

**IN THE MATTER OF THE FOOTBALL ASSOCIATION
FA DISCIPLINARY REGULATORY COMMISSION HEARING**

COMMISSION MEMBERS:

**ELLIOTT KENTON (CHAIR)
ANDREW ADIE
MARVIN ROBINSON**

THE FOOTBALL ASSOCIATION

and

ANDREW CURRAN

DECISION AND WRITTEN REASONS OF THE REGULATORY COMMISSION

Preliminary Matters

1. These are the written reasons for the decision and sanction in relation to a Regulatory Commission hearing that took place on 10 January 2022. As the participant charged, Andrew Curran (“**AC**”) has not responded to the charge against him, a Regulatory Commission were constituted to consider this case on paper pursuant to the FA Rules and Regulations.
2. The Commission comprised of Elliott Kenton who acted as Chair, Andrew Adie and Marvin Robinson.

The Charges

3. AC has been charged by the Football Association (hereafter the “**FA**”) for breaching the following FA Rules:
 - (a) FA Rule 3.1 – Improper Conduct (including foul and abusive language); and
 - (b) FA Rule 3.2 - Improper Conduct – aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability (the “**Charges**”).
4. The full excerpt of these Rules are reproduced below:

E3.1 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.

E3.2 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.

5. The particulars of the Charges are that during a meeting with English Football League (EFL) representatives, AC made the comment ‘nancy boys’, which is an offensive term aggravated by reference to sexuality.
6. As AC has not responded to the Charges, the Regulatory Commission shall consider liability and sanction if liability is found proven based on the documentary evidence before them.

The Evidence

7. This matter relates to a Zoom meeting on 27th July 2021 between AC and Darryl Rose (“**DR**”), representatives for Morton House MGT and First Form Construction Ltd (“**MHMCL**”), representatives of the English Football League (“**EFL**”), as well as RAFC Board of Directors, George Delves (“**GD**”) and Simon Gauge (“**SG**”) following MHMCL’s recent acquisition of a majority shareholding in Rochdale AFC (“**RAFC**”).
8. The relevant factual background herein is a summary of the principal submissions provided to the Commission. It does not purport to contain reference to all the points made, or to all the statements and information provided, however the absence in these reasons of any particular point, or submission, should not imply that the Commission did not take such point, or submission, into consideration when it determined the matter. For avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished in this case.
9. The Commission had before them the following evidence:
 - 9.1 Witness Statement of James Greenaway, the FA’s Integrity Investigator dated 20 October 2021 which sets out the background of the matter and the nature of the investigation. Mr Greenaway’s statement can be summarised as follows:
 - (a) AC and DR are representatives for MHM&CL, who recently acquired a majority shareholding in RAFC, without the knowledge of the RAFC Board of Directors.
 - (b) Having acquired the shares, AC and DR became aware that they were required to pass the EFL’s Owners and Directors Test (“**OADT**”) and subsequently submitted the OADT declaration forms to the EFL
 - (c) On 2 August 2021, I received two complaints, from a representative of the EFL and GD (Chief Operating Officer at RAFC) in relation to discriminatory comments allegedly made by AC during a Zoom meeting with EFL representatives on 27 July 2021.
 - (d) It was explained that the purpose of the meeting on 27 July 2021 was for representatives of the EFL to meet with AC and DR, who had both made applications under the terms of the EFL’s OADT.
 - (e) During the meeting on 27th July 2021, it is alleged that AC had used the words “nancy boys”.

