

# FA NATIONAL SERIOUS CASES DISCIPLINARY COMMISSION

The Football Association on behalf of

OXFORDSHIRE FA

v

JOSH DAVIES (61602594)

Case ID: 11587102M

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## WRITTEN REASONS

### FACTUAL TIMELINE AND CHRONOLOGY

1. These are the Reasons for the decision of the Disciplinary Commission which was heard by a CFA National Serious Cases Commission at 6-30 pm on Friday 10<sup>th</sup> April 2024.
2. The Commission consisted of Keith Allen (CFA National Serious Cases Chairs Panel) Chair, Christine Harrop-Griffiths (CFA National Serious Cases Panel) and Minesh Gupta (CFA National Serious Cases Panel).
3. The Secretary to the Commission was Oliver Ellery (CFA National Panel Secretary).
4. The following is a record of the main points which the Discipline Commission considered.
5. The charges in question arose from a game between Summertown Stars AFC Reserves and Marston Saints FC Reserves, played on 2<sup>nd</sup> December 2023.
6. By letter dated 2<sup>nd</sup> February 2024 **JOSH DAVIES** a player for Marston Saints FC was charged as follows:

**Charge 1 FA Rule E3** Improper Conduct (including foul and abusive language).

**Charge 2 FA Rule E3.2 Improper** Conduct – Aggravated by a person's ethnic origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability.

7. **Details of the charge:** "This refers to the comment "faggot" or similar"

8. By WGS dated 26<sup>th</sup> February 2024 Josh Davies denied the charges and requested a personal hearing.

9. FA Disciplinary Processes/General Provisions Section 1 Rule E3.1 provides for:

***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 dispute or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.***

## EVIDENCE

***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.***

10. The Commission had before it the following items to consider:

a) A report from match referee Jack Saunders:

“ Marston Reserves Number 15 (name not taken during the match) was sent off on the 85<sup>th</sup> minute mark for using offensive language. As ball was being played out of the home box by Summertown, I heard and observed number 15 of Marston use homophobic language to the home team goalkeeper who were both inside the box. I isolated the player, spoke to him and sent him off for this offence.”

b) Replies by the match referee in response to questions from the Association:

“ Number 15 clearly called the opposition player a faggot.”

“ (Not obtaining the name) This was mistake on my behalf but due to crowding around me of several players when stopping the game about to handle the misconduct by speaking to 15 and was aiming quickly deal with the situation to diffuse it and remove the offender, but appreciate I should've noted the name from the team sheet.”

c) A reply to an Association question from Sam White, Marston Saints secretary:

“ I can confirm the player dismissed was Josh Davies, however, we believe that this is a case of mistaken identity. Josh strongly denies making any comments of a homophobic nature and believes the perpetrator was a member of the opposition.

As a club we understand the seriousness of the accusation and as such took statements from players involved at the time. We would be happy to provide them for you or to assist your ongoing investigation in any way.”

d) A statement from Alex Pratt a player for Summertown Reserves:

“Towards the end of the 2nd Half, Marston won a corner. This was crossed in and as I (Summertown goalkeeper) went to claim the ball, I was obstructed by a Marston player linking their arm round mine. This went unnoticed by the referee and a goalmouth scramble ensued, which was eventually cleared. I continued to protest about the foul with the referee, initially as he was watching from outside box, but then further when play had progressed up towards the halfway line. As he was now a significant distance away, I was shouting loudly across the pitch, continuing to protest about the foul in the box that had gone unpunished.

At this point, a Marston player (Number 15) was shouting in my direction. I did not hear exactly what was shouted, as he was some 50 yards up the pitch on halfway, and I was still in my 18 yard box. However, play was brought to a halt by the referee and he brandished a red card. This came as a shock to me, as I did not hear anything untoward. However, as I approached the incident, I was made aware that

the shouts towards to me included calling me a “faggot”. What struck me immediately, is Number 15s inability to defend himself and say that he did not say it, but instead trying to remonstrate with the referee and suggest it was me that shouted the abuse.”

e) A reply from Alex Pratt in response to a question from the Association”

“After the issue ensued the game had stopped and there was a large gathering of players which I arrived at.

I was told by one of our players in this group. But, with all due respect, given that we now well over a month down the line, there is absolutely no chance of me recollecting this. Maybe if this had been chased in a timely manner, I may have been able to help.

