

THE FA DISCIPLINARY COMMISSION

On behalf Surrey County Football Association Limited

PERSONAL HEARING

Leniency Plea

Zane Wickens [58095203]

THE DECISION AND REASONS OF THE COMMISSION

CASE ID: 9680525M / 9680498M

7 March 2019

THE COMMISSION

- 1. Evans Amoah-Nyamekye - Chair**
- 2. Naila Hadid – Wing Member**
- 3. David Miller –Wing Member**

SUMMARY OF DECISION

The Commission found two charges of breaches of FA Rule E3-(1), one of which was alleged to be an aggravated breach pursuant to Rule E3(2), being aggravated by references to a person's *sexual orientation*, *unanimously* proved against Zane Wickens .

The Commission considered the seriousness of the incident, the mitigating and aggravating factors, the guidelines sanctions under FA Rule E3 and the Disciplinary Sanctions Guidelines issued by the FA.

Accordingly, the Commission imposed a 21-day suspension from all footballing activities. The Commission also imposed a fine of £75

The Commission imposed the mandatory order for Zane Wickens to undergo a FA Equality face to face Education Course within four (4) months. Should he fail to do so he is to be suspended from all footballing activities until such time as he does undertake the course, details of which will be provided to him.

The Commission also imposed 8 disciplinary points.

The reasons for the decision are stated in full below.

INTRODUCTION

1. Zane Wickens was accused of an aggravated charge of misconduct. Zane Wickens accepted the allegations against him.
2. According to the papers supplied, the discriminatory language that supported the alleged aggravated breach included social media tweets from 2012 to 2018. The tweet from 3 January 2013 related to two openly gay individuals.
3. We understand from the secretary to the Commission, James Sanderson, that Zane Wickens had received the documents. It was clear from his detailed response that he had received the details of the allegation and therefore had appropriate notice.
4. The case was presented before a Disciplinary Commission appointed by The Football Association (“The FA”) as a verbal plea for leniency hearing. This was a consolidated case.

THE CHARGE

5. Zane Wickens faced two charges of misconduct for breaches of FA Rule E3, one of improper conduct (including foul and abusive language) and an aggravated breach, including a reference to “*sexual orientation*” pursuant to Rule E3 (2).

THE PLEA

6. The case was treated as a guilty plea and preceded on that basis.

THE FA RULES

The applicable FA Rule E3 states:

GENERAL BEHAVIOUR

7. *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.*

E3 (2) A breach of Rule E3(1) is an “Aggravated Breach” where it includes a reference, whether express or implied, to any one or more of the following :- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.

THE COMMISSION

8. The following members were appointed to the Disciplinary Commission (“the Commission”, We/us”) to hear the case:

- 1. Evans Amoah-Nyamekye - Chair**
- 2. Naila Hadid – Wing Member**
- 3. David Miller –Wing Member**

THE HEARING

9. The hearing of the charges (the “Hearing”) took place in person on 7 March 2019.

10. The Secretary to the Commission, James Sanderson, confirmed that Zane Wickens had been provided with all the statements and evidence with which we had been provided. Accordingly, Zane Wickens had fair notice of the allegation made against him.

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

12. In advance of the Hearing we had received and read the bundle of documents.

THE COUNTY FA'S CASE

13.. According to the papers supplied, the discriminatory language that supported the alleged aggravated breach included social media tweets from 2012 to 2018. The tweet from 3 January 2013 related to two openly gay individuals.

THE PARTICIPANT'S CASE

15. There was a formal response from Zane Wickens. The Commission concluded that the response from Zane Wickens was clear and detailed.
16. The response from Zane Wickens did not deny the allegations in addition he apologised for his behaviour on social media.
17. Zane Wickens requested that the Commission take into account the length of time of some of the tweets and the missing context of the tweets. Zane Wickens produced other tweets in order to put the presented tweets in context.
18. The Commission concluded that the response from Zane Wickens avoided the objective reality that such comments were improper, and simply did not provide him with a defence.
19. The Commission was concerned with the view of Zane Wickens that '*gays worked in retail*'.

THE COMMISSION'S CONCLUSIONS

20. The Commission found the charges of breaches of FA Rule E3-(1), one of which was alleged to be an aggravated breach pursuant to Rule E3(2), being aggravated by references to a person's *sexual orientation*, unanimously **proved** against Zane Wickens .

21. The reasonable inferences which could be drawn are from the circumstances of the case were namely:

21.1. The context of the words was fully tested, and the Commission was satisfied that Mr Zane Wickens used the said tweets.

21.2. The acceptance by Zane Wickens of the tweets used.

BURDEN OF PROOF

- 21.3. The applicable standard of proof required for this case is the civil standard of the balance of probability, meaning more likely than not.
- 21.4. An incident is discriminatory when it is perceived by the victim or any other person to be discriminatory.
- 21.5. 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 versus any possible misinterpretation.
- 21.6. The Commission considered the context in which the comments were used, the intent behind the comments used and considered all the circumstances surrounding the use of the comments whilst considering the effect of the comments used.
- 21.7. The Commission noted that lack of intent could assist in mitigation but is not an adequate form of defence.

OUR FINDINGS OF FACT

22. On the balance of the burden required, The Commission are satisfied to make the following findings of fact that:
- 22.1. The discriminatory language that supported the alleged aggravated breach included social media tweets from 2012 to 2018. The tweet from 3 January 2013 related to two openly gay individuals. The Commission some of the tweets were missing from the presented bundle.
- 22.2. The Commission concluded that Mr Zane Wickens used aggravated improper conduct.
- 22.3. The Commission found the charges of FA Rule E3 and E3 (2) *'improper conduct – aggravated by a person's sexual orientation* was found **proved** against Zane Wickens.

THE DECISION

23. Having read the evidence, the assessment of the evidence is entirely a matter for the Commission members.
24. We have 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.
25. 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.
26. 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.
27. We considered all of the evidence provided.

MITIGATION

28. There was mitigation formally provided by Zane Wickens to the allegations. We applied appropriate weight to this factor to the aggravated element to the charge. Zane Wickens expressed his personal journey with personal problems. Zane Wickens was sorry for his actions and remorseful.

THE SANCTION

29. The Commission was then required to consider the appropriate sanction and penalty. In considering the appropriate sanction and penalty the Commission members discussed the severity of the offence.

30. Accordingly, the Commission imposed a 21-day suspension from all footballing activities. The Commission also imposed a fine of £75

31. The Commission imposed the mandatory order for Zane Wickens to undergo a FA Equality face to face Education Course within four (4) months. Should he fail to do so he is to be suspended from all footballing activities until such time as he does undertake the course, details of which will be provided to him.

32. The Commission also imposed 8 disciplinary points.

CONCLUSION

35 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
2. Naila Hadid – Wing Member
3. David Miller –Wing Member

7 March 2019

