

FOOTBALL ASSOCIATION REGULATORY COMMISSION

THE FOOTBALL ASSOCIATION

and

MARK SAMPSON

REASONS OF THE REGULATORY COMMISSION

**Commission: Richard Smith QC (Chairman)
Gareth Farrelly
Tony Agana**

Hearing Date: 9th and 10th January 2020

In Attendance:

For the FA

Christopher Foulkes - Counsel representing The FA

Rebecca Turner - Observer

Yousif Elagab - Observer

For the Participant

Mark Sampson

Nick De Marco QC – Counsel representing Mr Sampson

John Reid – Solicitor

Charlotte Adams – Solicitor

Marcus Taverner – Observer

Paddy McCormack – Regulatory Commissions & Appeals Manager - Secretary

Introduction

1. The Regulatory Commission (“the Commission”) was appointed to hear and determine proceedings brought against Mark Sampson following his being charged with Misconduct. That charge was denied by Mr Sampson. The hearing took place at Wembley Stadium commencing on the 9th January 2020. A transcript of the proceedings was taken.
2. This document sets out the principal reasoning of the Commission. It is necessarily a summary and is neither designed or intended to refer to all the evidence heard, all the arguments advanced on behalf of the respective Parties, or to everything considered by the Commission. The Commission considered and gave due weight to all of the evidence, all the other material placed before it and to the submissions helpfully advanced on behalf of the respective Parties.

The Charge

3. At the relevant time, Mr Sampson was the Assistant Manager of Stevenage FC and was therefore at all material times a Participant bound by the Rules of the Football Association. Rule E1 provides that the Football Association (“The FA”) may act against a Participant in respect of any “*Misconduct*”, which is defined as including a breach of “*the Rules and Regulations of The Association and in particular Rules E3 to 28*”.

4. Rule E3(1) provides;

“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.”

5. Rule E3(2) provides;

“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. Mandatory minimum sanctions are applicable to certain Aggravated Breaches. Further provisions as to sanctions applicable to Aggravated Breaches are found in The Association’s Disciplinary Regulations.”

6. The charge the subject of these proceedings arises out of an incident which is alleged to have occurred during a meeting of Stevenage FC staff on the 2nd September 2019. In that meeting it is alleged that Mr Sampson whilst speaking about the potential recruitment of a new player, said *“...a black Nigerian centre back, you can’t rely on them”*. Mr Sampson was accordingly charged by letter dated 19th November 2019, in the following terms;

“You are hereby charged with misconduct for a breach of FA E3 (2) in respect of a comment you made during a staff meeting on Monday 2nd September 2019

It is alleged that the language you used included improper and/or abusive and/or insulting words, contrary to Rule3(1) namely saying the words “a black Nigerian centre back, you can’t rely on them”

It is further alleged that this breach of FA Rule E3(1) is an “Aggravated breach” as defined in Rule E3(2) as it included a reference to race and/or colour and/or nationality.

Mr Sampson’s case

7. Mr Sampson denied the charge. It was Mr Sampson’s case that the words alleged against him had never been spoken by him in the meeting. In his preliminary written response dated 21st November 2019, Mr Sampson expressed his concern that the allegation had been fabricated against him. That assertion was an echo of that which he had said in his interview conducted with The FA in October 2019. In his substantive written reply dated 11th December 2019 a similar observation was made, referring to the fact that others may have an “axe to grind” maliciously against him.

8. Mr Sampson gave evidence before the Commission consistent with his pre-hearing assertions.

The Standard of Proof

9. The burden of proving the allegation against the Participant Mr Sampson rests upon The FA. The standard of proof is the civil standard, namely the balance of probabilities. In written submissions dated 11th December 2019 prepared on behalf of Mr Sampson, observations were made about the Commission's approach to the application of the civil standard of proof. The submissions essentially echo those advanced before the Regulatory Commission in the previously decided case of The FA v Fernando Forestieri, heard in July 2019, in which the Chairman of that Commission, Christopher Quinlan QC, observed as follows;

"In Re D (Secretary of State for Northern Ireland intervening), [2008] UKHL 33 Lord Carswell in his speech with which the other Lords agreed, described it as "finite and unvarying". The balance of probabilities therefore means what it says: "a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not".

