

FA NATIONAL DISCIPLINE PANEL DISCIPLINARY COMMISSION

The Football Association on behalf of

SURREY FA

V

NIGEL LEACH (59246417)

Case ID: 11054322M

AND

AFC KINGSTON YOUTH

Case ID: 11054320M

WRITTEN REASONS

Factual Background and Chronology

1. These are the Reasons for the decision of the Disciplinary Commission, which was heard on Thursday 9th February 2023, at 6-30 pm via Teams Video Link.
2. The Commission consisted of Keith Allen (CFA National Chairs Panel), Alan Day (CFA National Panel) and Minesh Gupta (CFA National Panel).
3. The Secretary to the Commission was Hayley Cain (CFA National Secretaries Panel).
4. The following is a record of the main points which the Discipline Commission considered.
5. The charges in question arose following a game between AFC KINGSTON U-14 and WHYTELEAFE U-14 WANDERERS FC, played on 3RD December 2022.
6. By letter dated 5th January 2023, Nigel Leach a non-playing participant with Whyteleafe U-14 Wanderers FC was charged as follows: **Charge 1** FA Rule E3.1 Improper Conduct (including foul and abusive language), **Charge 2** considered aggravated by reference to a person's Ethnic Origin, Colour, Race, Faith, Nationality, Gender, Gender Reassignment, Sexual Orientation or Disability.
7. Details of **Charge 1**: "It is alleged that Nigel Leach used abusive and/or indecent language contrary to FA Rule E3.1 and it is further alleged that this is an aggravated breach as defined by FA Rule E3.2 because it includes a reference to Disability, this refers to the comment(s) "are you autistic or something".
8. By WGS dated 6th January 2023 **NIGEL LEACH entered a NOT GUILTY plea to both Charges and requested a personal hearing.**

9. By letter dated 4th January 2023 AFC KINGSTON YOUTH were charged as follows: FA Rule E21 – Failed to ensure spectators and/or its supporters (and anyone purporting to be supporters or followers) conduct themselves in an orderly fashion.

10. Details of the charge: “This refers to the comment(s) used against AFC Whyteleaf player(s) “we are better than them”, “they’ve got nothing” “Hurt them”, “Kill them”.

11. By WGS dated 26th January 2023 **AFC KINGSTON YOUTH entered a NOT GUILTY plea to the charge and requested a personal hearing.**

12. With the charges arising from the same game they were considered as consolidated.

13. 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 anyone, 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.

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

a) A report from match referee Noah Read dated 4th December 2022:

“Following the game, the coach and club assistant (linesman) for AFC Kingston contacted me alleging that the following comments had been made during the duration of the match.

Whyteleaf’s assistant coach was alleged to have asked the Kingston club assistant whether he was “autistic” following an in-game decision.

The AFC Kingston coach also alleges that the Whyteleaf managers encouraged their players to “break some legs” or break the legs of their opponents.

I did not hear any of those remarks and whilst I was somewhat unimpressed with the demeanour of the Whyteleaf coaches yesterday, this obviously has little bearing on the serious allegations made to me following the game.”

b) An undated statement from John Gaylor, who was club assistant referee for AFC Kingston for this match:

"8 Luke suggested that you needed a statement from me with regard to the AFC Kingston Blues Under 14s match versus AFC Whyteleafe Warriors, Saturday 3 December and the conduct of Whyteleafe's assistant coach.

I was a linesman for both halves of the game. In the first half, there was one particular player, Fraser, who was directing remarks to one of the AFC Kingston players. I didn't hear absolutely clearly, however, he definitely made a remark about the AFC Kingston player being a 'foreigner'. In the second half, the same Whyteleafe player continued with somewhat abusive language to the same AFC Kingston player, which culminated in him suggesting that the AFC Kingston player was 'autistic'. The AFC Kingston player didn't react, however, the Whyteleafe player continued the same line of verbal abuse. This was being played out directly in front of the Whyteleafe coaching staff and one of the coaches appeared to actively encourage the abuse. Since this was taking place directly alongside me, I suggested that the Whyteleafe player calm down and stop the abuse and I said to the coach that he should stop encouraging the player. I think I said something, like "you need to calm him down, and not encourage him".

The coach's immediate response was, I believe, to ask me if I was autistic. He said something like "are you autistic?" or if it wasn't directed to me, he continued using the term "autistic" as it related to the abuse of the player. He then pointed out that I should "get on with my job" as linesman, suggesting perhaps that I shouldn't interfere. I tried to explain myself by suggesting that he should be trying to calm the player down and not to wind him up further which, if I recall, he was not interested in. I recall I said something like "seriously, you just need to calm him down" and he asked me why I kept saying "seriously" and that I was acting strange. It was a slightly threatening situation and he really didn't appear at all apologetic as to the player's conduct.

