

FA NATIONAL SERIOUS CASE PANEL

DISCIPLINARY COMMISSION

CHAIR PERSON SITTING ALONE

Sitting on behalf of Gloucestershire County Football Association

CORRESPONDENCE HEARING

of

WAYNE O'SHEA

[Case ID: 10660197M]

THE DECISION AND REASONS OF THE COMMISSION

Warning – this report contains foul and abusive language.

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Introduction

1. On 9th January 2022 Cheltenham CS Youth U16 Yellows played Bishops Cleeve Colts Youth U16 Colts in a Cheltenham Youth League U16 Division One fixture, collectively called the “match”.
2. Gloucestershire County Football Association (“Gloucester FA”) received a report of an allegation of threatening behaviour against the Match Official following the match.
3. Gloucestershire FA investigated the reported incident.

The Charge

4. On 12th January 2022 Gloucestershire FA charged Wayne O'Shea (“the Participant”) as a Club Official of Cheltenham CS Youth:

With misconduct for a breach of FA Rule E3.1 – Improper conduct against a Match Official including threatening and/or abusive language/behaviour.

It was alleged that the Participant continued improper conduct towards the Referee during and after the match. Contrary to FA Rule E3.1.

5. The relevant section of FA Rule E3.1 states: ¹

E3.1 A Participant shall at all times act in the best interests of the game and shall not act

¹ Page 124 of the FA Handbook 2021/2022

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.

6. Gloucestershire FA included with the charge letter the evidence that it intended to rely on in this case.
7. The Club was required to respond to its charge by 26th January 2022.

The Reply

8. The reply from the Club was received on 15th January 2022 and was “*Accept – Correspondence*”.

The Commission

9. The Football Association (“The FA”) appointed me, Ian R. Stephenson, as a Chair Person Member of the Football Association National Serious Case Panel, to this Discipline Commission, as the Chair Person Sitting Alone to adjudicate in this case.

The Hearing & Evidence

10. I adjudicated this case on 22nd January 2022 as a Correspondence Hearing (“the Hearing”).
11. I had received and read the bundle of documents prior to the Hearing.
12. The following is a summary of the principal submissions provided to me. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or submission, should not imply that I did not take such point, or submission, into consideration when I determined the matter. For the avoidance of doubt, I have carefully considered all of the evidence and materials furnished with regard to this case.
13. The following evidence was provided in the case bundle:

An extraordinary report submitted by James West, dated 9th January 2022.

James West was the Referee on the fixture. He states, and I quote:

“After I dismissed Declan O’Shea for a second caution, Wayne O’Shea stepped onto the pitch and said ‘Fuck off, you’re a fucking bully ref’ and then said ‘you’re a fucking joke ref’. I proceeded to dismiss Wayne O’Shea for using offensive, insulting or abusive language and/or gestures.

After I had dismissed Wayne O’Shea for using offensive, insulting or abusive language and/or gestures he then proceeded to say ‘you’re a fucking bully ref, every game, you’re a fucking joke’. Wayne O’Shea then proceeded to say ‘I’ll see you over there after the game ref’ and pointed to an empty area of the field. I can only assume this was said as a threat of physical violence. I then have had to ask Wayne O’Shea to leave the pitch 3 times before he did. As he

walked off, he put his middle finger up at me and shouted that 'I'm a fucking joke'. After the game, I was walking back towards the car park and Wayne O'Shea was walking in front of me. He then stopped walking, so that I would walk past him. Once I had walked past him, he closely walked behind me back towards the car park. Although he didn't say anything to me, I can only assume he was walking so close behind me in an attempt to further intimidate me".

14. An apparent email, no date or time, from Paul White on behalf of Civil Service Committee, which states, and I quote:

" Hi All

Please see Civil Service Committee's actions to Wayne's behaviour at our under 16's match below.

I have been in contact with the ref James and apologised and told him we would be taking action and hopefully it would not put him off doing future games at the Civil Service.

He was very understanding that we would not tolerate this and said he was fine with future games".....

From Civil Service Committee

Firstly as a club we would like to apologise to the referee and the league for the unacceptable behaviour at our U16 match on Sunday. Our Committee has urgently discussed this incident yesterday and the action we will be taking is as follows.

We will be removing Wayne from any involvement with the club both on Saturday and Sunday football until the end of this season. Any involvement in the club after this time will be reliant on any change in Wayne's Behaviour and taking courses provided by the GFA. He will not be asked to be involved if these conditions are not met and even then we might not wish to appoint him in any position.

We will also advise that he does not spectate at any games for the rest of the season, although you will appreciate how difficult this can be to police especially on away grounds. I expect any GFA suspension may help in this matter. If there is any repeat of this behaviour then we will seek to get Wayne banned by the Civil Service Club from the grounds. We hope this meets the league approval and can assure you we do not accept this kind of behaviour.

Our Chairman will be happy to discuss with you if you have anything else or any questions".

15. That concluded relevant evidence in this case.

Standard of Proof

16. The applicable standard of proof required for this case is the civil standard of the balance of probability. This standard means, I would be satisfied that an event occurred if I considered that, on the evidence, it was more likely than not to have happened.