- (f) Having received the complaint, I spoke with and obtained statements from representatives of the EFL and GD and SG at RAFC.
- (g) On 20 August 2021, I initially called AC and spoke with him about the allegation and told him that I would require him to take part in an FA interview about this matter. AC informed me that he was no longer involved in the EFL process and therefore was not interested in speaking with the FA any further about this allegation. I asked AC for an email address to put this request to him in writing, to which he requested for me to email his legal representative, Alexander Jarvis of Blackbridge Sports, rather than emailing him directly.
- (h) Later that day I wrote to AC, via Alexander Jarvis of Blackbridge Sports to request his availability to be interviewed by the FA in relation to this allegation. On 23 August 2021, I received a response from Mr. Jarvis who had cc'd in AC into the email thread and stated, *"Hi James, introducing to you Andrew Curran here via email. Morton House will respond directly."*
- (i) I heard nothing further from AC. On 31 August 2021, I emailed AC directly and cc'd Alexander Jarvis again further requesting his availability to be interview in relation to the allegation against him. On 31 August 2021, I received an email back from Mr. Jarvis who stated, *"Hi James, please note I am no longer working on the Rochdale AFC matter. My work for Morton House was completed several week ago"*.
- (j) I had no response to my emails or further contact with AC. On 12 October 2021, I sent a further email to AC, again requesting his availability to be interviewed and reminding his of his obligations to attend an FA Interview, contrary to FA Rule F2. I highlighted to him that disciplinary action could be taken against him if he failed to participate.
- (k) As of Tuesday 19 October 2021, AC had failed to respond to any of the three requests to be interviewed in relation to this matter.

9.2 Witness Statement of George Delves (GD) the Chief Operating Officer of Rochdale AFC dated 16 August 2021. GD's evidence can be summarised as follows:

- (a) The meeting took place on 27th July 2021 and was organised and led by representatives from the EFL, along with AC and DR and an individual called Alexandra Jarvis (AJ) who was acting as the broker for AC and DR, as well as a legal representative. In addition to GD, RAFC Chairman SG as well as Murray Knight (MK) and Jamie Sarsfield (JS) who are board members of RAFC.
- (b) AC did not have his camera on during the meeting, so I did not see his face. He and DR participated in the meeting from the same room and were using the same computer. The meeting was tense and both AC and DR seemed to be unprepared. They were unable or unwilling to answer many of the questions put to them by the EFL representatives and any answers given lacked substantial detail.
- (c) During the meeting, AC spoke in a confrontational manner and responded to several questions defensively. He seemed angry when he spoke, particularly when questioned why he had not complied with the procedure and completed the OADT before acquiring shares in the club.
- (d) Approximately 1 hour and 45 minutes into the meeting, the representatives of the EFL advised AC that The EFL were not present to referee an argument between him, DR and RAFC. In response to

being told this, AC stated he would be happy to sit around a table to discuss the matter, rather than *“run his mouth off to the fans like a bunch of nancy boys”*.

- (e) When AC said the comment, he had an aggressive tone to his voice and he emphasised the term ‘nancy boys’. I only heard him say ‘nancy boys’ once, but I heard it clearly. I also knew it was him that said it due to his accent.
- (f) Following this remark, the meeting continued for a further 5 minutes, before it was concluded by the EFL.
- (g) I remember the meeting and the comment made by AC very well. I am certain that he used the term ‘nancy boys’. He said it clearly and there was no one else talking at the time.

9.3 Witness Statement of the senior representative of the EFL in the 27 July meeting. That evidence can be summarised as follows:

- (a) The EFL had received OADT declaration forms from AC and DR. Having received the OADT forms via RAFC, a meeting was arranged to be conducted on 27 July 2021.
- (b) The EFL had concerns over MHMCL and during the meeting sought clarification from AC and DR about their company and their links to it. The main purpose of the meeting was to establish what available evidence exists as to the source and sufficiency of funding necessary to acquire and operate a club.
- (c) Throughout the meeting, there was a lot of tension between representatives from RAFC and AC and DR. From the start, we had to make clear to AC that the EFL was not going to act as a referee in their dispute and reminded him of the purpose of the meeting.
- (d) The meeting was extremely difficult throughout with AC saying words to the effect of *“We own 43%, regardless of what you do. If they want to be a load of nancy boys stabbing us in the back that’s up to them”*.
- (e) Following the meeting, I discussed the discriminatory language used with my colleague and we both agreed that we had an obligation to report the discrimination to the FA.

