

Football Association Independent Regulatory Commission

(the 'Commission')

**in the matter of an FA Rule E3 charge for misconduct brought by
The FA against Mr Francesco Becchetti of Leyton Orient FC.**

Regulatory Commission Decision

1. These are the written reasons for a decision made by an Independent Regulatory Commission which sat on Friday 15th January 2015 at Wembley Stadium.
2. The Commission members were Mr. S. Ripley (Chairman), Mr. A. Hardy and Mr. J. Moxey.
3. Mr. M. Ives of The FA Judicial Services Department acted as Secretary to the Regulatory Commission.
4. The FA was represented by Mr. Y. Elagab, Regulatory Advocate.
5. Mr. Becchetti was represented by Ms. K. Potts (Mishcon de Reya LLP).
6. Also in attendance were Mr. P. McCormack (FA Judicial Services Manager), Mr. N. Dutton (FA On-Field Investigations), Ms. J. Beeson (Independent Interpreter), Mr. A. Angelieri (Leyton Orient FC), Ms. L. Ellen (Mischon de Reya LLP) and Ms. S. Lobina (Mischon de Reya LLP).

7. In an FA Charge Letter dated 29th December 2015, Mr. Becchetti was charged with a breach of FA Rule E3 in that it was alleged that his behaviour at the end of the Leyton Orient FC v Portsmouth FC Football League 2 fixture, which took place on the 26th December 2015, constituted misconduct.
8. It was alleged that at the end of the match, the behaviour of Mr. Becchetti, owner and President of Leyton Orient FC, amounted to violent and/or improper conduct based on the submitted reports and video clips.
9. The case was designated by The FA as a Non Standard Case due to the unusual nature of the reported behaviour.
10. On 4th January 2016, Mr. Becchetti replied to The FA's Charge Letter by returning the FA Disciplinary Proceedings: Reply Form. In the form, Mr. Becchetti admitted improper conduct but denied that his actions were violent conduct. He requested an opportunity to attend a Commission for a Personal Hearing. Mr. Becchetti also indicated in the form that he wished to represent himself with the assistance of his appointed law firm, Mishcon de Reya LLP.
11. The Commission members noted that the applicable standard of proof for this case was on the balance of probability. It was further noted that on the balance of probability standard meant, on the evidence, the Commission would be satisfied that an incident happened if it considered the incident was more likely than not to have occurred.

Written Evidence

12. In addition to the aforementioned Charge Letter and reply form, the Commission had before it:

- a. An Extraordinary Incident Report Form from the Match Referee, Mr. G. Horwood, dated 26th December 2015;
- b. An Extraordinary Incident Report Form from the Match Assessor, Mr. M. Tingey, dated 27th December 2015;
- c. Two video clips of the incident;
- d. A letter to The FA Regulation Department from Mr. Becchetti, dated 4th January 2016; and
- e. Two statements on behalf of Mr. Becchetti relating to an ongoing legal dispute between Mr. Becchetti and the Albanian Government, dated 4th November 2015 and 7th December 2015.

13. The following is a summary of the principal written and oral submissions 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 submission, should not imply that the Commission did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence, materials and oral submissions provided with regard to this case.

14. In his Extraordinary Incident Report, the Match Referee, Mr. Horwood, stated *“At the conclusion of the game, I was informed by Mr Tingey, the*

match observer, that just after the final whistle he had witnessed the Leyton Orient President/Owner Francesco Becchetti, come onto the field of play and physically kick the Leyton Orient assistant manager Mr Andy Hessenthaler twice connecting around his hip area. This was not witnessed by any of the match officials. I then informed the Leyton Orient manager, Mr Ian Hendon, Mr Hessenthaler and the Club Safety Officer, Craig Witham in my dressing room that this matter would be reported and Mr Hessenthaler confirmed that he had indeed been kicked twice by Mr Becchetti. I was then aware that the Metropolitan Police who were at the ground, were outside of the dressing room waiting to speak to the safety officer and Mr Hessenthaler”.

