

**In the matter of an appeal from a decision of a Regulatory
Commission of The Football Association**

Between:

John Cummings

Appellant

and

The Football Association

Respondent

Reasons for Appeal Board Decision 18 November 2014

Introduction and background

1. These are the written reasons for an FA Appeal Board decision at a hearing at Wembley Stadium on Tuesday 19 November 2014, dismissing the appeal by Mr John Cummings against a 4 month suspension from all football activity ordered by an FA Regulatory Commission on 15 October 2014. These reasons are requested under 3.8 of the *Regulations for Football Association Appeals* (“the Appeal Regulations” at FA Handbook 2013-2014 pp.359-362). The parties had made written submissions and at the appeal hearing the Appellant was represented by counsel Mr Simon Goldberg and the FA by Mr Dario Giovannelli of the FA Regulatory Department. The Appellant was also present.

2. The Appeal Board members are Mr Nicholas Stewart QC (Chairman), Mr M. Armstrong and Mr D. Rose. The Regulatory Commission whose decision is under appeal was chaired by Mr S Ripley, sitting with Mr D. Pleat and Mr A. Hardy
3. The Appellant is the Secretary of the North East Sunday League and is a Vice President and Council Member of the Northumberland County Football Association.
4. On 17 March 2014 the Appellant attended a Cup Final Officials Workshop in Newcastle. During that meeting he made an offensive remark to Ms Lucy May, Referees Development Officer at Northumberland County Football Association. Ms May had approached him and expressed interest in refereeing in the North East Sunday League. The Appellant said to her:

“it’s nothing against you personally but all the time I’ve alive a woman will never referee on my League”

and then when Ms May asked why, he added:

“because you wouldn’t be able to handle it. A woman’s place is in the kitchen and not on a football field.”

There is now no dispute that the Appellant addressed remarks to Ms May in those terms. That was the Regulatory Commission’s finding and it has not been challenged on this appeal.

Charge of Aggravated Breach of FA Rule E3

5. By a letter dated 24 September 2014 the FA had notified the Appellant that he was alleged to have used abusive and/or insulting words towards Ms May during that meeting on 17 March 2014 and that he was charged with misconduct for a breach of FA Rule E3. The letter also alleged that the breach had been an Aggravated Breach as defined in FA Rule E3(2) as it included a reference to gender.

6. The Appellant denied the charge but elected not to request a personal hearing. The Regulatory Commission found the charge proven and imposed an immediate suspension from all football activity for 4 months starting from 15 October 2014. They also fined the Appellant £250 and ordered him to attend an education programme before completing his suspension.
7. On this appeal, by written notice dated 2 November 2014, the Appellant does not challenge the Regulatory Commission's finding of an Aggravated Breach of FA Rule E3(1). He appeals against the 4 months suspension from all football activity, on the ground that it was an excessive penalty. That is a ground of appeal under 1.6(4) of the *Regulations for Football Association Appeals*. There has been no appeal against the £250 fine or the order of an education programme.
8. FA Rule E3(1) states:

“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”.

It may be noted that the FA's 24 September 2014 charge letter alleged that the Appellant's remarks had been abusive and/or insulting but not that they had been threatening or indecent.

9. The concept of Aggravated Breach is contained in FA Rule E3(2):

“A breach of Rule E3(1) is an “Aggravated Breach” where it includes a reference to any one or more of the following :- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.”

The aggravating reference in this case was to gender. There is no question of references to any of the other aggravating factors in the present case.

10. "Participant" is defined in FA Rule 1 in very wide terms. It covers players, managers, coaches, agents and officials in terms which plainly include the Appellant. That brings him under Rule E3(1) and also Rule E3(3), which so far as relevant in this particular case states that

- (i) Where a Participant commits an Aggravated Breach of Rule E3(1) for the first time, a Regulatory Commission shall impose a suspension of at least five matches on that Participant. The Regulatory Commission may increase this suspension depending on any additional aggravating factors present.

