

IN THE MATTER OF AN  
INDEPENDENT REGULATORY COMMISSION  
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

The Association

- and -

KARL OYSTON

The Respondent

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WRITTEN REASONS FOR THE DECISION OF THE  
INDEPENDENT REGULATORY COMMISSION  
FOLLOWING THE PERSONAL HEARING ON  
9<sup>TH</sup> JUNE 2015

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**1. Background**

- 1.1 The Respondent, Karl Oyston, is the Chairman of Blackpool Football Club (“the Club”) and a member of the Football League Board.
- 1.2 Between the late evening of Thursday 14<sup>th</sup> November 2014 and Monday 17<sup>th</sup> November 2014, an exchange of text messages took place between Mr. Oyston and a Blackpool supporter, Stephen Smith. During the course of the protracted exchange, Mr. Oyston made the following statements (with emphasis added):

*“Well I am doing pretty well for someone so clueless. You on the other hand clearly haven’t a lot of any worth in your life so take to sending **retarded texts** to people you don’t know judging them ...”*

*“... Sorry your life is so shit but that’s only your fault not mine. Enjoy the rest of your **special needs day out.**”*

*"Are you sure we have met, I would have remembered such a massive retard. Business is great thanks and awash with money ..."*

*"... Impossible to have a meaningful conversation with such a fuctard as you. The day you ever advise me about anything other than paint colour will not come."*

*"I do ask for help just not from an intellectual cripple like you. When and if I need it. You are hilariously stupid as your type always are. Done fuck all, got fuck all, full of ideas how other people should spend their money. Get real you thick twat."*

## **2. The Charges**

2.1 The FA sent a charge letter to Mr. Oyston, dated 20<sup>th</sup> March 2015, in which it is alleged that each of the five statements set out above included abusive and/or insulting words towards Mr. Smith, contrary to FA Rule E3(1). The letter further alleged that each of the five breaches is an "Aggravated Breach", as defined in Rule E3(2), on the ground that they included a reference to disability.

## **3. Context**

3.1 By his own account, Mr. Oyston's relationship with the supporters of the Club has been difficult since he became its Chairman 17 years ago. After spending one season in the Premier League, that relationship deteriorated further when the Club struggled on its return to the Championship at the start of the 2014/15 season. The level of discontent amongst supporters was such that in or around the autumn of 2014 Mr. Oyston's private mobile phone number was obtained and published on the internet. He then began to receive unsolicited calls and text messages, the vast majority of which he either ignored altogether or expressed his unwillingness to engage with those who contacted him.

- 3.2 During the evening of Friday 14<sup>th</sup> November 2014 Mr. Smith, who is and was at the forefront of a movement to oust Mr. Oyston from the Club, sent a text message to Mr. Oyston's mobile phone. Initially, the messages were of an inquiring nature and inoffensive, including his plans to turn the club around. Quite properly, Mr. Oyston fended off three such texts, telling Mr. Smith to contact the Blackpool Supporter's Association.
- 3.3 Not to be deterred, Mr. Smith then sent a text which was highly offensive. In it, he identified himself as a member of a group that had met that evening and which had one aim: to oust Mr. Oyston. Mr. Smith said that he looked forward to seeing Mr. Oyston's face when the group "*crush you*". There then followed a somewhat sinister statement that "*nothing was off limits*" before Mr. Smith went on to accuse Mr. Oyston of being "*a financial retard*". The message concluded with a personal reference to one of Mr. Oyston's sons that had no connection whatsoever with the Club's predicament, on or off the pitch.
- 3.4 The message referred to above caused Mr. Oyston to rise to the bait, which he did at 10.10am on Saturday 15<sup>th</sup> November, setting off an exchange of mutually insulting and abusive text messages that continued until Monday 17<sup>th</sup> November. The Commission was provided with transcripts of the exchanges which fill 10 pages of single line space narrative, before Mr. Oyston eventually retreated to his initial stance of stone-walling Mr. Smith. The content of the messages are abusive and puerile in equal measure. They make depressing reading. Suffice it to say that the Commission deprecates in the strongest terms the highly abusive and insulting messages that Mr. Smith sent, particularly the reference to disability by the use of the word "*retard*" which he initiated.
- 3.5 Mr. Smith is not a participant and therefore not subject to any FA disciplinary action.