But, as Lord Nicholls of Birkenhead explained in *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 ,586, some things are inherently more likely than others. One would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian.

As Lord Carswell observed in *Re D* in some contexts a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard. He continued:

"The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place (Lord Hoffmann's example of the animal seen in Regent's Park), the seriousness of the allegation to be proved or, in some cases, the consequences which could

follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a tribunal of fact will look closely into the facts surrounding an allegation of fraud before accepting that it has been established. The seriousness of consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied of the matter which has to be established.”

10. The Commission in Forestieri proceeded upon the basis that they should apply the careful consideration spoken of by Lord Carswell. That is an approach with which this Commission respectfully agreed. Accordingly, in applying the civil standard of proof in this case, the Commission approached this serious allegation with an appropriately careful consideration of all the evidence. Such approach was consistent with Mr Foulkes’ invitation that the Commission have in mind that in a serious case of this kind, there was a need for cogent evidence.

Background

11. It was common ground between the Parties that a staff meeting took place in the coaches room at Stevenage FC in the afternoon of the 2nd September 2019. The informal meeting, in a small room, discussed the possible recruitment of a new defender on the last day of the transfer window. Accounts as to who was in the room at what time and who sat precisely where, varied. However, there was no dispute that Mark Sampson, Ali Uzunhasanoglu, Dino Maamria, Jon Ashton and Rob Smith were in the room at the relevant time. Others, to include Leon Hunter and Keith Bell, were described by some as coming in and out of the meeting space. Three players were under consideration, William Ediangulele who had been a trialist at the Club, Adam El-Abd and Gabriel Osho. Footage of Osho was being watched on a television screen including clips provided through scouting soft wear called Wyscout.

12. Mr Uzunhasanoglu and Mr Maamria alleged that during the meeting Mr Sampson made the comment that is the subject of the charge before the Commission. Complaint was made to The FA some days later on the 11th September 2019. An interview with Mark Sampson was conducted on the 3rd October, in which he denied the allegation put to him.
13. Significantly different accounts of the meeting and what was said, have been given by various of the attendees. It was accepted by Mr Sampson that if the remark had been made as alleged, then the same would have been an Aggravated Breach as provided for by Rule E3(2). However, the central question upon which this case turned, was whether the disputed words were spoken at all.

The Evidence

14. The Commission considered written witness statements *and* heard evidence during the course of the hearing from;
- Dino Maamria (Manager)
 - Ali Uzunhasanoglu (Goalkeeping coach)
 - Mark Sampson (Assistant manager)
 - Jon Ashton (Fitness coach)
 - Robert Smith (Analysist)
 - Phillip Wallace (Chairman)
 - Alex Tunbridge (CEO)
 - Leon Hunter (Head of recruitment)
15. In addition, the Commission read and considered written witness statements from;
- Leon Goldman (FA Integrity investigator)
 - David Matthews (FA Senior investigations manager)
 - Tom Norman (Club Secretary)
 - Keith Bell (Club Kit manager)

