

Case IDs: 10439993M & 10439990M

IN THE MATTER OF MISCONDUCT CHARGES UNDER RULE E3 & E20 OF  
THE RULES OF THE FOOTBALL ASSOCIATION

BETWEEN:

**THE WORCESTERSHIRE  
FOOTBALL ASSOCIATION**

and

**MALVERN TOWN FC**

and

**JAMES FEBERY**

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**DECISION AND REASONS**

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**The Charges**

1. On 5 March 2021 a Zoom call took place with Malvern Town FC (“The Club”) involving 25 participants including the Club Chairman, Chris Pinder, the first team managers Dean Whittall-Williams and Lee Hooper and James Febery a player for the Club. Laura Whitehead, who was the Lead Sports Therapist for the Club, also joined the Zoom call.
2. Arising from this Zoom call:

- 2.1 The Club has been charged by the FA with a breach of FA Rule E20 Failing to ensure Officials, Players and Spectators conducted themselves in an orderly fashion and refrained from improper, violent, threatening, abusive, insulting and/or provocative words or behavior by reference to gender, and
- 2.2 James Febery has been charged by the FA with a breach of FA Rule E3 Failing to act in the best interests of the game.
3. Both the Club and Mr Febery have accepted the charges in correspondence and have requested a non-personal hearing. In accordance with the FA Rules I was appointed as a Disciplinary Regulatory Commission Chair to determine these cases. I consolidated both cases since they arise out of the same incident.

### **The Evidence**

4. I have considered a pack of documents including the charge letters, the evidence in support of the charges and the response to the charges. I have also seen the photos and of male genitalia that was posted and showed in the WhatsApp chat group.

### **The Relevant FA Rules**

5. FA Rule E3.1 states:

*“3.1 A Participant shall at all times act in the best interest 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.*

6. FA Rule E3.2 provides:

*"3.2 A breach of rule E3 one is an "Aggravated Breach" where it includes a reference whether express or implied, to any one of the following:- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability."*

7. FA Rule E20 provides:

*"Each affiliated Association, competition and club shall be responsible for ensuring:*

*(a) that its directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behavior."*

### **Findings of fact**

8. Based on the written evidence, I have made the following findings of fact on the balance of probabilities.
9. On 5 March 2021 a Zoom call was arranged with the Club involving 25 participants including the Club Chairman, Chris Pinder, the first team managers including Dean Whittall-Williams and Lee Hooper, some first-team players including James Febery and some Under 18 players. Laura Whitehead, the Lead Sports Therapist with the Club, also joined the Zoom call.
10. The participants were playing a game via an app on their mobile phones which involved the participants voting on a favourite answer. The app

randomly generated the following question regarding Laura Whitehead; “If Laura entered a Miss America pageant, what would her talent be?” The majority of the answers provided by some of the participants were of a highly sexual and derogatory nature including:

- “Spreading legs isn’t the only thing she’s good at”
- “Rubbing balls and giving half of sucky”
- “Downward dog”
- “Great set”
- “ I would”, and
- “The happy ending at the end of a massage”.

11. These sexist and derogatory comments aimed at Ms Whitehead resulted in lots of laughter amongst the participants. Neither the Chairman Mr Pinder nor any of the first team managers intervened to stop and/or object to the unacceptable harassment behavior. In fact, when Ms Whitehead attempted to inform the participants that their behavior was offensive and amounted to sexual harassment, she was ignored and talked over. Later on, in response to the comments the Chairman Mr Pinder tried to make excuses for the players unacceptable behavior by stating that they were good lads but “pretty basic.”

12. Ms Whitehead left the app game and the Zoom call shortly afterwards. When the game re-started, she discovered that she had been added without her permission to a WhatsApp chat group. When she opened the chat, she discovered that highly explicit photos and videos of male genitalia had been posted and showed in the chat. The person responsible was James Febery. The other male participants did not object to the sexually explicit photos and videos of male genitalia at the time.

13. In due course, Ms Whitehead resigned from her employment with the Club because of the sexist comments since she no longer felt safe working in a close environment with the male players. She asked that her resignation letter be read to all members of the Club. It is alleged by Philip Earl that he read Ms Whitehead's statement to the players.

### **Decision**

14. As stated above, both the Club and Mr Febery have pleaded guilty to the charges and I am satisfied based on my findings of fact above on the balance of probabilities that the FA Rule E20 charge against the Club and the FA Rule E3 charges against Mr Febery have been proven.

