

THE FA DISCIPLINARY COMMISSION

On behalf of Gloucestershire County Football Association Limited

NON-PERSONAL HEARING - Chair alone

OF

Joshua Higgs [59301311]

THE DECISION AND REASONS OF THE COMMISSION

CASE ID: 10104316M

6 February 2020

THE COMMISSION

1. Evans Amoah - Nyamekye – Chair

SUMMARY OF DECISION

The Commission found charge 1 of breaches of FA Rule E3 Improper Conduct against a Match Official (*including physical contact and threatening and/or abusive language/behaviour*) was **proved** against Joshua Higgs.

After having considered the seriousness of the incident, Joshua Higgs disciplinary record, the mitigating and aggravating factors, the guidelines sanctions under FA Rule E3 and the Disciplinary Sanctions Guidelines issued by the FA, the Commission decided not to increase the sanction outside the threshold.

Accordingly, the Commission imposed a 182 days suspension backdated from the start of the interim suspension. The Commission also imposed a fine of £100. Joshua Higgs was warned as to future conduct.

The Commission also imposed 10 disciplinary points on the club.

The reasons for the decision are stated in full below.

INTRODUCTION

1. On 11 January 2020, a match between Barnwood United First V Newent Town Reserves took place.
2. It is alleged that Joshua Higgs against a match official used Improper Conduct (*including physical contact and threatening and/or abusive language/behaviour*) towards the match referee, Gary Norris.
3. The case was presented before a Disciplinary Commission appointed by The Football Association ("The FA") as a non-personal hearing, by chair alone.

THE CHARGES

4. The Joshua Higgs faced charges of breaches of FA Rule E3 - Improper Conduct against a Match Official (*including physical contact and threatening and/or abusive language/behaviour*).

THE PLEA

5. Joshua Higgs accepted the allegations. The case was dealt with as a guilty plea and dealt with on the papers.

THE FA RULES

The applicable FA Rule E3 states:

GENERAL BEHAVIOUR

6. *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.*

In accordance with The FA Sanction Guidelines, if a Commission find this charge proven, they will be required to decide whether they feel the proven misconduct should be classified as a low, medium or high level of seriousness. When reaching any decision, the Commission will take into account any aggravating or mitigating factors.

OFFENCES AGAINST MATCH OFFICIALS**Categories of Offence**

96 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;

96.2 Physical contact or attempted physical contact: examples include but are not limited to: pushing the Match Official, pulling the Match Official (or their clothing or equipment), barging or kicking the ball at a Match Official (causing no injury) and/or attempting to make physical contact with the Match Official (for example, attempting to strike, kick, butt, barge or kick the ball at the Match Official); and

96.3 Assault: acting in a manner which results in an injury to the Match Official. This includes spitting at the Match Official (whether it connects or not).

THE COMMISSION

7. The following member were appointed to the Disciplinary Commission (“the Commission”) to hear the case:

- 1. Evans Amoah - Nyamekye – Chair alone**

THE HEARING

8. We considered the matter on 6 February 2020.

9. From his response to the charge Joshua Higgs had been provided with all the statements and evidence with which the Commission had been provided. Accordingly, Joshua Higgs had fair notice of the allegation made against him.

10. The following is a record of the salient points which the Commission considered and is not intended to be and should not be taken as a verbatim record of the evidence considered.

11. In advance of the Hearing the Commission had received and read the bundle of documents.

THE COUNTY FA'S CASE

12. In the match referee's report, it states that
'Newent number 7 was sin bined in the first half and received his second yellow in the second half, he then made another bad challenge where I called him over to issue another yellow card and as I reached for the card he said you are a fucking joking and pushed me with his left hand on the right side of my chest. I then went to my pack pocket and issued him with a straight red card.'