That said, the referee clearly heard it, hence him sending the player off.”

f) Observations from Marston Saints FC, together with diagrams of the incident:

“ From the Summertown corner (sic). The referee (R) was stood around the edge of the box, looking at the game. The Marston number 11 Zach Plested was stood next to the Summertown goalkeeper. The ball was played into the box and there was an accidental collision between number 11 and the Summertown goalkeeper. Mr Davies (15) was stood close by the incident.

From the resulting corner, the ball was cleared to Summertown right. Therefore the referee was following the ball to spot X, (where the ball was). Please note, the arrows next to the R indicates where the referee was looking.

Number 15 Josh Davies said – “Obviously, before the corner there was taken was all the usual shoving about and I believe that the Goalkeeper and number 11, Zach Plested may have connected in a challenge. After the corner was cleared, there was I ran back to the halfway line as I was playing right back and I heard, who I believe was their keeper, shout something at Zach. The referee stopped the game and sent me off, he did not ask for my name and all he said was that I couldn’t say that on a football field. I said to him I did not say anything.”

Marston Coach Andrew Winchester (marked as AW) above contd : “The referee then stopped the game and sent off the Marston number 15 who was not involved in the incident. From ,memory, I heard someone shout “get off me you faggot” at this point the goalkeeper and Josh Davies were not close to one another. Due to the nature of the shout, I assumed that this was the Summertown goalkeeper who said this as there had been a collision between him and the number 11 Zach Plested when the corner came in.

From the two diagrams that I have included, the referee was watching the breakaway, heard a commotion and then turned around and sent off the Marston number 15.”

g) A statement from the Marston Saints Committee:

“ Statement from Marston Saints Football Club Committee:

As a club, we pride ourselves of being an inclusive football club. We have never had any issues, as reported in this incident, before and would action them very strongly if any were to arise in the future.

During the game in which the alleged incident took place, we had three players wearing the rainbow laces and also, our skipper wears a rainbow armband all year around. As a committee, we encourage our players to support all causes which enable inclusivity in sport.

We understand the seriousness of the allegation that has been made against our player and would like to put on record that if any of players were to ever use unacceptable language then we go through our internal disciplinary process. The club has investigated the incident with the evidence collected and believe that Mr. Davies did not make the alleged statement.

Mr. Davies has been a member of the football club for a number of years including youth level and now in senior football. We have spoken to the coaches, teammates and committee members from the club during Mr. Davies time here and he has previously never shown any behaviour patterns to suggest that he would make such a statement.

h) Final notes and summary of the incident from the Marston Saints Committee:

“1) Mr. Davies strongly denies making the statement.

2) Due to the congestion in the penalty area, we can not see how the referee identified Mr. Davies in making the allegation.

3) From the position of the coach, Andrew Winchester, the referee was not looking at the incident when it took place but in fact was correctly looking at the break away in the ongoing game.

4) Why would Mr. Davies, who was running back to the halfway line to defend, shout “Get off me, you faggot”. There were no Summertown players around him at the time and therefore this proves it was not him who made the statement.

5) The use of the word “Faggot” is a generational vocabulary for an older generation than Mr. Davies. This is a term that is not used by people of Josh’s age and again proves that it was very unlikely that Mr. Davies used this expression.

6) Using the evidence from the player statements and the observations, it is very unlikely that it was Mr. Davies used the alleged words. There was no one around Mr. Davies, therefore the part of “get off me” is not consistent, the language used is not consistent with someone of Josh’s age. The prior good behaviour and support from former teammates and coaches again make it inconsistent for these allegations to be made against Mr. Davies.

7) Mr. Davies strongly denies making the statement and has stated that he would not use this kind of language. This false accusation could have serious effects on his employment, future football career and his own mental health. He has already served a 4 game suspension for a crime that he simply did not commit.

i) Correspondence between Andrew Winchester of Marston Sports FC and the Association, with regards to the mechanism of the process, with the Association requesting a formal response on WGS and plea.