#### **4. Mitigation on behalf of Mr. Oyston**

4.1 A number of points were made in mitigation on behalf of Mr. Oyston, both in writing and orally at the hearing before the Regulatory Commission:

- (a) The factual context in which Mr. Oyston's actions occurred, in particular:
  - (i) The fact that the text message exchange in question is but one of a vast number of instances of abusive correspondence which has been received by Mr. Oyston and his family over the last 12 months and is the only occasion when Mr. Oyston has replied to such messages; and
  - (ii) The fact that Mr. Smith is a leading figure in a campaign of harassment of and protest against Mr. Oyston, and who he deliberately set up.
  
- (b) The context of the entire text message exchange which shows that:
  - (i) Mr. Oyston made a genuine effort to refrain from entering into a hostile exchange with Mr. Smith until the exchange was made personal by Mr. Smith;
  - (ii) Mr. Smith was responsible for instigating the abusive nature of the exchange and was the first to make disparaging comments about Mr. Oyston's family; and
  - (iii) It was Mr. Smith who first introduced the use of the word "*retard*" into the exchange and this was merely reflected back at him by Mr. Oyston.
  
- (c) The fact that Mr. Oyston's comments were made in what he considered to be a private, one-to-one exchange of messages with another individual, undertaken in his own time and in his personal capacity and not in his capacity as Chairman of Blackpool FC.
  
- (d) The fact that the comments which form the basis of the charge were not published by Mr. Oyston himself, but by a third party outside the jurisdiction of The FA, without Mr. Oyston's knowledge or consent and against his expectation or will.

- (e) The fact that the comments which form the basis of the charge were not made to an individual with the intention of discriminating against him, and were not intended to be disparaging or derogatory to disabled people. This possible consequence was not in Mr. Oyston's mind at the time of the text exchange.
- (f) The fact that Mr. Oyston is in no way prejudiced against disabled people and has a proven and ongoing track record in relation to work in support of mental and physical health organisations and charities and is a keen supporter of initiatives to support members of the Blackpool community with illnesses and disabilities.
- (g) The fact that Mr. Oyston has already taken steps to rectify the harm which has been caused by his comments, including a frank and unreserved apology and by making a donation to Blackpool FC's Community Trust.
- (h) The fact that Mr. Oyston has provided an admission of liability.
- (i) The fact that Mr. Oyston has an otherwise exemplary disciplinary record with regard to matters of this nature, including before and after the incident (even in the light of the continued abuse that he receives from fans), thereby proving that this was an isolated incident which will not be repeated.

## **5. The observations of the Regulatory Commission**

5.1 After consideration of the mitigation points, together with the submissions made by The FA in response, the Commission makes the following observations on them:

- (a) The written submissions on behalf of Mr. Oyston refer to an escalating campaign of protest that has been staged against him since the start of 2015, including theft, vandalism and criminal damage. Flares have been set off

outside his home. His family are said to have even received death threats and are in regular contact with the police. That deplorable increase in the nature and seriousness of the protest campaign against him has no doubt been shocking and distressing to Mr. Oyston and his family. However, we are concerned with his demeanour and state of mind at the time of the fateful text exchange in November 2014.

Mr. Oyston addressed the Commission and told us that he has suffered abuse ever since he took over the Club. It seems reasonable to assume that there were far fewer dissenting voices during Blackpool's successful promotion season in 2012/13 and brief stay in the Premier League the following season. They no doubt got louder as the 2014/15 season progressed, but the text exchange with Mr. Smith pre-dated the step-change in the nature and seriousness of the protest that on Mr. Oyston's own case took place at the beginning of 2015.

- (b) It is right to say that Mr. Oyston did resist engaging with Mr. Smith until the latter made highly disparaging remarks about Mr. Oyston and his family. It is also right to say that Mr. Smith introduced the word "*retard*" into the exchange by calling Mr. Oyston a "*financial retard*". The latter initially deflected that statement back at Mr. Smith, and the FA did not cite it as one of the alleged breaches. The Commission notes that in response to Mr. Smith's first offensive text, Mr. Oyston did not state his indignation at the attack on his family.
- (c) Moreover, Mr. Oyston self-evidently did not limit his referencing to disability to deflecting the word "*retard*" in the context that it was initially used by Mr. Smith. Instead, Mr. Oyston went on to insult Mr. Smith by inviting him to "*enjoy the rest of your special needs day out*". Mr. Smith's response to this particular insult ought to have left Mr. Oyston in no doubt that such a statement had been wholly inappropriate and that he should desist from any further dialogue:

*"Karl, I can only hope for your sake that the "special needs" part is not a shot at my kids or family!"*

This particular exchange took place at approximately 10.10am on Saturday 15<sup>th</sup> November. Despite having ample opportunity to reflect on what he was doing and had already said, Mr. Oyston allowed the exchange to continue over the weekend, culminating in him calling Mr. Smith a *"massive retard"* and a *"fuctard"* at 9.44am on Monday 17<sup>th</sup> November. It was some time later that morning, Mr. Oyston accused Mr. Smith of being an *"intellectual cripple."*

- (d) The Commission also notes that on three separate occasions after the last-mentioned insult on Monday 17<sup>th</sup> November, Mr. Oyston goaded Mr. Smith into sending him further messages because Mr. Oyston was deriving enjoyment from them. This is clearly not the reaction of someone who was participating in an exchange of insults against his will.
- (e) What transpired here, over the course of several days, may be contrasted with a verbal exchange, or an interview, of comparatively short duration, where the exchanges are instant, and where the opportunity to 'think on one's feet' and reflect is much more limited, both in terms of what has already been said and what to say next. In a text exchange of the kind in question, there was ample opportunity for both parties to it to pause and consider.
- (f) Exchanges on social media that post-date the text exchange suggest that Mr. Smith initiated it with a view to entrapping Mr. Oyston. It is conceivable that the former was prepared to take the credit for doing so even if that had not been his intention. Ultimately, though, whether Mr. Smith's motives were pure or not played no part in Mr. Oyston's decision to allow himself to become involved. He was undoubtedly provoked, but it was his choice to respond and to say what he did. He had a number of alternative options which he failed to take and which, understandably, he now regrets.

- (g) The context in which the litany of abusive messages took place was that of communications between an irate supporter of the Club and its Chairman. The hostility of Mr. Smith was motivated by Mr. Oyston's latter role and his running of the Club. In the absence of that connection, there would have been no reason for Mr. Smith to make contact with Mr. Oyston at all, let alone to insult him. As has been shown, the messages included references by both of them to personal matters, including their respective families, which had nothing to do with football matters or any grievances relating to the Club. Nevertheless, those 'personal' or 'private' insults were traded in the overarching context of Mr. Oyston's involvement in the Club. The fact that the text messages were received and sent from his private mobile phone does not detract from that fact. The Commission therefore rejects the argument that he was acting in his private capacity when the exchange took place.
- (h) It is right to say that Mr. Oyston played no part in the publication of his comments. Subjectively, he says that he did not expect that to happen. It would have been remarkably foolish of him to say what he did if he had turned his mind to the possibility of the wider dissemination of his comments. Objectively, though he ought to have realised from an early stage in the exchange that he was 'playing with fire' by engaging with Mr. Smith. He was having an arm's length conversation with someone whom he had never met, who identified himself with a group campaigning to remove him as Chairman, and whose hostility towards him was expressed in the most strident and offensive of terms. In those circumstances, there was a very real risk that Mr. Smith would share the exchange with others, especially as it was reduced into writing and did not depend upon unverifiable recollections (as would have been the case with a face-to-face exchange), and which could simply be denied later, or dismissed on the grounds of a misunderstanding. Instead, the exchange was recorded in all its glory on Mr. Smith's mobile phone. How Mr. Oyston could reasonably have anticipated that what he said to Mr. Smith would remain private between them is therefore difficult to fathom.



- (i) The common theme to all five statements made by Mr. Oyston is disability. On any objective standard, they are disparaging and derogatory towards disabled people. All of the references to disability were used in a negative and pejorative context. Either expressly, or by clear implication, they discriminate against disabled people on the grounds of their physical and/or mental capacity, and convey the sense that a disabled person is of less value, or inferior to a person who does not have a disability.
  
