

THE FOOTBALL ASSOCIATION DISCIPLINARY COMMISSION

Sitting on behalf of Worcestershire Football Association

PERSONAL HEARING

of

**JAMES MUDIE
REDDITCH BOROUGH**

THE DECISION AND REASONS OF THE COMMISSION

INTRODUCTION

1. This is the decision and written reasons of the Discipline Commission considering the personal hearing of Mr. James Mudie (“JM”), Case ID number 10207663M. This is a summary document, and does not purport to rehearse all the evidence and submissions that were considered.
2. The Disciplinary Commission members were Mr. Davide Corbino (Independent FA appointed Chair), Ms. Sue Henson-Green and Mr. Terry Harrop. Mr. Ravel Chasioua of Worcestershire FA acted as the Secretary to the Commission.
3. This case relates to two posts on JM’s Twitter account on 22 August 2020 and 25 August 2020. By charge letter dated 18 September 2020, JM was charged with a breach of FA Rule E3 – Improper Conduct (including foul and abusive language) (‘Charge 1’) and FA Rule E3(2) – Improper Conduct – aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Sexual Orientation or Disability (‘Charge 2’). It is alleged that the following comments are aggravated by reference to race and/or disability; “I’ll bite you Jake you pikey” and/or “bunch of mongers”.

4. JM admitted to posting the Tweets, but denied the charges. He requested a personal hearing. Given the current pandemic, a personal hearing was convened via Webex. JM was represented at the hearing by Julian Workman, Club Secretary of Redditch Borough.

EVIDENCE

5. The following is a summary of the principal evidence provided to the Commission. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or evidence, should not imply that the Commission did not take such point, or evidence, into consideration when the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished with regard to this case.
6. On 22 August 2020, JM posted the following Tweet on his Twitter account; “your full back played him on! Video proof pending. Bunch of mongers like we need to cheat in a friendly”. On 25 August 2020, JM posted a further tweet on his Twitter account; “I’ll bite Jake you pikey”.
7. On 26 August 2020, an email was sent to the Worcestershire FA in which the Tweets were reported. The email stated, *inter alia*, that the sender of the email found the tweet to be “quite frankly sickening to read” and “disgusting and derogatory”.
8. The Commission considered JM’s statement in response to the charge. JM states, *inter alia*, that:
 - i. During a pre-season friendly against Bartley Reds, there were some verbal disputes on the field involving the Bartley players and coaching staff. JM states that given that Bartley Reds have used the word on their social media themselves, he therefore finds it

difficult to believe they would “find it quite frankly sickening to read”.

- ii. Jacob Howard, who JM refers to as Jake in the Tweet dated 22 August 2020, is one of his best friends and he is soon to be his best man at his wedding. JM states that Jake is referred to as ‘Pikey’ within their friendship group as a nickname. JM was not aware, until this allegation was made, of the meaning of the word ‘Pikey’.
 - iii. There are various definitions of the word “mong”; he was “fully unaware of the meaning aimed at an individual with Down’s Syndrome” and that he was referring to the meaning of which referred to a crossbreed dog which was representational of the opposing team’s aggression during the game.
9. The Commission heard oral evidence from JM. JM’s oral evidence was entirely in line with his written evidence. JM stated, in short, that he did not know the derogatory meanings of the words “mong” and ‘pikey’; he should not have got involved in the Twitter train and regretted Tweeting anything; that during the game the opposing team had abused his team and the step-in linesman which had upset him.
10. The Commission noted an email from Jacob Howard, dated 18 September 2020. Mr Howard states that; “...*I can understand the connotation of the word used on social media and understand some may have taken to the term ‘pikey’ and I would like to make it categorically clear I took none whatsoever. though it was aimed at me, and it was a nickname given to me by team mates at my university football team, through no fault of my own or James’ he was using it as a term of endearment towards me... I am regularly referred to as that word and obviously from further investigation we can all understand that it is not acceptable, I can say categorically that neither James, I or my university friends were aware of its connotations.*”

11. At the closing of the hearing, JM and his representative were reminded to call any further or provide any further evidence they may have that they sought for the Commission to consider. JM and his representative confirmed that he had no further evidence and went on to make closing submissions.

