

THE FOOTBALL ASSOCIATION
DISCIPLINARY COMMISSION

(on behalf of the Surrey FA ('SFA'))

Participant: Anthony Burton (a Match Official)

Hearing: Personal Hearing

Date: 7 November 2023

Incident: Inter Ham FC ('IHFC') v The Royal Oak FC ('ROFC') 6 August 2023 ('the Fixture')

THE DECISION AND REASONS OF THE COMMISSION

Disciplinary Commission

1. The following members were appointed to the Disciplinary Commission:
 - a. Mr Alan Darfi (Independent Chairman appointed by The Football Association);
 - b. Miss Fiona Rudge (Independent Member appointed by The Football Association);
and
 - c. Mr Peter Sowton (Independent Member appointed by The Football Association).(the 'Commission')
2. The Commission was assisted by Ms Lauren Halsey who acted as Secretary.

Charges

3. In correspondence dated 1 September 2023, SFA issued a charge letter alleging that Mr Burton had engaged in Improper Conduct including the use of foul and abusive language, in breach of FA Rule E3. Rule E3.1 states '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 combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behavior' ('Charge 1').
4. It was separately specifically alleged that the foul and abusive language was aggravated by reference to ethnic origin, colour, race, nationality, faith, gender, sexual orientation or disability, in breach of FA Rule E3.2. Rule E3.2 states 'A breach of Rule E3.1 is an "Aggravated Breach" where it includes reference, whether express or implied, to any one or more of the following:- ethnic origin, colour, race, nationality, faith, gender, gender, sexual orientation or disability' ('Charge 2') (together with Charge 1, the 'Charges').
5. It was alleged that Mr Burton had said 'Religion has no place in football' or similar during the Fixture.
6. Mr Burton denied the Charges, requested the matter be considered at personal hearing.

Evidence

7. The Commission had received and reviewed the following documents, in advance of the Hearing:
 - a. SFA charge letter, dated 1 September 2023;
 - b. Evidence in support of the Charges; and
 - c. Response to the Charges.

Decision

8. The following is a summary of the principal submissions considered by the Commission. It does not purport to contain reference to all points considered, 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 these cases.
9. The burden of proof was on SFA. The applicable standard of proof is the balance of probability. 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.

10. The Commission heard live evidence from Anthony Burton, Akaash Sharma (IHFC) and Harvey Barwis (IHFC). Amy Pearce (IHFC), Alfie Farington (IHFC) and Kieran Chandler (IHFC) attended the hearing and were available to be questioned on their written statements, which had been submitted. The Commission however gave appropriate weight to their written statements.

11. Mr Sharma stated that:

- a. He was a player in the Fixture, which was the first pre-season match of the season.
- b. Prior to kick off, he notified the referee that he was wearing a cotton bracelet, which was for religious reasons. The referee told him to remove the bracelet, however he explained that he could not do so due to the fact that it could not be cut.
- c. The bracelet is a piece of string incapable of causing harm.
- d. He has worn the cotton bracelet for about 4 years without any issue. If a referee has had an issue with the bracelet previously, he has always been able to tape it up. He offered to tape it up, but the referee again stated that it needed to be removed.
- e. The bracelet is a cotton bracelet that is tied tightly to the wrist. He may have been wearing two of these, but both were tied tightly.
- f. The referee told him that the only way he could play would be to remove the bracelet. He again explained that it was for religious reasons and that the bracelet could not be cut.
- g. The referee then said, 'there is no place for religion in football'. This was said 'with belief and firmness'. It was said as a statement.
- h. He could not believe what the referee was saying, which upset him. He did not remove the bracelet and prior to kick off the referee again told him to remove it, repeating that 'there is no place for religion in football'. He again tried to explain the reason for the bracelet to the referee, but he refused to change his mind.
- i. Given the fact it was the first game of the season and he wanted to play, he reluctantly removed the bracelet by ripping one of them off. The second was able to be removed. One of the main reasons for taking this decision was that he knew he would be getting a new bracelet tied a week later, given the time of year.
- j. It was possible that the referee had instead said 'there is no room for religion in football', however he had certainly not said 'there is no religion in football'.