15. The Match Assessor, Mr. Tingey, stated in his Extraordinary Incident Report, *“After the final whistle, I witnessed Mr Francesco Becchetti, the Leyton Orient Owner/President, enter the field of play to approach and then kick Mr Andy Hessenthaler, the Leyton Orient Assistant Manager, in a violent manner. The Portsmouth management staff were adjacent to the incident and ushered Mr Hessenthaler away to prevent any escalation”.*

16. Mr. Tingey continued *“Having prepared my notes for the de-brief, I attended the match officials changing room ...Mr Hessenthaler confirmed that he had been kicked twice by Mr Becchetti, in the upper leg/hip area, although he had no explanation for the motives of the Owner’s actions. The Referee and I confirmed that we would be reporting the incident, which met with agreement from Mr Hessenthaler and Mr Hendon”.*

17. In his letter dated 4th January 2016, Mr. Becchetti, stated that the kicking incident should be looked at within the context of his relationship with Mr.

Hessenthaler. He wrote *“To understand the context of my incident with Andy Hessenthaler (‘Andy’), it is important to explain a bit about my character. Those who know me would describe me as a boisterous and demonstrative person. For me it is normal to be quite physical with friends and colleagues who I know react well to such behaviour – that could be a hug when I greet someone, a slap on the back, a playful punch etc. Andy is someone with whom I enjoy that sort of physical interaction. At the training ground we often greet each other with a playful kick or punch. It is all good natured and a sign of our positive relationship. I will take a hit from him as well as him taking a hit from me”*.

18. In his letter, Mr. Becchetti went on to describe how he had watched the first half of the match in the Directors’ Box but had then moved during the second half to sit with the fans, a few rows back from the dugout. At the end of the match he stepped down to the side of the pitch to start the celebrations (Leyton Orient had won the game 3-2 despite having a player sent off).

19. Mr. Becchetti described the incident as follows: *“Andy was making a silly gesture to the fans, flapping his ears as if to say ‘you aren’t saying anything now’*. This was, I believe, in response to criticism from fans about some of the substitution decisions he and Ian Hendon had made during the game. This is something that had been bothering Andy for some weeks and he alluded to this in his post-match interview (transcript below). I had said to him on previous occasions that he and Ian must not let that get to them, and they must not react to the fans because the fans pay a lot of money and give up their time to come and watch the team. I do not want my management staff arguing with our own fans. Andy did not see me as I

approached him on the edge of the pitch, which probably explains his reaction of surprise (and that of the Portsmouth staff who were with him at the time). You can see on the video that I was waving my right arm towards him – I was gesturing and shouting at him the words “Later, later, later”. I was making the point that this was not the time for him to act like that with the fans. I aimed a playful kick at Andy and said “Come and celebrate” as I was moving him to come and celebrate with me. He was not facing me at the time and I am certain that my kick did not make proper contact. I rushed at Andy, but pulled up without following the kick through. The Match Assessor has referred to me kicking out twice, and making contact around the hip level. I do not accept this, nor do I believe the video footage supports this – my leg is only brought back once in a kicking motion. The second movement caught at the top of the video is as I step forward – there is no kick. Hessenthaler says he felt contact around hip or high leg level, but that could easily have been when someone grabbed him, or simply me brushing against him. He was not struck with enough force to knock him off balance (as is evident from the video), and if I had kicked him ‘violently’ twice, he would have stumbled or fallen”.

20. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

21. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Preliminary Hearing

22. With the Oral Hearing due to commence at 11.00am the Commission was informed at around 10.45am that Ms. Potts wished to introduce new evidence into the proceedings by way of three previously published FA Commission Reasons relating to other FA charges.

23. Having carefully reviewed the relevant Preliminary Applications and Preliminary Hearings provisions within The FA Handbook, the Commission noted it shall have the power to:

- a. Dismiss the Preliminary Application summarily;
- b. Order that the issues raised in the Preliminary Application be dealt with as part of the main proceedings and not on a preliminary basis;
- c. Allow or dismiss the Preliminary Application in full or in part; or
- d. Make such further order as it considers appropriate.

24. The Commission heard submissions from both parties in order to decide whether or not the introduction of such new evidence ought to be permitted at this late stage of the proceedings.