***For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished with regard to this case.***

## HEARING

11. Match referee Jack Saunders was called as an Association witness and in response to questions on his report, first from the Commission and then JD, replied:

a) He sent off number 15, he didn't take his name just his number, then he got his name from the team sheet.

b) He was standing just outside the penalty area and Number 15 called the goalkeeper a "faggot", he was about 10 metres away.

c) The ball was in play and he saw an altercation inside the box, he saw an incident between JD and the goalkeeper, clearly hearing JD say "faggot" or maybe "go away faggot". He thinks JD was facing the goalkeeper but he could tell he was the person saying it.

d) He stopped the game and sent Josh straight off, Josh tried to deny it but he heard what he heard, it was a red card offence and Josh just went straight off.

e) He was 90% certain it was Josh who said the word "faggot".

f) This was his first season as a referee at senior or youth level, it was the first time he had refereed these particular teams and he was independent having been appointed by the League.

g) He was unable to identify JD from this video link, he did not recognise him but it has been too long ago and he had refereed too many players side to identify him.

h) At the time of the incident he was standing on the edge of the D just outside the penalty area and the incident happened near the penalty spot.

i) He did not see the words coming out of JD's mouth as he had his back to him, but it was clear the word was from Josh, he had a clear and unobstructed view of the altercation.

j) There was no reaction from the goalkeeper to the word'

k) He didn't speak to the goalkeeper, Josh just said, "it wasn't me, I didn't say anything".

l) He could not have been mistaken, there were just the two players and he heard the word clearly, on a scale of loudness from 1-10, maybe 7 or 8.

m) Josh was not standing next to me when he heard the comment, although JD was on the move in general play, but he did not think it was not possible it could have been the goalkeeper.

n) When he heard the word, he saw JD's head movement and the direction the word came from, he clearly heard the word and the direction, he heard the word "faggot" but did not hear, "get off me you faggot", he was drawn to the word "faggot" and that was all he heard.

o) At the time of the incident he saw Summertown players but did not remember any Marston players in the vicinity.

p) There was no major protest on the pitch when he sent Josh off, but they came after the game and were unpleasant, with players and Marston Saints officials asking if he was sure it was him.

12. With no further Association witnesses called, JD gave evidence on his own behalf:

- a) He was playing right back in this game, but was normally a midfield player'
- b) There was a corner and Marston were chasing the game, so there were a lot of bodies in the 6 yard box to crowd the goalkeeper and make it difficult for him.
- c) The goalkeeper caught the ball and cleared it quickly away, he (JD) made his way out of the area and heard someone say the word "faggot".
- d) The referee heard the word as well and picked on the first person he saw, who was him and sent him off.
- e) He missed the final few minutes of the game and was then suspended for four matches, two for the sending off and a further two for inadvertently playing whist suspended.

13. JD then responded to questions for the Commission:

- a) He had his back to the goalkeeper when he heard the word and was about on the edge of the area, the keeper was on the goal line, he (JD) was leaving the penalty area.
- b) He heard someone say, "get off me you faggot", he did not know who it was, but assumed and guessed it was their keeper to a Marston player, there were three of their players in the vicinity.
- c) He heard the word "faggot" after the goalkeeper cleared the ball.
- d) At that time the referee was nearly level with him, maybe just 2/3 yards away from him, the referee was not looking at him.
- e) The referee stopped the game and came straight to him, and said, "you can't say that, I heard you say it", then showed him the red card and he just walked off.
- f) The referee immediately came over to him and had no doubts in his mind, he heard the word and saw bodies, he (JD) was leaving the box and was not sure why the referee thought it was him.
- g) There had been no problems between him and the referee during the game, he just thinks the referee was mistaken.
- h) He was aware before the incident the aggravated meaning of the word "faggot" in this context and clearly knew at the time.

14. JD then called Zac Plested as a witness and response to questions, first from JD and then the Commission, he replied:

- a) There was a corner and he was standing "on the keeper", trying to put him off.
- b) The goalkeeper caught the ball and kicked it away, saying to him "get off me you faggot".

c) The referee was outside the area on the edge of the D, with him and a lot of other players around, Josh was also on the edge of the D.

d) The goalkeeper said it clearly, he was pretty certain it was him, maybe on a scale of 1-10 about 9/10 certain.

e) The referee blew his whistle and went immediately to Josh, there was no delay, it was like lightening, it was purely human error, Josh was the first person he saw.

f) The goalkeeper said the words to him, he did not say anything and the referee then blew his whistle.

g) He asked the referee why and tried to explain it was not Josh, a few of us asked why and tried to tell him it was their goalkeeper.

