

IN THE MATTER OF A REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

THE FOOTBALL ASSOCIATION

V

ALEX WORLEY

REASONS FOR THE REGULATORY COMMISSION
DECISION 17 MARCH 2021

Overview

1. By letter dated 18 January 2021 the FA charged Walsall FC player Alex Worley (“AW”) with a breach of Rule E3(1), following words he used at the end of a fixture between his team and Mansfield Town FC on 31 October 2020 (“the match”). He was heard by the assistant referee to say “They are all faggots” in reference to the opposing team. The breach was said to be Aggravated as defined by Rule E(3)(2) because it included language referring to sexual orientation.
2. By Reply dated 25 January 2021, AW denied the charge, but indicated that he was content for the matter to be considered on the papers. The hearing was therefore convened via Microsoft Teams on 17 March 2021. The Commission comprised of Aisling Byrnes (independent legal member, Chair), Andrew Adie (independent football member) and Matt Williams (independent football member). John Edmunds acted as secretary to the Commission.

3. Having considered all of the evidence in the case, the Commission unanimously found the matter proved.
4. The following sanction was issued:
 - a. 6 match suspension (4 matches to serve as AW has already received a 2 match suspension);
 - b. Requirement to attend an online education course.

The FA's Case

5. At the final whistle of the match, there was a mass confrontation between the two teams. Assistant referee Victoria Anderson states (at p22) that AW was pulled away from the incident. As he walked past her, she "clearly" heard him say "They are all faggots". At that point she was approximately one metre away from AW and states that she was "confident that those were the words he used".
6. Anderson immediately reported this comment to the match referee Thomas Johnson (statement p21), who had not heard it. He, however, made a note of the comment as reported to him. The note is exhibited within the bundle at p4 and records the comment as "*You're a(ll) bunch of fucking faggots*". Johnson dismissed AW for the use of foul, abusive and insulting language.
7. Following the match, the Walsall FC manager asked Anderson what his player had said. She informed him that she had heard AW call the opposition "*faggots*". AW then approached Anderson and said he did not say the word. Anderson replied "I heard you say it". AW then returned to his changing room.
8. AW was interviewed by the FA on 9.11.20:
 - a. He confirmed he is 17 years of age;
 - b. He had been playing for Walsall for two months;
 - c. At the match in question he came on after half time;

- d. It was a “messy” game, with one of his team having been sent off after 30 minutes;
 - e. There was no personal conflict between him and any Mansfield player or the team in general;
 - f. There was an incident around the goal at the end of the match “...like, we were pushing each other, and I used the language, I said “Fuck off” and then I said “You’re all fucking dickheads”.....that’s all I said and then I walked away, and then at that point, I got called back by the referee.”;
 - g. He was walking with his team mate Jack Lynch and was further away from the assistant referee than the one metre she states;
 - h. He confirmed that the words he described were the only ones he used and that they were used during the melee, before he walked away;
 - i. He has already received a two game suspension in relation to the dismissal;
 - j. He denied using the word “faggots” at any point;
 - k. He had wished to appeal the two match suspension because he thought it was harsh given that all he had said was “*fucking dickheads*”. The club accepted it because it was at that stage a simple allegation of foul and abusive language, which they understood AW to have admitted (viz “*fucking dickheads*”);
 - l. He called the opposition “*dickheads*” because of their words and actions;
 - m. “Faggot” is not a word in his vocabulary;
 - n. He accepted having denied the comment to Anderson outside the changing room, but said that this was as a result of being told that she was telling his manager that he had admitted it, which he also denied.
9. A statement was obtained from Jack Lynch (p23), who states that he heard AW shouting the words “*Fuck off you dickheads*” during the melee. He did not hear AW using the word “faggot” as they made their way towards the dugout. This statement was unused by the FA.
10. A further statement (p55) was sought from Ms Anderson in the light of AW’s representations. She stated that she did not hear anything said by AW during the melee but would not have reported words such as “fuck off” or “you are all fucking

dickheads". She confirmed that she had heard him say "they are all faggots" as he made his way past her after the melee. She expressed herself to be "100% confident" in this regard.

11. In written submissions (p51), the FA noted that there appeared to be no dispute that the word "faggot" would satisfy the Rule E3(2) test for an Aggravated breach. It pointed out that there was no reason for Ms Anderson to fabricate her allegation and so examined the possibility of mistake. It discounted this as a possibility owing to her proximity to AW at the time, her repeated expressions of confidence in what she heard (including after the match by the changing room as well as in two statements made for the purpose of these proceedings) and the immediate reporting of the matter to the referee and his near-contemporaneous note of it.
12. The FA acknowledged AW's position but noted that neither he nor Mr Lynch could be characterised as independent witnesses. As to the other witnesses, they took the position no further as they could not say with any certainty what was said.