The Whyteleafe player may have been asked to sit out for 10 minutes, however, later he was back playing and he remarked to another AFC Kingston player that he would "kill him", in response to a tackle.

Through the second half I continued to act as linesman and can recall that the coach was particularly interested in some of the calls that I was making and clearly didn't necessarily agree with them. Towards the end of the game, I was standing quite close to both Whyteleafe coaches and the coach that had made the original remarks to me, muttered to the other coach that he believed that the area in which we were playing (Ham) was likely to have "a lot of council estates, since you could tell from the type of people". I made no response to this comment and I am guessing that the comment was made in relation to the way that he considered I was making the linesman calls.

As I was taking down the goals after the match, the same coach called across to say, "thanks lino". I didn't respond to him, but I am guessing this wasn't necessarily directed towards me as a particular friendly greeting. My overall summary was that this coach was unnecessarily confrontational after the original incident; he didn't do

anything to calm his players down and he continued to direct subtle comments following the incident, in such a way that he was basically trying to get a rise out of me.”

c) A statement from Geoff Maleham an AFC Kingston parent, dated 19th December 2023:

“I just wanted to drop you a note to say how saddened and disappointed I was to hear that there has been a complaint made about the Whyteleafe Warriors U14 Management/Football team. I believe you said that the game in question was an away fixture against AFC Kingston. I attended this match as a parent spectator to watch my son play and have no recollection of any incident or controversy that could have led to a complaint. Whilst I fully appreciate that I was standing away on the touchline on the far side and not on the pitch or close to the management team, I did not see or hear anything from where I was that looked anything other than a normal football match. The game from memory was a fairly routine victory against a battling Kingston side that set out to possibly play for a 0-0 but conceded two goals and were beaten on the day by probably a slightly fitter team with better passing ability and technique. I did not witness any issues with any parents from either side, and both sets of boys appeared to shake hands at the end of the game and congratulate each other for a hard-fought match in very cold conditions. I am very happy with the behaviour and positive supportive attitude of the Whyteleafe Management team from what I have seen over the past two plus years, and if I had any concerns or worries over the integrity of the management team, I would remove my son from the club immediately. The Management always positively reinforce good behaviours, attitudes and values and the children are brought up to ensure that they must play the game in the right “sporting “way. I am 100% sure that any poor sporting behaviour simply would not be tolerated, and the child would be asked to leave the club.

Sorry I do not have anything to add with regards to a “potential complaint”, I personally did not witness anything other than a children’s football match on a bitterly cold Saturday morning played by two good teams.”

d) A statement from Dimitris Sofos an AFC Kingston parent, dated 19th December 2023:

“The game in my opinion was not any different from any other game the boys have played. The referee was quite strict on his calls, sometimes giving lighter challenges as fouls thus breaking the run of play and getting both sides a bit frustrated. Generally fair though. he even penalised one.

There may have been some tough challenges from both teams leading to some tension between the boys, and some injuries that were dealt by the coaches. We couldn't see or hear if anything was said between the benches.

It was quite a cold morning so we wrapped up well watching the match. Not all parents were there, possibly 4-5 parents from our team as we shared rides. We were quite surprised by the intensity of the shouting from the opposition parents. They seemed quite a vocal bunch. Not sure if there was some sort of vendetta between

the two teams. Whyteleafe was by far the best team on the pitch and deserved the win.”

e) A statement from Alan Jones an AFC Kingston parent, dated 19th December 2022:

“I’m shocked to learn about a complaint made against Whyteleafe after our match.

I stood and watched the game in its entirety with a group of about four other parents. the game was competitive and played in good spirit from both sides. At no point was there any physical nonsense that needed any intervention from the referee or coaches.

During the game I noticed some banter between their left back a French or Spanish boy and our number 7. They both seemed content with some name calling and general winding up of each other throughout the game. It seemed to me like they were both having fun and at no time did it turn physical.

In fact, the only incident I can recall was my son making a foul and the opposition coach screaming at his ref for a card. He was pretty vocal about it because it was windy, and he could be heard from the opposite side of the pitch.

I also remember the loudest woman screaming support for the other team. She was bellowing comments such as “we are better than them”, ‘They’ve got nothing”, “Hurt them!”. She screamed louder than most men can shout. Again, this didn’t raise any reaction from our parents, the woman to us just looked like she was having a great time supporting her team.