25. During her submissions Ms. Potts advised that the documents in question should not be considered as new evidence but authorities and stated that she intended to rely upon one of the three cases in order to highlight a distinction between improper and violent conduct. The other two, she said, would be used in mitigation.

26. Mr. Elagab on behalf of The FA stated that he would need time to consider The FA cases if they were admitted to the proceedings and as such the Hearing would need to be delayed in order for him to do so.

27. Having considered submissions from both parties, the Commission decided to dismiss, in full, the Preliminary Application of the introduction of such new evidence on the basis that:

- a. The FA Reasons had been readily available and accessible in the FA on-line Library and Ms. Potts had ample time to prepare her case leading up to the Commission Hearing. The request was therefore unreasonable, being made as it was 15 minutes before the Hearing was due to commence;
- b. It would have been unfair to allow the admittance of such new evidence without Mr. Elagab having sufficient time to consider that which Ms. Potts wished to rely upon. He would need to

prepare his response and this would have necessitated a delay in the proceedings; and

- c. Such a delay was unnecessary as the Commission was in no way bound by previous FA cases and the Commission members felt that they had sufficient experience to decide if an action was violent or not and did not necessarily need guidance on the matter from Ms. Potts.

The Hearing

28. Having dealt with the Preliminary Application the Commission proceeded to hear oral submissions from both parties at the Personal Hearing.

29. Mr. Elagab submitted, on behalf of The FA, that the video evidence essentially 'speaks for itself' and that anyone who viewed it could not fail to see that the actions of Mr. Becchetti, in kicking out at Mr. Hessenthaler, were violent in nature.

30. Mr. Elagab took the Commission through one of the two clips of video evidence, he drew to the Commission's attention that:

- a. Mr. Hessenthaler makes a gesture (flicking his hand against his ear) in the direction of Mr. Becchetti, possibly goading him;
- b. Mr. Becchetti emerges from behind Mr. Hessenthaler and strides on to the pitch toward him, making an animated hand gesture as he approached Mr. Hessenthaler;

- c. Although the majority of Mr. Hessenthaler was not visible at this point, the position and orientation of Mr. Hessenthaler's feet were visible and would suggest that Mr. Hessenthaler was stood side-on to Mr. Becchetti and as such he would have seen Mr. Becchetti advancing toward him;
- d. There appears to be a gesture from Mr. Hessenthaler just before Mr. Becchetti kicks him;
- e. Mr. Becchetti rushed towards Mr. Hessenthaler and clearly aimed a first kick at Mr. Hessenthaler with his right leg and with considerable force;
- f. Mr. Becchetti then seemed to make a second movement with his right leg toward Mr. Hessenthaler which was the second kick, as described by the Match Assessor; and
- g. Mr. Hessenthaler was seen being restrained by two of the Portsmouth staff as he tried to move forward and confront Mr. Becchetti following the incident.

31. Mr. Elagab submitted that the question of whether or not the kick or kicks were 'violent' ought to be assessed by the Commission objectively and not subjectively.

32. Mr. Elagab also submitted that even though it was The FA's case that contact had been made, it was not necessary for actual contact to have been made for the kick(s) to be considered 'violent' in nature.

33. Ms. Potts opened her submissions by explaining to the Commission that Mr. Becchetti's split response to The FA charge was down to two reasons.

Firstly, he genuinely did not believe his actions to have been violent and secondly [REDACTED]

[REDACTED]

34. [REDACTED]

35. Ms. Potts called Mr. Becchetti as a witness but chose not to proceed with an examination in chief. Mr. Becchetti was therefore subjected to an initial examination from Mr. Elagab.

36. Mr. Elagab asked Mr. Becchetti if he had been drinking alcohol during the match to which Mr. Becchetti replied that perhaps he had one glass of wine but that he certainly was not drunk.

37. Mr. Elagab asked Mr. Becchetti if having viewed the video footage he thought that objectively assessed, his kick could be considered 'violent'. Mr. Becchetti was somewhat evasive in his response on this point, preferring to highlight a number of other points that he felt indicated that his kick was not 'violent' in nature.

