

NON-PERSONAL HEARING

THE FOOTBALL ASSOCIATION

and

Mr RYAN TUNNICLIFFE

Fulham FC

THE DECISION AND REASONS
OF THE FA REGULATORY COMMISSION

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Introduction

1. The Football Association (“The FA”) received complaints concerning comments posted on a Twitter account believed to be belonging to Mr Ryan Tunnicliffe of Fulham FC (“Fulham”).
2. On 27 May 2015, Mr Richard Berry, The FA Football Regulation Coordinator, had written to Mr Tunnicliffe, who is a registered player at Fulham, inviting Mr Tunnicliffe’s observations in relation to these comments and requested the response by 01 June 2015.
3. In a correspondence, undated, Mr Tunnicliffe replied back to Mr Berry with his observations.

The Charge

4. On 03 June 2015, The FA charged Mr Tunnicliffe with misconduct for a breach of FA Rule E3 in respect of the comments posted on his Twitter account on 25 May 2015 at 9.48pm (the “Charge”).
5. The FA alleged that Mr Tunnicliffe’s comment, which included the text *“Happy that Middlesbrough didn’t go up, just for the main fact that @Patrick_Bamford is a sausage boy”*, was abusive and/or insulting and/or improper, contrary to FA Rule E3(1).
6. It was further alleged that this breach of Rule E3(1) was an “Aggravated Breach” as defined in Rule E3(2), as it included a reference to sexual orientation.
7. The FA advised Mr Tunnicliffe that should the Regulatory Commission find that an “Aggravated Breach” of FA Rule E3(1) has been committed via the use of any communication device, public communication network or broadcast media only, then the Commission may impose any sanction that it considers appropriate, taking into account any aggravating and mitigating factors present, pursuant to FA Rule E3(4) (see para 29).
8. The relevant part of FA Rule E3, p.113 of FA Handbook Season 2014-2015, states:

“(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.

(2) 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...”

9. The FA enclosed, the following evidence that it intended to rely on:

9.1. Letter from Mr Berry to Mr Tunnicliffe, dated 27 May 2015;

9.2. Screenshot of Mr Tunnicliffe’s Twitter comment referred to in Mr Berry’s letter to Mr Tunnicliffe;

9.3. Letter from Mr Tunnicliffe to Mr Berry, forwarded by Mr Peter Morrison of James Grant Sports, undated; and

9.4. Screenshot of urbandictionary.com.

10. Mr Tunnicliffe was required to reply to the Charge by 6pm on 11 June 2015.

The Reply

11. On 08 June 2015, Mr Tunnicliffe responded by admitting to the Charge and requested the matter to be dealt with at a Paper Hearing, on the content of the documents served upon him/the Club and any documents he/the Club supply to The FA with the Reply Form.

12. Mr Tunnicliffe included a submission with his reply to the Charge.

The Regulatory Commission

13. The following members were appointed to the Regulatory Commission (“the Commission”, “We/us”) to hear this case:

Mr Thura KT Win, JP (Chairman);

Mr Mick Kearns; and

Mr Alan Hardy.

Mr Robert Marsh, The FA Judicial Services Manager, acted as Secretary to the Commission.

The Hearing & Evidence

14. We convened at 9.30am on 15 June 2015 via videoconference for this Non-Personal / Paper Hearing (the “Hearing”).
15. We had read the bundle of documents prior to the Hearing.
16. As Mr Tunnicliffe had admitted to the Charge, we sought Mr Tunnicliffe’s previous disciplinary record and Mr Marsh advised us that Mr Tunnicliffe has no relevant previous disciplinary record.
17. Mr Tunnicliffe’s Twitter comment contained the word “*sausage boy*”, which has a meaning as “*a homosexual man – sausage is in reference to the penis*”.
18. We noted the observations from Mr Tunnicliffe in his initial response to The FA, which stated (we quote the relevant text):

“... I sent the tweets to the player as a result of a previous altercation which occurred earlier in the season and as a result of a difference of opinions in a match situation whilst playing against him. I appreciate this was the wrong medium to express my feelings but it was a spur of the moment comment borne purely from a breakdown in relationship and nothing more than that.

It has been [mooted] they are comments with a homophobic undertone, which has surprised and dismayed as this wasn’t and never would be my intention. The language was perhaps at worst antagonistic but never was it meant to convey anything of a homophobic nature.

... This was simply a comment made as stated borne out of my issues with the player without any ulterior motive.

I would therefore ask you to accept my explanation and treat me on that basis.”

19. We also noted Mr Tunnicliffe’s further submission with his reply to the Charge (we quote the relevant text):

“... may I refer to my previous correspondence explaining my reasons behind the tweet and an honest belief that under no circumstances was it ever my intention to send a comment which had any homophobic or sexual undertone.

In fact it shocked me at the realisation that it could be construed in such a discriminatory way and more importantly using such a medium which allows it to be seen instantly by so many children... I recognise the need for tolerance in society for people to live together in harmony despite their sexual preference.

