

**IN THE MATTER OF THE FOOTBALL ASSOCIATION
DISCIPLINARY COMMISSION
CHAIR ALONE NON – PERSONAL HEARING**

**GLOUCESTERSHIRE FA
(on behalf of the Football Association)**

and

RICHARD GAINEY

DECISION AND WRITTEN REASONS

Preliminary Matters

1. These are the written reasons for the decision and sanction in relation to a non-personal hearing on 12 September 2022 following charges brought by Gloucestershire FA against Richard Gainey (Case ID: 10866669M) (“**RG**”).

The Charges

2. RG has been charged by Gloucestershire FA with a breach of:
 - (a) FA Rule 3.1 – Improper Conduct (including foul and abusive language) (“**Charge 1**”); and
 - (b) FA Rule 3.2 - Improper Conduct – aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability (“**Charge 2**”).(collectively, the “**Charges**”).
 - (c) The particulars of the Charges are that RG said the word ‘nigger’.
3. RG has accepted Charge 1 but denied Charge 2. Accordingly, the Chair shall consider whether liability is proven for Charge 2 on the balance of probabilities based on the documentary evidence before him.

The Evidence

4. This matter relates to a fixture between PAFC and Bristol City which took place on 26 July 2022.
5. The relevant factual background herein is a summary of the principal submissions provided to the Chair. 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 particular point, or submission, should not imply that the Chair did not take such point, or submission, into

consideration when he determined the matter. For the avoidance of doubt, the Chair has carefully considered all the evidence and materials furnished in this case.

6. The Chair has before him the following evidence:

6.1 Complaint by Darren Green (by email) dated 9 August 2022, which can be summarised as follows:

(a) During the break, the 3 match officials were talking and a player from Plymouth was in the area when he heard a racist comment from one of the match officials towards the other 2 officials. The individual in question was not identified but the other officials said that the comment was inappropriate.

(b) The individual in question said something like 'I tan like a nigger' when they were talking about the heat and sun.

6.2 Statement of RG dated 13 August 2022, which states as follows:

"On Tuesday the 26/07/2022 I was asked if I could go and run the line at Bristol City Training Ground, 7-00 KO, at half time I meet in the centre circle with the referee and the other assistant, after talking about the first half, I was asked by the referee if I wanted some suntan cream, I said what, and he repeated again, I asked him why, he replied your really brown, I replied it's the nigger blood in me, sorry I mean black blood, these are the words I used, there was no other person around it was said by me to the referee, there was no malice in it or directed at any person its was about my self, I apologise for using the word or causing offence, I have been refereeing for 44 years and this is my first mistake."

6.3 Submission by RG in response to Charges:

"To who it may concern, I plead not guilty to the Rule E3.2, I did not say the N word to any individual or any group/person, this was directed at me by me, it was an answer to the comment the referee made about me being very brown [...]"

Decision on Liability

7. As RG has denied Charge 2, the Chair took into consideration all of the evidence before him in considering whether Charge 2 was proven.

8. The burden of proof is borne by Gloucestershire FA that the Charges are proven on *the balance of probability*.

9. Put simply, this means that the Chair should be satisfied that it was more likely than not that JS used foul and abusive language aggravated by a person's race when he said the word 'nigger'.

10. The Chair having considered all of the evidence before him has found that Charge 2 is **proven** on the balance of probabilities.

11. The reason for the Chair reaching this decision are as follows:

12. It is important to keep in mind the FA Rules relating to Misconduct, which form the basis of the Charges.

13. 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."* (emphasis added)

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."* (emphasis added).

14. In this case, RG has admitted in his witness statement that he said the word 'nigger' in conversation with another Match Official relating to the use of sunscreen. RG's defence is framed that the comment was actually self-deprecating and not aimed at anyone but himself.
15. However, the Chair considers that a comment of this nature does not necessarily have to be directed at someone for the Charges to be proven. It is sufficient for the Charges to be proven if a racist word such as 'nigger' is used, in whatever context as it is an indecent and insulting word by reference to race. The Chair also notes that the comment was made during a conversation with another Match Official, and objectively speaking, the word used was likely to offend that person during the conversation in question.
16. It is clear from the evidence provided that RG used a racist word. Accordingly, the Charges are proven.

Decision on Sanction

17. As the Chair found Charge 2 proven, the Chair considered the appropriate sanction to impose.
18. In accordance with the FA Sanctioning Guidelines 2022/23, the Chair can impose a match-based suspension of between 6 – 12 matches, along with a mandatory education course. A fine is also at the discretion of the Commission.
19. It is at the Chair's discretion to vary a sanction where there are aggravating or mitigating factors present for the participants.
20. The Chair consulted RG's previous disciplinary history and noted that prior to this incident, RG did not have any previous proven misconduct charges.
21. The Chair considered that in this case, the clean disciplinary history should be credited in mitigation, along with the early acceptance of Charge 1 as mitigating factors.
22. Therefore, the Chair imposed the following sanction on RG:
 - (a) A 42 day based suspension (equivalent to a six (6) match suspension));
 - (b) An education programme to be undertaken virtually by the end of the suspension period.
23. There is a right of appeal against this decision in accordance with the relevant provisions set out in the rules and regulations of the Football Association.

Elliott Kenton
National Serious Case Panel Chair
12 September 2022