15. JD then called Andrew Winchester as a witness and response to questions, first from JD and then the Commission, he replied:

a) He explained he was the joint manager of Marston Saints FC but was suspended and was standing behind the respect barrier on the halfway line, with his co-manager acting as assistant referee, running the line in the half of the pitch furthest from the incident.

b) There was a corner for Marston Saints, after which he was watching an opposition break away as was the referee, he suddenly sent Josh off.

c) When I asked Josh why, he was told, "I didn't say it", he (JD) said the goalkeeper was very vocal.

d) He spoke to the referee after the game and he told me what had happened and then went back to his dressing room.

e) He spoke to the referee again in his dressing room, telling him what a serious allegation it was, but he replied he was 100% certain, the players all said it was the goalkeeper who said it and told the referee on the pitch.

f) He noticed the referee did not put the red card down on the misconduct sheet, and he assumed there was some doubt in the referee's mind.

g) He was 50 yards away from the incident and so did not know who said it, I just asked the referee if he was sure.

h) He went back to the team headquarters and told a senior Committee man what had happened, he was told to collect witness statements straight away.

i) He asked members of the team if they had heard anything and received replies he had kept on his phone, but he did get written statement from Josh and Zac, which had been submitted.

j) He collated his report and realised the serious nature of this, he looked on WGC and it was not there and he assumed the card had not been put through.

k) All of our players were adamant it was not Josh who said it, although some did not hear who actually said it.

l) He did not hear the word used, he saw Zac next to the goalkeeper and them shouting at each other, he was surprised when he saw Josh being sent off. The way

the team play is to crowd the goalkeeper in such situations and that is what Josh and Zac were doing.

m) He did not recall seeing Josh speaking to the referee after the red card.

n) He heard the referee blow his whistle and then go straight to Josh.

o) The referee had been following the ball, then within a few seconds JD was there and the referee sent him off, I think the referee heard something, a word, panicked and sent off somebody.

p) He did not take JD's name. Josh was calm about it, there were protests on the field from a lot of his teammates, he assumed Josh had said something.

q) Players for his team do not harass referees and he believed his players when they said Josh did not say it.

16. At this point the Chair asked JD if he was satisfied he had received a fair hearing and been able to present all his evidence as he would have no other opportunity to do so, he confirmed he was satisfied.

17. JD then summed up his case:

a) This was a case of mistaken identity.

b) It is a most serious allegation and he would not use such words or make any such comments.

c) This allegation could affect his job if he used such language, he had just begun an apprenticeship and would not do anything that would affect his job.

d) If something like this was said to the wrong person it would be bad.

e) It was not me.

### STANDARD OF PROOF

***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 they considered that, on the evidence, it was more likely than not to have happened.***

### DELIBERATION

18. The Commission reminded itself that the charge against Josh Davies was:

**Charge 1** Improper Conduct (including foul and abusive language), which was accepted and **Charge 2** FA Rule E3.2 Improper Conduct – Aggravated by a person's ethnic origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability and that the standard of proof was on the balance of probability.

19. The onus is on the Association to prove the charge and the Commission were extremely disappointed that the only Association witness called by the County was the match official.



20. There were two key witnesses, the referee and Alex Pratt, the Summertown Stars FC goalkeeper, who had been accused by Marston Saints as being the person who made the remark, he had submitted a report, in which he accuses JD, but the Commission were unable to test his evidence as he was not called.

21. The Commission considered all evidence, both written and verbal, noting.

a) The Commission considered the written and verbal evidence of the match official, he had given clear, consistent and confident evidence of what he believed he had seen and heard. The Commission were impressed with the young referee, finding him honest, credible and they had no reason to question the veracity of his evidence.

b) The Commission considered the written and verbal evidence of JD, who also gave clear, consistent and confident evidence of what he contends happened. The Commission also finding him honest and credible, he did not blame the referee, merely suggested it was "human error".

c) This placed the Commission in the unusual position of believing the accounts of the participant charged and the referee, who was the key witness called although they could not both be totally correct in their versions of events.

d) The other key witness was the Summertown goalkeeper, with evidence presented it was he who had made the aggravated remark, sadly for whatever reason he had not been called as an Association witness, leaving the Commission unable to test his evidence.

e) Alex Pratt, the goalkeeper had submitted a statement, in which he describes being obstructed by a Marston Saints player linking their arm round his (not JD). He then continued to protest about the foul to the referee who was initially on the edge of the box, but play had progressed to towards the halfway line.

f) He then gave evidence that the number 15 was shouting in his direction from 50 yards up the pitch on halfway, so he could not hear what had been said, until he approached the incident.