16. A pre hearing application had been made by Mr De Marco to the effect that the evidence of the witnesses should not be examined in chief and that questioning should be restricted to cross examination. That application was not acceded to (as detailed in Case Management Directions issued 7th January 2020). This was a case in which there was a stark conflict of evidence concerning events on the 2nd September 2019. It was Mr Sampson's case that the allegations against him have been fabricated. The credibility of the principal witnesses of fact were very much at large. The Commission were of the view that, far from being what Mr De Marco suggested might be a "*waste of the Commission's time*", hearing the principal witnesses of fact give evidence in both examination in chief and in cross examination, would allow the Commission to be best placed to assess the evidence given by those witnesses.
17. Dino Maamria and Ali Uzunhasanoglu both gave evidence in support of the allegation and the events in the September meeting. Both, and in particular Mr Maamria, at times gave their evidence in a defensive and challenging manner. They both clearly felt strongly about the relevant time at the Club.
18. In oral submissions made to the Commission, Mr Foulkes observed that it would be extraordinary for Mr Maamria and Mr Uzunhasanoglu to have made a false allegation in a context where others were said to have been present, so presenting those others with the chance to contradict the allegation. That analysis was superficially attractive but ignored the fact that Mr Maamria had described himself as a man who expected loyalty from his staff. Moreover, during the course of giving his evidence Mr Maamria showed himself to be a very strong character, confident in his own opinion, slow to listen to criticism and aware that he could appear intimidating to others. *If* it was that this was a false complaint, Mr Maamria may have given no thought to the detail of conspiracy in the angry heat of the moment but would have expected his staff to follow his wish and his word. Accordingly, in assessing the reliability of The FA witnesses, the Commission did not find themselves assisted, one way or another, by this submission.

19. Ali Uzunhasanoglu detailed that during the staff meeting the discussions turned to the recruitment of a centre back, one candidate being a recent Stevenage trialist, William Edjengulele. He alleged that he heard Mr Sampson say *"you can't have a black Nigerian centre back, you can't rely on them"*. Club manager Dino Maamria gave evidence that he too heard the words spoken by Mr Sampson in the meeting.
20. Dino Maamria said that he responded to what he had heard his assistant manager say by saying *"no wonder Eni Aluko made a complaint, she must have been right about you"*. Mr Maamria said that he made his own remark jovially and it was met with laughter from others.
21. Both witnesses then went on to describe to the Commission that the Club's fitness coach Jon Aston moved his chair forward and said to Mr Sampson *"you can't say that"*. Others present in the room, including analyst Rob Smith, started to discuss the fact that there were a number of successful and reliable black African centre backs that had played or were playing in the Premier League.
22. The sense of the evidence given was that Jon Ashton's moving of his chair forward and Dino Maamria's exclamation in response to what he said he heard, were essentially simultaneous events. In so far as there was inconsistency as to the order of the two events, the Commission were not assisted in their deliberations by the same. Similarly, the precise wording recounted at the hearing by Mr Uzunhasanoglu as to what Mr Sampson allegedly said, was slightly different from that which he has documented in his witness statement. Again, nothing was found to turn on that, one way or the other.
23. In considering the reliability of the evidence called by The FA, it was important in the Commission's view to have regard to the fact that both Dino Maamria and Ali Uzunhasanoglu had failed to mention significant features of their (final) accounts when *first* invited to give their recollections to The FA.
24. In evidence before the Commission, Mr Uzunhasanoglu said that;

- Dino Maamria had responded to the words spoken by Mr Sampson in the meeting by saying *“She was right about you, that’s why you got sacked from England”*. That was an echo of what Mr Maamria had said in his first statement.
- he had recalled Jon Ashton having moved forward in his chair to speak to Mr Sampson. That would have been of note to someone in the room as it would have announced that another, namely Ashton, has heard the words and taken exception to them.

25. Mr Uzunhasanoglu had not included either of those two details in his original statement to The FA dated the 17th September. The assertions first appeared in writing in a subsequent statement of evidence taken by The FA and dated the 1st November.

26. In his first statement, dated the 16th September 2019, Mr Maamria made no mention of the fact that Jon Ashton wheeled his chair forward to speak to Mr Sampson. Like Mr Uzunhasanoglu, that detail appeared in a subsequent statement taken on the 31st October 2019.

27. Both witnesses suggested that such oversights might be explained by the fact that they first spoke to the FA over the telephone. The Commission found this explanation unsatisfactory having regard to the fact that (i) the statements were detailed and flowed chronologically and (ii) the witnesses had a chance to review and alter the content of the written statements created from the calls before signing them.

28. There were also other features of the evidence of The FA’s principal witnesses that required consideration when assessing their accounts. At the hearing, Mr Uzunhasanoglu added another detail to his recollections that had not been present in either of the written statements he had made. He was to say that on leaving the meeting room he too heard

the discussion about successful black centre backs. In response to a question from the Commission Mr Uzunhasanoglu said he “*did not know*” why this wasn’t in his statement.