12. Mr Barwis stated that:

- a. He was not present for the initial conversation between Mr Sharma and the referee.
- b. Prior to kick off he heard Mr Burton asking Mr Sharma to remove a cotton bracelet that he was wearing. He heard Mr Sharma explaining to the referee that this was worn for religious reasons and was not jewelry, however the referee repeated that it had to be removed saying it looked like jewelry.
- c. He then saw and heard the referee say to Mr Sharma 'there is no place for religion in football'. He was stood about five feet away at the time and was '100% certain' these words were said by the referee. The words were said 'firmly'.
- d. Mr Sharma then continued to try to explain the reason for the bracelet but the referee 'did not seem to either understand or care'. Mr Sharma offered to tape the

bracelet up, but the referee refused to allow this, explaining that the bracelet had to be removed or Mr Sharma would be unable to play.

- e. He could see that the bracelet was a small cotton bracelet that would not cause any harm. There was nothing hanging down and no metal. He believed that Mr Sharma may have been wearing two of the bracelets.
- f. He has played with Mr Sharma for about three and a half years and could not recall any other instances where the bracelet had been an issue. The team always wear short sleeve shirts.
- g. Mr Sharma looked 'pretty distraught' but reluctantly cut the bracelet off. The bracelet had been tied on tightly and was a struggle to cut.
- h. If he could go back in time, he would have either agreed with the team to not go ahead with the Fixture or offer to play without the referee. Since the incident the team has agreed that this is what they would do if faced with the same situation again.
- i. He argued with the referee about his approach, asking what the difference was between a player wearing a turban, which was allowed, and the bracelet.
- j. He did not believe there was any difference between the referee saying, 'there is no place for religion in football' or 'there is no religion in football', as both were, in his opinion, equally offensive.

13. Mr Burton stated that:

- a. He had been a referee for 25 years.
- b. He had known the IHFC captain, Mr Farington, for a number of years and it was Mr Farington who appointed him to the Fixture.
- c. During his pre-match talk with the captains, he explained to Mr Farington that there were a number of new rules for the season. He also explained that he would not be permitting anyone with jewelry to play. Mr Farington explained there were a number of 'religious boys' in the team, to which he explained 'there is no religion in football'.
- d. He said these words as he was just explaining the laws of the game which state that no jewelry can be worn, without exception.
- e. Mr Sharma then came to do the coin toss and he noticed that he was wearing 2 or 3 bangles, one of which was hanging down. A few years ago, he had allowed a player to play wearing something similar and a serious injury had been caused so he told Mr Sharma that he had to remove the items. He did not offer him the option to tape these up, as this was not permitted under the laws of the game.
- f. Mr Barwis then 'got in his face'. He again repeated 'there is no religion in football'.
- g. There were a number of issues in the game, with Mr Barwis and Mr Sharma abusing him, amongst others. The game was ended early after another IHFC player threatened him.
- h. During the Fixture another IHFC player was substituted onto the pitch wearing a similar bracelet, however he had no issues removing this.
- i. After the match was ended early Mr Barwis' father approached him aggressively accusing him of being 'racist'.

- j. He left the venue straight away due to the aggressive approach from Mr Barwis' father.
- k. When he arrived home he called the League Secretary and reported to him 'word for word' what had happened. He explained that he had been accused of being 'racist' and asked if what he had said had been wrong. The League Secretary assured him it was not and that he would 'deal with it'.
- l. 10 years ago, he had allowed players to play with religious bands but contacted SFA afterwards to check whether this had been correct. Someone from the SFA had said to him 'there is no religion in football'.
- m. Other referees had supported him when he explained what had happened, including an Asian referee.
- n. He was not a bigot or a racist. He had not meant to offend anyone and was sorry if his comments had been taken this way. He had not intended for them to offend anyone, and he was just explaining the laws of the game.
- o. The words he said were 'there is no religion in football' not 'there is no place for religion in football'. He noted a number of the witnesses had correctly reported the words he had said. He admitted that, if he had said 'there is no place for religion in football' then this would have been offensive, but this was not the case.
- p. He had been suffering from anxiety as a result of this incident. He had recently suffered from a heart attack and had been advised to avoid stressful situations.
- q. He had not noticed an opposing player wearing an earring until during the Fixture, As soon as he did he asked them to remove it.
- r. The basis for the complaint was as a result of the fact that IHFC had treated him badly during the Fixture and were simply worried about action being taken against them.
- s. He had not approached those who had supported him in terms of submitting a statement or appearing as a witness as he did not think this would be needed.
- t. He believed Mr Sharma was wearing either two or three bracelets, although it could have been that two were tied together to look like one. One definitely had a 'tail' that was hanging down. The bracelets were leather, not string, with tiny stars on the inside of one.
- u. He had said the words calmly.
- v. He ordinarily refereed between 3-4 games a week but was currently inactive due to his health issues. He had not refereed for 3 months.
- w. The player did play in the Fixture, having removed the bracelets.
- x. He was not aware of any FA guidance in terms of religion, only the laws of the game.