11. This was the Appellant's first Aggravated Breach of Rule E3(1) and we think it fair to record that it is his first ever disciplinary offence of any sort in some 50 years of committed service to football in the North East of England. The Regulatory Commission stated in its written reasons that it had regard to the Appellant's previous clean record. However, the offence is serious and under the express terms of Rule E3(3)(i) it would unavoidably bring upon him a minimum suspension of 5 matches.

Minimum penalty under FA Rule E3(3)(i): How to apply to this case

12. However, in the present case there is a question about the terms of E3(3)(i) which the Regulatory Commission did not expressly acknowledge but which is implicitly recognised by their decision. How does a minimum 5 match suspension work in the case of an official in Mr Cummings's position who does not have the same direct participation in matches as a player, coach or manager? The Appellant is not associated in any formal sense with any one club and will frequently attend matches in the North East Sunday League and no doubt other leagues and competitions, both for his own interest and enjoyment and as an important part of his responsibilities both as Secretary of the North East Sunday League and as a Vice President and Council Member of the Northumberland County Football Association. However, while he could not realistically carry out those responsibilities without fairly frequent attendance at matches, there is no particular obligation on him to attend specific matches (except sometimes a matter of courtesy) and absence from matches for even a few weeks does not seem likely to have a material impact on his discharge of those responsibilities. Moreover, the impact on him of being unable to attend a match is not remotely comparable with the impact on a player of

being unable to play or on a coach or manager of being able to take any part on a match day (which is the way suspensions of coaches and managers are usually given effect).

13. There is the related difficulty of how to work a 5 match suspension anyway in cases such as this one. Where a player, coach or manager is suspended, that is done by suspending him or her from matches (often expressed as first team matches) played by the club to which they belong. That cannot be done in the same way with an official of a league or association, who can and usually does attend all sorts of matches which cannot be specified in the same way that a suspension of a player or coach can specify the matches to count towards the suspension.
14. It is apparent that the Regulatory Commission was alive to these points in deciding to impose a period of suspension from all footballing activity as opposed to a simple 5 match suspension which would have been unworkable.
15. Counsel for the Appellant did not suggest that for the Regulatory Commission to have imposed suspension for a period and not for a number of matches was outside its jurisdiction or powers. He was right in that approach. Although the drafters of the relatively new Rule E3(3) do seem to have overlooked the difficulties of applying it to a "Participant" in this Appellant's position, the Regulatory Commission's order was within its powers in the FA Rules. FA Rule E3(6) states:

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.

That plainly gave the Regulatory Commission in this case the power to make the order it did, as long as its decision was within a reasonable range of discretion so that the result was not a penalty which was excessive having regard to all relevant considerations.

16. As far as the technical powers were concerned, the most that could be said for the Appellant was that in order strictly to comply with the mandatory terms of Rule E3(3) the Regulatory

Commission could have included in its overall decision, alongside the suspension for a period, a formal order that the Appellant was suspended for 5 matches. That order would have overlapped with the period of suspension. The 4 month suspension alongside the 5 match suspension would have had the longer effect in practical terms. We do not think the Regulatory Commission can be faulted for not having made such an unwieldy and pointlessly complicated double order.

17. Mr Goldberg as counsel for the Appellant did not argue that the Regulatory Commission could be faulted in that respect anyway. He approached the matter by taking it that in the absence of “additional aggravating factors” as mentioned at the end of Rule E3(3)(i), a suspension for a period, instead of for a number of matches, must nevertheless be designed as the equivalent of a 5 match suspension. From that position he argued that:

- (1) there were no such “additional aggravating factors” which would justify going above the mandatory minimum level (observing, correctly, that the aggravating factor of reference to gender is already covered by making the breach an “Aggravated Breach” in the first place and that something extra is needed to constitute an “additional aggravating factor”); and
- (2) the fair equivalent of a 5 match suspension was 5 weeks (on the footing that one match is treated as played each week)

18. We consider that approach to be a flawed and inadequate way of approaching the case. It does not sensibly reflect the glaring difference of the effect of match suspensions on players, coaches and managers involved with one club or team as compared with an official in the Appellant’s position. A 5 match suspension for a player is a very heavy penalty. Of all forms of penalty, match suspensions are the most resisted and hotly contested by players (as well as coaches and managers), for precisely that reason. They hate them and will fight tooth and nail to avoid or reduce suspensions for even one, two or three matches.

