

IN THE MATTER BEFORE A REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

-and-

MR ANDRE GRAY

**WRITTEN REASONS OF THE FOOTBALL ASSOCIATION
REGULATORY COMMISSION**

1. By charge letter dated 22 August 2016 (“the First Charge Letter”) Andre Gray (“AG”) was charged with four breaches of FA Rule E3 in respect of media comments posted on his Twitter account between 9 January 2012 and 11 March 2012. The Football Association (“The FA”) allege that the comments posted were abusive and/or insulting and/or improper and/or brought the game into disrepute contrary to Rule E3(1). It is further alleged that these breaches of FA Rule E3(1) include a reference to an “aggravating factor” namely, sexual orientation and/or gender and/or colour and/or race contrary to Rule E3(2). The relevant rules are those for Season 2011/12.
2. Further by charge letter dated 2 September 2016 (“the Second Charge”) AG was charged with a further two breaches of FA Rule E3(1). It is alleged that other media comments posted on AG’s Twitter account were abusive and/or insulting and/or improper and/or brought the game into disrepute. The comments were posted on his Twitter account between July and December 2014. It is also further alleged that the breaches of Rule E3(1) are “Aggravated Breaches” as they include a reference to gender and/or colour and/or race contrary to Rule E3(2). The relevant rules in respect of these charges are those for Season 2014/15.

3. A personal hearing was held at Wembley on 22 September 2016. The Regulatory Commission consisted of David Casement QC (Chairman), Ifeanyi Odogwu and Alan Knight MBE. The Secretary to the Commission was Paddy McCormack. Those attending before the Commission were as follows:

Andre Gray

Jim Sturman QC

Ben Jones – Opus Law solicitors

Matt Williams - Head of Football and Company Governance of Burnley Football Club

Amina Graham – Head of Regulatory Advocates

Yousif Elagab – Observer (Regulatory Advocate)

4. The six tweets which form the basis of the two charge letters are as follows:

First Charge Letter

- (1) “Is it me or are there gays everywhere? #Burn #Die #MakeMeSick”. (9 January 2012)
- (2) “Ladies stop dressin ur sons as women in heels and make up...Do you want him to end up like #PeteBurns #Faggot” (28 January 2012)
- (3) “Black girls feet are always dry n crusty man kmt...Never heard of moisturiser #cocobutter” (4 March 2012)
- (4) “Black girls with red lip stick is like burnt toast with jam on it #leaaaaveittyeahhhhh” (11 March 2012)

Second Charge Letter

- (5) “Why are women so bitchy? #JealousyFemalesTrait” (18 December 2014)
- (6) “I hate lightys! These geezers tink there chris brown kmt! Does my nut in” (18 July 2014)

- 5. AG accepts responsibility for each of the six tweets but denies that tweets (3), (4) and (5) constitute breaches of the rules. He accepts that tweets (1), (2) and (6) constitute breaches of the rules.

The Player’s Submissions

- 6. AG was represented by Jim Sturman QC instructed by Opus Law solicitors. Mr Sturman provided written submissions and supplemented those with oral submissions at the personal hearing.
- 7. Mr Sturman submitted that tweets (3), (4) and (5) did not constitute breaches of the rules for the following reasons which we summarise:

7.1 the comments made in (3), (4) and (5) are not abusive, insulting and/or improper;

7.2 the comment made in (3) regarding “Black girls feet” is immature and childish but is not offensive nor was it racist. No reasonable observer would have taken offense at the comment;

7.3 the comment made in (4) was lifted from another person’s post and because the Player found it amusing he decided to partly quote. He does not recall the context of the quote;

7.4 tweets (5) and (6) have been unearthed subsequent to the original tweets by someone intent upon “finding anything that might conceivably sustain a charge”;

7.5 “It is submitted that the charges already admitted provide the panel with adequate sentencing powers. There is an increased

tendency in modern life for some people to look to find offence, rather than dealing with matters that are truly offensive and the panel must not fall into the trap of looking to find offence rather than dealing with what is admitted to be offensive”;