- (j) Having regard to the number of statements that were made by him, their context and content, it is very difficult to arrive at any conclusion other than that Mr. Oyston intended the references to disability to be abusive and insulting towards Mr. Smith. He could have used other graphic terms to insult him – and in a way that would not have exposed him to a misconduct charge by The FA. Mr. Oyston chose instead to insult Mr. Smith by reference to disability. The disability theme may have been introduced by the latter, but it then evolved in Mr. Oyston’s responses. Further, once his comments were published, they would have been objectively understood by disabled people generally as being insulting and/or abusive towards them, even if that had not been Mr. Oyston’s intention. Ultimately, he was not charged by The FA with misconduct because publication of his comments took place, but because they were insulting and abusive to Mr. Smith.
  
- (k) Mr. Oyston did change his plea to guilty after the Arbitration Panel rejected his challenge to the lawfulness of the charge. However, he really had no other option in view of the objective test that applies under The FA’s Rules in determining whether a statement is insulting or abusive. Intention is only relevant to the question of sanction. Indeed, Mr. Oyston’s timely and frank apology for what he said, and for which he deserves credit, meant that to have persisted with a not guilty plea may well have been an aggravating factor in the event that his privacy argument failed.

- (l) Finally, at his request, Mr. Oyston attended the hearing before the Regulatory Commission to reiterate his apology for what has happened and to admit that he acted foolishly. We have no reason to question the sincerity of his expression of regret.

## **6. Sanctions**

### 6.1 The main aggravating features of this case are:

- (a) The repeated use of discriminatory references to disability;
- (b) The highly offensive nature of the abuse;
- (c) The fact that the exchange of texts with Mr. Smith took place over the course of several days, giving Mr. Oyston ample time to reflect on the propriety and wisdom of what he was doing;
- (d) The fact that Mr. Oyston is in a position of responsibility, which includes the public support of disability projects; and
- (e) The seriously undermining effect which Mr. Oyston's offending comments are likely to have on efforts to encourage disability sport generally, and specifically football by The FA, and to promote equality and inclusivity.

6.2 Because the abusive comments were made in writing, the Commission has complete discretion in terms of the sanctions at our disposal. It was submitted on behalf of Mr. Oyston that by reason of all of the mitigating factors, and also taking into account certain matters relating to the governance of the Club (as to which, see below), that a sporting sanction was not indicated and should not be imposed. In all of the circumstances of the case, and attaching appropriate weight to both mitigating and aggravating factors, the Commission had no difficulty concluding that a sporting sanction should be imposed in this case, in addition to a financial penalty and other sanctions.

6.3 The matter that occupied the Commission's time for much longer than whether a sporting sanction should be imposed in principle was how to reconcile the following considerations in arriving at an appropriate sanction, and the terms that should attach to it:

- (a) To impose a penalty that reflects the seriousness of the breaches, but one that is fair and proportionate having regard to the mitigating factors;
- (b) The fact that Mr. Oyston has offices within the Club's Bloomfield Road stadium from which he runs other business interests not connected with the football activities that he also conducts from offices located there on behalf of the Club;
- (c) The fact that Mr. Oyston is the only director of the company that owns and/or manages the Club with executive powers that enable him to take responsibility for a wide range of day-to-day matters involved in its operation, including transfers; and
- (d) Allied to point (c) in particular, the requirement to minimise any indirect damage to the interests of the Club and its supporters as a consequence of any sporting sanction to be imposed on Mr. Oyston. The transfer window is currently open. It closes on 1<sup>st</sup> September. Players who are out of contract may be signed at any time, but the period that follows the closure of the transfer window is a particularly important period for acquiring players in that position. The Club's current predicament means that they are likely to have a particular interest in out-of-contract players.

6.4 Mr. Oyston sought to support his argument against the imposition of a sporting sanction of any kind by praying in aid points (b), (c) and (d) above. The Commission concluded that to accept such a submission would be to allow 'the tail to wag the dog'. Similarly, if we concluded - as we do - that a suspension from all football and football activity for a specified period is the appropriate sanction taking into account all relevant matters, it would be wrong in principle to reduce the sanction to a stadium ban on match days

simply to accommodate the particular circumstances of Mr. Oyston and/or the Club. To do so would also set an undesirable precedent that in future would be susceptible to exploitation by participants in executive positions. Instead, we determined that the appropriate response was to allow Mr. Oyston a reasonable period of time to make alternative arrangements on behalf of the Club, including the delegation of his powers, during the period of his suspension.

