

**IN THE MATTER OF A FOOTBALL ASSOCIATION REGULATORY  
COMMISSION**

**BETWEEN:**

**THE FOOTBALL ASSOCIATION**

**and**

**MR ANDREW MANGAN**

---

**WRITTEN REASONS AND DECISION OF THE REGULATORY COMMISSION**

---

Regulatory Commission:

Tim Ward KC (Chair) – Independent Specialist Panel Member

Gareth Farrelly- Independent Football Panel Member

Ken Monkou- Independent Football Panel Member

Michael O'Connor -Lead Judicial Services Officer – Secretary

Hearing date: 28 July 2023

**Appearances**

Football Association:

Will Martin- Counsel

Andrew Mangan:

Nick De Marco KC- Counsel

Karim Bouzidi- Clintons

Lauren Beech- Clintons

Katie Mangan- Observer

## **Introduction**

1. The Regulatory Commission was appointed to hear a disciplinary charge against Mr Andrew Mangan, set out in a charging letter (“**the Charging Letter**”) of 13 December 2022:

“It is alleged that on 22 October 2022 during the half time period of the match between Bristol Rovers FC v Plymouth Argyle FC, your language and/or behaviour towards a Plymouth Argyle FC staff member was abusive and/or insulting contrary to Rule E3.1. It is further alleged that the breach of FA Rule E3.1 is an “aggravated breach” as defined in Rule E3.2, as it includes a reference, whether express or implied, to sexual orientation.”

2. On 1 February 2023, Mr Mangan denied the charge and requested a personal hearing.
3. The Commission held an oral hearing on 28 July 2023 in order to determine the charge. We heard submissions from counsel and the following oral evidence:

- a. For the FA:
  - i. Charlie Rose
  - ii. James Williamson
- b. For Mr Mangan:
  - i. Andrew Mangan
  - ii. Danny Ventre
  - iii. Tom Gorringer

4. The FA had sought to cross-examine Paul Coutts, a witness tendered by Mr Mangan, but as time had not permitted it on the day of the hearing, he was not called to give evidence.

5. In addition, the Commission was supplied with:

- a. Four video clips of the incident giving rise to the charge, obtained by Mr Rose.
  - i. Unedited video.
  - ii. A version with subtitles added by Mr Rose.
  - iii. A version with Mr Rose’s subtitles, with audio enhanced by the FA.
  - iv. A version with subtitles added by Mr Mangan.
- b. Two video clips of the areas in, around and downstairs from the tunnel area, provided by the FA, and recorded after the incident.
- c. A plan of the relevant area around the dressing rooms, which is appended to these Written Reasons. It was prepared on behalf of Mr Mangan, but was accepted by

the FA as being broadly accurate, save that within the home dressing room, there was an internal wall running opposite the “shower” and “bath” areas.

- d. A witness statement provided by the FA from Leighanne Kelly. The FA did not seek to rely on her evidence. Ms Kelly gave her account of the incident.
  - e. Witness statements served by Mr Mangan from Ellie Davies, Andy Griffiths, Chris Gibson MBE, John Gibbons, Joseph Barton. Those witnesses were not called to give evidence. All gave character evidence in support of Mr Mangan.
  - f. The transcript of an interview of Mr Mangan conducted by the FA on 8 November 2022.
  - g. An “interview plan” for Charlie Rose.
  - h. The “Participants Reply to Charge” drafted by counsel on behalf of Mr Mangan.
  - i. Various other documents, correspondence and precedents.
  - j. A draft of Mr Rose’s witness statement provided in the course of the hearing.
  - k. The letter of 28 October 2022 from the FA to Mr Rose inviting him to interview.
  - l. Closing submissions in writing on 9 and 15 August 2023 .
6. The Commission took all of this material into account.

### **Legal framework**

7. The legal framework was common ground. The burden of proving the charge lies on the FA. The standard of proof is the civil standard of the balance of probabilities, and this is a single unvarying standard. The correct approach to rules E3.1 and 3.2 is set out in *FA v John Yems*, 13 April 2022, paras 59 – 6:
- a. The test for breach of rule E.3.1 is objective.
  - b. It is a question of fact whether a breach of rule E3.1 includes a reference to a protected characteristic. “That too is to be answered objectively and no question of subjective intention arises”.
  - c. All that falls to be decided is (materially):
    - i. What was said;

- ii. Whether what was said abusive or insulting;
  - iii. Whether the words contained a reference to sexual orientation.
8. It was further common ground that: “What a player intended will be irrelevant if the words used or gesture made can only have one possible meaning or explanation. But intention may be very important if the meaning is open to any doubt”: *FA v Wayne Hennessy*, 12 April 2019.