- 7.6 in comment (5) AG was not calling women “bitches” but bemoaning, tongue in cheek, “bitchy” behavior. The word “bitchy” is in common usage and is not offensive within the context of this tweet. The word can be applied to both men and women;
- 7.7 the Commission should have regard to Article 10 European Convention of Human Rights. A finding of guilt would cross the line into disproportionate interference with AG’s right to express himself freely;
- 7.8 regarding tweet (6) it is accepted that “Lighty” is an expression used to describe people of mixed race. AG is a person of mixed race. AG intended his remarks to persons who mimicked/ aspired to be like Chris Brown although it is accepted his generalization amounts to improper conduct. It is submitted that his offence is less serious than Rio Ferdinand’s “choc-ice” remark;
- 7.9 in mitigation AG has pleaded guilty in respect of three of the six tweets. It is significant mitigation that the tweets did not originally attract comment and were published to a small group of only 50 followers who were friends and family. It is the retweeting of the comments in 2016 that has caused widespread circulation. AG has deleted his Twitter account and intends never to use it again. AG issued a heartfelt apology before The FA issued charges.
- 7.10 further, AG has had personal difficulties in his personal life prior to 2012. These were elaborated upon in submissions. At the time he wrote the tweets AG was immature and coping with serious difficulties in his life. In submission AG has provided context for his tweets;
- 7.11 at the time of the 2012 tweets AG was playing in non-league football and had a handful (about 50) of followers, all friends and family. At the time he was not viewed as a role-model;

- 7.12 AG was unaware at the time of the dangers of social media and he had not received any training or advice regarding the pitfalls of Twitter;
- 7.13 AG has an unblemished record with The FA never having been charged with breach of the rules or ever having received a red card on the pitch;
- 7.14 AG wished to make clear that if, contrary to his submissions, he is found to be in breach of the rules in respect of the three tweets to which he has pleaded not guilty, he expresses his sincerest apologies;
- 7.15 for the above reasons and the other reasons addressed in submissions the Commission should not impose a sporting sanction.

The FA's Submissions

8. Ms Amina Graham on behalf of The FA filed a case outline to stand as submissions and submitted as follows:

8.1 the test for the Commission to apply when considering whether the comments by AG are in breach of FA Rules E3(1) and (2) is to consider the comments objectively and how they would be perceived by the "reasonable reader" without taking into account any subjective element such as intention;

8.2 the terms "abusive", "insulting", "improper" and "bringing the game into disrepute" should be given their natural and ordinary meaning. Intention is irrelevant for the purpose of determining if there was a breach of Rule E3(1);

8.3 regarding the comments in (3) and (4) these were abusive, insulting and improper. They are statements which denigrate a particular gender and racial group (namely black females) by attributing negative features/characteristics to them;

- 8.4 AG is incorrect to say that the tweets contain a “mere” reference to the word “black.”
- 8.5 the word “bitchy” in (5) should be given its natural and ordinary meaning as set out in the Oxford English Dictionary namely malicious or spiteful. The FA does not accept that the urban dictionary cited by AG is authoritative but even if it were that website provides further definitions of the word “bitchy” to include “snide”, “mean”, “nasty” and “bitch.” In reading the comment the unavoidable conclusion is that AG was querying why and asserting that women generally possess this negative characteristic. The use of the hashtag “jealousy” is also suggested as a trait possessed by all females;
- 8.6 the fact that the word “bitchy” could be applied to both men and women is nothing to the point. The comment at (5) was directed towards women only with no qualification;
- 8.7 contrary to AG’s submissions the aggravated offence has been in force since 2007-2008 although initially it was regarded as an aggravating factor. Substantively there is no difference. Further the suggestion that The FA did not regulate social media in 2012 is incorrect: the first social media charge was brought in respect of Ryan Babel in the 2010-2011 season and was widely publicised;
- 8.8 AG has co-operated with The FA in this process but that is no more than he is obliged to do under the rules. He is not entitled to additional credit. AG is entitled to credit for pleading guilty in respect of three of the comments;
- 8.9 the fact that AG only had 50 followers at the time is not relevant. The tweets were made onto a public account which enabled re-tweeting to a much larger audience. AG must take responsibility for the dissemination of his comments;
- 8.10 although it is accepted that any sporting sanction will impact upon Burnley FC this is no more than what follows from to any innocent party in respect of a player’s misconduct.

