

The Football Association

and

Dele Alli

Reasons of the Regulatory Commission

Hearing Monday 8th June 2020

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

Jim Sturman QC: Counsel for the Player, Dele Alli

Rebecca Turner: Counsel for The FA

Paddy McCormack: Regulatory Commissions & Appeals Manager (Secretary)

The Charge

1. 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.
2. The Player, Dele Alli, was charged with misconduct pursuant to FA Rule E3(1) in respect of a Snapchat post made on the 6th February 2020. It was alleged that the post was insulting and/or improper and/or brought the game into disrepute.

3. It was further alleged that the Player's conduct in posting the material amounted to an "Aggravated Breach" of the relevant provisions by reason of Rule E3(2) in that the post included reference, whether express or implied, to race and/or colour and/or ethnic origin and/or nationality. The charge was denied by the Player.
4. A Hearing of the charge took place by Microsoft Teams video link on the 8th June 2020 after a delay caused by the implications of Covid-19.

Background

5. On the 6th February 2020 the Player was at Heathrow airport and was travelling to Dubai for a mid-season break with three friends and his security guard. There had been concern about the journey in the light of developing concerns around the effects of coronavirus. Dele Alli had prepared himself with a mask and hand gel. Whilst sat in an airport lounge and wearing his face mask, the Player filmed a video on his mobile phone. The video first showed the Player's masked face accompanied by the words;

"Corona whattttt, please listen with volume".

6. The video thereafter moved to focus in on a man who was of Asian appearance sat close to the Player.
7. The Player was to maintain that the man he had filmed had been coughing, and that was why the post invited people to 'listen with volume'. No coughing could in fact be heard on the recording.
8. The video was posted on to the Player's Snapchat account. The Snapchat story account was accessible to some 160 people who he regarded as 'friends and colleagues'. In addition, the video was posted on to a WhatsApp group that the Player shared with three 'very close [named] friends'.
9. The video was deleted from the Player's Snapchat story soon thereafter and had disappeared from the account upon the Player's arrival in Dubai seven hours later. However, the video was copied by one of the (unidentified) Snapchat recipients and forwarded to a

national newspaper, who in turn published the material online. Other publications and commentary followed in the national and international press. The Player thereafter issued an apology on a Chinese social media platform.

The case for The FA

10. It was not the FA's case that Dele Alli was a racist. The FA's case was that 'without sufficient thought', the Player shared a video that depicted an 'unacceptable racist stereotype' in a misguided attempt at humour.
11. In her oral submissions to the Commission and in her Note dated the 26th February 2020, Miss Turner explained that The FA's principle case was that the Player deliberately targeted a man of Asian appearance. He was selected, argued The FA for his appearance and not because there had been any coughing. That 'targeting' was said to be consistent with a racial stereotyping of persons of Asian appearance being connected with coronavirus.
12. In the alternative, The FA further submitted that even if it was that a Commission were not satisfied that the man depicted in the video had been deliberately targeted by the Player, the fact that the man was of Asian appearance, could only sensibly be viewed objectively as suggesting that the man was selected because of a link as between persons of that appearance and the virus.
13. The FA played the video and adduced the Player's responses to the charge in the presentation of their case.

The case for the Player

14. Dele Alli gave evidence in accordance with the account set out in in his documentary replies to The FA, dated the 13th and 21st February 2020 respectively, and in his statement dated the 6th March 2020.
15. The Player said that he had been concerned about travelling and had prepared himself by wearing a face mask and having anti-bacterial hand gel available. He was teased by his friends about what they (then) perceived to be an overreaction to the risk posed. In his

statement adduced before the Commission, Kyle Walker Peters detailed that he thought Dele Alli was indeed overreacting by wearing a mask and that the group were engaged in 'banter' about it.

