

**IN THE MATTER OF THE FOOTBALL ASSOCIATION    Case ID : DSC/21/0050**  
**REGULATORY COMMISSION**

**BETWEEN :**

**THE FOOTBALL ASSOCIATION**

**and**

**DION CHARLES**

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**DECISION AND REASONS**

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**Warning to the reader of this document. This document contains reference to  
offensive and/or discriminatory language or behaviour.**

**Disciplinary Commission constitution.**

Abdul S. Iqbal QC (Chair - Independent Legal Panel Member)

Tony Agana (Independent Football Panel Member)

Andy Taylor (Independent Football Panel Member)

Michael O'Connor (Secretary)

Date of hearing : 6/4/22

**Attendees**

**Football Association**

Rebecca Turner – Regulatory Advocate representing the FA.

**Dion Charles**

Dion Charles

Nick Cusack – PFA Advocate representing Dion Charles

Simon Marland – Club Secretary (observer)

1. This document sets out the written reasons for the decisions and sanction in this Regulatory Commission (“the Commission”).

2. This document does not set out the entirety of the evidence and/or submissions heard by the Commission. It sets out the relevant evidence on the central relevant issues as heard by the Commission and assessed by the Commission in reaching findings of fact.

### **(1) The charges.**

3. By “*misconduct charge notification*” dated 3<sup>rd</sup> February 2022<sup>1</sup> the Football Association (“FA”) alleged that Dion Charles (“DC”) breached FA Rule E3 in respect of 15 comments posted on his Twitter account @Dion\_charles between 13<sup>th</sup> November 2011 and 15<sup>th</sup> August 2013.

4. The FA alleged that the Twitter posts aforesaid by DC were insulting and/or abusive and/or improper and/or brought the game into disrepute, contrary to FA rule E3.1.

5. The FA further alleged that each of these breaches of FA Rule E3.1 are an “*aggravated breach*” as defined in Rule E3.2, as they included a reference to sexual orientation, and/or ethnic origin, and/or race, and/or nationality, and/or religion or belief.

6. Accordingly, the FA charged DC with :

- i. Improper conduct (abusive and/or indecent and/or insulting language) between 13<sup>th</sup> November 2011 and 15<sup>th</sup> August 2013 contrary to rule E3.1 of the Rules of the Football Association 2021/22 ;
- ii. Aggravated improper conduct (reference to sexual orientation, and/or ethnic origin, and/or race, and/or nationality, and/or religion or belief) between 13<sup>th</sup> November 2011 and 15<sup>th</sup> August 2013 contrary to rule E3.2 of the Rules of the Football Association 2021/22.

7. DC admitted the charges by response dated 17/2/22 and requested a personal hearing<sup>2</sup>.

### **(2) The facts.**

#### **(a) Evidence adduced by the FA.**

8. The FA adduced the following written evidence.

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<sup>1</sup> Page i of the case bundle.

<sup>2</sup> Pages 26 to 27 of the case bundle.

(i) Chris Hall

9. The Commission had a written statement from Chris Hall<sup>3</sup>.
10. The evidence of the witness can be summarised as follows :
  - i. The witness is an Integrity Investigator at the FA ;
  - ii. The witness investigated social media postings on Twitter by Mr Dion Charles, who is currently a player for Bolton Wanderers FC (BWFC) ;
  - iii. On 4<sup>th</sup> January 2022, The FA became aware of a number of social media posts made on the account @Dion\_charles between 13<sup>th</sup> November 2011 and 15<sup>th</sup> August 2013. These posts included terminology which could be seen to be abusive and/or insulting with reference to sexual orientation, and/or ethnic origin, and/or race, and/or nationality, and/or religion or belief ;
  - iv. As a result of The FA becoming aware of these posts, the witness wrote to DC on 4<sup>th</sup> January 2022 and requested his observations in relations to the posts ;
  - v. On 12<sup>th</sup> January 2022, the witness received a letter from DC in response to that request for observations. DC accepted posting each of the Tweets and stated that he offered an unreserved apology ;
  - vi. The witness also received a response from Bolton Wanderers Football Club ("BWFC") Secretary Simon Marland (SM) on behalf of BWFC ;
  - vii. Further enquiries by the witness confirmed that DC was training and playing for Blackpool FC at the relevant time of the offending Tweets ;
  - viii. DC was born on 7<sup>th</sup> October 1995. Therefore, DC was 16 years old at the date of the first post on 13<sup>th</sup> November 2011, and 17 years old at the date of the final post on 15<sup>th</sup> August 2013 ;
  - ix. DC was 16 years old at the time of the first five posts, and 17 years old at the time of the following ten posts ;
  - x. DC provided confirmation that he was a player for Blackpool FC's Academy teams between 13<sup>th</sup> November 2011 and 1<sup>st</sup> July 2012, the period in which the first two posts were made. He subsequently began his scholarship with Blackpool FC on 1<sup>st</sup> July 2012,

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<sup>3</sup> See pages 1 to 2 of the case bundle.

so was a scholar with the club at the time of the following thirteen posts.

