

FOOTBALL ASSOCIATION DISCIPLINARY COMMISSION

SUSSEX FA

v

EMLYN McCANN

Case ID: 10598316M

WRITTEN REASONS

Background and Chronology

1. The Football Association convened a Disciplinary Commission (“the Commission”) on behalf of the Sussex FA to adjudicate upon disciplinary charges levied against Emlyn McCann arising out of a match played on 16 October 2021 between Corinthian FC Reserves and Eastbourne Borough FC U23 Development in the Suburban Football League.
2. The Commission Members were Yunus Lunat (Independent Chairman of the FA National Serious Cases Panel), Peter Sowton (Hampshire FA) and Vince Williams (Royal Air Force FA).
3. Sienna Howell of the Sussex FA acted as Secretary to the Commission.
4. By letter dated 17 November 2021 Emlyn McCann was charged with the following offences.

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, race, nationality, faith, gender, sexual orientation or disability.

5. An acknowledgment to the misconduct charges was filed denying the charges and requesting them to be dealt with at a hearing.
6. A remote hearing was arranged in view of the Covid 19 pandemic. Mr McCann represented himself at the hearing.
7. The Commission had been provided with the case documents and video recording which had all been considered.
8. The following is a summary of the principal reasons considered by the Commission. It does not purport to contain reference to all of the issues or matters considered and the absence in these reasons of reference to any particular point or submission should not be read or implied that the Commission did not take such point or submission into consideration when the Commission determined the matter. For the avoidance of doubt, the Commission carefully considered all of the evidence and material furnished with regard to this case.

9. **The Relevant FA Rules**

Rule E3.1 provides that:

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.

Rule E3.2 provides for:

“Improper conduct, aggravated by 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.”

Appendix 1 Part A of the FA Disciplinary Regulations stipulate:

Where a Participant commits an Aggravated Breach a Regulatory Commission shall impose an immediate suspension of between six and twelve matches on that Participant. The Regulatory Commission may impose a suspension in excess of twelve matches where aggravating factors of significant number or weight are present.

A Participant who commits an Aggravated Breach shall be subject to an education programme, the details of which will be provided to the Participant by The Association;

A Regulatory Commission may impose a financial penalty or any other sanction that it considers appropriate as provided by paragraph 40 of Part A of the Disciplinary Regulations.

The Evidence and Hearing

10. The Commission had been provided with a bundle of documents containing all the evidence and a video recording which had been considered. The Commission heard from the following witnesses:

Gerry Kehoe

Mr Kehoe was the assistant referee, who confirmed the contents of his statement in his email to the Sussex FA dated 21 October in which he described that in the second half he heard Mr McCann shout “*Your (sic) “a fuckng.....”* following which the referee paused play and came over to him and enquired if he had heard what Mr McCann had just called him. Mr Kehoe explained that he had his head turned and so only heard “*your (sic) a fucking.*” He was not certain of the rest of the shout. The referee explained that Mr McCann had just called him a “*fucking cheating bastard*” and proceeded to show him the red card.

Sas Parsad

Mr Parsad is the Eastbourne manager and was stood in the technical area at the relevant time. He confirmed the contents of his written statement that after the off side decision he heard Mr McCann shout “*lino he (sic) 5 yards behind him, he ran fucking past him*”. After Mr McCann was dismissed he pressed the referee on what the referee thought was said but the referee did not reply. He stressed that there was a video recording of the incident which will be crucial, and disprove that any discriminatory language was used.

Jack Tebbett

Jack was the Corinthians manager. He confirmed the contents of his written statement that when the off side decision was given he actually turned to the Eastbourne management and said he agreed with them that it was the wrong decision. He heard one of the Eastbourne management shout across to the referee that the player had run past the defender. For some reason the assistant referee started flagging and the referee then sent off the Eastbourne manager. He maintained that he did not hear any discriminatory language used at any point. Under questioning he confirmed that he did not hear the word “ *fucking* ” shouted, and that he only learned of the homophobic allegation at full time when Mr McCann informed him of the allegation. Mr McCann was upset at the allegation.

Emlyn McCann

Mr McCann maintained that he did not shout any homophobic comment when he challenged the off side decision. The video recording clip was played on a number of occasions followed by a series of questions in an attempt to decipher the disputed comment, with Mr McCann admitting to shouting “ *lino, he’s five yards behind him* ” followed by “ *he’s fucking run past him* ”. He insisted that he could not hear “ *you fucking bent bastard* ” and repeated his denial.

Decision

11. As part of its deliberations the Commission reminded itself of the standard of proof which was required.
12. As part of its deliberations the Commission considered all of the evidence that had been presented.
13. It was a matter for the Commission to determine which evidence to accept and reject where there were discrepancies between the evidence of the witnesses.
14. Having determined which evidence the Commission accepted and rejected, the Commission then went on to determine the charges on the balance of probabilities. The unanimous decision of the Commission was to find the **aggravated charge not proven** but the non-aggravated element under **E3.1 proven** by admission.

Reasons for the Decision

15. The Commission listened to the recording many times in order to determine the alleged offensive comment and deliberated for almost 30 minutes. It was unclear whether the shout was *“fucking bent bastard”* or *“fucking went past him”*. It was however not possible to conclude on a balance of probability that the final comment was *“fucking bent bastard”*. In the circumstances the Commission dismissed the aggravated element of the charge and found it not proven. Mr McCann had admitted shouting and swearing at the referee which was an admission of Improper Conduct by way of foul and abusive language.
16. In view of the aggravated charge being found not proven the hearing fee was ordered to be returned.

Sanction

17. In view of the E3.1 charge being admitted the Commission were then informed of Mr McCann’s previous disciplinary record over the past five seasons which was clear until this incident.
18. Mr McCann then addressed the Commission as to mitigation.
19. The Commission referred to all of the relevant FA rules and the Disciplinary Regulations and Sanction Guidelines in arriving at the sanction.
20. The following sanction was imposed:
 - (i) Emlyn McCann will be suspended from all football activity for 1 match. This will be by way of a ground ban in view of his role as a manager.
 - (ii) He will also pay a fine of £15.
 - (iii) Eastbourne Borough FC shall be subjected to 5 disciplinary points.
21. There is a right of appeal in accordance with the FA Regulations.

20 January 2022

Yunus Lunat (Independent Chairman)

Peter Sowton

Vince Williams