

IN THE FOOTBALL ASSOCIATION REGULATORY COMMISSION

16 January 2023
Mr David Phillips KC FCI Arb
Ms Alison Royston
Mr Matt Williams

BETWEEN –

THE FOOTBALL ASSOCIATION

and

ACCRINGTON STANLEY FC

WRITTEN REASONS

INTRODUCTION

1. This matter arises out of incidents that occurred at the League One match played between Accrington Stanley FC and Bolton Wanderers FC at Accrington Stanley's ground on 22 October 2022. By its letter dated 1 December 2022 the FA charged Accrington Stanley with a breach of FA Rule E21.4. By its letter dated 7 December 2022 Accrington Stanley admitted the charge and consented to the matter being heard by way of a paper hearing. The FA has made no written submissions on sanction. Accrington Stanley has set out its case in letters dated 7 December 2022 and 12 January 2023. We sat as a Regulatory Commission on 16 January 2023 and considered the matter by way of a Teams meeting.

FACTS

2. In the charge letter dated 1 December 2022 the FA put the charge in the following terms –

Charge

You are hereby charged with misconduct for a breach of FA Rule E21.4 in respect of the Match.

It is alleged that Accrington Stanley FC failed to ensure that spectators and/or its supporters (and anyone purporting to be its supporters or followers) conduct themselves in an orderly fashion whilst attending the Match and do not use words or otherwise behave in a way which is improper, offensive, abusive, indecent, or insulting with either express or implied reference to sexual orientation.

The charge did not specify the acts/omissions relied on but the charge letter was accompanied by video clips of the incidents and by an email exchange between the FA and Bolton Wanderers. Also included with the charge letter was a letter

from Accrington Stanley to the FA dated 31 October 2022.

3. The video clips reveal that the behaviour that constituted the charge was chanting by Accrington Stanley supporters directed at Dion Charles, a Bolton Wanderers' player. In response to a request from the Commission, the FA specified the wording of the offending chant to have been *He takes it up the arse, Dion Charles*. The volume is such that a not insignificant number in the crowd must have been responsible. The chanting lasted for 20 seconds in the video clip and was still continuing when the clip ended. The only steward who appeared to be present in the stand did not react in any visible way to the obvious chanting, nor did the cluster of stewards who could be seen gathered in the open corner between the two stands. In the email to the FA Bolton Wanderers stated *We are aware of abusive chants towards Dion Charles... I have discussed this with the player in question and he confirmed he did hear the chants, was not happy with them but he does not wish to provide a statement or proceed with any claim himself*.
4. In its letter dated 31 October 2022 Accrington Stanley stated (amongst other things) –

As far as we are aware, the police, match officials or the player involved (Dion Charles), didn't report the alleged incident at the time or in any post match reports.

We have spoken to the ASFC Ground Safety Officer (GSO) for the fixture and he has stated that if he had been made aware of the alleged incident, he could then have made the provision for the PA announcer to request the chants cease and extra stewards would have been deployed to stop the alleged incident at source and deal with the perpetrators according. I was Deputy DSO on the day and would have done exactly the same.

We have been in contact with Bolton Wanderers who have also been contacted by the FA. They have spoken to their player who does not want the matter taken any further.

We have subsequently spoken to the Accrington Stanley Officials Supporters Trust and some of the older "Stanley Ultras" who stand on the home terrace and asked that they "self-police" the songs and chants and ensure that any abusive chants are not sung at players, police, match officials, stewards or anyone else at all for that matter.

THE PROPER APPROACH

5. Recent decisions of Regulatory Commissions dealing with alleged breaches of Rules E20 or E21 have adopted a consistent approach. That approach involves determining the appropriate sanction by reference to the following criteria –
 - (1) The seriousness of the breach committed by the club.
 - (2) The culpability of the club.
 - (3) The harm caused by the incident.

(4) The mitigation available to the club.

We have followed that approach in our deliberations.

6. Those recent decisions have also adopted a consistent approach to the question of deterrence. A Regulatory Commission is perfectly entitled to recognise that a sanction will have a deterrent effect but the overriding principle is that the sanction must be proportionate to the facts of an individual case. A sanction cannot be increased beyond a proportionate level in order to achieve the otherwise legitimate aim of deterrence.