16. When he heard someone coughing in the first-class lounge, the Player said that he decided to record the person who was coughing, as a joke aimed at himself and his apparent 'overreaction'. The Player said that he started his film at the time the man was coughing and expected the same to be captured on the soundtrack. In answer to questions put to him, the Player accepted that the reason why he filmed the man coughing was because the supposed joke was that the coughing man might have the virus. In answer to a question in cross examination from Miss Turner, the Player denied that he had zoomed in on the Asian man simply because of his appearance.
17. Mr Alli said that it was only after the video had been posted that he appreciated that the soundtrack did not in fact include any coughing noise. The man who was filmed did not appear to be in the act of coughing.
18. The Player accepted that, at the time the video was created on the 6th of February, he was aware of the scale of the problem caused by coronavirus and that there were links between China and the virus. He documented his understanding of the "*widespread coverage of coronavirus and how it was effecting [sic] everyone all over the world*", and that it was "*in China where the virus has affected the most people*".
19. However, at the heart of the Player's case was his contention that he had not selected the man in question because of his appearance but simply as he happened to be the person coughing. As the Player put it, "*ethnicity was irrelevant*".
20. The video was described to be a misguided attempt at humour; his friends at the airport did not find it funny. The Player said that he "*very quickly realised that [the video] may have the potential to cause upset because no one should be making jokes about people all over the world catching coronavirus, especially when people have lost their lives as a result of it*". He added that he "*..understands even on his private account it was an insensitive video to share...at a time when many others are suffering*".

21. Harry Hickford, called in support of the Player's case, detailed in his statement that the video made no sense and was not funny. Aaron Greene said he immediately appreciated it was *"bound to upset someone"*. That was, in the view of the Commission, an understandable reaction.
22. The Player explained that he decided to delete the video before he boarded his flight to Dubai. It was the following day that he became aware that he had, in his words, been *"betrayed"* by someone on his Snapchat group and the post had been given to the media. An apology was made in which the Player detailed that he had 'let himself down', but it was the Player's evidence to the Commission that he did not regard the content of the video to be of a kind to 'cross the line' into conduct answerable under Rule E3, in particular as the video, in his opinion, *"had nothing to do with the ethnicity of the man"*
23. Harry Hickford, the Player's brother and agent, was called in support of the Player's case and like Kyle Walker Peters (who's written statement was accepted into evidence by the Commission), spoke of the banter that had taken place amongst friends about Dele Alli's overreaction to the threat of the virus. Importantly, he also gave evidence that he had heard the man coughing in the airport lounge. Aaron Greene gave evidence that he too had heard the coughing. The Commission accepted their observations that they were more sensitive to hearing people cough at that time, by reason of the heightened awareness around the symptoms associated with the virus.
24. Miss Turner challenged the evidence of those called in support of the Player's case to the effect that they could not in truth have recalled a man coughing in the lounge and that they had made up their evidence in an attempt to support the Player. Both Mr Hickford and Mr Greene denied any such suggestion.
25. In his written statement, Kyle Walker Peters said that he had not heard the coughing, and spoke principally as to the character of his friend, echoing the thoughts of others, to the effect that Dele Alli was not racist and of good character.

Finding

26. It is clear from all the evidence the Commission heard, and accepted, that The FA were right to observe that it was not their case that Dele Alli was a racist.

27. The Commission concluded that the video created at Heathrow airport on the 6th February was a very poorly judged attempt at what the Player then regarded as a humorous joke. The measure of that extremely poor judgement was evidenced by the fact that the Player himself reflected promptly on the content and sought to delete it with some haste.
28. In her submissions to the Commission, Miss Turner had invited the Commission to conclude that the Player had not heard the man of Asian appearance cough at the relevant time, and that the only reason the man had been filmed was because of his Asian appearance. As detailed herein above, it was said that the Player had *deliberately* targeted a man of Asian appearance and so had expressly included a reference to race, and/or colour and/or ethnic origin and/or nationality.
29. Having considered all the evidence before them, the Commission were satisfied that Dele Alli had heard the man in question coughing, and that when he commenced his video his (ill judged) intention was to film the man so as to suggest a link between the coughs and coronavirus.
30. In reaching that conclusion the Commission had particular regard to the evidence given by the Player. The Commission carefully considered both what was said and how it was said. They found Dele Alli to have given a truthful account of what he had heard and what his intentions were in setting about to create the supposedly humorous video.
31. The Commission further noted that the Player's account was supported by the evidence of Harry Hickford and Aaron Greene. Notwithstanding the careful examination and criticism of this evidence by Miss Turner, the Commission found both witnesses to be credible in respect of the evidence they respectively gave about hearing the coughing. Both men gave their evidence, on that issue, in a straightforward and candid way.
32. The fact that the video had been accompanied by an invitation to 'listen with volume' was a feature of the evidence that the Commission very much considered to be consistent with the evidence given by the Player. It was, the Commission concluded, because the Player expected the video to catch the sound of coughing, that he asked his audience to listen with sound.