9.4 Witness Statement of Simon Gauge (SG), Chairman of RAFC dated 20 August 2021. SG’s evidence can be summarised as follows:

- (a) The previous CEO of RAFC was David Bottomley (DB), who was removed from his role on 1 June 2021. Prior to leaving the club, he was in contact with AC and DR and initiated conversations about selling his shares in RAFC. It has since come to light that DB passed on personal information to AC and DR who have since acquired shares. This was all done without any knowledge of RAFC or any communication with the EFL which would require authorisation under OADT.
- (b) AC and DR subsequently did submit OADT forms to RAFC. However, there was a slight delay in submitting these forms. Once the forms were submitted to the EFL, the EFL scheduled a meeting on 27 July 2021.

- (c) The meeting was heated throughout and AC had a bombastic style. He repeatedly swore throughout his answers. At one point when questioned by the EFL as to why he had invested large sums of money in shares prior to completing the OADT, AC ranted and requested the EFL loan RAFC the money in order to repay him for the cost of the shares. AC was told that the EFL had not done anything to encourage AC to spend a million pounds.
 - (d) In reaction to this, AC said words to the effect of *"if they want to sit around a table, instead of like a load of nancy boys backstabbing on fans forums writing this about my son and daughter, then we'll go and shake their hands and still put the money in the club"*.
 - (e) Everyone was in shock when AC said the term 'nancy boys' and the meeting continued for a further 5 minutes before concluding.
- 9.5 Witness Statement of a second EFL representative in the 27 July meeting, dated 16 August 2021. His evidence can be summarised as follows:
- (a) I arranged the meeting on 27 July 2021 on behalf of the EFL. The purpose of the meeting was for the EFL to speak with AC and DR in order to gain a clearer understanding of their intention to acquire shares in RAFC and to establish if any breaches of the OADT or the EFL regulations had occurred. My colleague took the lead during the meeting and I took notes.
 - (b) AC was emotional in the meeting and seemed angry. His tone was raised and he made several insulting remarks towards the RAFC board and fans. AC and DR participated throughout the meeting from the same computer, however with the camera turned off. I was able to identify when AC was speaking due to his distinct cockney accent, whereas DR speaks with a soft southern accent.
 - (c) During the meeting, AC queried whether the EFL would approve his and DR's acquisition of shares in RAFC. My colleague responded by advising that the EFL reserved the right to withhold from making any such decision until it had been deliberated. This comment aggravated AC further.
 - (d) AC then challenged the EFL and stated words to the effect of *"We own 43% regardless of what you do"*. This was aimed at the EFL. He went on *'If they want to be a load of nancy boys stabbing us in the back, that's up to them'*. This was in reference to the RAFC Board.
 - (e) I only heard AC say 'nancy boys' once. He said it clearly, but he was not shouting. I am certain of the words I heard and no one else was speaking at the time he said it.
- 9.6 Exhibit JAG/1 – Exhibit JAG/3 which is correspondence from the FA to AC inviting him to interview on various dates; and
- 9.7 Further exhibits, including the EFL OADT Declaration Form and handwritten notes recording the meeting and the comment made by AC.

Decision on Liability

10. As a preliminary matter, the Commission has considered AC's challenge that he is not a 'Participant' as defined by the FA Disciplinary Regulations. The Commission found unanimously that AC is a participant by virtue of the FA Disciplinary Regulations. This is by

virtue of the declaration that AC signed within the EFL Owner's and Directors' Test that AC signed on 15 July 2021 and is replicated as follows:

*"I, the undersigned, understand that by signing and dating this Declaration I acknowledge and agree to be bound by the Regulations of the English Football League. **I further acknowledge that as a Relevant Person I am / will become a "Participant" as that term is defined in the Football Association Rules and, as such will be bound by them.**"* (emphasis added).