The Findings & Decision

17. The Commission reminded itself that the burden of proving a charge falls upon the County FA, in this case the Gloucestershire FA.
18. In a Commission such as this, the assessment of the evidence is entirely a matter for the Commission. I have to assess the credibility of the witness, (that is whether the 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.
19. Where there are discrepancies between witnesses, it is for the Commission to accept 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 the Commission to assess if the discrepancy is important. Having considered which evidence to accept and which to reject, the Commission then has to decide if, on the balance of probabilities, the alleged breach of the FA Rules is established.²
20. It should be noted that where direct speech is quoted in a witness statement, I have recorded it exactly in the wording and grammar in which it appears in the witness statement, without making any grammatical or typing alterations to obvious typo errors.
21. In summary, it was alleged that the Participant continued improper conduct against the Referee during and after the match.
22. The Commission considered all of the evidence presented in the case bundle and the case is summarised as follows:
 - i. The referee alleged that the Participant was dismissed for using foul and abusive language against him. Having dismissed the Participant the referee states that he said to him *"you're a fucking bully ref, every game, you're a fucking joke"*.
 - ii. The language used against the referee is clearly foul and abusive.

Further, the referee alleges that the Participant then said *"I'll see you over there after the game ref and pointed to an empty area of the field. I can only assume this was said as a threat of physical violence. I then had to ask Wayne O'Shea to leave the side of the pitch 3 times before he did. As I walked off, he put his middle finger up at me and shouted that I'm a 'fucking joke'".*
 - iii. The Commission considers the words used by the Participant to the referee were threatening as defined in FA Regulation 96.1 (Threatening behaviour).³
 - iv. After the game the referee was walking back towards the car park when he saw the Participant walking in front of him. The referee alleges that the Participant stopped walking so that he had to walk past him. The referee further alleges that the Participant then walked closely behind him back towards the car park but says that the Participant

² Paragraph 16 page 4

³ Paragraph 96.1 of the FA Handbook 2021/2022

did not say anything to him. He “*assumed*” that the Participant was walking so close behind him in an attempt to further intimidate him.

v. From the evidence placed before the Commission it is difficult to determine whether the Participant’s actions of walking behind the referee “*so close*” are a continuation of his earlier threatening behaviour as it is not known how close he was walking behind the referee and because the referee “*assumed*” that his actions were meant to further intimidate him. For this reason the Commission has not considered this part of the evidence to constitute a continuance of the Participant’s earlier threatening behaviour.

vi. The Club have accepted the charge.

23. Therefore, after careful consideration of all of the evidence I found that it was more likely than not that the Participant did use threatening and abusive language and behaviour towards the Match Official and therefore found the E3.1 Charge⁴ is PROVEN.

Previous Disciplinary Record

24. After finding the charge proven I sought the offence history of the Participant and found the following misconduct findings against his name in the previous five Seasons;

- i. 08/12/2018 Improper Conduct (including threatening and / or abusive language behaviour). He received a 2 match suspension and a fine of £45.00.
- ii. 03/12/2016 Improper Conduct against a Match Official (including abusive language / behaviour). He received a 3 match suspension and a £30.00 fine.

Mitigation

25. No formal mitigation was presented by the Club. The Commission has considered the following to be matters of mitigation when determining the appropriate sanction to be imposed in this case however:

- i. The Club have accepted the charge.
- ii. The Club have apologised to the referee and informed him that they will be taking their own action against the Participant, ensuring that he has no further involvement at the Club on either a Saturday or Sunday for the remainder of the season.
- iii. The Club are to ask the Participant not to spectate at any further games for the remainder of the season.

The Sanction

⁴ Paragraph 4 Page 2

26. In a case of Improper Conduct (Threatening Behaviour) the Commission must apply the relevant Disciplinary Regulations.⁵

27. Categories of Offences against Match Officials are defined in the FA Handbook 2021/2022.

In this case the Commission is satisfied that the threat made to the referee was a threat of potential physical abuse or violence against the referee, and it was understandable, considering the circumstances under which the threat was made, that the referee may well feel that the Participant may carry out the threat immediately, or soon after the match taking into account the exact words that were used.⁶

28. The Commission noted that the Sanction Guideline for the E3.1 Offence is a suspension from all football activities for a period of between 56 days and 182 days. The recommended entry point, prior to considering any mitigation or aggravating factors, is 112 days, together with a fine up to £100.00, with a mandatory minimum of £50.00, together with an order that the Participant must complete an education programme before the time-based suspension is served.

29. In determining sanction, the Commission finds aggravating factors in this case, namely:

- i. The Participant was an Official of the Club. He is recorded as being the Assistant Manager of the team.
- ii. The Participant displayed a continuing course of improper conduct towards the referee, it was not just one allegation of a solitary act. He initially failed to leave the pitch and had to be asked to do so on three occasions by the referee. He continued to use foul and abusive language towards the referee after he had been dismissed and after he had made the threat detailed in these reasons. He also made an obscene gesture towards the referee prior to leaving the pitch.
- iii. This improper conduct, carried out by the Assistant Manager of the team, played out in the presence of young persons as this was an Under 16's League fixture.
- iv. The two previous misconduct charges recorded against the Participant during the previous five seasons cannot be overlooked when determining the appropriate sanction.

30. After taking into account all of the evidence presented in this case, and after careful consideration of the identified aspects of the mitigation, and the aggravating factors identified, the Commission applies the following sanction:

Wayne O'Shea is:

- i. Suspended from all football activities for a period of 126 days. This includes a ground /venue ban.

⁵ Paragraph 101.1 – 101.3 & 102 on page 195 of the FA Handbook 2021/2022.

⁶ Paragraph 96.1 on Page 194 of the FA Handbook 2021/2022

- ii. A Monetary fine of £75.00 (Seventy five Pounds) is imposed.
- iii. He must attend an ONLINE Education programme. This must be undertaken before the time-based suspension is served. Failure to comply with this order will result in a *Sine-Die* suspension being issued against the Participant until he has fulfilled this order in its entirety.
- iv. 7 Club Disciplinary Points to be recorded against the Club.

31. The sanction is formally imposed.

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

Signed: *Ian R Stephenson*

FA National Serious Case Panel Chair

22nd January 2022.