**(ii) Relevant posts on Twitter.**

11. The relevant extracts of the relevant social media posts the focus of these proceedings are :

- i. 13/11/11 → “*change your password so you dont RT gay things*” [sic] ;
- ii. 27/1/11 → “*you gay*” ;
- iii. 29/8/12 → “*you enjoyed it #gay*” ;
- iv. 20/9/12 → “*have a word with you faggot bf. Tell him to wear his own clothes*” [sic] ;
- v. 22/9/12 → “*everybody love a gay boy*” [sic] ;
- vi. 8/11/12 → “*you little queer!*” ;
- vii. 10/4/13 → “*yeah that’s still gay*” ;
- viii. 10/4/13 → “*gay that!*” ;
- ix. 17/4/13 → “*cos its for gays*” [sic] ;
- x. 21/4/13 → “*gay that ash*” ;
- xi. 18/5/13 → “*paki land*” ;
- xii. 22/5/13 → “*there call PAKIES not Muslim*” [sic] ;
- xiii. 24/6/13 → “*borderline gay*” ;
- xiv. 24/6/13 → “*gay that*” ;
- xv. 15/8/13 → “*#GAY*”.

**(3) Liability.**

12. DC admitted the misconduct in correspondence but sought a personal hearing to advance submissions in mitigation.

**(4) The relevant FA rules.**

**(i) FA Rules 2021/22.**

13. The FA rules 2021/22 provide (insofar as relevant) :

- i. **Rule 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.

- ii. **Rule 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.
- iii. **APPENDIX 1 - STANDARD SANCTIONS AND GUIDELINES FOR AGGRAVATED BREACHES**

## **PLAYERS, MANAGERS AND TECHNICAL AREA OCCUPANTS**

### **Sanction Range**

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 (“Sanction Range”).

A Regulatory Commission shall take all aggravating and mitigating factors into account, including but not limited to those listed in these guidelines when determining the level of sanction within the Sanction Range.

The lowest end of the Sanction Range (i.e. 6 Matches) shall operate as a standard minimum punishment (the “Standard Minimum”).

A Regulatory Commission may impose an immediate suspension in excess of 12 Matches in circumstances where aggravating factors of significant number or weight are present.

### **Exceptions to the Standard Minimum**

A Regulatory Commission may only consider imposing a suspension below the Standard Minimum where the following specific (and exhaustive) circumstances arise such that the Regulatory Commission determines that the Standard Minimum would be excessive:

Where the offence was committed in writing only or via the use of any communication device and:

- Where the Regulatory Commission is satisfied that there was no genuine intent on the part of the Participant Charged to be discriminatory or offensive in any way and could not reasonably have known that any such offence would be caused; or

- The age of the Participant at time of the offence (e.g. where the Participant was a minor at the time the offence was committed); or
- The age of the offence (e.g. a social media post made a considerable time ago).

For the avoidance of doubt, the existence of the circumstances above will not necessarily result in a departure from the Standard Minimum. A Regulatory Commission must be satisfied that the unique circumstances and facts of a particular case are of such significance that a departure from the Standard Minimum is justified to avoid an unjust outcome for the Participant Charged. In reaching a decision, the Regulatory Commission must also consider whether or not it is in the best interests of the game in tackling all forms of discrimination to depart from the Standard Minimum. In any event, a Regulatory Commission shall impose a suspension of no less than 3 Matches.

(ii) The applicable FA Rules in earlier seasons.

14. The FA rules 2011/12 and 2012/13 provide (insofar as relevant) :

- i. **Rule E3(1)** : A Participant shall at all times act in the best interest 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.
- ii. **Rule E3(2)** : In the event of any breach of Rule E3(1) including a reference to any one or more of a person's ethnic origin, colour, race, nationality, faith, gender, sexual orientation or disability (an "aggravating factor"), a Regulatory Commission shall consider the imposition of an increased sanction, taking into account the following entry points:

"For a first offence, a sanction that is double that which the Regulatory Commission would have applied had the aggravating factor not been present.