11. Having found AC to be a participant and in consideration of AC not formally responding to the Charges, the Commission took into consideration all of the evidence before them in considering whether the Charges were proven.
12. The burden of proof is borne by the FA that the Charges are proven upon *the balance of probability*.
13. Put simply, this means that the Commission should be satisfied that it was more likely than not that AC used the term 'nancy boys'.
14. The Commission having considered all of the evidence before them has found unanimously that the Charges are **proven** on the balance of probabilities.
15. The reasons for the Commission reaching this decision are as follows:
 - 15.1 The Commission unanimously consider that the term 'nancy boys' is an aggravated comment by reference to sexuality.
 - 15.2 There is compelling evidence from a number of witnesses that AC used the term 'nancy boys' in an aggressive manner during a meeting on 27 July 2021 with EFL and Rochdale AFC representatives.
 - 15.3 Although there is a slight deviation between witnesses' accounts as to the exchange, four witnesses heard the comment AC say 'nancy boys' during a heated discussion between the various representatives.
 - 15.4 The witnesses comment that they heard the comment 'nancy boys' clearly and the comment was identifiable to AC and was said flippantly in the context of AC owning 43% of Rochdale AFC through an intermediary whilst failing to comply with the EFL procedure for the acquisition of football clubs, through completion of the mandatory OADT.
 - 15.5 The Commission considers the evidence reliable in that the witnesses are unequivocal as to hearing the aggravated comment and all link this to AC by virtue of his distinctive accent and the fact that no-one else was speaking at the time. The Commission have no reason to doubt the credibility of any of the witnesses' evidence.
 - 15.6 Therefore, on the balance of probabilities, it is more likely than not that AC said the comments 'nancy boys', which is an aggravated comment by reference to sexuality.

Decision on Sanction

16. Having found the Charges proven, the Commission considered the appropriate sanction to impose.

17. The Commission referred to Appendix 1 of the Disciplinary Regulations for Standard Sanctions and Guidelines for Aggravated Breaches. For Aggravated Breaches, the sanction range is between 6 matches and 12 matches with 6 matches as the standard minimum.
18. Appendix 1 stipulates that where there is a finding of an aggravated breach against a participant that is not a player, manager or technical area occupant, the Regulatory Commission may assess that a match based suspension is not appropriate and in these circumstances, it shall impose an appropriate time based suspension that is commensurate with the breach, having regard to the specific roles and responsibilities of the Participant.
19. It is at the Commission's discretion to vary a sanction where there are aggravating or mitigating factors present.
20. The Commission considered an entry point of 56 days (or the equivalent to 8 matches for another participant) would be commensurate with the offending in this case. This takes into account AC's position as having purchased a majority stake in a football club (through an intermediary) and the risk of bringing the game and the club into disrepute by his comments.
21. Having decided upon the entry level of the sanction, the Commission considered any aggravating or mitigating factors. In this case, the Commission considered that AC's failure to cooperate with the FA investigation to be an aggravating factor, which warrants an upward suspension to the sanction by 7 days, taking the total sanction to 63 days.
22. The Commission considered whether a ground ban would be appropriate in this case and would encompass the football and all football activity suspension. The Commission unanimously concluded that the suspension shall include a suspension from AC attending RAFC grounds during this suspension period.
23. The Commission also ordered that AC undertake a face-to-face education programme, the details of which shall be provided for by the FA.
24. AC is sanctioned as follows:
 - (a) A suspension from football and all football related activities to include a RAFC ground ban for a period of 63 days.
 - (b) The completion of a face-to-face education programme to be completed within four months of the date of the decision.
 - (c) There is no order as to costs.
25. There is a right of appeal against this decision in accordance with the relevant provisions set out in the rules and regulations of the Football Association.

Elliott Kenton (Chair) on behalf of the FA Regulatory Commission
20 January 2022