### **Sanction - The Club & the E20 Charge**

15. The sentencing guidelines for an E20 charge for a Step 5-7 Club is a fine of between £0-£250.00. I find the following aggravating features in this case:

- (i) Ms Whitehead was subjected to several sexist and highly derogatory comments from male participants of the Club during the WhatsApp game;
- (ii) The comments not only amounted to a breach of FA Rule 20 by reference to a person's gender, they also amounted to unlawful harassment related to gender under section 26 of the Equality Act 2010. The comments amounted to unwanted conduct related to Ms Whitehead's gender and had the purpose of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms Whitehead.

- (iii) Neither the Club Chairman, Mr Pinder or any of the first team managers including Dene Whittall-Williams or Lee Hooper who were participants on the Zoom call and in the WhatsApp game preventing or objected to the highly sexist and discriminatory remarks made against Ms Whitehead. Effectively by their actions or rather the “lack of action”, they condoned the player’s wholly unacceptable behavior;
- (iv) Because of the player’s sexist and discriminatory remarks, Ms Whitehead resigned her employment with the Club;
- (v) This incident wasn’t taken “seriously” by the Club until Ms Whitehead requested a meeting with the Club’s Board and a statement of resignation;
- (vi) The Club acknowledge that they allowed at least one 17 year old player to attend the Zoom call which involved players making highly offensive and sexist comments towards a female employee;
- (vii) The Club's investigation into this serious incident of harassment was woeful and inadequate. There was no proper documented investigation. The players involved were “let off” with verbal warnings, which are again undocumented. The captain of the Club who was responsible for making one of the worst sexist derogatory comments kept his captaincy;
- (viii) The Club’s mitigation, which I have considered, is equally woeful and inadequate and is quite frankly embarrassing. Marg Scott, Football Secretary of the Club, states that Ms Whitehead “acted as one of the boys and that is how she was treated”. With respect, Ms Whitehead was the victim of unlawful sexual harassment during the Zoom call and there can be no justification whatsoever for her treatment. Marg

Scott states that a Zoom party was arranged for the lads to have “a night out” and Ms Whitehead was added as “one of the lads” and invited. However, Ms Whitehead was clearly not treated as “one of the lads” since she was subjected to highly derogatory sexist comments which amounted to unlawful sexual harassment. Marge Scott continues that Ms Whitehead was willing to take part in the games and only took offence when one of the games was directed at her. It is one thing to participate in a WhatsApp game; it is quite another to be the subject of highly offensive sexist remarks during the game because you are a woman. Marg Scott continues that this allegation has “left a bitter taste with the players, managers and board members from someone they all considered a friend but has stabbed them in the back”. This an appalling comment to make against Ms Whitehead who was the victim of highly offensive sexist comments which amounted to unlawful sexual harassment. She had every right to challenge the Club’s wholly unacceptable behaviour and had every right to bring it to the FA's attention. The only organization and individuals that has let anyone down here is the Club, the Chairman, the first team managers, and the players who made highly derogatory sexist comments about Ms Whitehead.

- (ix) I have also taken into account the Club’s offence history namely another proven E20 offence also by reference to sexual orientation in December 2020; a proven E3.1 charge of improper conduct including foul and abusive language aggravated by race/ethnic origin in September 2019; and three proven charges of using offensive, insulting and/or abusive language/gestures all in 2016. However, even if I had not taken into account the Club’s offence history, the penalty below would have been the same.

16. In the circumstances and without any hesitation, I impose the maximum fine against the Club for the E20 charge of £100.00 (one hundred pounds) and 22 penalty points. If I had the power to award a more serious penalty, I would have done so. In addition, the Club including its Chairman, Mr Pinder, the first team managers including Dene Whittall-Williams or Lee Hooper, the players who participated in the Zoom call and Marg Scott, Football Secretary of the Club, should all attend an on-line FA Education Course.

### **Sanction – James Febery & the E3 Charge**

17. Mr Febery posted highly sexually explicit and offensive obscene videos and images on a WhatsApp group seen by some of the Clubs players and a female employee. Under FA Rule E3, he failed to act in the best interest of the game and/or brought the game into disrepute and/or was guilty of abusive, indecent behaviour. For Improper Conduct (including threatening and/or abusive language or behavior) the high range is a fine of between £60.00 to £100.00. This case falls within the high range for the reasons given above.

18. In the circumstances, the appropriate sanction is maximum fine of £100.00 (one hundred pounds). In addition, Mr Febery must attend an on-line FA Education Course.

19. My decisions are the subject of a right of appeal under the relevant FA Rules and Regulations.

Signed:

Tariq Sadiq, Chair

17 August 2021.