

DISCIPLINARY COMMISSION

Sitting on behalf of the Norfolk County Football Association

IN THE MATTER OF A NON-PERSONAL HEARING

of

MR MODESTAS KIVYTA OF COBHOLM FC

THE COMMISSION'S DECISION AND REASONS

BACKGROUND & HEARING

1. The Disciplinary Commission ("the Commission") convened via WebEx video conference on Thursday, 7 February 2019 by way of a non-personal hearing. The Commission adjudicated in respect of charges brought by Norfolk County FA against Modestas Kivyta as the result of alleged misconduct in a match between AC Mill Lane Reserves and Cobholm on Saturday, 5 January 2019.

THE COMMISSION

2. The Members appointed to the Commission were:

- i) John Turner (Council Member of Norfolk County FA)
- ii) Raffi Coverdale (Independent Member)
- iii) Paul Ballard (Council Member of Norfolk County FA)

3. Matt Lemmon (Norfolk County FA) assisted the Commission as Secretary.

THE CHARGE(S)

4. Norfolk County FA charged Modestas Kivyta as follows:

Breach of FA Rule E3 – Improper Conduct against a Match Official (including threatening and/or abusive behaviour).

5. The particulars of the charge against Modestas Kivyta are that it was alleged that after being sent off he said to the referee "I will punch you in the face and broke [sic] your nose you fucking cunt". It is further alleged that he had to be asked by the referee to leave the vicinity of the field of play, to which he replied with "you fucking cunt" and "come on then, fucking cunt, I will punch you."

THE REPLY

6. Modestas Kivyta accepted the charge and confirmed he was content for the matter to be heard in his absence by correspondence.

THE RULES

7. Pursuant to The FA Handbook 2018-19 Season, FA Rule E3(1) provides as follows :- “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.”

THE BURDEN AND STANDARD OF PROOF

8. In this instance the burden of proof is on the County. The applicable standard of proof is the civil standard of the balance of probability. The balance of probability standard means that the Commission is satisfied an event was more likely than not. Therefore, if the evidence is such that the Commission can say “we find it more probable than not” the burden is discharged, but if the probabilities are equal it is not.

THE EVIDENCE

9. The following is a summary of the principal evidence and submissions provided to the Commission. It does not purport to contain reference to all the evidence and submissions; however, the absence in these reasons of any particular point, evidence or submission, should not imply that the Commission did not take such point, evidence or submission 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.

10. The documents before the Commission comprised of:

- i) The referee’s report dated 6 January 2019.
- ii) A screenshot confirming that Modestas Kivyta had accepted the charge.
- iii) Copies of emails between Matt Lemmon of Norfolk County FA and Tammy Hughes, Secretary of Cobholm dated 29 January and 6 February chasing the Club for any written response that may be provided.

11. The referee’s report indicated that *‘everything start when the flag man (ac mill lane) call a off side and I call it, and I ear Modestas Kivyta call to linesman a stupid idiot, I call this player and I reach my poket to get a red car and Modestas Kivyta said to me strai away I will punch you in the face and broke your nose you fucking cunt. When I saw him left and walking to the changing rooms I give a signal for we can start the game. After 2 or 3 minutes, the ball went out near of ac mill lane subs and the manager, I saw Modestas Kivyta, near of ac mill lane linesman, I stop the game and approach the line and invite the player to leave and walk away, he start again call me You Fucking Cunt, I stand my ground and invite him to go away, and he start walk to me and saying Come on them, fucking cunt, I will punch you, and I saw one of ac mill lane players invite him to go away and he did...and after 10m I finish the game and the Cobholm Manager come near of me to say sorry about his player....I was a little scare when he approach me near of the line and I was expecting him to puch me and I’m glad he didn’t...’[sic]*

12. In response to the charge the case had been accepted on the Whole Game System and, despite two emails from Matt Lemmon to Tammy Hughes, no further submissions had been received.

FINDINGS

13. The Commission studied the evidence very carefully, being conscious of the burden and standard of proof. The Members noted that Modestas Kivyta had responded by accepting the charge and considered that the referee had submitted a full and detailed report based on what he had witnessed on the day.

14. The Commission Members reminded themselves that for the charge to be proven, on the balance of probabilities, the following questions had to be taken into consideration, namely:

- i) Did Modestas Kivyta act as reported by the referee?
- ii) Did this conduct amount to a breach of FA Rule E3?

15. The Commission considered the alleged actions of Modestas Kivyta and noted that he had accepted the charge in its entirety and had not submitted any written response to the charge.

The Commission further considered the report submitted by the referee and found this to be a clear account of the allegations.

For these reasons, the Commission found it more likely than not that Modestas Kivyta did commit the threatening action alleged by the referee.

16. In summary, the Commission unanimously found the charge against Modestas Kivyta to be proved.

PREVIOUS DISCIPLINARY RECORD

17. The Secretary advised the Commission that Modestas Kivyta had no previous misconduct charges on his record. The Commission noted that Modestas Kivyta had been sent off in this match for the language that he used towards the AC Mill Lane Assistant Referee.

SANCTION

18. The Commission carefully considered all the relevant FA Rules and the Sanction Guidelines issued by The FA.

19. The Commission found this to be an unacceptable action causing the referee to feel threatened.

20. The Commission noted that the recommended sanction for a proven offence is a 112 day / 12 match suspension and up to a £100 fine, with a minimum sanction of 56 days / 6 matches and a £50 fine.

21. In considering the sanction to impose, the Commission took into account the full nature of the incident which included Modestas Kivyta making a threat towards the referee on more than one occasion.

22. The Commission also considered the previous good record of Modestas Kivyta and the fact that the charge had been accepted.

23. Taking all of the circumstances into account and remembering the recommended sanction guideline for this offence, the Commission unanimously decided to impose the following sanction:

- i) Modestas Kivyta is suspended from all football activity for 12 matches.
- ii) Modestas Kivyta is fined the sum of £75.
- iii) Modestas Kivyta is warned as to his future conduct
- iv) Cobholm FC receive seven penalty points on their Club disciplinary record.

APPEAL

24. This decision is subject to appeal in accordance with the relevant FA Appeal Regulations.

John Turner (Chair)
Raffi Coverdale
Paul Ballard

7 February 2019