

FOOTBALL ASSOCIATION REGULATORY COMMISSION

THE FOOTBALL ASSOCIATION

-and-

BERNARDO SILVA

Commission: Richard Smith QC (Chairman)
Gareth Farrelly
Marvin Robinson

Secretary to the Commission: Paddy McCormack

Hearing: 11 November 2019 (by Webex) in the absence of the Parties

REASONS OF THE REGULATORY COMMISSION

- 1 The Regulatory Commission was appointed to determine proceedings brought against Bernardo Silva ('the Player') who was charged with misconduct.

The Charge

- 2 Rule E3 (in part) provides as follows:

(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 any 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 assignment, sexual orientation or disability.

- 3 The Player was charged with misconduct for an aggravated breach of FA Rule E3 (1) in respect of a post on the Player's Twitter account dated 22 September 2019, the post being insulting and/or improper and/or bringing the game into disrepute.

4 The Player admitted the charge (in a context explained and relied upon later herein in these Reasons). The Player expressed his wish that these proceedings be determined on the papers without the necessity of a personal hearing.

The facts

5 On 22 September 2019 the Player posted a tweet on his personal Twitter account, being an account that had in excess of 600,000 followers. The tweet (appearing as DJM/1 in the hearing bundle) was a message directed to the Player's team-mate and good friend Benjamin Mendy. The tweet showed a picture of the Player's Manchester City team-mate as a child set alongside the image of a cartoon-like character used to promote a brand of Spanish chocolate called Conguitos. The Player had accompanied the imagery with the question '*Guess who?*', itself accompanied by two laughing emoji symbols.

6 Subsequent research by the Football Association revealed that there was, in the words of the Commission, some controversy regarding the Conguitos character employed in a long-standing Spanish advertising campaign for the relevant product. However, the Commission immediately recognises that such controversial specific history would have been known only to a limited few and it is accepted by all concerned in these proceedings that the Player himself had no previous knowledge of the adverse connotations linked by some to the brand. Moreover, the Player had himself grown up in a country where both the brand and the character were familiar and considered inoffensive.

7 The tweet had been intended as a joke between team-mates and was taken in exactly that spirit by the intended principal recipient, Mr Mendy. Mr Mendy made his thoughts and emotions clear in that regard in a letter provided to the Commission in undated correspondence appearing as page 57 of the hearing bundle.

8 The Commission accept that the Player did not *himself* intend the post to be insulting or in any way racist. Not least, such conduct would have been totally out of character for the Player based upon the information made available to the Commission. It is clear that the tweet was intended to be no more than a joke between close friends.

9 However, this was not a private jocular communication between two friends. The post was on a social media platform exposed to the 600,000 followers of a high-profile and well-respected professional footballer. It was quickly observed and reported upon by

elements of the media. To his credit, the Player removed the tweet from his account within a period of some 45 minutes or so.

- 10 By his plea, the Player accepts that whilst he was ignorant of the adverse historical connotations of the Conguitos character, and that he had not intended the post in any way to be offensive, he acknowledges that others would do so. With what he calls 'hindsight' in his statement dated 21 October 2019, the Player accepts that "*the tweet has been considered offensive*". That analysis is certainly correct. Many persons viewing the imagery depicted in the tweet would have taken offence to the content as being insulting by reference to race, colour and ethnic origin in a way that unquestionably brings the game of football into disrepute.
- 11 Bernardo Silva is aged 25 is correctly described before the Commission as being of "exemplary" previous good character. It is clear to the Commission that the Player regretted his actions.

Sanction

- 12 The Player has admitted an aggravated breach of FA Rule E3.
- 13 Disciplinary Regulation 48.3 provides that where, as here, the communication the subject of the charge was made by social media, a Regulatory Commission;
- "will not be bound to impose an immediate suspension of at least six Matches for a first such breach, or of no fewer than seven 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"*.
- 14 Accordingly, this Commission is not bound to pass a suspension of at least six matches for this aggravated breach by reason of the fact that the communication was via social media. Both Parties helpfully provided the Commission with written submissions on the question of sanction.
- 15 At the heart of this case is the question of whether the misconduct merits the imposition of a playing sanction. In carefully considering that question, the Commission has had regard to all the materials placed before it and has considered previously decided cases, noting at the same time that this case requires consideration on its own, somewhat unusual, facts. It is worthy of note that many previously decided cases related to circumstances where the offender deliberately targeted a particular individual or incident. That is not so in the case of this Player.