BASIS OF ACCEPTANCE OF THE CHARGE

7. Although in the charge the FA specified the offensive conduct it did not identify Accrington Stanley's failings. Similarly, although Accrington Stanley accepted the charge and has advanced a variety of material in mitigation, it did not explain the basis for the plea. In other words, neither party has identified what Accrington Stanley did wrong or failed to do right. Accrington Stanley's failings are an important element in determining its culpability.
8. Accordingly, during the week before the hearing the Commission requested that both parties should *make clear and agree the basis of the plea – in other words, what the club failed to get right*. That request prompted Accrington Stanley to write the letter dated 12 January 2023. That letter, however, does not address the request made by the Commission. Similarly, the FA response (email 16 January 2023 [10:27]) does not specifically address the basis of plea. It does, however, state *we can confirm that Regulatory Legal take no issue with the position as stated by the club in their submissions*.
9. We consider it to be unfortunate that neither party has expressly identified the wrongdoing that is alleged and accepted. We consider it to be good practice in cases such as this for the parties to agree a basis of plea (as is commonly done in criminal cases). If agreement cannot be reached the FA should set out its allegations, and the club should respond explaining what is and is not accepted, and the reasons that it relies on. The Commission will then be in a position to proceed on the basis of agreed facts, or to make an informed determination of the issue.

THE FA's CASE

10. The FA's case is simple. It relies on the fact of the chanting by Accrington Stanley's supporters. It has not made any submissions, and has not sought to address the criteria that we have identified in paragraphs 5 & 6 (above).

ACCRINGTON STANLEY's CASE

11. Accrington Stanley, as is clear from its letters dated 31 October 2022 and 7 December 2022, advances the case that it does not tolerate behaviour of the type that gave rise to the charge. It puts its case by reference to both proactive and reactive steps. Proactively, it takes considerable steps to deter discriminatory or anti-social behaviour. It has adduced evidence of a large sign at its ground and of full page notices in the match programme. It has provided a video clip of a public address announcement that is now made before the commencement of matches. It has provided a copy of its pre-match steward briefing for the match against Bolton Wanderers. Reactively, it follows up any report during a match of inappropriate behaviour. In its letter dated 31 October 2022 it states that the Ground Safety Officer was unaware of the incident and so did not react by deploying stewards to the source of the chanting.
12. Although Accrington Stanley did not explain the basis of plea in response to the Commission's request, it advanced further mitigation in its letter dated 12 January 2023. In that letter it stated (amongst other things) –

Further information for submission

The Club would like the following mitigation to be also considered.

There were numerous internal planning meetings to ensure sufficient trained stewards were on duty during the day to control the capacity crowd of which 2600 (more than 50% of the crowd) were Bolton Wanderers supporters. There was 2 specific Silver planning meetings with Lancashire Constabulary and a stadium visit by the police Bronze and Silver Commander for the fixture. The Police Match risk assessment had graded intelligence that over 100 "risk" Bolton Wanderers fans had tickets and would attend the fixture.

To deal with this fixture the steward numbers were doubled from 45 stewards (minimum as per the safety certificate) to 90.

When the GSO heard the discriminatory chanting, he immediately dispatched the home "response team" to the area (behind the Clayton End home goal) to see if the main culprits could be identified.

The CCTV cameras were moved from the away terrace to the home terrace to see if the response team could point out any of the main suspects. Please note the CCTV at Accrington Stanley is live footage only and does not record any audio.

No action was taken as no specific individuals were able to be identified by the response team.

13. The Commission notes that in this letter Accrington Stanley states that the Ground Safety Officer had been aware of the incident and had reacted appropriately and comprehensively, but that it had not been possible to identify the culprits. This is inconsistent with what was asserted in its letter dated 31 October 2022.
14. The letter dated 12 January 2023 continued –
- Further Consideration**
- The club would welcome specialist advice via an action plan to mitigate a repeat incident happening again.
- All our in-house stewards are NVQ level 2 in Spectator Safety Management and are briefed by the Level 4 NVQ trained GSO prior to every game.
- The CCTV operators are also fully trained and are also NVQ Level 4 trained in Spectator Safety Management.
- Communications via the public address system, programme advertising and specialist signs are used at every home fixture at ASFC. This evidence has previously been submitted.
- The Club have appointed a specialist EDI consultant who is working to deliver diversity projects at ASFC and develop proactive supporter initiatives.
- ASFC trust that this additional information will assist the Commission in reaching their verdict and emphasise how seriously incidents of this nature are investigated by the Club to a satisfactory conclusion.
15. As we have noted, the FA takes no issue with the submissions made by Accrington Stanley.