9. The Commission was provided with a list of sanctions imposed in other cases.

Regulations

10. Rule E3(1) and (2) at page 119 of The FA Handbook Season 2011-2012, state the following:

(1) *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.*

(2) *In the event of any breach of Rule E 3(1) including a reference to any one or more of a person's ethnic origin, colour, race, nationality, faith, gender, sexual orientation or disability (an "aggravating factor"), a Regulatory Commission shall consider the imposition of an increased sanction, taking into account the following entry points:*

For a first offence, a sanction that is double that which the Regulatory Commission would have applied had the aggravating factor not been present. For a second offence, a sanction that is treble that which the Regulatory Commission would have applied had the aggravating factor not been present. Any further such offence(s) shall give rise to consideration of a permanent suspension. These entry points are intended to guide the Regulatory Commission and are not mandatory. The Regulatory Commission shall have the discretion to impose a sanction greater or less than the entry point, according to the aggravating or mitigating factors present in each case.

11. In Season 2013-2014, the term "Aggravated Breach" was supplemented for the former reference to an "aggravating factor".

However, the substantive offence remained the same.

12. The Season 2014-15 and current Rule E3(1) and (2) is set out at page 112 of FA Handbook Season 2016-2017:

- (1) *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.*
- (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.*

13. In Season 2013-2014 The FA also introduced a new sanctioning regime for all cases involving a breach of FA Rule E3(2), at E3(3) and (4). This states:

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

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

Findings

Breach

14. The Regulatory Commission concludes that the tweets made by AG at (3), (4) and (5) as being aggravated breaches of Rule E3(1) and that The FA has proved its case on the balance of probabilities. The comment at (3) is, on an objective interpretation, a comment about all black females about whom it is said their feet are always dry and crusty. This is derogatory of persons in respect of two protected characteristics namely race and gender. The same is also the case in respect of comment (4) which draws an analogy between the skin of

black females and burnt toast. Comments (3) and (4) were references to all black females.

15. In respect of comment (5) the Commission is of the view that on an objective reading this is clearly a reference to all women and would be taken by a reasonable reader to mean that all women have the negative characteristic of being “bitchy.” The Commission agrees with The FA’s submissions that “bitchy” means malicious or spiteful but in any event conveys a negative characteristic to an ordinary reasonable person who might read such a comment. The comment was not made about a particular individual but was a generalisation about all women.
16. On the question of liability the Commission is unanimously of the view that comments (3), (4) and (5) constitute comments which were improper and/or brought the game into disrepute and they were abusive and/or insulting and/or improper and/or indecent contrary to Rule E3(1). Further the comments clearly included references as to gender and/or colour and/or race pursuant to Rule E3(2). The Commission considers that the argument based upon Article 10 is without any merit: there is no disproportionate interference with the freedom of speech quite apart from the fact that The Football Association is not a public body.

Sanction

17. The Commission takes into account that this is the first offence committed by AG. The Commission also takes into account the fact that the first set of tweets took place in 2012 and the second set of tweets took place in 2014 and that at the respective times AG played for Hinkley United Football Club who played in the Conference North and Brentford Football Club who played in the Championship. It is certainly true that there was less education and awareness for players

regarding social media in 2012 in a lower level club than say in a Premier League club today. However by 2014 AG was playing in the Championship when education was more available and there had been considerable publicity regarding other cases where players had committed similar breaches using Twitter. Further the Commission does wonder how much education was required for a player even in 2012 to know that the comments which are the subject of the First Charge Letter were completely unacceptable and should not have been said let alone published in a format where they could have been read by anyone searching the internet. We accept that AG had 50 followers who were friends and family when the first set of comments were tweeted and about 2000 when he tweeted the second set of comments. However AG's Twitter account was open to the public and could have been read by anyone with access to the internet. Those who publish statements on the internet must be taken to knowingly run the risk that their comments may be read by a very large number of people.

18. The Commission has taken into account all of the mitigation advanced by Mr Sturman on behalf of the player. We have not heard from AG himself but it was submitted that the player is genuinely contrite about the publication of these comments and that he is now a very different person compared to who he was in 2012 or indeed 2014. It was said on his behalf that he is ashamed of the comments he made and they do not reflect who he really is. It is asserted on behalf of AG that he is not racist, sexist or homophobic however it is not asserted by The FA that he is any of those things and that such does not form any part of the charges with which the Commission is concerned.
19. The fact remains that the comments made by AG were deplorable and must be taken seriously so as to provide adequate protection to vulnerable groups. Irrespective of the level at which players play it is

essential that a message is sent out that comments such as these are utterly unacceptable.

