S CASE – ALTERNATE CHARGE 1

36. The Commission would like to reproduce here what was said above at paragraphs 28 and 30 to 36 of these Reasons.
37. The Commission reminded itself that apart from Charge 1, Alternate Charge 1 was also issued against Mr. Frazer-Holland.
38. An alternate charge is where an individual has been reported for a matter of Misconduct and the County can raise an alternate charge (second charge) which is a lesser charge. If the individual can successfully deny the higher charge, *i.e* the Commission finds the charge not proven or the individual is acquitted on formal and/or procedural defects, the alternate charge (lesser) is then considered and depending on the Participant's response, the outcome is decided. The alternate charge will only be considered however if a Commission find that the main charge is not proven.
39. As the Commission found Charge 1 not proven it then proceeded to consider Alternate Charge 1.
40. The terms "*physical contact*" or "*attempted physical contact*" are defined in the FA Handbook 2021/2022 as *physical actions (or attempted actions) that are unlikely to cause injury to the Match Official but are nevertheless confrontational, examples include but are not limited to: pushing the Match Official or pulling the Match Official (or their clothing or equipment).*
41. The term "*threatening behaviour*" is defined in the FA Handbook 2021/2022 as *words or action that cause the Match Official to believe that they are being threatened.* It then proceeds to exemplify what can constitute threatening behaviour: *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.* It is the Commission literal interpretation that the definition entails a subjective test. The Commission when considering such language and/or behaviour must assess, if not expressly stated, if the Match Official felt threatened by the language and/or behaviour of any given participant. Although it is the opinion of the Commission, according to the definition's wording, that threatening behaviour will be anything that reasonably makes a Match Official to feel threatened, the Commission also considers

that in the interests of achieving a just and fair result it should not be given a broad sense to it but rather a strict sense, otherwise even a non-threatening language and/or behaviour, as perceived by a an objective person with a reasonable fortitude, would fall within the definition if a Match Official said he felt threatened by it, which ultimately would be unfair. Therefore, the Commission relied on the teleological interpretation of the definition, *i.e* the effect that the definition is intended to achieve or, in other words, what type of language and/or behaviour the definition intends to encompass, thus considering that the assessment of a threatening language and/or behaviour should be analysed on a case-by-case basis with an appropriate weight being given to the Match Official's perception of the language and/or behaviour and by considering the examples given in paragraph 96.1 of the FA Handbook.

42. The term "abusive" is not strictly defined by the Regulations, therefore the Commission considers that it should be given their ordinary meaning. The ordinary meaning of abusive language generally refers to offensive and insulting words directed at another person.
43. The Commission when comparing both Mr. Ryan's and Mr. Wilce's versions of the events found the former's to be somewhat of an exaggerated version, especially when compared to the latter. The Commission was not entirely convinced by Mr. Ryan's report, particularly because it did not find credible that an individual would stick his middle finger up all the way until he exited the pitch while, at the same time, directing several foul and abusive comments to Mr. Ryan. Even the fittest individual would get tired or bored to have his middle finger up during so much time. Adding to this, it would be expected that someone would witness Mr. Frazer-Holland's gesture of sticking his middle finger up if he did it for so long, and that was not the case as neither the Assistant Referee Mr. Wilce nor Mr. Rowles saw it.
44. Nonetheless, the Commission noted that all the witnesses heard Mr. Frazer-Holland expressing foul and abusive language at the Match Official Mr. Ryan. It should be noted that even Mr. Rowles, a secretary for Blakeney FC, agreed with the Match Official Mr. Ryan's decision of sending off Mr. Frazer-Holland for using improper language, Mr. Rowles specifically referred to the words "*fuck off*". Furthermore, besides expressing foul and abuse language, Mr. Ryan stated that Mr. Frazer-Holland refused to give his

name which was not a proper behaviour to have. The Commission took into account the circumstances of the incident, *i.e* the fact that Mr. Frazer-Holland thought that his team goal was going to be disallowed, which surely contributed to his demeanour and, therefore, was satisfied that Mr. Frazer-Holland had an abusive language and behaviour towards the Match Official Mr. Ryan.

45. Therefore, the Commission found, on the balance, that it was more likely than not that Mr. Frazer-Holland had directed abusive language at the Match Official Mr. Ryan and refused to give his name to the latter upon request, which the Commission considered to be improper and for that reason contrary to FA Rule E3.1 (Improper Conduct against a Match Official (including Abusive Language/Behaviour)).

46. As a result of the aforementioned, the Commission found, on the balance of probabilities, Alternative Charge 1 proven.

VII. SANCTION

47. The Commission was guided by the FA Sanction Guidelines for the 2021/2022 season and relevant FA regulation when deciding on the sanction.

48. The Commission was informed about Mr. Frazer-Holland disciplinary history⁶:

⇒ 2021/2022 Season:

- Suspended for 2 matches and fined £45.00 for Using Offensive, Insulting or Abusive Language and/or Gestures.

⇒ 2020/2021 Season:

- Cautioned for Unsporting Behaviour – Foul Tackle.

49. With respect to aggravating factors, the Commission considered that the only aggravating factors to consider was the persistent denial of Mr. Frazer-Holland in giving his name to the referee alongside with the foul and abusive language used by him. Although the recipient of Mr. Frazer-Holland's language and behaviour was the Match Official, which constitute itself an aggravating factor, it is already reflected on the

⁶ Unless specified otherwise all offences relate to Non-Step competition.

sanctions to be imposed as per the recommended sanction guidelines. For this reason, this fact should not be taken into account for the purpose of aggravating the sanction.

50. In relation to mitigating factors, the Commission considered Mr. Frazer-Holland disciplinary record as reproduced above at paragraph 48 of these Reasons which only showed a proven standard charge for an offense committed in the same game.

51. Mr. Frazer-Holland denied the charge, as is his right to do so. However, he could not avail himself to any credit as a result.

52. Having considered all the circumstances in the case, the sanction guidelines and the aggravating and mitigating factors present, the Commission felt that this case fell within the Mid Category and imposed the following sanction:

53. **CHARGE 1:** As the Commission found Charge 1 not proven there is no sanction to be imposed in this regard.

54. **ALTERNATE CHARGE 1**

- a) A 3-match suspension;
- b) A £50 fine;
- c) A Warning as to future conduct; and
- d) 5 Club Disciplinary Points.

VIII. RIGHT TO APPEAL

55. This decision is subject to the right of appeal under the relevant FA rules and Regulations.

André Duarte Costa (Chair sitting alone)

26 August 2021