- 16 The Commission took account of the fact that there are a number of features which can properly be said to *mitigate* the misconduct. In reaching its decision the Commission has taken careful account in particular of the following matters, namely that:
- a) The Player did not have any knowledge of the historical connotations of the Conguitos character.
 - b) His tweet was not intended by him to be either racist or offensive in any way.
 - c) The tweet was promptly deleted by the Player.
 - d) The Player and his Club have taken steps themselves to ensure that the Player has a greater understanding of his responsibilities on social media.
 - e) The Player made an early admission in full cooperation with the disciplinary process.
 - f) The Player has an exemplary character and disciplinary record.
- 17 In their written submissions to the Commission the Football Association submitted that the Player's conduct was *aggravated* in four ways.
- 18 It was firstly submitted that, whilst the Player had no knowledge of the historical connotations of the Conguitos character, "*he ought properly to have been aware that such stereotyping as is contained in the image as insulting or improper by reference to race, colour and/or ethnic origin*".
- 19 The Commission take the view that, rather than being a feature of the case that can properly be said to aggravate the misconduct, this assertion is no more than a declaration of the substance of the aggravated misconduct itself. The Commission has exercised caution and care to ensure that there is no 'double accounting' of features of this case.
- 20 The FA further suggested that the content of the imagery may have a particular influence upon young children. The Commission do not agree with that analysis.
- 21 The FA submitted that, by reason of his 25 years of age and experience as an international football player, the Player "*ought to have had a greater awareness*

regarding the implications of posting such an image on social media". Whilst the Commission unhesitatingly accept that the Player does not have the benefit afforded to him of youth (giving rise to mitigating circumstances based on naivety and inexperience), the Commission do not conclude that his age or international experience are of themselves an aggravating feature of his misconduct.

22 The final matter relied upon by the Football Association was the fact that this tweet was published on a media site that had in excess of 600,000 followers.

23 Previously decided cases have observed, correctly in the view of this Commission, that a high-profile professional footballer may have his misconduct aggravated by reason of the fact that his profile in the community serves to further influence those who are exposed to the improper communication. Moreover, in this particular case the offending material was distributed to an extensive public audience. The Commission regard that degree of publicity, coupled with the profile of this well-respected professional footballer, as being an aggravating factor.

24 In their submissions dated 29 October 2019 the Football Association make reference to the decision in *FA v Yannick Sagbo*, in which the Regulatory Commission convened to hear that case observed that;

"We consider that the overall thrust of FA Rule E3 is that it should normally take the presence of strong mitigating factors and little or nothing by way of aggravating factors before a Regulatory Commission decided against any suspension at all for an aggravated breach."

That is an assessment with which the Commission respectfully agrees.

25 The Commission carefully balanced those factors that mitigated in this case together with the feature that aggravated the misconduct. Such considerations were themselves necessarily assessed in the context of the circumstances of the admitted misconduct, and the nature of the communication publicized.

26 In all of the circumstances, and notwithstanding the strong mitigation in part that exists in this case, the Commission came to the conclusion that the subject-matter of the post and the aggravating factor that was present, were of a kind that could only properly be met by the imposition of a playing sanction. However, taking proper account of the

individual circumstances of this offence and the offender, the Commission came to the conclusion that that a playing sanction could be limited to one game.

- 27 In addition, the Commission concluded that it was correct to impose a financial penalty on the Player commensurate with the financial information that had been provided in the proceedings.
- 28 By reason of the provisions of Regulation 46.1 the Commission is bound to order that the Player is made the subject of an education programme.

Summary of Sanction

29 The Player Bernardo Silva is;

(i) suspended from all domestic club football with immediate effect until such time as Manchester City FC have completed one First Team competitive Match in an approved competition.

(ii) fined the sum of £50,000.

(iii) ordered to attend a mandatory face-to-face education programme the details of which will be provided to the Player by The Football Association. That programme is to be completed within a 4 month period commencing with the date of these Written Reasons. If the Player fails to satisfactorily complete the programme in that period, he will be immediately suspended from all domestic club football until such time as the mandatory programme is so completed.

Richard Smith QC (Chairman)

Gareth Farrelly

Marvin Robinson

12 November 2019