The Regulatory Commission shall have the discretion to impose a sanction greater or less than the entry point, according to the aggravating or mitigating factors present in each case."

15. The FA rules 2013/14 added to the above rules (insofar as relevant) :

- i. **Rule E3(4)** : Where an aggravated breach is committed :

(a) in writing only.... a Regulatory Commission will not be bound to impose an immediate suspension of at least 5 matches for the first breach or of more than 5 matches for a second and further such breach. Instead the Regulatory Commission may impose any sanction it considers appropriate taking into account any aggravating and mitigating factors present.”

#### **(5) The FA’s submissions.**

16. In summary, the FA submitted as follows :

- i. The offending tweets posted by DC between 2011 and 2013 remained on his Twitter social media account until they were removed earlier this year ;
- ii. Accordingly DC had been charged with misconduct pursuant to the FA rules applying to the 2021/22 season ;
- iii. The current FA rules mean that for a proven misconduct charge pursuant to rule E3.2 a minimum 6 match suspension (“the minimum sanction”) is mandatory unless the specific exception to the minimum sanction pursuant to Appendix 1 of the rules<sup>4</sup> was found to apply to the facts of this case ;
- iv. Even if the specific exception to the minimum sanction pursuant to Appendix 1 applied, the minimum applicable sanction within the 2021/22 regulations is a 3-match suspension ;
- v. The FA acknowledged and conceded, however, that it was appropriate to apply the sanctioning guidelines that applied at the time that DC first posted the offending tweets (namely the 2011/12, 2012/13 and 2013/14 seasons) rather than the current sanctioning guidelines ;
- vi. The reason The FA so conceded is because DC is entitled to the benefit of less onerous sanctioning guidelines in existence during those earlier seasons and the absence of a minimum sanction within those earlier sanctioning guidelines ;
- vii. Those earlier sanctioning guidelines nonetheless give the Commission ample discretion to impose a match-based suspension after considering the facts of this case

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<sup>4</sup> Page 157 of the FA Handbook 2021/22. The exception to the minimum sanction relates to social media posts that are in writing only and of considerable age.

and all aggravating and mitigating factors ;

- viii. The case of DC bears some similarity to the previously decided FA Regulatory Commission case of *Marc Bola* (heard on 3<sup>rd</sup> November 2021)<sup>5</sup> ;
- ix. In the case of Marc Bola, a single “tweet” was posted by a 14 year old professional club Academy player about 10 years ago. That tweet made very serious adverse comment towards those of a homosexual background ;
- x. The Regulatory Commission in *Bola* decided that the appropriate sanction was a face-to-face education programme, a formal warning as to future conduct, and a costs order against Bola ;
- xi. Each such disciplinary case must turn on its own facts and each case is highly fact-specific ;
- xii. The decision in *Bola* at its highest is persuasive authority but plainly not binding on this Commission ;
- xiii. Insofar as probative, the following could be properly described as similar features between the facts of this case and those of *Bola* :
  - a. Both DC and *Bola* admitted the misconduct at an early stage ;
  - b. The offending misconduct occurred several years ago when the players were much younger ;
  - c. Both *Bola* and DC were attached to professional football clubs at the time of the misconduct ;
  - d. Neither *Bola* nor DC had received any social media training at the time of the misconduct.
- xiv. Insofar as probative, the following could be properly described as distinguishing features between the facts of this case and those of *Bola* :
  - a. DC was aged 16 or 17 years old whereas *Bola* was aged 14 years when the misconduct occurred. Such a differential age is significant insofar as maturity is concerned. For example, DC would realistically be engaged with adult players and eligible to play for

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<sup>5</sup> Pages 31 to 42 of the case bundle.



adult teams whereas Bola would not be at the relevant ages ;

- b. DC engaged in the tweets for almost 2 years whereas *Bola*'s misconduct amounted to a single tweet (albeit that social media post was of a more serious individual nature than each individual tweet posted by DC) ;
- c. Although *Bola* used words that fall foul of FA disciplinary regulations by being homophobic in nature and thereby seriously abusive, DC's use of language included the words "*Pakis*", "*faggot*" and "*queer*" that on any view are highly objectionable and must have been obviously so to DC when aged 16 or 17 years ;
- xv. The Commission is entitled to conclude, taking into account the aggravating and mitigating factors, that a match-based suspension is necessary and proportionate whilst being mindful of the overriding best interests of the game in tackling all forms of discrimination.

