

**Disciplinary Commission (“The Commission”)**

**On behalf of Sussex FA**

**In the matter of Jesters FC**

**(Case number 9967368M)**

**Hearing Summary including Written Reasons**

1. This is a hearing summary and includes written reasons for the decision of the Disciplinary Commission (The Commission) which convened by personal hearing (online) on Monday 4<sup>th</sup> January 2021.
2. The FA appointed Mr. Michael O’Brien as Chair of the Commission. Mr Minesh Gupta and Mr Mark Tucker were appointed as wing members. Mr Shane Comb, Sussex FA, was appointed by the FA as Commission Secretary.
3. The following is a record of the salient points which the Commission considered. It is not intended to be, and should not be taken to be, a verbatim record of the hearing.
4. Following a game between Old Town Boys and Jesters FC on the 13/12/20, Sussex FA raised charges against Jesters FC (JFC) on the 21/12/20, as follows: -

**JESTERS FC**

*FA Rule E20 – Failed to ensure Players and/or Club Officials and/or spectators conducted themselves in an orderly fashion.*

*Details; It is alleged that Jesters failed to ensure that player(s), official(s), spectator(s), and/or all person(s) purporting to be its supporter(s) or follower(s) conducted themselves in an orderly fashion and refrained from improper, violent, threatening, abusive, indecent, insulting and/or provocative words and/or behaviour contrary to FA Rule E20, and it is further alleged that the language and/or behaviour made reference to sexual orientation. This refers to the comment(s) “poof” and/or “faggot”, or similar allegedly made by Jesters spectators and causing the abandonment of the game.*

5. The charge sheet advised that, should the Commission find the charge proven, then the FA’s recommended sanction guidelines indicated a fine of £0 - £150.
6. JFC denied the charge and asked to attend a personal hearing.
7. The Commission had before them the following evidence and/or statements:
  - A statement from the match official, Mr Mark Gidman (MG), who stated that in or around the 68<sup>th</sup> minute of the match, MG was approached on the pitch by Assistant Referee Perry Hart (PH) who advised him that he had heard homophobic comments (directed at Old Boys players) on 3

separate occasions from persons connected with JFC. PH suggested that the game be abandoned and MG agreed so made this decision. MG stated that the Jesters Manager advised MG that he had heard some or all of the comments

- A statement from PH who stated that, after Old Boys had taken a 2-0 lead, and in or around the 60<sup>th</sup> minute, he heard a person connected with JFC (PH described him as a white male supporter stood directly amongst the JFC supporters) shout “get up you poof” to an Old Boys player. PH stated that he challenged the person who made the comment, advising that such comments were completely inappropriate. PH reported this comment to JFC management shortly afterwards, identifying the individual involved at this time. PH further stated that, approximately 5 minutes later, a foul was awarded against a JFC player. The reaction of a JFC supporter was to shout the word “faggot”. As PH went to report the comment to MG, he heard the word “faggot” shouted once more, again from within the JFC supporter section but this time from closer to the bench (from a different person judging by location and voice). PH suggested that the game be abandoned and MG agreed. PH had no doubt in his mind that the comments came from JFC supporters and / or substitutes and / or management staff.
  - A statement from Tracey Saunders (TS), JFC Club Secretary, who stated that JFC had hired a coach for supporters to travel to the game. TS stated that the person alleged to have made the first homophobic comment had not travelled on the coach and stated that there was nothing such as clothing to identify the individual as a supporter of JFC. TS also stated that, on the day, the only allegation mentioned was use of the word poof. TS questioned how or why additional comments have subsequently been alleged.
  - A statement from Shane Saunders (SS) of JFC, who stated that the Assistant Referee (PH) identified a man, who was stood amongst the JFC supporters, to him as having made a homophobic comment. SS did not recognise the man but asked him to stop to avoid any problems for the Club.
- 8.** In person at the hearing the match officials came across as extremely credible witnesses. The Commission were left in no doubt that discriminatory language had been used as described by PH. This opinion was formed due to the compelling testimony of PH, the trust that MG has in PH as a fellow Level 4 official and MG’s testimony that a JFC official had admitted hearing some of the language.
- 9.** In person at the hearing, Ben Saber (BS) represented JFC as player and Chairman of the Club. BS did not come across as an entirely credible witness. BS was at times rather argumentative and sought to disrupt reasonable conversation on more than one occasion. BS stated that several neutrals had been attracted to the game and situated themselves amongst JFC supporters due to the respect barrier that JFC had erected (at the request of the League). BS advised that he had tried to address the behaviour of the neutral spectators (those amongst the

JFC section that he did not know) prior to any incident involving discriminatory language. However, the spectators had told him that they would act as they pleased with the game being played at a public venue. BS did not accept that there was any link between the scoreline (JFC had gone 2-0 down just prior to the first incident of discriminatory language) and the behaviour of the persons using the discriminatory language.

- 10.** SS appeared as a witness for JFC and came across as a credible witness. SS stated that he addressed the first alleged comment with the man pointed out to him by PH. SS stated that he did not recognise the man but asked him to refrain from such conduct to protect the reputation of JFC and avoid problems for the Club. SS did not hear the other alleged comments or play in any part in how they were dealt with.
- 11.** The Commission considered all the evidence before them, and found unanimously, using the applicable standard of proof which is balance of probability, that the charge of contravention of FA Rule E20 was proven. Having determined that it was practically certain that the comments had been made as described by the Match Officials, the question turned to whether the comments were made by persons associated with JFC or whether they were made by persons who were neutral (who had chosen to situate themselves amongst the JFC support). The Commission determined that it was much more likely that the persons were associated with JFC; the key reasons being that:
  - i/ the persons were situated amongst the JFC section. Whilst it is not impossible that neutrals may have stood in that area it was deemed unlikely when there was plenty of space elsewhere around the pitch
  - ii/ the comments started when JFC had just gone 2-0 down. Whilst it is possible that this was coincidental, it seems more likely that the comments were made with the score line as a factor
  - iii/ the first comment was made by an individual standing alone a few yards from other JFC supporters. An individual making such a comment is arguably more likely to do so in familiar company rather than when standing amongst complete strangers
  - iv/ the individual who made the first comment appeared to have travelled to the game rather than being a local (the comment 'why? Because we're in Brighton?' suggests this)
- 12.** For the record, the Commission would wish to state that it is not determining whether or not JFC, as a Club, are homophobic, but the Commission is merely required to decide on the evidence before them on this occasion, that the comments were made and that they included the reference to Sexual Orientation within the meaning of FA Rule E20.
- 13.** The Secretary gave the Commission JFC's disciplinary record over the last five years, which showed 1 relevant incidents of misconduct. A £55 fine was issued for a proven E20 charge from a match played in September 2020.

- 14.** The Commission found this to be an aggravating factor, as was the fact that multiple comments were made by more than 1 individual.
- 15.** The Commission unanimously decided to place this offence in the upper middle category in terms of sanction and a fine of £90 was imposed, with 7 penalty points to be recorded against the record of the Club.
- 16.** There is a right of appeal against these decisions in accordance with the relevant provisions set out in the Rules and Regulations of the Football Association.

Michael O'Brien (Chairman)

Minesh Gupta

Mark Tucker JP

Monday 4<sup>th</sup> January 2021