Again, I can’t imagine what cause there could possibly be to raise a complaint. In fact, It should be me if anyone who came away feeling aggrieved after their manager/coach was screaming at his ref trying to get my son sent off. It seems that following the FA protocol as parents and being respectful doesn’t count for much.”

f) A statement from David Nguyen manager of AFC Kingston Youth, dated 19th December 2022:

“I wrote the below then realised that the request was for a statement of the discrimination against their acting manager. I can categorically say, I haven’t got a clue what that’s about!!??

Think you have two options: 1) go back to ask for some specific examples 2) go with what I’ve written acknowledging that the incident I’ve provided was neither discriminatory nor aimed at the manager!?”

“During the second half, the game got competitive on the management side of the pitch where their player, left-back (I believe), threatened one of our players.

He said something like, “I’m going to snap you in half” to our player. Our player reacted by laughing off the incident and informed myself and my assistant manager

what was said, and on seeing this, the player actually repeated the comment directly to us.

We were shocked and laughed at the brazenness of the player repeating the comment directly to us. At this point, I also told my player to help calm and not to escalate matters further as I didn't want that boy to execute his threat.

Then their linesman got involved and told us not to escalate matters when we were in fact laughing off the incident and at the fact that we were actually trying to de-escalate the situation. We actually subbed our player that was threatened shortly after this incident to prevent any further issues.

It's worth nothing that there were a few incidents that could have resulted in us providing negative feedback on the match, but we chose to let these go:

1) their parents shouting, "kill them" to their players and deliberately aggravate their players throughout the match - I'm sure I can get some statements from our parents to support this if required.

2) their linesman was overly biased in their decisions on the game.

3) I heard their linesman say "we'll see" to my assistant, but unfortunately, I have no context behind this as it was just after the incident and so my primary focus was on the game to prevent any further issues.

To summarise, yes there was an incident, but I was happy to let the referee manage the game and situation, which he did. At no point had my assistant or I been discriminatory towards their acting manager. So, I am very surprised to hear this complaint, and in particular about discrimination towards the manager. I thought I had a fairly amicable relationship with the Kingston management team, albeit the actual manager wasn't available for this match.

I hope this statement helps with your investigation and I am disappointed that this accusation was brought upon us. I don't believe we have done anything wrong, but in response to this enquiry, I shall reinforce the 'code of conduct' message to my players and coaching/management team."

HEARING

18. The Commission initially heard the charge against Nigel Leach and as the match referee had not been called as an Association witness, John Gaylor of AFC Kingston was called as an Association witness.

19. JG had already submitted a comprehensive report of the interaction that led to this charge against NL and in response to questions, first from the Commission and then the participant charged, stated:

a) He was club assistant referee and situated on the same side of the pitch, to the side of the technical area, mid-way in the half of the pitch, a few metres away from NL.

b) There had been remarks made by a Kingston player, whose name he believed to be "Fraser", towards a Whyteleaf player, which culminated in him asking his opponent was "autistic".

c) He heard this and told the Kingston coach to stop encouraging the player and to calm him down, the immediate response of the coach (NL) was, "are you autistic" or it may have been "is he autistic" referring to the player.

d) He was 100% certain that the word "autistic" was used, NL was looking directly at him when he said it, although he only said it once.

e) The only person near enough to hear was the manager of Whyteleaf, who was standing close to NL his coach, the referee was either not within earshot or concentrating on play, which had moved away.

f) He deliberately did not respond to the comment and NL then said, "mind your own business and get on with your job".

g) He heard clearly the comments made by the Whyteleaf player, which used the word "autistic" and then later "foreign", but it was not his son involved in the exchange,

h) When NL used the word "autistic" to him, his demeanour was not aggressive but was direct to him.

i) He considered the comments NL was alleged to have made about "a lot of council estates, since you can tell by the type of people", to be an attempt to "get a rise" out of him, so he just ignored them.

j) He was 100% certain NL used the word "autistic".

20. With no other Association witnesses, NL presented his own defence and the responded to questions from the Commission:

a) Accusations had been made about comments from "Fraser", who had been involved with an opposition player for some time, which was 50/50 interaction, so he took him off for a few minutes to calm the situation down.

b) The parents were getting a little involved, so he told Luke (the Kingston manager) to calm them down.

c) He had never had a problem with Kingston before and got on well with the manager.

d) He did not hear the word "autistic" used by any player from either side.

e) He did not use the word "autistic" at any time.

f) He was 100% certain he had not used the word "autistic".

g) He did not know the linesman (John Gaylor) at all and there was no history between the two, he had never met him.