#### **(6) Dion Charles' submissions.**

- 17. In summary, Dion Charles submitted as follows :
  - i. DC is 26 years old and now a League One professional footballer for Bolton Wanderers FC ;
  - ii. DC had just signed for Bolton Wanderers FC earlier this year when these tweets came to light ;
  - iii. DC accepted responsibility and culpability for the 15 offending tweets immediately upon them being brought to his attention earlier this year ;
  - iv. DC accepts that 13 of the offending tweets are homophobic in nature, 2 are racist in nature, and 1 is Islamophobic in nature ;
  - v. Accordingly DC accepted the misconduct charge promptly ;
  - vi. DC has no other misconduct recorded against him ;
  - vii. DC made a public apology in a public press statement earlier this year ;
  - viii. DC was aged 16 or 17 years at the time of this misconduct. He has matured since then and is now a family man ;
  - ix. The tweets were sent to close friends or family and were not intended to be widely disseminated ;

- x. DC had received no social media training from Blackpool FC (to which club he was attached at the material times) when he sent these tweets ;
  - xi. DC is not homophobic, racist or Islamophobic. He is ashamed and embarrassed at the content of these messages ;
  - xii. DC is now a family man and a parent and believes in tolerance and respect for everyone irrespective of sexual orientation, race and religion ;
  - xiii. DC has engaged recently with the “Kick it Out” campaign demonstrating his commitment to tackle discriminatory behaviour generally ;
  - xiv. The Commission should have due regard to the decision of an earlier Regulatory Commission in the case of *Marc Bola* which has similarities to the case of DC ;
  - xv. Although *Bola* was a younger player (aged 14 years) at the time of his misconduct, the single tweet sent by *Bola* was very serious in nature ;
  - xvi. The tweets sent by DC were over a significant period of time but are not threatening or intimidatory in any way ;
  - xvii. After such a long period of time, the Commission should not punish DC and indeed Bolton Wanderers Football Club by the imposition of a match-based sanction ;
  - xviii. The imposition of an education course and formal warning meet the justice of the case and provide rehabilitation that is commensurate with ensuring the best interests of the game and ensuring that all forms of discrimination are tackled ;
  - xix. Accordingly the Commission should impose such a sanction in this case.
18. DC sought permission to address the Commission directly. He was granted permission.
19. DC apologised for his behaviour in the past and assured the Commission that he did not hold views consistent with the messages he accepted sending several years ago.
20. In addition to the above, the Commission also read and considered the following :
- i. Statement from Dion Charles<sup>6</sup> ;

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<sup>6</sup> Pages 14 to 16 of the case bundle.

- ii. Statement from Simon Marland (Bolton Wanderers FC Club Secretary)<sup>7</sup>

**(7) The Commission's factual findings and conclusions as to sanction.**

21. Having considered all of the evidence and submissions before the Commission, the Commission concluded as follows.

22. The FA submitted that the misconduct charges referred to the 2021/22 FA rules because the offending tweets remained posted until the 2021/22 season when they were eventually removed by DC. Hence the Misconduct Charge Notice referred to FA rules E3.1 and E3.2.

23. The Commission noted that in future it may be more appropriate to charge such misconduct as having breached the relevant FA Rules that applied *at the time the offending statement was made* by its posting on social media rather than the latest date that it remained posted.

24. The misconduct alleged is the *making* of the offending statement itself. That occurs at the point that the social media posting is made rather than at the point it is removed.

25. Such an approach to the initiation of charges by the FA would avoid the need for submissions by the parties as to the relevance and applicability of particular season FA Sanctioning Guidelines that inevitably change from time to time.

26. Accordingly, the Commission applied the FA Sanctioning Guidelines that applied during the 2011/12, 2012/13 and 2013/14 seasons when the offending tweets were posted by DC.

27. The Commission noted that the FA Sanctioning Guidelines from those earlier seasons did not impose a mandatory minimum sanction for such aggravated misconduct albeit they did recommend an uplift to the appropriate sanction for a non-aggravated charge of this type.

28. The Commission considered the oral submissions, written documents, and oral apology from DC carefully.

29. Plainly the Commission had to balance the fact that this was the aggravated form of misconduct involving multiple plainly abhorrent and discriminatory tweets with the fact that the misconduct occurred at a time when DC was much younger.