g) He went on to say, "what struck me immediately, is the number 15's inability to defend himself and say he did not say it, but instead remonstrate with the referee and suggest it was me who shouted the abuse".

h) Alex Pratt then gave a second statement in response to a question from the Association, in which he said he had been told of the use of alleged word by one of his teammates but, "with all due respect, given that we are now month down the line, there is absolutely no chance of me recollecting this. Maybe if it had been chased in a more timely manner, I may have been able to help".

i) The Commission considered all the evidence submitted by Alex Pratt, which was given appropriate weight, but noted inconsistencies in the first statement and detected him taking a surprisingly defensive position, although it was not he who had been charged.

j) The second statement from Alex Pratt, in which he claimed not to remember who had informed him of the alleged offence, was considered arrogant, dismissive, bordering on offensive and did him no credit. Whilst he may not remember who told him about the comment, it appears he made no effort to make enquiries amongst his teammates.

k) The Commission would have benefited by being able to test the evidence of Alex Pratt, but with just his two statements to consider, they felt he was too defensive and that parts of his evidence lacked consistency and credibility.

l) The evidence of Zac Plested was noted and given appropriate weight, he contended it was he who had obstructed the goalkeeper, whose response was "get off me you faggot".

m) Zac Plested gave his verbal evidence confidently, but the Commission noted although his submission was compelling, he was a teammate of JD and not independent.

n) Andrew Winchester gave helpful and credible evidence, although he was too far away from the incident and was not able to hear any alleged comments, he came across as a sensible and reasonable witness. Although it was observed that in his written statement he said, "I heard someone shout "get off me you faggot". ", which did cast some doubt on the veracity of this part of his evidence.

o) The evidence he gave of discussions with the referee and players after the match, was particularly helpful and all of his evidence was given appropriate weight.

p) The evidence of the referee was considered at length and it was noted:

i) He was a young, inexperienced referee in his first half season at the time of the incident.

ii) He did not take the name of JD when he showed him the red card, which he admitted was a mistake and was alleged not to have included the dismissal on the misconduct sheet.

iii) He was only 90% certain that it was JD who said the word, although the player had his back to him he was going on the dynamic of the player and his movements.

iv) He said there were no immediate protests from anyone, although there is evidence of protests from Marston Saints players and Alex Pratt in his evidence said JD had tried to tell the referee it was him (Alex Pratt) that had made the comment.

v) The referee was swift in his actions on hearing the word "faggot" and immediately sent off JD, he did not speak with the goalkeeper at any point, although he had been heavily involved in the incident.

q) The evidence given by JD was very consistent, after the goalkeeper threw the ball he was quickly making his way out of the area and facing the match official when he (JD) heard the word “faggot”.

r) The Commission had its doubts about the evidence of Alex Pratt, considering he had a motive to point the blame at JD and to deflect blame from himself.

s) It was considered that evidence had been given that the full comment was, “get off me you faggot”, which if it were accepted would indicate it was not said by JD, as he had never been in close physical contact the goalkeeper.

t) It was also noted that despite the evidence of Alex Pratt, that JD had tried to place the blame on him to the referee, at no point did JD allege it was the goalkeeper who made the comment, to the contrary in his evidence he said he had not heard who made the comment.

t) Zac Plested said the goalkeeper made the comment after he had obstructed him and the goalkeeper himself said a Marston Saints players had “linked his arm”, which could suggest it was actually the goalkeeper who made the comment.

u) The Commission considered at length all written and verbal evidence, once more expressing disappointment that Alex Pratt, a key witness, had not been called by the Association and decided that the County had not presented enough evidence to find either charge proven on the balance of probability.

v) The Commission commend the match referee on his swift actions on hearing the word “faggot”, despite admitted mistakes in administering the dismissal, he was acting on what he believed he had seen and heard. However, there was not enough evidence presented by the County to prove he had not merely made an honest mistake.

22. The Commission deliberated at length, after giving appropriate weight to all written and verbal evidence unanimously found both **CHARGE 1 E3 – Improper Conduct (including foul and abusive language) and Charge 2 FA Rule E3.2 Improper Conduct – Aggravated by a person’s ethnic origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability against Alex Highfield were found NOT PROVEN on the balance of probability.**

23. There is a right of appeal against the decision in accordance with the relevant provisions set out in the Rules and Regulations of the Football Association.

Keith Allen (Commission Chair)  
Minesh Gupta  
Chris Harrop-Griffiths

14<sup>th</sup> April 2024