19. To have notionally converted a 5 match suspension to a 5 week suspension in Mr Cummings’s case would have produced a penalty which in its practical impact and as a mark of the inherent seriousness of an Aggravated Breach of Rule E3(1) would have been well below the level of a 5 match suspension for a player, coach or manager. Although this analysis is understandably

not spelt out in the Regulatory Commission's written reasons, their decision clearly grasped this distinction in a realistic and common sense way.

20. We consider it reasonable and sensible for the Regulatory Commission to have ordered the suspension in the form of a suspension from all football activity (which does not prevent the Appellant anyway from attending matches as a spectator). That was a penalty with appropriate practical effect in the particular case.

Was a 4 months suspension excessive? – Mitigating or aggravating factors

21. The remaining question is whether the period of 4 months was excessive.

22. Unsurprisingly, the Appellant's counsel argued that there were mitigating factors. Mr Giovannelli for the FA argued that there were aggravating factors beyond the reference to gender which made it an Aggravated Breach in the first place.

23. The Appellant's suggested mitigating factors and our view of them are as follows:

(1) The Appellant's clean disciplinary record over many decades of active involvement in football – It was correct to take that into account and paragraph 30 of the Regulatory Commission's reasons stated expressly that they had done.

(2) His long and dedicated and unpaid work for the game – This would have been well in the minds of the Regulatory Commission and it is expressly noted in paragraph 29 of their reasons that the Appellant receives no income from his work with the Northumberland County FA. It is of very slight weight in dealing with an offence of this nature and if anything his long-established position and reputation in North East football make his offence the more serious.

(3) The Appellant is 77 years old and the changes in culture and in the regulation of such behaviour have been and are difficult for someone of his age – That may be true (and in

fact, it obviously has been true in this case) but it is no mitigation. As long as he remains active in football, the Appellant like everyone else must accept and adapt to the world as it is. The rules are clear and they make plain that behaviour of this sort is absolutely unacceptable.

- (4) Because the administration of the North East Sunday League is run for all practical purposes by the Appellant single-handedly though with the help of his wife, his suspension for as long as 4 months will produce chaos – The Appeal Board starts from the position that it is a very common consequence of suspensions that they have a detrimental effect on others (such as the effect on a team and on its innocent supporters, as well as disappointment for millions of television viewers, when a star player is suspended for a big game). Normally, and correctly in principle, such a consequence cuts little or no ice with the tribunal which has to decide the penalty for the offender for his or her offence. It is up to the North East Sunday League to make arrangements as best they can to deal with the situation. In any case, if they could have dealt with the 5 week suspension for which Mr Goldberg argued, they ought to be able to deal with a 4 month suspension and avoid anything which could realistically be called chaos.
- (5) The Appellant's recognition that what he had said was wrong, inappropriate and a mistake, and he was sorry. He was a great supporter of the involvement of women in football and had promoted women referees. - First, in deciding whether the Regulatory Commission's had imposed an excessive suspension, we cannot take account of apologies and remorse offered belatedly to the Appeal Board but not to the Regulatory Commission. Secondly, such considerations have very little weight when set against the plain facts of what the Appellant said and the circumstances in which he said it.
- (6) Ms May's delay in making a complaint – This is a hopeless point. Ms May did take some time before making a complaint to the FA but we do not see how that helps the Appellant. It is exactly in this sort of case that the victim of abuse by someone in a position of authority is likely not to rush into a complaint and to have anxiety about the consequences of doing so.
- (7) By electing for a paper hearing by the Regulatory Commission, Mr Cummings did not require Ms May to give oral evidence or be cross examined – No one could be so credulous

as to suppose that this was any part of Mr Cummings's motive in electing for a paper hearing. We do not regard this point as having any worthwhile weight. He denied the charge and resisted it right to the end of the Regulatory Commission hearing, so presumably felt that a paper hearing was in his own best interests.

