

**IN THE MATTER OF
SUSSEX FOOTBALL ASSOCIATION**

-v-

**MAX VARDY
(CASE REFERENCE 9921998M)**

**REASONS FOR DISCIPLINARY COMMISSION DECISION
THURSDAY 17th OCTOBER 2019**

Warning – This document contains offensive and/or discriminatory language.

INTRODUCTION

1. These are written reasons for the findings of a Disciplinary Commission, held via videoconference (Webex), on behalf of Sussex FA (SFA) on Thursday 17th October 2019. The Commission considered charges against Max Vardy (MV) of Associates First (AF). The offences are alleged to have taken place during a Sussex Sunday League Division 4 fixture between AF and Whitehawk Rangers First on Wednesday 4th September 2019.

PARTIES

2. The Disciplinary Commission members, all members of the County Football Association's National Discipline Panel, were Michael O'Brien (Chair), Anthony Rock and Ian McKim.
3. Lauren Halsey (Hertfordshire FA), appointed by the FA, acted as Secretary.

MISCONDUCT CHARGE NOTIFICATION

4. By SFA Misconduct Charge Notification, dated 13th September 2019, the following charges were raised:
 - a. Charge 1 - FA Rule E3 - Improper Conduct (including foul and abusive language).
 - b. Charge 2 - FA Rule E3(2) - Improper Conduct - aggravated by a persons Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Sexual Orientation or Disability.

FA RULE E3

5. The relevant sections of FA Rule E3 (The FA Handbook Season 2019-2020 page 115) states:
 - a. *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.*

b. 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.

CHARGES

6. Charges against MV were raised after he is alleged to have used foul and abusive language/behaviour towards the Referee and that such language/behaviour was aggravated by reference to nationality. Specifically, he is alleged to have said, *“you’re a fucking idiot, you’re fucking stupid, you’re not even English, you are not supposed to referee in this county, you’re a fucking foreign”*.

PLEA

7. On 20th September 2019, MV pleaded guilty to charge 1 (using foul and abusive language) but not guilty to charge 2 (that the language used within charge 1 was aggravated by reference to nationality). Accordingly, we dealt with the case as a deny by correspondence.

WRITTEN EVIDENCE

8. The written evidence available to us consisted of:
- a. SFA Misconduct Charge Notification (MV) dated 13th September 2019.
 - b. FA Extraordinary Incident Report Form dated 5th September 2019, submitted by the Referee, Calogero Rizzo.
 - c. E-mails dated 5th, 8th and 12th September 2019 from the Referee, confirming that it was MV who made the aggravated comments.
 - d. Observations and text messages from AF club officials, players and spectators (John Stone, Dan Bryant, Bradley Freeman, Jamie Hart, Maj Bensliman, Tom Mitchell, Ainsley Amerena Rix, Max Vardy, Conal Sweeney, Paula Lee Jennings, Graham Webb, Cozzie, Karl Rolph and Luke Samson).
 - e. FA Response Pro-forma from MV dated 20th September 2019; plea to both charges.
 - f. Two letters from MV dated 9th and 16th September 2019; general letter of apology/denial of charge 2 and a copy of the letter of apology sent to the Referee.

SUMMARY OF EVIDENCE

9. The foregoing is a summary of the written evidence provided to us. It does not purport to contain reference to all the points made. However, the absence in these reasons of any particular point or submission should not imply that we did not take such point or submission into consideration.
10. In his submissions the Referee states he was standing 2 yards away from MV when he showed him the red card for a second cautionable offence. At that point MV made the alleged aggravated

comment. When asked to comment on a suggestion that the comment had been made by one or more of the spectators rather than MV, the Referee was sure that it was MV who had made the comment.

11. In his statement the Match Observer says that he was initially 40 yards away from MV and the Referee, and whilst he could hear MV making some insulting and abusive comments he did not hear every word. As MV left the pitch the Match Observer moved to within 20 yards of him and could clearly hear the player's rhetoric and language, which included calling the Referee a "*fucking useless cunt*".
12. We considered the submissions from AF club officials, players and spectators. Whilst their collective evidence is that MV did use foul and abusive language, none of them report hearing MV make any racist or aggravated comment. Luke Samson does state that he heard MV say to the Referee something along the lines of "*learn to speak English*". In their submissions, Danny Bryant (AF Manager) and Graham Webb (AF Captain), say they spoke to the Referee numerous times both during and after the game, but the Referee said nothing about any racist remarks having been made. A number of the players say that after MV was sent off the crowd were making comments and chanting, including reference to the Referee "*fucking off back to his own county*". Many of their statements focus on the poor performance of the Referee and not on the actions/comments made by MV.
13. MV does not dispute making insulting and abusive comments to the Referee. After being sent off he states that the crowd were giving the Referee abuse, including the comments, "*you cunt, you shit ref, fuck off back to your own country*". At this point MV says he told the crowd to shut up because it would only make matters worse. We noted in his letters of apology that MV accepts he was totally disrespectful to the Referee but denies making any reference to the Referee's nationality.

FINDINGS

14. The burden of proof is on the County FA meaning it is for SFA to prove the case to the appropriate standard of proof. The applicable standard of proof in this case is the civil standard of the balance of probability, sometime referred to as the 51% test. The balance of probability standard means that we have to be satisfied that the occurrence of an alleged event or events was more likely than not to have taken place.
15. We spent a significant amount of time considering the evidence in this case. Having first agreed that there was a clear and abusive reference to being foreign and not English, we then satisfied ourselves that FA Rule E3(2) does not require an express reference to a specific nationality for a breach to be aggravated. We then considered and rejected the possibility that the Referee, stood some 2 yards away from MV, had misheard the comment or that someone other than MV had

made it.

16. The Match Observer was initially not close enough to fully hear MV's comments, and no AF players, club officials or spectators appear to have been close enough to report hearing MV say anything of a racist/aggravated nature. When considering all of the evidence it basically came down to the Referee's word against that of MV.
17. We concluded, on the balance of probability, that MV did make reference to the Referee being foreign and that such reference constitutes an aggravated breach. By a unanimous decision we found both charges proven.

PREVIOUS MISCONDUCT

18. We were informed of MV's disciplinary record, noting that he has no other proven cases of misconduct.

SANCTION

19. In regard to the entry point for an aggravated misconduct first offence we were reminded of the FA Sanction Guidelines for Season 2019-20: a 6-match suspension; a £75.00 fine and the requirement to complete an FA Equality Education Course. We also noted that under FA Disciplinary Regulations 2019-20 (page 145 paragraph 48.4) we were not bound to impose an immediate suspension of at least 6 matches but instead may impose any sanction we consider appropriate.
20. Taking into account the circumstances in this case and the mitigating and aggravating factors (including the nature of the offence, misconduct record, plea to the charges and letters of apology), we concluded that the following sanction is to be imposed:

MV is to be suspended for 6 matches and fined £75. He is required to complete an on-line FA Equality Education Course within 4 months, the details of which are to be notified by SFA, failing which he shall be suspended from all footballing activity until completion of said course. His club, AF, will incur 6 disciplinary penalty points.

21. In accordance with FA Regulations there is a right of appeal against the decision.

Friday 18th October 2019

Michael O'Brien (Chair)

Anthony Rock