14. In summary Mr Burton stated that:

- a. The complaint had only been lodged as IHFC were concerned about action being taken against them.
- b. He had said 'there is no religion in football' only, which was confirming the laws of the game in terms of wearing jewelry.

- c. There was no intention whatsoever for his words to have been 'racist'.
 - d. He did not regret saying the words as they had not been 'racist'.
 - e. He was happy the hearing had been a fair one.
15. The Commission noted Mr Burton accepted that, if he had used the words 'there is no place for religion in football', then this would have been deemed to have been offensive. The Commission however agreed that, even if Mr Burton had said the words 'there is no religion in football', then this could also have been deemed to have been offensive, given specific guidance issued by the FA in terms of religion across the game.
 16. The Commission noted both Mr Sharma and Mr Barwis reported that Mr Burton had used the words 'there is no place for religion in football'. The Commission noted both Mr Sharma and Mr Barwis were stood in a good position to be able to see and hear what had been said by Mr Burton. The Commission noted Mr Sharma and Mr Barwis both reported the words had been said 'firmly', with Mr Sharma reporting they were said as a statement.
 17. The Commission noted the words had been said following a discussion between Mr Burton and Mr Sharma as to whether or not Mr Sharma could play wearing a religious bracelet. The Commission agreed that, given the fact Mr Burton said the words to emphasise his point that Mr Sharma would be unable to play wearing the bracelet, even if Mr Burton had said 'there is no religion in football', then this could have been offensive. Whilst it is not a requirement of the Charges, the Commission noted that offense was caused, with Mr Sharma appearing to have been upset and Mr Burton being accused of being 'racist' at the end of the Fixture by someone connected to IHFC.
 18. The Commission agreed that Mr Sharma and Mr Barwis would have been best placed to recall the words that were said by Mr Burton, together with the tone. The Commission also noted words had been said by Mr Burton on a number of occasions. The Commission noted other witnesses corroborated the statements from Mr Sharma and Mr Burton. The Commission noted Mr Sharma and Mr Burton reported the words were said 'firmly' rather than by way of an explanation, as suggested by Mr Burton.
 19. The Commission noted the evidence from Mr Sharma and Mr Barwis was clear and consistent. The Commission agreed that both had come across as a credible witness. The Commission noted a number of discrepancies in the evidence of Mr Burton, including the suggestion in his written statement that the items being worn included a metal bangle, which was not corroborated by anyone else including Mr Burton in his oral evidence. The Commission noted Mr Burton also suggested a number of witnesses supported him but noted no statements had been submitted.
 20. The Commission noted IHFC had reported both to Kick It Out and directly to the SFA, via several individuals. The Commission did not find the explanation from Mr Burton that IHFC had done so due to concerns about themselves being disciplined credible, particularly given the separate report to Kick It Out.
 21. Taking all of the above into consideration, the Commission agreed it was more likely than not that Mr Burton had said 'there is no place for religion in football' firmly and as a statement. The Commission found it more likely than not that Mr Burton had not intended for these words to have been in breach of the Charges, but noted the wording of the Charges did not include for this to be a requirement for them to be found proven.
 22. Taking all of the above into consideration, the Commission unanimously found the Charges proven.
 23. Having found the Charges proven, the Commission was advised that Mr Burton's previous discipline record indicated two previous similar aggravated offences from December 2018 (14-day suspension) and December 2021 (159-day suspension and £60 fine). The Commission was advised Mr Burton would have also been ordered to complete FA

Education courses. The Commission was advised Mr Burton's previous discipline record also indicated a previous breach of FA Rule E3.1 for improper conduct including threatening and/or abusive language/behaviour (21-day suspension).