29. For his part, Dino Maamria added for the first time in giving evidence that he saw Mr Sampson looking at his laptop on Wyscout and saw a Nigerian flag against the player’s name. It was this flag, Mr Maamria suggested, that prompted the unconscious response from Mr Sampson about black Nigerians. This was, as the Commission concluded, an extraordinary omission on the part of the witness when considering that Mr Maamria’s account to the Commission had at its heart, the fact that it was what Mark Sampson had seen on the laptop that had been the catalyst for his uttering of the disputed words. The Commission found it difficult to reconcile Mr Maamria’s reliability on this point with the fact that it was heard for the very first time in the setting of the Hearing.

30. That concern was compounded by the fact that Mr Maamria suggested Mr Sampson gleaned the information from the Wyscout software that was playing on his laptop. The evidence revealed that there were only two licences to use the software, one of which was in use at the time by analyst Rob Smith. Accordingly, if what Mr Maamria was now saying was correct, Mr Sampson would have to have ‘signed on’ to the software with someone else’s log in details, namely those of Leon Hunter.

31. The evidence given by Mr Maamria and Mr Uzunhasanoglu also had to be judged in the light of the evidence of those others in the meeting room. Jon Ashton gave evidence to the Commission in rather different terms from that explained by The FA witnesses. Mr Ashton, having been called to give evidence for Mr Sampson, said that he was not really listening or contributing to the meeting. When asked originally by Leon Goldman, FA Integrity Officer, whether he had heard the words spoken by Mr Sampson he said that he had not. He repeated that evidence before the Commission and said that he did *not* wheel his chair over towards Mr Sampson to challenge him about any comment, nor did he start to name Premier League black players who were successfully reliable.

32. In evidence, Rob Smith said he too had no recollection of the words allegedly spoken by Mr Sampson or of any subsequent discussion about successful black players.
33. Whilst the Commission had concerns that both Mr Smith and Mr Ashton had apparently become considerably more robust in their accounts than had been the case when first interviewed by The FA, and that both witnesses gave answers that at times seemed deliberately evasive and non-committal, the content and presentation of their evidence did not, as The FA were bound to suggest, appear to the Commission to be obviously consistent with men who were lying to *"keep their jobs"*. Nor would such suggestion be consistent with what the Commission found would have been the attitude of the Club (as reflected in the evidence given by Club officials Mr Wallace and Mr Tunbridge) if staff had in fact supported an allegation that a racial comment had been made.
34. Leon Hunter, Head of Recruitment at Stevenage, gave evidence that he was present in the room at times during the meeting. He heard no discriminatory remarks. Keith Bell, the Club kit manager, provided a written statement in which he said that he entered the meeting whilst it was in progress on two separate occasions. He heard nothing. The Commission gave little weight to this evidence by reason of the fact that it was clear that neither party could be said with sufficient certainty to be present at the precise time the words alleged were spoken.
35. It was the Participant's case that a further indication of the unreliability of the team manager and his goalkeeping coach, was provided for by the failure to promptly report the words allegedly spoken. A prompt reporting, it was argued in submissions made to the Commission, would have been consistent in particular with Mr Maamria's assertion that he was upset by the words spoken, his previous experience helping others with racial complaints, and in circumstances where evidence called in the case showed that Mr Maamria had not previously been slow to complain about racial matters.
36. In his evidence, Ali Uzunhasanoglu described that having heard the words spoken by Mr Sampson he left the meeting. However, his evidence continued to the effect that he saw

Mr Sampson later and said goodbye to him before leaving the premises. In further assessing the reliability of Mr Uzunhasanoglu's account, the Commission had in mind the fact that if he was as disgusted and upset as he said he had been, his failure to challenge Mr Sampson later, seemed inconsistent with his emotions and the forthright, straightforward and at times robust character he showed at times in giving his evidence.