BURDEN & STANDARD OF PROOF

12. The Commission reminded itself that the burden of proving a charge falls upon the County FA.

13. The applicable standard of proof required for this case is the civil standard of proof namely, the balance of probability. This standard means the Commission would be satisfied that an event occurred if it considered that, on the evidence, it was more likely than not to have happened.

DECISION

14. The Commission reminded itself that the test for a breach of Rule E3(1) and E3(2) is an objective test, commonly known as the ‘reasonable observer’ test. In other words, the Commission was to consider how a reasonable observer would perceive the words used in the given context. The objective person would be someone of reasonable fortitude. It is not necessary for the County FA to prove that JM intended the tweets to be abusive or insulting and aggravated by race and/or disability.

15. Turning to the Tweets, the Commission place little, if any, weight on the complainants purported harm that the Tweets are said to have caused them subjectively. Liability does not turn on this finding, so their motives are not relevant. As mentioned above, the test is an objective one.

16. The word “Mongs” is a word strongly associated as being a derogatory slur used to refer to somebody as disabled. The word “Pikey” has well-known disparaging connotations associated with the term and is therefore commonly considered a slur. The Commission found that an objective

bystander would have perceived the Tweets both as abusive and making reference to disability and race.

17. Therefore, the Commission are satisfied find that the County FA have proved JM's tweets to be in breach of FA Rule E3 and both Charge 1 and Charge 2 are found proved.

18. For completeness, the Commission did not accept JM's suggestion that in the Tweet dated 25 August 2020 he was calling his friend, Jacob, 'Pikey' as a nickname. The construction and normal reading of the Tweet does not support such a suggestion; Jacob is named within the tweet as 'Jake' and the Tweet does not appear to be directly in response to a Tweet from Jacob Howard. Similarly, in relation to JM's explanation of the use of the word "mongers", the Commission found that, given the context and normal reading of the Tweet, objectively, it is clear the content of the Tweet was disparaging.

19. Finally, the question as to whether objectively the Tweets contained a reference to race/disability is different from the question of whether JM is racist/discriminatory. We were not required to make a finding as to whether JM was racist/discriminatory and did not make such a finding. We sanctioned on that basis.

SANCTION

20. The Commission was informed that JM had a previously unblemished disciplinary history.

21. In mitigation, JM's representative stated that he was disappointed with the decision, but asked the Commission to take into account that JM had a good background and an impeccable record and also the unprecedented times that we are currently in when considering sanction. JM also addressed the Commission; he stated that he would accept any fine but just wanted to play football and that playing alleviated stress from his job. The Commission also noted that as part of JM's evidence, JM expressed remorse for

involving himself with the Twitter thread; would not do it again and as a result has subsequently deleted Twitter.

22. The FA's standard sanctions and guidelines for Aggravated Breaches are set out form part of The FA's Disciplinary Regulations at Appendix 1, Part A, General Provisions which provide:

“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”).

A Regulatory Commission may impose an immediate suspension in excess of 12 Matches in circumstances where aggravating factors of significant number or weight are present.”

23. The Commission did not consider that this matter fell within one of the specified and exhaustive circumstances outlined within Appendix 1 of the Disciplinary Regulations which would allow the Commission a discretion to depart from the standard minimum sanction.

24. Having considered all of the circumstances in the case, including JM's previously unblemished disciplinary record, aggravating and mitigating factors present, the Commission impose the following sanction:

- i. 6 match suspension. This will come into effect upon the resumption of the applicable league/competition;
- ii. Monetary Penalty of £75;
- iii. JM to satisfactorily complete a mandatory online education programme.
- iv. Five Club Disciplinary Points

25. Failure of the participant to complete the education course within four months shall result in his immediate suspension from all football activity until such time as he has completed the course.

26. This decision is subject to the right of appeal under the relevant FA rules and Regulations.

Mr Davide Corbino (Chair)

Ms. Sue Henson-Green

Mr. Terry Harrop

3rd November 2020