38. Mr. Becchetti's testimony in relation to the force of the kick was somewhat inconsistent. He initially said that he 'did not kick' Mr. Hessenthaler but merely 'projected a kick' at him. He then said that the

kick was 'friendly' and of a 'light touch' but he finally stated that the kick was of 'medium force'.

39. As mentioned above, Mr. Becchetti made reference to a number of points that he believed indicated that his actions were not violent in nature. These were as follows:

- a. The incident was being misinterpreted because people were unaware of his 'boisterous' relationship and everyday interaction with Mr. Hessenthaler at the football club;
- b. That Mr. Hessenthaler had not seen his approach and this was the reason that Mr. Hessenthaler was shocked by the kick and not by the force of the kick;
- c. That the Portsmouth FC coaches had not realised Mr. Becchetti was the Leyton Orient FC owner and had mistakenly thought that he was a fan attacking Mr. Hessenthaler and this explained why they were holding Mr. Hessenthaler back;
- d. That he only kicked Mr. Hessenthaler once and that he pulled up short when he made his second movement toward Mr. Hessenthaler;
- e. That in his post-match interview Mr. Hessenthaler, when asked by the interviewer about what "*seemed like an altercation*" replied "*Well it is boxing day ain't it. No nothing, it's fine, little bit of banter a bit of stuff that's been going on over the last few weeks between us and it probably looked worse than what it was*"; and
- f. That the lack of reaction from Mr. Kevin Nugent (Leyton Orient FC coach) towards the incident indicated that he understood the type of relationship that existed between Mr. Becchetti and Mr.

Hessenthaler and his continued clapping was an indication that he viewed the incident as not being serious.

40. In his summing up, Mr. Elagab reiterated that from the video evidence it was clear that the actions of Mr. Becchetti had been violent, that contact was immaterial (even though there had been considerable force in the contact), that objectively viewed the actions could only be viewed as being violent and that the subsequent reactions from both the Portsmouth staff and Mr. Hessenthaler himself were strong indicators that violence had been perpetrated.

41. In her summing up, Ms. Potts stated that not all physical actions are violent, that the video evidence was inconclusive as to contact and as to the force exerted, that there was in fact no second kick and that if Mr. Hessenthaler had been violently kicked he would have fallen backwards. She also asked the Commission to consider the context of the relationship that is said to exist between Mr. Becchetti and Mr. Hessenthaler and Mr. Hessenthaler's post-match interview reaction.

42. Having considered the video, written and oral evidence before it the Commission members were in no doubt and unanimously agreed that the actions of Mr. Becchetti were of a violent nature and as such the element of the charge of violent conduct was found proven.

43. The Commission felt that the video clips indicated that Mr. Hessenthaler's ear flicking gesture, whether made to Mr. Becchetti directly or generally toward the fans, had irritated Mr. Becchetti in some way. In fact, Mr.

Becchetti confirmed as much in both his written and oral evidence, stating that *“they must not react to the fans because the fans pay a lot of money and give up their time to come and watch the team. I do not want my management staff arguing with our own fans”* and *“I was making the point that this was not the time for him to act like that with the fans”*.

44. It was also clear to the Commission from the animated hand gestures and general body language of Mr. Becchetti as he advanced on to the pitch toward Mr. Hessenthaler that Mr. Becchetti was in an agitated or heightened state.

45. Having considered carefully the position of Mr Hessenthaler’s feet immediately before the first kick was delivered, the Commission could see that he was side-on to Mr. Becchetti and as such could well have seen Mr. Becchetti’s approach, although it is also possible that he did not. Mr. Hessenthaler can also be seen to make a gesture towards Mr. Becchetti which again indicates that he had seen Mr. Becchetti approaching him.

46. With regard to the first kicking movement by Mr. Becchetti, the Commission unanimously agreed that objectively viewed it could only be seen as having been executed as an excessively forceful kicking motion.

47. With regard to the second kicking movement, the video evidence was inconclusive as to whether or not it was a full kick or a movement that was ‘pulled up short’.

48. It is not clear from the video clips that contact was made by either of these movements, but the Commission noted that both the Match Referee

and the Match Assessor wrote in their reports that Mr. Hessenthaler had indicated to them that he had in fact been kicked twice around the hip area. The Commission also noted that Mr. Becchetti himself had stated in his oral evidence that the kick he aimed was of a “light touch” thus indicating that at least some contact was made.