21. With no further questions NL called his manager, Dave Nguyet, as a witness and in response to question, first from NL and then the Commission, he stated:

a) At no time did he hear NL use the word “autistic”.

b) There had been no conflict with assistant referee JG, who was doing a good job running the line.

c) He did not hear the word “autistic” used at any time or any negative comments between players.

d) He brought “Fraser” off to protect him as he felt threatened and there was a tough game coming up,

e) He observed no derogatory interactions between NL and JG, although he recalled them having a “bit of a chat”.

f) He was 100% certain that he had not heard the word “autistic” used by anyone.

g) He did not notice any “banter” between players during the game.

21. With no further witnesses called the Chair asked NL if he was satisfied, he had presented all his evidence and received a fair hearing, to which he replied he was satisfied.

22. NL then summed up his case by stating, we have never had a problem with AKC Kingston over many years and “I can assure you it did not happen”.

STANDARD OF PROOF

The applicable standard of proof required for his 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

23. The Commission studied and gave appropriate weight to all written and verbal evidence noting:

a) The match referee had reported no problems between the players and had heard no adverse comments, either on or off the field of play.

b) Charge 1 against NL was, “Improper Conduct (including foul and abusive language)” and there was no evidence to suggest any foul or abusive language was used, other than the alleged use of the word “autistic”.

- c) The aggravated Charge 2 revolved purely around the alleged use of the word “autistic” by NL, made directly to JG in the question “are you autistic” or “is he autistic” he was unsure which. It was noted that JG was not totally sure which version of the alleged comment he heard.
- d) NL denied using the word(s) and the only other person within earshot was the Whyteleafe manager, Dave Nguyent, who also denied hearing NL use the word(s).
- e) The Commission were of course aware that DN and NL were close colleagues, although they gave to give appropriate weight to evidence of DN.
- f) JG gave clear, detailed and comprehensive evidence of the brief altercation, both in writing and verbally, that led to the charge against NL, with the Commission of the opinion that JG was a most credible witness.
- g) NL also gave clear evidence of the brief altercation and he was also considered by the Commission as a credible witness.
- h) The Commission could see no motivation for JG to fabricate the evidence that led to the charge and noted he was 100% certain that the word “autistic” was used.
- j) NL was also 100% adamant that he had not used the word “autistic”, as was his witness DN.
- k) Faced with two credible witnesses whose crucial evidence conflicted, the Commission were tasked with making the decision whose evidence was the more compelling.

24. Taking into account and giving appropriate weight to all evidence, both verbal and written, the Commission unanimously decided there was insufficient evidence to find either Charge 1 or Charge 2 proven and found **both charges against Nigel Leach NOT PROVEN on the balance of probability.**

25. 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.

CHARGE AGAINST AFC KINGSTON

HEARING

26. The charge against AFC Kingston was a contravention of FA rule E21, failed to ensure spectators and/or its supporters (any anyone purporting to be its supporters or followers), conduct themselves in an orderly fashion when attending a match.

27. The club were represented by Luke Dennis, manager of AFC Kingston U-14 at the game in question.

28. Alan Jones, of Whyteleafe U-14 Wanderers who was present at the game in question, was called as an Association witness and in response to questions, first from the Commission and then by AFC Kingston, replied:

a) It was a good competitive game and I heard shouting from the spectators, with one lady from Kingston shouting louder than any other supporting her team, but she did not cause any upset.

b) All the supporters were stood reasonably close together, with one loud female shouting loud comments, which were clearly heard by all players and supporters.

c) She shouted such comments as, "we are better than them", "they've got nothing", "hurt them, hurt them".

d) There was no reaction from the Whyteleafe supporters to her, no one challenged her, and her comments were just laughed off, but she was definitely a parent of a Kingston player.

e) The demeanour of the lady was forceful and excited, but with no malice, she was not ladylike but offended no one.

f) The referee had a good game and ignored any shouting.

g) There is normally supportive shouting from the parents, but this was worse than normal, trying to motivate her team's players, all the other Kingston parents were fine.

h) His statement was submitted because his secretary indicated there was a charge against Whyteleafe and asked for his observations on what he had seen or heard, without informing him of what the complaint was.

i) He was shocked there had been a complaint against Whyteleafe and made a statement on what he had observed on the day.

j) When asked a direct question by the Chair of the Commission, "If there had been no complaint against Whyteleafe, would your club have submitted a complaint about the conduct of Kingston supporters", AG immediately responded "No".