37. On the following evening after the meeting, the 3rd September, Mr Uzunhasanoglu said he expressed his concern at what he had heard to Mr Maamria. In his first statement to the FA, Mr Uzunhasanoglu said that *"Dino told me that he had heard the comment and was also unhappy about it"*. In that first statement Ali Uzunhasanoglu also said that he had immediately left the meeting after Mr Sampson spoke. The statement made no mention of hearing his manager respond. In that context, Mr Uzunhasanoglu's observation that Dino had told him that he too had heard the words spoken, makes logical sense. Mr Uzunhasanoglu would have needed confirmation of the same, because he had not seen and heard any intervention from Dino Maamria that would have indicated the fact that Dino Maamria had heard what was said.

38. However, and as detailed hereinabove at paragraph 24, by the time Mr Uzunhasanoglu came to give evidence before the Commission, it was his evidence that he *had* heard his manager respond whilst in the meeting and before he, Mr Uzunhasanoglu, left the room. In that context, the Commission found it difficult to reconcile that (more recent) version of events with that which was included in the witnesses first statement of his recollections concerning the exchange with his manager on the evening of the 3rd September.

39. Ali Uzunhasanoglu continued in his evidence to detail that it was a match day when he raised the matter with the manager: the manager said he was busy and so would deal with the matter in due course. Mr Maamria gave an account of the exchange in similar terms. Mr Uzunhasanoglu said that he left his 'line manager' to report the matters to the Club.

40. No contemporaneous complaint was in fact made by that line manager. Mr Maamria described the alleged comments made by Mr Sampson as “*completely inappropriate*” in his statement to The FA dated 16th September. However, he said or did nothing at the time in response to hearing what he said he had.
41. The Commission found there was ample opportunity for Mr Maamria to report matters to the Club in the week that followed the meeting. He could have done so to the Club Secretary, the CEO and others. Dino Maamria said that he made a “judgement call” not to report the matter until the following week, so as not to disrupt an important week of football preparation. He, as manager, was under pressure in the light of recent poor results. The Commission found the Club’s contrary suggestion wholly unconvincing; whatever the events in the meeting room, the Commission were satisfied that at the relevant time Mr Maamria felt significantly pressured to better the Team’s results and the Club would unquestionably have appreciated that.
42. Whether to delay the report of a serious occurrence was procedurally correct was not the issue for the Commission; rather, the scrutiny was as to the potential credibility of the explanation, if indeed the words had been spoken at all. The Commission found the sense of the reasoning given by Dino Maamria to be credible in the light of the difficult circumstances they accepted Mr Maamria felt as manager at the relevant time. His judgement to act as he did might objectively be regarded as misplaced, but understandable. The Commission did not regard the failure to report the matter as being clearly indicative of a false complaint. In reaching that conclusion, the Commission had in mind that whilst the manager had very promptly reported other racially orientated matters before, including a touchline incident at Carlisle in 2017, those other matters involved the manager as the victim and arose in a game context with officials immediately in attendance.
43. However, in assessing the reliability of the evidence given by Mr Maamria and whether it could be safely relied upon to base a guilty finding in this case, the Commission were

troubled by the managers failure to make a written note of the alleged events. Mr Maamria's own evidence was that to make a note of matters of this kind was his usual practice and he had done so in the past. Whatever the playing demands of the week, there was ample time to record the allegation for future reference.

44. On Sunday the 8th September Mr Maamria was sacked as manager. Mr Sampson was appointed to the position of caretaker manager in his place. Mr Maamria described himself as *"annoyed and disappointed"* with Mark Sampson as he felt he had been disloyal and had taken his job. He had an expectation that his staff would leave with him. When it was clear that was not to be the case, he sent a WhatsApp message to Mr Sampson describing him as a *"snake and a spineless cunt"*.