DISCUSSION

16. Before addressing the criteria identified in paragraph 5 (above) we consider the inconsistent descriptions given by Accrington Stanley as to whether the Ground Safety Officer had been aware of the offensive chanting during the match. In light of the fact that the FA has taken no issue with the case advanced by Accrington Stanley we consider that Accrington Stanley should be given the benefit of the doubt. Accordingly, we proceed on the basis that the information given in the letter dated 12 January 2023 is correct, and represents a more informed response to that erroneously given in the letter dated 31 October 2022. We therefore proceed on the basis that Accrington Stanley reacted appropriately to the chanting, deploying a response team of stewards to the area, and redirecting the CCTV to that area. However we find that the evidence the Club has served as to what steps it had taken before and since the incident to be limited.

17. We turn now to consideration of the relevant criteria.

(1) Seriousness of the breach

Discriminatory, offensive chanting of the type used in this case must always be serious. It may not involve physical violence, or interruption of the match, but it is an abuse that should not be tolerated.

(2) Culpability

In the absence of an agreed basis of plea we proceed on the basis that Accrington Stanley failed to take all the steps that it should have. Having said that, the Commission recognises that Accrington Stanley did take some appropriate steps – there was proactive and reactive behaviour. We recognise that it is difficult for a club always to be able to control unruly supporters. We consider the steps taken by Accrington Stanley to have been significant. Accrington Stanley's culpability is low.

(3) Harm

The principal harm of behaviour such as this is that it fosters a mistaken belief that discriminatory, offensive behaviour is in some way to be tolerated. That is genuine harm. Further, direct harm will have been caused to the player (and perhaps his fellow players) who will have been unsettled by the chanting.

(4) Mitigation

As we have already made clear, there is mitigation – which has been accepted by the FA. We have already identified the appropriate proactive and reactive steps taken by Accrington Stanley. The Commission noted the contents of the letter dated 12 January 2023. The suggestion of an Action Plan is sensible: we hope that the FA will work with Accrington Stanley to agree the proposed plan.

SANCTION

18. In determining the appropriate sanction the Commission has taken into account the FA's Policy and Guidance issued in relation to charges of this nature. Accrington Stanley was playing in League One. It accepted the charge promptly, and has advanced a variety of mitigation that has been accepted by the FA. Nevertheless, a significant number of supporters were involved in the chanting, that behaviour was plainly inappropriate. By its acceptance of the charge Accrington Stanley has recognised that it failed to take the reasonable steps that should have been taken. The Commission gave serious consideration as to the

financial penalty that the breach warranted in view of the fact that Accrington Stanley failed to address the request by the Commission in advance of the hearing to make clear and agree the basis of the plea with the FA. On the other hand, however, we note that Accrington Stanley put forward a variety of mitigation, with which the FA took no issue. In light of that acceptance of that mitigation the Commission concluded that despite the seriousness of the incident, a fine of £5,000 was appropriate.

19. We agree that an Action Plan should be imposed on Accrington Stanley. The Commission will prepare a draft for consideration by both the FA and Accrington Stanley. We consider that the seriousness of the incident is such that a financial penalty should be imposed. We fine Accrington Stanley the sum of £5,000.

CONCLUSION

20. The Commission –

- (1) Directs that the FA and Accrington Stanley seek to agree the Action Plan that the Commission will provide. In default of agreement the Commission, after considering any submissions that may be made by either party, will impose the Action Plan. The FA must monitor Accrington Stanley's performance of this Action Plan.
- (2) Directs that Accrington Stanley must pay a fine of £5,000.



David Phillips KC FCI Arb
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Revised for typographical errors 27 January 2023