I therefore feel that I have on this solitary occasion allowed my own high standards to slip in my quest to discredit another player, without recognising the consequences of my actions and therefore feel I have no option but to accept the charge levelled against me by The FA.

... I would welcome any guidance and advice or even training in ensuring that I do not fall foul of such a misdemeanour again.

In mitigation please take my initial letter in account. Also I must advise you that I am going to be fined by the club following your decision, something they have advised me both personally and in writing.

I will in addition be writing personally to the player concerned to apologise my previous altercations were at the heart of this issue and it needs to be addressed and conclude it in a proper manner.

Finally along with the above points I would ask you in mitigation to take into account my good record both on and off the field during the last 5 years and treat me as much understanding and compassion as possible on this occasion.”

20. Mr Tunnicliffe also posted in reply “...but I can afford the fine... cheers” when a couple of Twitter users warned him that he might be fined by The FA for his previous comment. We accepted that this post was not part of the “Aggravated

Breach” charge.

The Burden of Proof

21. The applicable standard of proof required for this case is the civil standard of the balance of probability.

Our Findings & Decision

22. We noted that Mr Tunnicliffe had accepted the Charge – albeit the screenshot of the comment and it belonging to Mr Tunnicliffe’s account were hard to deny. We would give credit for his timely admission.
23. Mr Tunnicliffe had stated in his submissions that he was shocked that the word “*sausage boy*” could be construed in such a discriminatory way (in para 19) and it was not his intention to send a comment which had any homophobic or sexual undertone (in paras 18 and 19).
24. We noted Mr Tunnicliffe’s explanations, his recognition that he had allowed his high standards to slip on this occasion, and he was also going to be fined by the Club (in para 19).
25. The FA Rule E3(2) simply states that “... it *includes a reference*, whether express or implied,...” (see para 7 and emphasis added) and does not require a Participant’s intention, to prove the “Aggravated Breach”.
26. For avoidance of doubt, we found Mr Tunnicliffe’s comment to be abusive, insulting and improper, AND included a reference to sexual orientation.
27. We noted that Mr Tunnicliffe was writing to apologise to the player he directed this discriminatory comment to (in para 19) and, from the tone and content of his submissions, he seemed to have learnt a lesson from this experience. We would consider these as mitigation to give some credit.

The Sanction

28. This was Mr Tunnicliffe’s first “Aggravated Breach” and, as it was made on social media, FA Rule E3(4) would apply in this case.

29. The relevant FA Rule E3(4) states:

“(4) Where an Aggravated Breach of Rule E3(1) is committed –

(i) In writing only; or

(ii) Via the use of any communication device, public communication network or broadcast media only; or

(iii) By reference only to nationality,

a Regulatory Commission will not be bound to impose an immediate suspension of at least five matches for a first such breach, or of more than five matches for a second or further such breach. Instead the Regulatory Commission may impose any sanction that it considers appropriate, taking into account any aggravating or mitigating factors present.”

30. Furthermore, FA Rules E3(8) and E3(9) applies to all Participants committing an Aggravated Breach of FA Rule E3(1). The FA Rules E3(8) and E3(9) state:

“(8) A Regulatory Commission may impose a financial penalty or any other sanction that it considers appropriate in respect of an Aggravated Breach of Rule E3(1) whether or not it has imposed a suspension in respect of the same breach.

(9) A Participant who commits an Aggravated Breach of Rule E3(1) will be subject to an education programme, the details of which will be provided to the Participant by The Association.”

31. We assessed Mr Tunnicliffe’s offence to be at a medium level of seriousness and culpability.

32. FA Rule E3(4) stating “an immediate suspension of at least five matches for *a first such breach*” (emphasis added) has already reflected a Participant having

- no previous relevant disciplinary record. And, this was Mr Tunnicliffe's first such breach.
33. We would, however, give some credit for Mr Tunnicliffe's timely admission to the Charge (in para 22) and mitigation present in this case (in para 27).
34. We also received information on Mr Tunnicliffe's weekly football income, which we gave regard to when deciding an appropriate and proportionate financial penalty.
35. We noted that, in accordance with FA Rule E3(4), we would not be bound to impose an immediate suspension of at least five matches for Mr Tunnicliffe's first Aggravated Breach.
36. As a guide, Mr Marsh informed us of the range of sanctions already imposed on other participants who had committed similar offences previously.
37. After considering all the above, and based on the nature and seriousness of the offence which we had assessed, we ordered that Mr Tunnicliffe:
- 37.1. be suspended from all domestic club football from the commencement of the 2015/16 Season until such time as Fulham have completed 2 (two) First Team matches in approved competitions;
- 37.2. be fined a sum of £5,000 (five-thousand pounds);
- 37.3. be warned as to his future conduct; and
- 37.4. to satisfactorily complete a mandatory education programme, in accordance with FA Rule E3(9), within 4 (four) months or Mr Tunnicliffe be suspended until such time he successfully completes the mandatory education programme, the details of which will be provided to Mr Tunnicliffe.
38. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed...

Thura KT Win, JP (Chairman)

Mick Kearns

Alan Hardy

17 June 2015