33. In her measured submissions to the Commission, Miss Turner suggested that Mr Alli might have in fact expected the video to catch another sound rather than coughing. Subsequent newspaper reports had spoken of supposedly hearing Chinese accents in the background of the footage. That did not appear to be so to the Commission and was not advanced as being so by The FA. Miss Turner, when asked, could not suggest or identify any alternative sound that would make sense of the 'invitation to listen'.
34. The Commission were mindful that the Player could have set out to record the coughing and in addition deliberately included the focus upon the man of Asian appearance as a racial stereotype of the kind suggested by The FA. After careful consideration, and not without some hesitation, the Commission came to the conclusion that they could not be satisfied that the Player had included the man in the video for that reason. Rather, the Commission concluded that the Player had, as he had said, filmed the man not because of his ethnicity, but because *he* was the man who had been coughing. Again, the Commission gave weight to the evidence they had heard from the Player and had regard in addition to the Player's character which they accepted was of a kind inconsistent with a suggestion that he *deliberately* sought to reference race in a joke.
35. In respect of the substantive charge of misconduct, the burden was upon The FA to prove on a balance of probabilities that the Snapchat post was insulting and/or improper and/or brought the game into disrepute. Notwithstanding what the Player (and those travelling with him) had accepted about the content of the video, Dele Alli did not accept that the video "*crossed the line into improper conduct*". Mr Sturman QC was to echo that analysis in his submissions to the Commission.
36. The Commission reminded themselves that the video and other circumstances of this case had to be viewed in the context of world events as they were in February 2020. The dramatic and serious effects of Covid-19 have resonated in the months immediately after the Player's mid-season holiday to Dubai. However, the Commission unhesitatingly concluded that the subject matter and content of the posted video went far beyond a poor joke made in bad taste; the material was very clearly insulting and improper of a kind to bring the game into disrepute within the meaning of Rule E3(1). Accordingly, The FA proved the basic charge of misconduct.

37. The Commission went on to consider whether the proven misconduct was aggravated within the meaning of Rule E3(2), that is, whether the post included reference, whether express or implied, to race and/or colour and/or ethnic origin and/or nationality.
38. Whether the charge was racially aggravated is an objective test and is not determined simply by the intentions of the Player. It is also important to note that the question for the Commission was not whether Dele Alli was racist per se, but whether the video contained a reference to one or more of those matters, including race, provided for in Rule E3(2). Accordingly, whilst the Commission were not satisfied that Dele Alli had deliberately chosen the man in the video by reason of his appearance, the Commission also had to consider whether the fact that the man was of Asian appearance could only be sensibly viewed objectively as suggesting that the man was in fact selected because of a link as between persons of that appearance and the virus.
39. The FA had argued that a reasonable bystander assessing the content of the video would have reached the conclusion that it was being implied that the man of Asian appearance had coronavirus. Indeed, Miss Turner essentially elicited just such a conclusion from both Mr Greene and Mr Hickford in answers they gave to questions put in cross examination. For his part, Dele Alli did not accept that, even when viewed objectively, that the content of his video was of a kind to be considered in breach of Rule E3(2).
40. The Player had accepted that he was, at the time the video was created on the 6th of February, aware of the scale of the problem caused by the virus and that there were links between China and the virus. The Commission concluded that a moment of sensible reflection by Mr Alli would have led him quickly to the conclusion that (whatever his supposedly humorous intentions) others looking at the selection of the male in the video would have thought the video was clearly implying that there was a link between the virus and those of Asian appearance; a racial stereotyping.
41. Viewed objectively the Commission concluded to the requisite standard, that the video included an implied reference to race and nationality. The video very clearly was open to the interpretation that the creator was seeking to observe that there was a link as between the man of Asian appearance and coronavirus. Accordingly, the Commission found the charge proved in the aggravated form.