45. Against the background of such feeling (however regrettably and inappropriately expressed) Mr Maamria did not at that time take the chance to disclose the important material about Mr Sampson's behaviour in the recent meeting either to Mr Sampson himself or a third party in office at the Club. Again, the Commission did not see the failure to raise the 'Sampson issue' at that acrimonious stage of exchanges as being helpful in determining whether the subsequent report of matters was indeed reliable. Mr Maamria said he was *"overwhelmed"* at that stage. That was understandable whatever the truth of the matters on the 2nd September.

46. On attending the Club for work on Monday 9th September Mr Uzunhasanoglu was informed by Mark Sampson that his services were no longer required. Alex Tunbridge detailed that in his meeting with Mr Uzunhasanoglu that day, Mr Uzunhasanoglu referred to Mr Sampson as a *"snake"*. Mr Uzunhasanoglu did not however make any mention of the words allegedly spoken by Mark Sampson in the coaching meeting.

47. The words allegedly spoken by Mr Sampson were not reported to the Club until Tuesday 10th September, the day after both manager and goalkeeping coach had been sacked by the Club and Mr Sampson (controversially in their eyes) had been appointed as manager. Mr Uzunhasanoglu reported the allegedly racist comments to Alex Tunbridge

(Stevenage CEO) by text, the message having first been sent to Mr Sampson a little earlier that same day. The message read;

“Mark, Just letting you know that I was uncomfortable when you made racist remark last week about our trialist William when the Gaffer mentioned signing him..which we were all in the coaches room (You, Gaffer, Ash,Rob &me) you said “you can’t have a black Nigerian CB that you can’t rely on them” you laughed about it bit I was extremely offended. I am going to seek advise [sic] on it”

48. Mr Uzunhasanoglu reported matters to the FA on the 11th September whereupon Leon Goldman, FA Integrity Investigator, was informed. He in turn contacted Stevenage FC and commenced an investigation. Mr Tunbridge had briefly commenced an internal Club investigation. That was short lived as the Club understandably took the view that they should not further contact those concerned once The FA became involved.

49. Dino Maamria clearly revelled at the prospect of the complaint being made. He took the chance to warn his former assistant in a message exchange that they were, *“coming for”* him. It was Mr Sampson’s case that the coincidence in timing with the pair’s acrimonious dismissal (as it clearly was) was said to signal an obvious motive for the creation of a false complaint.

50. In WhatsApp messages sent to his friend and manager Mr Maamria on the 15th September, Ali Uzunhasanoglu said;

*“We are telling the truth, whatever interpretations of words been used by Mark is up to FA. Regardless what we do outside of it doesn’t matter in the case...
Key is Rob and Ash words”*

51. Mr Foulkes understandably suggested that this exchange gave a window to the truth. This was an apparently private exchange created in circumstances, as the Commission concluded it was likely to be, in which there was no expectation of others seeing the messages.

52. The Commission did not accept Mr De Marco's contention that the messages didn't make sense. They were clearly capable of referring to the accounts that had been given to The FA by the witnesses. However, the two-message exchange was an extract of what must have been a longer communication of one sort or another. The Commission were robbed of the complete context. Accordingly, but not without much hesitation, the Commission did not consider this evidence alone to be sufficiently conclusive of where the truth lay. Further, the Commission did not consider that this evidence supported the reliability of Mr Maamria and Mr Uzunhasanoglu to such a degree that their evidence could be accepted without more, notwithstanding the concerns expressed as to that evidence hereinbefore and having regard to the evidence called by the Participant that contradicted The FA's case.

53. In considering the evidence called by The FA, the Commission concluded that the omissions of apparently important detail from original statements, the unsatisfactory and unconvincing explanations for those omissions, and the manner in which the evidence was given, cast a shadow over the evidence given by the two witnesses called by The FA, raising concerns as to the reliability of their accounts. That concern had also to be seen in the light of the contradictory accounts given by others in the room, even if, as the Commission concluded, that other evidence had itself to be approached with a sense of caution. Such different views as were given could not themselves be properly described as compelling.

54. Mr Sampson gave evidence to the Commission in support of his own case. He adopted the written statements he had previously provided in the proceedings. He denied having made remark about black Nigerian players.