- (8) The Appellant has suffered considerable adverse publicity and has been pilloried and ridiculed in the national and local press – This is not a mitigating factor. It is the expected consequence of the Appellant's own conduct. In any case, we cannot see how it could have made any significant difference to the media coverage if the Regulatory Commission had imposed a suspension of say 5 weeks instead of 4 months.

24. In addition to those specific points, Mr Goldberg argued strongly that the length of the suspension had failed to take into account what he described as the Appellant's lack of intent. This requires scrutiny. The essence of Mr Goldberg's submission is that what the Appellant said to Ms May had not been intended seriously and was in his mind in the nature of a joke.

25. We are not required to read the Appellant's mind and nor was the Regulatory Commission. Realistically, we do not see how the first part of what the Appellant said ("it's nothing . . . on my league") could have been intended as a joke, but the point is not important anyway. The Regulatory Commission expressly rejected the argument that Ms May should have got the joke (such as it was) and its conclusion cannot be faulted. The words used by the Appellant must have been taken seriously by Ms May and the Regulatory Commission clearly found on the evidence that she had understood them seriously. She had approached the Appellant when he was sitting at a table with four members of the Northumberland CFA Referees Committee.

26. It was disgraceful for Mr Cummings, in his position of authority, to have spoken to a young woman in Ms May's position in such insulting terms in that place and in those circumstances. We regard that as an additional aggravating factor beyond the reference to gender which made this an Aggravated Breach of Rule E3(1) in the first place.

27. On the facts and having regard to everything we have considered so far in this reasons, the Regulatory Commission was fully justified in imposing a 4 month suspension from all football activity.

28. We add only that the Appellant's position is not improved by his interview by an FA Investigations Manager on 17 July 2014. The Regulatory Commission had the transcript of that interview in evidence. Mr Cummings started by denying that the events described by Ms May had taken place at all. He later shifted his position to maintaining that what he had said had been a joke and that if Ms May had not realised it was a joke "that's not my problem that's her problem". That later position was the one he maintained for the Regulatory Commission proceedings.

Appeal dismissed: Order and costs

29. The seriousness of this offence was properly marked by the 4 month suspension. There were no mitigating factors to make that an excessive penalty.

30. This appeal is dismissed.

31. The *Regulations for Football Association Appeals* (at pages 359-362 of The FA Handbook 2013-2014) give us the power, in 3.3, to order either party to pay costs incurred by the Appeal Board. This appeal has failed completely. We order the Appellant to pay £1,500 of those costs.

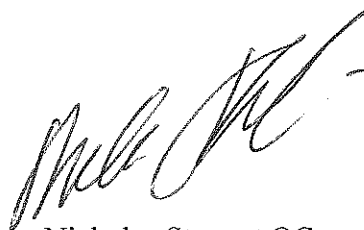
32. The Appeal Board orders:

(1) The appeal is dismissed.

(2) The Regulatory Commission decision and order made on 15 October are upheld, so that:

(a) the Appellant remains suspended from all football activity until 15 February 2015;

- (b) he is fined £250;
- (c) he must attend an appropriate Education Course prior to the completion of his suspension and failure to complete the education programme within that time will result in his remaining suspended until he has completed the education programme;
- (3) the Appellant's appeal deposit of £100 is forfeited; and
- (4) the Appellant is to pay to the Football Association £1500 costs incurred by this Appeal Board.



Nicholas Stewart QC
Chairman

Maurice Armstrong

David Rose

24 November 2014