30. The Commission concluded that the following were significant aggravating factors that

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<sup>7</sup> Pages 17 to 19 of the case bundle.

applied in this case :

- i. The offending tweets were multiple tweets posted over a period of almost two years ;
- ii. The tweets remained posted for many years before being removed and were public posts readily visible to those that viewed DC's Twitter public profile ;
- iii. The tweets offended the FA rules in respect of discriminatory language directed at sexual orientation, race, and religion ;
- iv. DC's use of language went beyond the (ordinarily and in isolation) unobjectionable use of the word "gay" but included the words "*Pakis*", "*faggot*" and "*queer*" that on any view are highly objectionable words and would have been obviously so to DC when he was aged 16 or 17 years.

31. The Commission concluded that the following were significant mitigating factors that applied in this case :

- i. The tweets were posted several years ago when DC was aged 16 or 17 years and therefore far less mature than now ;
- ii. DC in all probability simply left the offending tweets publicly visible without any intention to create ongoing harm ;
- iii. The misconduct was limited to social media posts rather than actual use of such language towards another person with relevant protected characteristics ;
- iv. DC is now a mature man in very different circumstances from when he posted the offending tweets ;
- v. DC has worked hard to establish himself as a successful professional footballer and the fact of the misconduct itself has had a salutary effect upon him ;
- vi. DC accepted the charges promptly and admitted the misconduct charges promptly. He has shown remorse for this behaviour and regrets it ;
- vii. DC publicly apologised for this behaviour promptly ;
- viii. DC has no other misconduct recorded against him.

32. The Commission did not regard the fact that DC had not received social media training at the time of this misconduct as any or any significant mitigation. Whether such statements

were posted on social media or said orally to another(s), it must have been plain that they were highly objectionable statements that should not be made in any form.

33. The Commission considered the above competing factors carefully.

34. The Commission is acutely mindful of the need to protect the integrity of the game and the need for the game to effectively tackle all forms of discrimination.

35. Although the Commission found the earlier decision of a differently constituted Regulatory Commission in the case of Marc Bola to be a useful comparator, this Commission is of course not bound by that decision.

36. The Commission noted that there are those similarities and distinguishing features between this case and that of *Bola* outlined at paragraphs 16 (xiii) and 16 (xiv) of this document.

37. After careful consideration of all of the above factors and culpability of DC, the Commission concluded that this was a case that was readily distinguishable from the case of *Bola* in any event because:

- i. DC was aged 16 or 17 years at the date of the misconduct. Bola was aged 14 years. Such a difference in age is significant when viewed in the context of teenage years. For example, *Bola* would not be eligible to play in the adult game whereas DC would. The differences in maturity would be significant ;
- ii. DC's misconduct ranged over a period of almost two years whereas *Bola*'s misconduct was founded on one single social media post (albeit a seriously objectionable one) ;
- iii. DC's misconduct involved discriminatory behaviour directed at three protected characteristics whereas the case of *Bola* involved one such protected characteristic.

38. The Commission concluded that this case of DC was a borderline case such that a match-based sanction could not be justifiably termed an excessive sanction in all of the circumstances.

39. Ultimately, two members of the Commission were of the view that, although the offending social media posts were highly abhorrent and objectionable, that a match-based suspension was not necessary in all of the circumstances of this case to mark the misconduct.

40. This determination was primarily based on the age of the offending tweets and the prompt admission of culpability by DC.

41. However, to underline the borderline nature of this case, one member of the Commission was of the view that a match-based suspension was merited and necessary.

42. This assessment was primarily based on the need to mark the seriously discriminatory behaviour reflected in the offending tweets despite their age.

43. The decision of this Regulatory Commission is therefore a split decision with one dissenting view.

44. This decision is accordingly not to be viewed as authority for any general proposition that such aggravated misconduct relating to old social media posts when participants were considerably younger and/or immature will invariably not lead to match-based suspensions.

45. Each case will, as ever, turn on its own facts and be considered individually. There will necessarily be cases where match-based suspensions are wholly merited and appropriate for this category of misconduct.

## **(8) Sanction.**

### **(i) Sanction in relation to the breach of rules E3.1 and E3.2 by DC.**

46. The sanction imposed is :

- i. DC will complete the face-to-face education programme by 7<sup>th</sup> August 2022 ;
- ii. If DC has not satisfactorily completed the face-to-face education programme by 7<sup>th</sup> August 2022 then he will be suspended from all domestic club football until the face-to-face education programme has been satisfactorily complied with ;
- iii. DC is formally warned as to his future conduct ;
- iv. DC is ordered to pay the costs of the Commission.

47. The above sanctions are formally imposed.

48. There is the right to appeal these decisions in accordance with FA Regulations.

ABDUL S. IQBAL QC (Chair)

ANDY TAYLOR

TONY AGANA

7<sup>th</sup> April 2022