ASSESSMENT OF THE MATCH REFEREE'S EVIDENCE

13. The Commission concluded that the match report from Gary Norris was clear. Like many written statements it was unable to be orally vigorously tested by the Commission.
14. The Commission took the view that referee did receive the physical contact from Joshua Higgs when he pushed him with the left hand on the right side of his chest.
15. The Commission accepted the evidence of match referee as trying to be truthful and provide a reliable statement,
16. The Commission noted that the match referees report was corroborated by the plea of guilty.

THE PARTICIPANT'S CASE

ASSESSMENT OF THE STATEMENT / EVIDENCE OF JOSHUA HIGGS

18. There was no formal statement in response to the charge from Joshua Higgs. However there was a statement that described him as a 'really good guy to have around. He works full time, is in a relationship and drives. Always training and pays his match fees and subs. But he is the type of person who will always stand up against injustice, because he cares.
19. The Commission concluded that the statement on behalf of Joshua Higgs's was an attempt to provide background information to the case.
20. The Commission concluded that Joshua Higgs did use the improper conduct as described by the match official.

THE COMMISSION'S CONCLUSIONS

21. The Commission found the charge of breaches of FA Rule E3 assault on match official and improper conduct (including physical contact and threatening and/or abusive language/behaviour) was **proved** against Joshua Higgs.

22. The reasonable inferences which could be drawn are from the circumstances of the case were namely:
 - 22.1. For reasons given above the Commission determined that the match report and the plea of guilty were clear evidence that the charge was proved.

BURDEN OF PROOF

- 22.2. The applicable standard of proof required for this case is the civil standard of the balance of probability, meaning more likely than not.
- 22.3. The Commission took the view that the allegation and the evidence supporting that allegation needed to be tested. The Commission considered the possible innocent use and interpretation of the word and conduct versus any possible misinterpretation.
- 22.4. The Commission considered the context in which the conduct was used, the intent behind the conduct used and gave consideration to all the circumstances surrounding the use of the comments whilst considering the effect of the comments used.

OUR FINDINGS OF FACT

23. On the balance of the burden required, The Commission are satisfied to make the following findings of fact that:
- 23.1. On 11 January 2020, a match between Barnwood United First V Newent Town Reserves took place.
- 23.2. The Commission concluded that Joshua Higgs did use improper conduct as described in the match referees report '*pushing in his chest*'.
- 23.3. The Commission concluded that Joshua Higgs did use physical contact, threatening or abusive behaviour towards a match official.
- 23.4. The Commission found that the E3 charges –Improper Conduct 'against a match official (*including physical contact and threatening and/or abusive language/behaviour*) **PROVED** against Joshua Higgs.

THE DECISION

24. Having read the evidence, the assessment of the evidence is entirely a matter for the Commission members.
25. The Commission has to assess the reliability of the witness (*that is whether, even although a witness may be attempting to tell the truth their evidence might not be relied upon for differing reasons*) and the credibility of a witness (*that is whether a witness is attempting to tell the truth*). Of course such an assessment is difficult to make if the evidence being considered is in written form.
26. Ultimately it is for the Commission to accept or reject each piece of evidence we are considering. Even where there are discrepancies between witnesses or within a witness's own evidence, it is for us to assess if the discrepancies are important and leads assistance to the determination of the balance of probabilities.
27. Having decided which evidence we accept and rejected; we then have to decide on the balance of probabilities if the alleged breach of the FA Rule is established.
28. The Commission considered all of the evidence provided.

SANCTION

29. After having considered the seriousness of the incident as medium -low, Joshua Higgs disciplinary record, the mitigating and aggravating factors, the guidelines sanctions under FA Rule E3 and the Disciplinary Sanctions Guidelines issued by the FA, the Commission decided not to increase the sanction outside the threshold.
30. Accordingly, the Commission imposed a 182 days suspension backdated from the start of the interim suspension. The Commission also imposed a fine of £100. Joshua Higgs was warned as to future conduct.
31. The Commission also imposed 10 disciplinary points on the club.

CONCLUSION

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

Signed The Commission:

THE COMMISSION

1. Evans Amoah - Nyamekye – Chair alone

6 February 2020