29. With no other Association witnesses called, Luke Dennis presented evidence on behalf of AFC Kingston and then in response to questions from the Commission stated:

a) The mood on the day between the players and spectators was good, there was a bit of joking and banter between the players but no malice.

b) I was on the opposite side of the pitch, one of our parents was quite loud but I could not make out what she was shouting, she had no intention to "incite" and "If the opposition supporters had believed it was going to boil over, she could have been challenged".

c) There are respect signs around the ground.

d) The lady who had been shouting loudly had never been spoken to about her conduct at any previous game.

30. AFC Kingston then called Alex Boecking a parent at the game as a witness and in response to questions from LD and then the Commission stated:

a) The mood of the parents was good, supportive as always and no different to any other game.

b) She did not recall any adverse comments and only heard just supportive encouragement.

c) She was stood with some of the other supporters on the touchline mid-way between the centre and goal lines.

31. AFC Kingston then called John Gaylor as a witness and in response to questions from LD then the commission stated:

a) I was linesman on both side of the pitch, in the first half on the spectator side of the pitch and in the second on the technical area of the pitch.

b) The mood between the parents was good, he noticed nothing untoward, just a typical game.

c) No one stood out more than any other, he heard no adverse comments, just supportive, he definitely did not hear any Kinston supporter encouraging players to "hurt" the opposition.

d) When on the far side of the pitch he could hear shouting from supporters, but nothing untoward and it had absolutely no impact on the players.

32. AFC Kingston then called Matthew Bennett a parent at the game as a witness and in response to questions from LD then the Commission stated:

a) The mood amongst parents and supporters was fine, just supporting the team.

b) He did not recall hearing any adverse comments, the game was no different to any other during the match and he heard nothing extraordinary, the atmosphere was normal with no animosity.

c) He did not hear any unusual screaming or shouting, no one shouts louder than the lady parent supporter, but never inflammatory, always positive like "use your power".

33. AFC Kingston then called Lenca Cato a parent at the game as a witness, who was the loud female supporter commented on by the opposition and in response to questions from LD then the Commission stated:

a) The mood amongst the parents was positive and encouraging, telling the boys to “try your best”.

b) This was no different to any other game, always the same.

c) She would never use phrases like “kill him” or “hurt him”, just encouraging the players to “use your power” and “go on do this”.

d) She has been requested to calm down in a previous match, but she just encouraged the team to use their energy and power.

e) She has never encouraged any player to “hurt them” and was only ever encouraging.

34. With no further witnesses called the Chair asked LD if he and the club were satisfied, they had presented all their evidence and received a fair hearing, to which he replied he was satisfied.

35. LD then summed up their case by stating:

a) The club have never been questioned about their conduct before.

b) The referee did not report any poor behaviour or adverse comments.

c) The parents are passionate and nothing more.

DELIBERATION

36. The Commission studied and gave appropriate weight to all written and verbal evidence noting:

a) The match referee had reported no problems between the players and had heard no adverse comments, either on or off the field of play.

b) The charge against AFC Kingston was a contravention of FA Rule E21, “Failed to ensure spectators and/or its supporters (any anyone purporting to be its supporters or followers), conduct themselves in an orderly fashion when attending a match”.

c) It was noted that the charge specifically refers to the conduct of supporters and not to that of players and/or officials.

d) At the outset the Commission were of the opinion that there was no case to answer, with the only evidence presented being that of a rather loud and passionate female supporter.

e) The evidence given by Alan Jones of Whyteleafe, which brought about the charges against AFC Kingston, was considered excellent and refreshingly honest, indeed he was complimented on his honesty by the Chair.

f) In his evidence Alan Jones admitted when asked a direct question by the Chair, that he would not have submitted a report about the conduct of AFC Kingston supporters if there had not been a charge against Whyteleaf.

g) The Commission believe that the evidence of Alan Jones was what he had seen and heard, he was not aware of the reason he had been asked for his observations at the time of submitting it.

h) The Commission were therefore of the opinion that this was not necessarily a “tit for tat” complaint by Whyteleaf against Kingston, but merely one that led to a charge being correctly raised by Surrey FA.

i) The verbal evidence of Lenca Cato was particularly interesting, in it she exhibited all the passion she clearly shows on the touchline each week, coming across as a supportive and encouraging parent/supporter.

j) However, the Commission strongly advise she tempers her enthusiasm and exhibits her support in a manner that is more user friendly to the opposition. At present her loud, vocal support is for her son and his under 14 team, it may be less appreciated by the opposition when the players become older.

37. Taking into account and giving appropriate weight to all evidence, both verbal and written, the Commission unanimously decided that the charge of a contravention of FA Rule E21 **against AFC KINGSTON was found NOT PROVEN on the balance of probability.**

38. 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 (Chair)
Alan Day
Minesh Gupta

Sunday 12th February 2023