49. Notwithstanding the above, the Commission agreed with Mr. Elagab’s submissions that lack of contact does not necessarily make an action non-violent. If a person throws a vicious punch at another person’s chin but misses, this does not make the action of throwing such a punch any less violent.

50. The Commission members agreed that that the reaction of Mr. Hessenthaler as seen on the video clips strongly indicated that he had been kicked forcefully and that he wanted to get to Mr. Becchetti. It’s more likely than not that the Portsmouth coaches having seen Mr. Hessenthaler being kicked reacted so as to stop the situation escalating by restraining Mr. Hessenthaler.

51. Having considered all of the evidence before it the Commission felt that on the balance of probability it was more likely than not that Mr. Becchetti had violently kicked Mr. Hessenthaler at least once and possibly twice and as such the charge of improper and/or violent conduct contrary to FA Rule E3 was proven.

Sanction

52. With regard to sanction, the Commission noted in mitigation that Mr. Becchetti had no previous record of misconduct during his initial eighteen months (approximately) under the jurisdiction of The FA.

53. The Commission also noted that Mr. Becchetti had made a partial apology in his letter dated 4th January 2015 wherein he states “...I am sorry to have brought negative attention to my Club on a day where I was only hoping to celebrate an enjoyable victory”. Although this apology must be viewed in the light that it was contained within a letter that denied the charge of violent conduct.

54. It was argued in mitigation by Ms. Potts on behalf of Mr. Becchetti that the context of the day should be a consideration for the Commission when gauging the level of sanction appropriate to impose. The Commission disagreed, Mr. Becchetti’s actions cannot be mitigated against on the basis that it was Boxing day, a big match, an exciting game or that he was caught up in the moment nor can his behaviour be mitigated against on the basis that he is a ‘passionate man’.

55. The Commission felt that the sanction imposed ought to reflect the position Mr. Becchetti holds at Leyton Orient FC. As the owner and President of the club he has an added responsibility to act appropriately and is expected to meet certain standards of behaviour. In kicking out at Mr. Hessenthaler, Mr. Becchetti’s behaviour fell way below that which is expected of a person in his position.

56. The Commission noted that the actions of Mr. Becchetti were in full view of the spectators at the match, which was also highlighted as an aggravating factor by Mr. Elagab, and had drawn negative attention from the media, as accepted by Mr. Becchetti. It was also noted that Mr. Becchetti should not have been on the field of play following the final whistle.

57. The Commission noted that Mr. Becchetti although admitting the improper nature of his behaviour had denied the charge and had therefore caused a Commission to be convened, incurring all the costs that are attached to such a hearing.

58. Although it was argued on behalf of Mr. Becchetti that he derives no salary from his position at the football club, it is clear to the Commission that Mr. Becchetti is an extremely wealthy and affluent man. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

59. Having considered all the mitigating and aggravating factors the Commission decided that an appropriate sanction would be as follows:

- a. Effective immediately, Mr. Becchetti is banned from attending, at any time on a match day, the stadium or ground at which Leyton Orient FC First Team is playing, until such time as Leyton Orient FC

has completed six (6) first team matches in approved competitions;

- b. Mr. Becchetti is fined the sum of £40,000;
- c. Mr. Becchetti is ordered to pay the full costs of this Personal Hearing; and
- d. Mr. Becchetti is warned as to his future conduct.

60. This decision may be appealed in accordance with the relevant regulations of the prevailing FA Handbook.

Post Hearing

61. Post Hearing the Regulatory Commission received an application on behalf of Mr Becchetti to set aside the sanction in its entirety pending receipt of the written reasons and whilst they considered the options for an appeal.

62. Having considered the application the Regulatory Commission ordered that the sanction will be set aside until:

- a. Mr. Becchetti confirms he does not wish to appeal; or
- b. The outcome of an appeal is known; or
- c. The period of time to lodge an appeal has expired.

Stuart Ripley

Regulatory Commission Chairman

20th January 2016