AW's Case

13. AW provided a written reply to the charges (p36). In it he described the melee which took place at the end of the match. He confirmed that at that point he told the opposition players to "fuck off" and "You're all fucking dickheads". He then walked towards the dug-outs with Jack Lynch.
14. He then stated that he was called back by the referee who told him "*I've been told by my official you have made a homophobic comment which is you're all a bunch of fucking faggots and that will result in a red card*". AW states that he said "No I haven't said that". He went on to say that "*while I was speaking to the ref the female official then jumped in quickly saying 'yes you did yes you did'. I said 'no I haven't said that honestly I haven't said that'.*"

15. He described the conversation outside the changing room as he had in interview and denied again using the word “faggot”, insisting that it is not in his vocabulary.
16. Attached to the Reply were witness statements from
- a. Nick Adshead, the Academy Secretary who was standing behind the goal during the melee. He heard inappropriate language from both sides but nothing homophobic from anyone;
 - b. Ade Francis played in the match for Walsall and stated that he did not recall any homophobic language used by AW;
 - c. Jayden Allamby-John similarly played and heard no such language;
 - d. Bradley Taylor came on as a substitute and heard no such language;
 - e. Daniel Mole, the COO of Walsall (who accompanied AW to his FA interview) observed that this charge, which has been “looming” over AW for some months has been hard on him, particularly given his age. He felt compelled to offer his support to AW by way of a character reference;
 - f. Miguel Garzon, the Walsall Academy Manager, expressed surprise at the allegation, indicating that AW is a quiet person who works hard, shows good example and is respectful and friendly;
 - g. Neil Harding, Head of Academy Coaching at Walsall, similarly described AW as professional, a leader on and off the pitch and someone who was highly unlikely to have used homophobic language.

The Rules

Aggravated Misconduct

17. The FA Rules, rule E3.1 states:

‘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’.

18. The FA Rules, rule E3.2 states:

'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'.

19. Accordingly, a breach of the FA Rules, rule E3.1 that includes a reference to a protected characteristic identified in the FA Rules, rule E3.2 will amount to an *'Aggravated Breach'*.

20. Pursuant to the FA Disciplinary Regulations, Part A, General Provisions, para. 45, the FA Disciplinary Regulations, Part A, General Provisions Appendix 1 (the Standard Sanction and Guidelines for Aggravated Breaches) apply to all levels of football.

Sanction

21. The Aggravated Breach Guidelines state:

14.1. A finding of an Aggravated Breach against a Player, Manager or Technical Area Occupant will attract an immediate suspension of between 6 matches and 12 matches, and an education programme.

14.2. The lowest end of the Sanction Range (i.e. 6 matches) operates as the standard minimum punishment.

14.3. When dealing with a second or further Aggravated Breach the presumption is that the sanction will be at the higher end of the Sanction Range (i.e. 12 matches) and, in any event, shall be for no fewer than 7 matches.

14.4. When determining the level of sanction within the Sanction Range, a Regulatory Commission must give consideration to any aggravating or mitigating factors,

including but not limited to those specific factors listed in the Aggravated Breach Guidelines.

Aggravating and Mitigating Features

22. By reference to the Guidelines, aggravating factors include but are not limited to:

- Repeated use of discriminatory language or conduct during commission of the offence.
- The public nature of the offence (e.g. the commission of the offence in a public place, via broadcast media or a social media platform (particularly via an account on a social media platform with a high number of followers in relative terms)).
- The profile of the Participant, including where they hold a position of responsibility within their Club or organisation (e.g. Club captain, Chairman, member of senior management).
- The relative ages of the Participant and the victim(s) at the time of the offence, particularly where the victim was a minor and the Participant was not.
- Failure to co-operate with The Association.
- Previous disciplinary record of the Participant.
- Any attempt to conceal the breach.
- The extent of any premeditation.

23. Mitigating features include but are not limited to

- Admission at the earliest opportunity where the factual conduct forming the basis for the charge would be capable of being disputed.
- Demonstration of genuine remorse.
- Co-operation with The Association.
- Where it is accepted that the Participant had a legitimate expectation of privacy.
- Inexperience of the Participant by reference to their age or background at the time of the offence.

- In respect of social media posts, the age of the post and the Participant's age at the time of the post. For example, depending on the other circumstances and characteristics of the offence, it may be considered a mitigating factor where the post was made a considerable time ago and/or where it was made at a time when the Participant was a minor.

On-Field Punishment

24. Pursuant to the FA Disciplinary Regulations, Part D, On-Field Regulations, Section One, para. 5 the FA may issue a charge against a player in relation to an incident whether or not the same incident has been dealt with by the referee and/or the FA Disciplinary Regulations, Part D, On-Field Regulations, Section One.

25. Further, the FA Disciplinary Regulations, Part D, On-Field Regulations, Section One, para. 6 states:

'A Regulatory Commission considering a Charge pursuant to paragraph 5 above shall have regard to any standard punishment imposed pursuant to paragraphs 23 to 32 below for the same incident when considering any penalty in accordance with paragraph 40 of Part A: General Provisions Section Two'.

26. Pursuant to the FA Disciplinary Regulations, Part D, On-Field Regulations, Section One, para. 28-29, the commission of a sending-off offence by a player will result in that player receiving an automatic suspension in accordance with (for players of clubs in EFL League Two) Category 1: Table 2. Pursuant to Table 2, an automatic suspension of 2 matches applies for a sending-off offence of *'Using offensive, insulting or abusive language and/or gestures'*.