Sanction

42. The Commission heard submissions from The FA calling for the imposition of a playing sanction. Mr Sturman QC urged that in circumstances where the evidence reflected what the FA themselves described to be an offence committed 'without sufficient thought', and 'in a misguided attempt at humour', there was no necessity to suspend the Player from playing.
43. The Commission were informed that Dele Alli had no similar misconduct offence on his record.
44. Both Parties pointed to certain similarities with the comparative case of *Bernardo Silva*. Having also sat that case, the Commission considered themselves well placed to weigh the comparative assistance, or otherwise, provided by the facts of that case. The FA, inter alia pointed to the fact that Silva had admitted the offence; the Player pointed, in particular, to the fact that he had not published on a widely viewed Twitter account.
45. The Commission concluded that the misconduct was not premeditated, and that the Player had not set out to be insulting or to create a racial stereotype. The Commission agreed with the FA in their assessment that the actions of the Player were 'without sufficient thought' and a 'misguided attempt at humour'. The creation and distribution of the offending material was more the product of spontaneous ill-judged stupidity rather than any sense of malicious intent. However, the fact that the video was intended to be limited to the eyes of about 160 people did not make the content any less offensive or inappropriate. Not least, and as the FA rightly highlighted, the Player had included a member of the public (without that man's knowledge or consent) in his video, with the clear inference that the man could have the virus.
46. It is important to note when assessing the culpability of the Player's misconduct, that the content was not deliberately distributed to a very wide public audience; it had been intended only for what the Player thought was a trusted and private group of friends and colleagues. However, the Player could and should have appreciated that once material is distributed the author no longer has control of the onward distribution. As Mr Sturman QC

was to put it in his written submissions, "...[it] *may be too late to put the genie back in the bottle*". The fact that the video was published onward without his knowledge or agreement is evidence in itself that Dele Alli in reality had no control of over the material once he chose to post it at all. That lack of control is still further illustrated by the fact that the Player says he remains unable to identify who it was in his 'group' that copied the material.

47. Equally, Dele Alli knew or ought to have known that that there will always be a significant public and media interest where anything regarded as controversial or inappropriate originates from a well-known public figure. That was a consideration that the Player's own friend Aaron Greene had himself observed in his evidence. This video was clearly both controversial and deeply inappropriate. Whilst it was not his intention, the onward transmission of the content had, as one could have foreseen, added to a misplaced media narrative about Asian stereotypes in what one witness described as the ensuing "press storm".
48. In taking account of all those matters placed before them, the Commission also found that the Player's misconduct was mitigated in particular by the fact that he;
- promptly deleted the video and subsequently posted an apology;
 - was of good character, without any similar misconduct matters in his disciplinary history;
 - had expressed regret for his actions (albeit that such regret was tempered in part by his failure to acknowledge the true gravamen of his misconduct); and
 - as a result of delays caused by the implications of Covid-19, waited some time to have his hearing and learn his fate.
49. Having regard to the provisions of Disciplinary Regulation 48.3 and by reason of the fact that the Aggravated Breach was via the use of a communication device, the Commission was not bound to impose an immediate suspension of at least 6 matches, as would otherwise have been the case for an Aggravated Breach. Rather, the Commission imposed a sanction that was appropriate in the circumstances of this case and taking account of those matters which aggravated and mitigated the offending.

50. The Commission concluded that the justice of the case was met by the imposition of a one match suspension from playing, together with the imposition of a fine.
51. Disciplinary Regulation 46.1 provides that it is mandatory that the Player is made the subject of an education programme.

Summary of Sanction

52. The Player is;

(i) suspended from all domestic club football with immediate effect until such time as Tottenham Hotspur FC completes one First Team Competitive Match in an approved competition;

(ii) fined the sum of £50,000; and

(iii) ordered to attend a mandatory face-to-face education programme the details of which will be provided to the Player by The FA. That programme is to be completed within a 4 month period commencing from the 8th June 2020. If the difficulties presently posed by the restrictions relating to Covid-19 do not allow the course to be completed in the 4 month period, then the Parties are at liberty to apply for an extension of time in which to complete the programme. If the Player fails to satisfactorily complete the programme in the relevant period, he will be suspended from all domestic club football until such time as the mandatory programme is so completed.

Costs

53. The Player's personal hearing fee is forfeited. In circumstances where the charge against the Player is proved after the request for a personal hearing, it will often be the case that the costs of the Regulatory Commission are to be paid in full by the Player. In this particular case the Commission were mindful that some of the important factual issues that necessarily required resolution by the Commission, were decided in favour of the Player. The Player is ordered to pay 75% of the full costs of the Regulatory Commission. The sum to be paid will be confirmed after the costs of the Regulatory Commission are calculated in due course.

Richard Smith QC
Gareth Farrelly
Marvin Robinson
9th June 2020