24. Mr Burton stated that he remained of the belief that the comment was not racist and had been said previously by an SFA official, 10 years' ago. Mr Burton said he would say the comment again tomorrow.
25. The Commission referred to Appendix 1 of the FA Disciplinary Regulations General Provisions, which state:
 - A finding of an Aggravated Breach against a Player, Manager or Technical Area Occupant will attract an immediate suspension of between 6 Matches and 12 Matches ("Sanction Range"). A Regulatory Commission shall take all aggravating and mitigating factors into account, including but not limited to those listed in these guidelines when determining the level of sanction within the Sanction Range. The lowest end of the Sanction Range (i.e. 6 Matches) shall operate as a standard minimum punishment (the "Standard Minimum");
 - Any Participant who is found to have committed an Aggravated Breach shall be made subject to an education programme, the details of which will be provided to the Participant by The Association.
 - A Regulatory Commission may assess that a Match-based suspension is not appropriate due to the specific circumstances of a case; the nature of the role of a Participant, and/or whether they are currently engaged by a Club. A Regulatory Commission should have regard to the Sanction Range as set out in this Appendix as well as the mitigating and aggravating factors when determining sanction. However, a Regulatory Commission shall be entitled to impose an appropriate time-based suspension that is commensurate with the breach, having regard to the specific roles and responsibilities of the Participant.
 - Second or further offences will be treated with the utmost seriousness.

There will be a presumption that the sanction for a second or further offence will be higher than the top end of the Sanction Range (i.e. 12 Matches), however the Regulatory Commission shall in any event impose an immediate suspension of no fewer than 7 Matches. Where a Regulatory Commission deems it appropriate to issue a time-based suspension it should consider all relevant factors including but not limited to the number and severity of any previous offences when determining sanction. A Regulatory Commission should have regard to the Sanction Range as set out in the Appendix as well as the mitigating and aggravating factors when determining sanction. However, in all cases a Regulatory Commission shall be able to impose any punishment it deems appropriate and proportionate in the circumstances.

26. The Commission referred to Regulation 40.2 of the FA Disciplinary Regulations General Provisions which state 'save where expressly stated otherwise, a Regulatory Commission shall have the power to impose any one or more of the following penalties or orders on the Participant Charged...a fine'.
27. The Commission noted that Mr Burton had two previous aggravated breaches together with an incident of threatening and/or abusive language/behaviour. The Commission noted therefore that the incident in question was Mr Burton's third aggravated breach, agreeing this was highly concerning. The Commission noted Mr Burton was a match official therefore in a position of authority and also that he would have previously had to complete FA education courses.
28. The Commission agreed that, whilst any aggravated comments were clearly unacceptable and there is no room in society for them, the comments in question were arguably lower down the scale in terms of offensiveness. However, the Commission noted that Mr Burton

clearly had a record of making aggravated comments and agreed that this was highly concerning. The Commission noted the previous aggravated charge had resulted in a significant suspension of 159 days.

29. Taking all of the above into consideration, the Commission agreed a suspension of 182 days from football and all football activities was appropriate. The Commission agreed that Mr Burton should be ordered to complete a face-to-face education course prior to being eligible to resume participation, due to the fact this was a third proven aggravated charge.
30. For the avoidance of doubt, the Commission was not tasked with confirming whether or not Mr Burton was 'racist', simply whether, on this occasion, it was felt that his comments had been aggravated by reference to a protected characteristic.

Outcome

31. The Commission ordered that Mr Burton be:
 - a. Ordered to serve a 182-day suspension from football and all football activities. and
 - b. Ordered to attend a face-to-face education programme before the time-based suspension is served or be suspended until such time as this course is completed.
32. There is the right to appeal these decisions, in accordance with FA Regulations.

Alan Darfi
Fiona Rudge
Peter Sowton

9 November 2023