27. Accordingly any such standard punishment served by a player for an offence which also forms the basis for a subsequent charge must be taken into account when determining the appropriate sanction in respect of that charge.

The Commission's Findings

28. The Commission reminded itself that the burden was on the FA at all times to prove this matter on the balance of probabilities. Since there was no dispute that using the word "faggot" in the circumstances alleged here would give rise to the charge which is the subject of these proceedings, the question the Commission had to answer was whether it was more likely than not that AW had used it.

29. The Commission considered all of the evidence, including the detailed representations and evidence submitted on AW's behalf, with care. The Commission did not consider that a personal hearing was necessary. It was content to proceed on the basis of the papers.

30. On that basis, the Commission concluded that it was more likely than not that AW had uttered the word "faggot" as alleged. The charge was therefore proved. The reasons were as follows:

- a. The Commission accepted the evidence of the assistant referee Victoria Anderson. Although she did not make a contemporaneous written record of the incident
 - i. When she heard the comment she was a short distance away from AW;
 - ii. She was sufficiently sure that it happened to report it immediately to the referee;

- iii. She reiterated her certainty when confronted with a denial by AW outside the changing room;
 - iv. She indicated that she “clearly” heard the comment and was “confident” about her accuracy in an official witness statement sought from her for the purposes of these proceedings;
 - v. When provided with AW’s account of events she discounted the possibility of both fabrication and mistake in a second witness statement, once again expressing confidence in her accuracy.
- b. The Commission discounted the possibility that Ms Anderson had fabricated her account: there was on the evidence no reason for her to do so, and none was advanced on behalf of AW. It did consider whether or not she may have been mistaken in what she heard, but concluded that she had not. Ms Anderson’s consistent account was that she had heard AW say the words as he walked away from the melee. AW’s position was that the only offensive words he had spoken were *during* the melee. There was accordingly no scope for a mistake on the evidence.
- c. The Commission considered with great care the fact that the note of AW’s comment written by the referee at some point after the match was in terms that were different to what Ms Anderson was alleging, but concluded that the inconsistency there did not displace the weight of the evidence:
- i. The note was not written by Ms Anderson and so the inconsistency was not necessarily hers;
 - ii. Even if she did report AW as having said “*you’re all a fucking bunch of faggots*” at the time, the fact that her statement recorded him as saying “*they are all faggots*” was more likely to be a reflection of the speed over which the incident took place and the fact that her statement was given some days later rather than the hallmark of

fabrication or mistake over whether the word faggot was used at all. There was no inconsistency about the reporting of the word “faggot”, which gave rise to the Aggravated breach alleged here;

- d. The Commission also considered with care the evidence relied upon by AW but concluded that it did not take the matter a great deal further. This was because it was entirely possible in each of their cases that the witnesses had simply not heard the words spoken by AW;
- e. The Commission acknowledged the evidence of Jack Lynch, who was next to AW at the material time. However his evidence could not be said to be entirely independent and in any event his position was that he did not hear AW making a homophobic comment;
- f. The Commission accepted entirely that such a comment would have been out of character for AW. However, as he indicated in interview, this was a “messy” game, and on his own account he had been pushed and shoved in the melee. It was in those circumstances entirely possible that a usually calm player could be animated to use words he did not usually use;
- g. Moreover, the Commission was concerned by the account given by AW in his written statement of the discussion he had with the referee when he was sent off. There, he stated that he was expressly accused of uttering the word which is the subject of this charge, which he said he denied. This would appear to be at odds with AW (and his club CEO)’s position in interview that they accepted the dismissal and the consequent two match suspension because they thought

it was owing to AW having called the opposing side “*fucking dickheads*”. The Commission considered that this was an inconsistency which had an adverse effect on AW’s general credibility.

Sanction

31. The Commission went on to consider the question of sanction.

32. Pursuant to FA guidance, for violations of FA Rule E3.2 the sanctioning range is a 6-12 match suspension, with the standard minimum sanction being a 6-match suspension, in addition to any fine and/or education course to be imposed, the latter of which is mandatory. None of the exceptions to the standard minimum sanctions apply in this case.

33. The Commission noted that AW had no previous matters of misconduct recorded against him (none having been provided by the FA), which was to his credit.
34. The Commission therefore found that there were no additional aggravating factors to this case than those that put Mr. Worley in violation of FA Rule E3.2, by way of an aggravated breach of the Rules, in the first place. Without at all excusing it, his comment was at least limited to the use of one derogatory and discriminatory word (many cases are worse still), in a short-lived moment of improper behaviour. Added to that, the Commission reminded itself that AW is just 17 years of age.

35. In the circumstances the appropriate penalty was the standard minimum of a six match suspension. Since AW has already been suspended for two matches, he has four matches to serve.

36. AW is also required to undertake a mandatory online education course within 4 months of this decision. Should he not take the course he will be automatically suspended until such time as the course has been undertaken.

Appeal

37. The findings of the Commission may be appealed in accordance with the Regulations.

17 March 2021

AISLING BYRNES (Chair)

ANDREW ADIE

MATT WILLIAMS