

Disciplinary Commission (“The Commission”) on behalf of the Oxfordshire Football Association

In the matter of Ben Sturgess – Case ID: 10336519-M

1. This is a hearing summary and includes written reasons for the decision of the Disciplinary Commission which sat (via webex) on Thursday 18th February 2021.
2. The Football Association (FA) had appointed all Commission members, i.e. Mr. Michael O’Brien (Chairman), Mr. Daniel Mole and Mr. Brian Coddington. Ms. Debbie Sowton of Hampshire FA had been appointed by the FA as Commission Secretary.
3. Ben Sturgess (BS) had been charged by Oxfordshire Football Association (OFA) in respect of the following matters:

Charge 1: FA Rule E3.1 - 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, Sexual Orientation or Disability

It is alleged that on 15th December 2020, during the friendly game between Thame United First (TU) and Chalfont St Peter First (CSP), BS abused CSP player Danny Wickenden (DW), calling him a “faggot”.
4. BS had denied the charges and requested a personal hearing.
5. OFA received a witness statement from match referee, Mario Stetakovic (MS), which stated that, in the 43rd minute, MS heard one of the players shout “you faggot”. MS did not know which player made the comment. However, 20 seconds later CSP player DW advised MS that BS had called him a ‘faggot’. BS looked distressed as he told the referee. DW told MS that he wished to continue playing. MS subsequently warned BS to be careful with his language. MS confirmed to The Commission that he had advised Club officials from both sides at half time that he had heard the word faggot used, but had not seen which player made the comment.
6. During cross examination at the hearing, MS came across as an extremely credible witness. He stated that he was 90% certain that he heard the comment including the word ‘faggot’. However, it was from somebody in a group of 4 or 5 players stood to the rear of him so he did not know who made the comment. MS confirmed that BS had been within this group of 4 or 5 players.
7. OFA received a witness statement from DW, who stated that, late in the first half, DW became embroiled in a disagreement with the TU captain. During this altercation, the TU captain (BS) called DW a “faggot” from approximately 5 yards away. DW advised the referee, who DW felt dealt with the matter well.

8. During cross examination at the hearing, DW came across as an extremely credible witness. He mentioned that, in the altercation with BS, prior to BS making the 'faggot' comment, BS had referred to DW's alice band in a derogatory manner. BS stated that he was 100% certain BS made the 'faggot' comment and that it was directed at him. He stated that the comment was made in a casual manner rather than in a 'venomous' manner. DW stated that he was extremely upset by the comment.

9. OFA received an email from Finlay Johnson, CSP Secretary, who advised that he had collated 3 separate text messages from 3 CSP players into an email for expediency. The key parts of the messages were:

Luke Elliott (LE) – 'I heard the TU captain call Danny a faggot. The referee told me that he had heard it'

Blake Darcy (BD) – 'I heard the captain call Danny a faggot after an argument. I was about 5/10 yards away, closer to the halfway line than to my box'.

Brandon Kalu (BK) – 'After a bad tackle, and when the ball was near the middle of the pitch, it kicked off a bit. I heard someone call Danny a faggot and Danny complained to the ref'.

10. Although LE and BD declined to attend the hearing, BK did attend. BK came across as a credible witness. He stated that he was aware of DW being involved in a verbal altercation with somebody but that he wasn't really concentrating on it. BK then heard the word 'faggot' used. He was 100% certain that the word had been used but he did not know who said it. He was fairly certain that the comment was made by the person involved in the altercation with DW.

11. OFA received a witness statement from BS in which he categorically denied making any such comment. BS also stated that the match referee had said to him at the time that he had not heard the word faggot being used. BS stated that as captain he enjoys a position of responsibility which is something he takes seriously.

12. During cross examination at the hearing, BS did not necessarily come across as a non credible witness. He was categorical in his denial of using the language attributed to him. However, on at least one occasion, his testimony was not consistent. When asked about advice that he had received from his Assistant Manager about not coming out for the 2nd half, BS gave conflicting answers. At first he said he thought it was a reasonable decision from the Assistant Manager. Later in testimony, he said he was angry about this piece of advice.

13. The foregoing is a summary of the key 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 submission, should not imply that the Commission did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, the Commission carefully considered all the evidence and materials furnished with regard to this case.

14. The burden of proof fell upon the OFA. The applicable standard of proof is the balance of probability, sometimes referred to as the 51% test. The balance of probability standard means that the Commission is satisfied an event occurred if the Commission considers that, on the evidence, the occurrence of the event was more likely than not.

15. In determining what was likely to have happened, The Commission ruled out the possibility of any fabrication. So many people had heard the word being used, including the referee, that it was practically certain that a comment had been made. The Commission also ruled out the possibility of any mistaken identity. There had not been any suggestion that any person other than BS might have made the comment and DW was 100% certain that it was BS, with 2 other team mates testifying in writing that it was BS who made the comment.

The Commission concluded that there were 2 possibilities as to what had occurred. Either that the comment was made by BS as described by DW, or that, in the alternative, DW had misheard a comment, and that the others who said they heard the comment either also misheard, or came to believe that this is the word they heard after DW had repeated it by way of an audible complaint.

The Commission concluded that, the former explanation was significantly more likely than the latter. For the latter to have been the case, a significant number of persons would have to have misheard a comment or been mistaken in what they recalled. This seems unlikely. In addition, the fact that BS had drawn attention to DW's alic band prior to the comment arguably makes it more likely that the comment was made as described by DW rather than misheard.

16. By a unanimous verdict, the Commission found that the charges against BS were proven.

17. In respect of the proven charges, the Commission referred to the FA Handbook, the FA's Disciplinary Regulations 2020/2021 and the Disciplinary Sanctions Guidelines issued by the FA in coming to its decision.

18. The Secretary gave the Commission BS's disciplinary record over the last five years, which showed many yellow cards but no history of serious misconduct.

19. The Commission considered if there were any mitigating or additional aggravating factors in respect of the matter. The Commission noted the impact of the comment on DW, which was considered to be an aggravating factor. In terms of mitigating factors, BS's reasonably good disciplinary history was taken into account.

20. After considering all of the aforementioned factors, the Commission determined that the following sanction be imposed in respect of the proven charges:-

*Suspension of 7 matches

*£75 fine

* 9 disciplinary penalty points;

*Mandatory online education course to be completed within 4 months

21. 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.

M. O'Brien (Chair), 18th February 2021