55. The only matter dealt with in examination in chief was Mr Sampson's explanation as to why it was it was said to be inherently unlikely that he would, now, make the sort of remark alleged against him. The Commission found themselves unable to give much weight to this point, when it was alleged that the words allegedly spoken were not calmly announced after careful consideration, but rather had unconsciously slipped out whilst his mind was elsewhere, followed by immediate silence and apparent embarrassment.
56. The Commission did however note that the sense of evidence in the case taken as a whole, was that Mr Sampson expressed a preference to sign Gabriel Osho rather than one of the other two defenders under immediate consideration in the relevant meeting. It would have been strange for the assistant manager to express an uncertainty about the reliability of a black Nigerian player, when he was at the same time in fact advocating that one be signed. It was evident that Mr Maamria's preference was to sign Adam El Abd, an Egyptian defender playing for Wycombe Wanderers FC. He wanted an experienced defender as opposed to another young player.
57. Mr Foulkes submitted that Mr Sampson gave his evidence in a manner that was aggressive in his stance towards Mr Maamria and Mr Uzunhasanogly. Mr De Marco suggested that Mr Sampson was *"perhaps the most obvious witness who gave evidence that was honest, fair, not contradictory.....he didn't evade the questions and his answers were credible"*. Having judged not just what Mr Sampson said, but how he said it, the Commission felt that neither description of the Participant's evidence completely accurately described the quality of the evidence. The Commission did not find Mr Sampson compelling in his account and as in the case of the witnesses called in support of The FA case, were left unable to conclude that Mr Sampson had provided a version of events that was sufficiently reliable upon which to confidently and correctly base a conclusion as to the origin of the truth.

Determination

58. The evidence adduced in this case provided a direct conflict of evidence; two quite different accounts of the same meeting. Accordingly, at the very heart of the Commission's consideration was whether, on a balance of probabilities, the verbal comments said to have been made by Mr Sampson were spoken as alleged.

59. This was not a case where it could sensibly be said that a witness had somehow been mistaken about what had, or had not, been said at the relevant time. Put simply, some of those giving evidence had lied. It is clear that misplaced loyalty and a willingness to be untruthful was an inescapable part of this case. Collusion of evidence, one way or another, was unattractively at play in this case.

60. As detailed hereinabove, the Commission found several parts of the evidence called by both of the Parties to be lacking the cogency or reliability upon which to base a sound evidential assessment of the facts. The truth was unquestionably hard to find.

61. The Commission did not find the evidence of any one of those who attended the meeting compelling, or sufficiently compelling, to allow the Commission to be confident that they could properly base a judgement upon it. Equally, consideration of the collective evidence called in respect of the two quite different versions of the same meeting, did not enable the Commission to have that necessary confidence.

62. After careful deliberation and not without some hesitation, the Commission came to the conclusion that the evidence did not allow the Commission to fairly or properly say that one or other of the two versions advanced before the Hearing was to be safely or correctly preferred to the exclusion of the other. In the light of that position as the Commission found it to be, and in the absence of a clear path to the truth, the Commission were not able to say that the evidence called in support of the allegation was sufficiently cogent to discharge the burden on The FA to prove that Mr Sampson had spoken the words alleged.

In reaching that conclusion, the Commission approached this serious allegation with the appropriately careful and critical consideration of the evidence that the standard of proof correctly demands.

63. Such analysis should not be taken to suggest that the Commission rejected outright the evidence of Mr Maamria and Mr Uzunhasanoglu. They did not. Nor should that analysis be taken as a suggestion that the Commission unequivocally accepted the account given by Mr Sampson and those called in support of his case. They did not. The finding of this Commission is determined by the proper application of the burden and standard of proof. The evidence was not of a kind to enable the Commission to be satisfied to the requisite standard of proof that the words had in fact been spoken.

64. It follows from the factual conclusions that the charge of Misconduct is not proved and the charge against Mr Sampson is dismissed.

Richard Smith QC (Chairman)

Gareth Farrelly

Tony Agana

16 January 2020