20. To take comment (1) first, which is agreed by both AG and The FA as being the most serious, the comment “Is it me or are there gays everywhere?” would be objectively taken to mean that in his opinion at the time there were too many gay people. When that is juxtaposed with the words “#Burn #Die #MakeMeSick” the comment takes on an altogether more sinister tone and is likely to be construed as meaning that gay people should burn and die. The comment was clearly aimed at the protected characteristic of sexual orientation.
21. Comment (2) again related to sexual orientation and Comments (3) and (4) related to gender, colour and race.
22. The fact that the First Charge Letter relates to a number of protected characteristics namely sexual orientation, gender, colour and race must be taken to be an aggravating feature of the case. There is no suggestion that AG retracted any of these comments prior to matters coming to light in 2016 when it is accepted he has published a full apology. However for a period of two to four years those comments have been available to be read on the internet by anyone who searched for them. That is clearly what happened when a person unearthed those comments and reported them to The FA in 2016. The motivation or standing of the person who reported the comments The FA is nothing to the point.
23. The comments made in 2014 do not provide evidence of a significant improvement in AG’s insight nor do they show a more mature approach from that demonstrated in 2012. Comment (5) was clearly a reference to all women and expressed a view that all women possessed the negative attribute of being “bitchy.”

24. In comment (6) the statement “I hate lighty’s!” was a reference to people of mixed race. The word hate is a strong word. AG has submitted that he himself is of mixed race but that is nothing to the point. The suggestion that the comment was a only a critical reference to those who mimic Chris Brown referred to later in the comment is not something that can be readily discerned from the tweet. The comment refers to all those of mixed race.
25. It is of concern to the Commission that AG contested liability in respect of comments (3), (4) and (5) to a full hearing. Mr Sturman submitted that this was on advice for which AG is not responsible. The position is that the decision of AG to deny that the comments breached the rules is AG’s responsibility and it shows a lack of insight on the part of AG that he decided to contest those charges.
26. Taking into account the contents of the comments which the Commission regard as being of a serious nature touching as they do a number of protected characteristics, the number of tweets, the publication of the comments in an open Twitter account, the length of time in which the comments have remained accessible to anyone who chose to search the web, the decision to contest liability in respect of three of the charges and also the matters of mitigation advanced on behalf of AG including those matters set out above, this is a case which clearly calls for a clear message as to the unacceptability of this behavior. Some credit must however be given for the three charges to which AG did in fact plead guilty, even though a full hearing was still required, and due to AG’s previous unblemished record .
27. The Commission have taken into account the apology of AG and the submissions that he is ashamed of the comments and is willing to engage in not only education but also to assist others to learn from his mistakes. The sanction imposed includes credit for that constructive approach taken by AG. Without that constructive approach the

sanction would have been more severe. Whilst it was submitted on behalf of AG that the comments are 'ancient' in the context of social media the Commission does not find that compelling. The mere effluxion of time is not a mitigating factor particularly when the messages remained published on the world wide web during the intervening period. The more important point is contrition and, as stated, credit is given for the constructive approach taken by AG.

28. The Commission notes that the comments set out in the First Charge Letter fall to be dealt with in accordance with the sanctioning regime at the time namely the rules for the 2011-12 season. For the Second Charge Letter the sanctioning regime for season 2014-15 is applicable. There is no minimum sanction required to be imposed and all options including suspension of the sanction are open to the Commission. The Commission has decided to impose the following by way of sanction in order to reflect the seriousness of the offences and the other matters identified above and taking into account the totality principle:

28.1 AG shall be suspended with immediate effect, from all domestic club football until such time as Burnley Football Club shall have completed four first team competitive matches in approved competitions;

28.2 AG is fined the sum of £25,000;

28.3 AG shall pay the sum of £2000 as a contribution towards the costs of the proceedings;

28.4 The personal hearing fee of £100 is forfeited;

28.5 AG shall attend a one to one Football Association education course, the details of which will be notified in early course, within four months of notification of this decision. Failure to

do so within the specified time shall bring into effect an immediate suspension from all football and football related activity until successful completion of the course;

28.6 AG is given a warning as to his future conduct.

29. This decision is subject to the relevant Appeal Regulations.

DAVID CASEMENT QC (Chairman)

ALAN KNIGHT MBE

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22 September 2016