6.5 Previous cases were cited to us, but ultimately each turns on its own particular facts. Any attempt to compare and contrast the abuse of a racial or ethnic nature in one case, with abuse relating to disability in another, is fraught with difficulties. Accordingly, the sanctions imposed in other cases may or may not provide useful guidance. In all the circumstances of this particular case, the Commission concluded that the abusive and insulting words used by Mr. Oyston were very serious, but that taking into account the mitigating factors, an appropriate sporting sanction is that he should be suspended from all football and football activities for a period of six weeks.

6.6 The Commission then considered when the suspension should take effect. An immediate suspension was likely to cause the Club serious logistical difficulties. Alternatively, a six-week suspension that took effect from the beginning of the new Football League season (on 8<sup>th</sup>/9<sup>th</sup> August) would not expire until after the Club's main transfer business is likely to be conducted. In Mr. Oyston's absence during that critical period, the collateral damage to the Club and its supporters would potentially be greater. However, to defer the commencement of the suspension until, say, the end of September to enable Mr. Oyston to remain in place throughout would simply pander to his convenience which we are not prepared to do. A further consideration is that any part of the suspension that encompasses the closed season means that the number of competitive matches that he will be unable to attend is reduced.

- 6.7 Ultimately, the Commission had to reconcile these competing, and in some respects conflicting, considerations in the least imperfect way. We resolve this issue by ordering the six-week period of suspension to commence on Wednesday 8<sup>th</sup> July 2015 and to end on Tuesday 18<sup>th</sup> August 2015 (inclusive). The suspension includes Mr. Oyston's attendance at any Blackpool FC match (competitive or otherwise) during that period. In respect of any match that the Club may play at its Bloomfield Road ground, Mr. Oyston shall not enter the stadium for a period commencing two hours prior to kick-off time until two hours following the end of the match. Subject to that restriction, he shall be permitted to attend the stadium in connection with his other business interests that are not connected with football or football activities. This in turn raises concerns over how Mr. Oyston's suspension from football would be policed. This is not something that the Commission is able to resolve. The FA may wish to consider some form of monitoring, including spot-checks.
- 6.8 This outcome means that Mr. Oyston will be able to resume his activities on behalf of the Club before the transfer window ends and during the critical period in September referred to above. In this way, the indirect damage to the Club and its supporters as a result of Mr. Oyston's suspension is likely to be reduced. The other consequence is that based on the fixtures for August 2014 in the season that has recently ended, it is anticipated that Mr. Oyston will be prevented from attending 3 or 4 competitive matches. This is fewer games than the Commission considers the breaches warrant, but is a consequence of the complex and difficult balancing exercise that we have had to undertake.
- 6.9 For the avoidance of doubt, Mr. Oyston is not required to relinquish his chairmanship of the Club during the period of his suspension, or to divest himself of his shareholding in the Club.

6.10 In addition to his suspension from all football and football activities, the Commission orders Mr. Oyston to pay a fine of £40,000. In arriving at that figure, which was not means-tested, we derived some guidance from the financial penalty that was imposed in a previous case that was cited to us. The penalty also reflects the circumstances of this particular case, including appropriate credit for the various mitigating factors, including the early full and frank public apology.

6.11 Mr. Oyston is also required to attend The FA Educational Programme which is to be completed by 10<sup>th</sup> October 2015. If he should fail to complete the course by that date he shall be suspended immediately from all football activity until he completes the course.

6.12 Mr. Oyston is warned as to his future conduct.

6.13 The fee paid by Mr. Oyston for requesting a personal hearing shall be retained by The FA.

6.14 Mr. Oyston is ordered to pay a contribution of £700 towards the costs of the Commission.

6.15 The orders in respect of the financial penalty and costs are payable by 4pm on 27<sup>th</sup> June 2015.

6.16 There is a right of appeal against the decision of the Regulatory Commission within 14 days of the publication of these Written Reasons.

*Craig Moore*

Chairman of the Regulatory Commission

11<sup>th</sup> June 2015

The Independent Regulatory Commission

Craig Moore, Barrister, Independent Chairman appointed by Sports Resolutions

Brain Jones, FA Council Member and Member of The FA's Judicial Panel

Gary Mabbutt, Independent Member of The FA's Judicial Panel

Appearances:

For The FA

Dario Giovannelli, Counsel

For Mr. Oyston

Matthew Bennett, Solicitor, Messrs Brabners Solicitors, Manchester