### **The background**

9. Mr Mangan is a former player who has a long and impressive history of involvement in football, first as a player and now as a coach. He is, and was at the time of the incident giving rise to the charge (“**the incident**”), a First Team coach at Bristol Rovers FC (“**BR**”).
10. The incident took place during a BR home match at the Memorial Stadium against Plymouth Argyle FC (“**PA**”). It consisted of exchanges between Mr Mangan and Mr Charlie Rose that took place in the tunnel area during half time.
11. Mr Rose is employed by PA as the club’s Content and Digital Media Manager. He was the complainant to the FA about the incident. He attended the match in a professional capacity, in order to create content for PA. At the end of the first half, PA led by two goals to nil. Mr Rose explained that during the half-time break, he had collected some equipment from the BR media room, which can be accessed via stairs running behind the home team dressing room. This was not directly challenged. He then made his way back to the tunnel area, passing behind the home team dressing room.
12. Mr Mangan adduced evidence that this was not the purpose of the media room and that Mr Rose should not have been present in it. It was not, however, said that this was explained to Mr Rose, or that Mr Rose should have been aware it was out of bounds.
13. At point A on the attached plan he encountered Mr Paul Coutts, the BR captain. Mr Coutts was injured at this time and not playing. Mr Rose gave evidence that he assisted Mr Coutts (who was on crutches) by holding the door open for him and Mr Coutts thanked him for it.

14. Mr De Marco KC made clear that he did not seek to challenge Mr Rose's motives for giving this account. His version of events was, however, disputed in Mr Coutts' witness statement. Mr Coutts stated that he challenged Mr Mangan and recalled using the words "What are you doing here mate, you are not allowed"... and "After you – get out of here. This is not your area, it's our area". He described Mr Rose's account as "completely unreal".
15. It is unfortunate (if understandable) that Mr Coutts did not give evidence before the Commission. He had attended the hearing, but had to leave to catch a flight to Scotland before he was called. We offered the parties the opportunity to hear his evidence remotely on Teams the following week, but this was objected to by Mr Mangan on grounds of cost.
16. Ms Kelly gave a witness statement to the FA in which she said "I cannot remember what was said exactly, but I believe PC was challenging the PAFC staff member on why he was at the rear of the changing room." She also said she recalled Mr Mangan challenging Mr Rose, but could not recall exactly what was said.
17. The Commission considers that the evidence is inconclusive as to what exactly was said as between Mr Rose and Mr Coutts and that it is unnecessary to decide the issue.

### **The incident**

18. At the time of the incident, Mr Rose was standing at point C on the plan, with his camera trained on the door to the away dressing room. The video we have been supplied with of the incident was recorded by Mr Rose at the time. He has explained that his purpose was to capture film of the PA players leaving the dressing room and returning to the pitch after half time. Shortly before the players did so, there was an altercation between Mr Mangan and Mr Rose. In his witness statement, Mr Mangan set out the following transcription, including the description "Scouse accent" for some of the speakers):

- a. **Male:** *I'm not filming yous don't worry.*
- b. **Male (Scouse accent):** *What are ya? A peeping Tom? Bit weird that filming outside our room init?*
- c. **Male:** *I'm filming them*
- d. **Male (Scouse accent):** *Think it's dead weird that, you haven't got a*

bird have ya.

e. **Male (Scouse accent):** One of the weirdest things I've ever seen that, mate. I'd burst into your house and check your computer. Filming outside our room.

f. **Male:** *I'm filming them, I'm filming, I'm I'm, I'm filming our door. Fucking hell.*

g. **Male:** *That's not going to make the final edit, is it.*

h. **Male (Scouse accent):** *Ay, was you, was he filming round the back? Why you filming round the back?*

i. **Male:** *I wasn't filming down the back at all*

j. **Male (Scouse accent):** *You looking at our lads in the shower?*

k. **Male:** *What you on about.*

l. **Male (Scouse accent):** *What's going on there?*

m. **Male:** *I'm filming this, I'm filming our lads. I went to the media room downstairs and came back up.*

n. **Male (Scouse accent):** *I'm gonna report you, it's weird.*

o. **Male:** *Crack on*

(underlined emphasis added)

19. The FA accepted that this transcription was an accurate record of everything audible on the video, although as explained below it contended that additional words were said. Mr Mangan also relied on the word “no” being said between g and e. It is common ground that the “Male” voice at a, c, f, i, k, m, o was Mr Rose.
20. Mr Mangan accepted that the remarks at b, d, and e (which we have underlined above) were said by him (“**the Admitted Words**”). He said he was not sure if he said the words at h, j, l and n.
21. The FA contended that the Admitted Words were sufficient to make out the charge on the basis of an implied reference to sexual orientation (“**the Implied Allegation**”). In its closing submissions the FA did not seek to rely on the other statements said to have been made in a “Scouse accent”.
22. In addition, the FA contended that Mr Mangan used the terms “gay cunt”, “gay bastard” and “bender” in the course of this exchange. We refer to these terms collectively as “**the Express Allegations**”. The FA accepted that these words were inaudible on the video of the incident and the Panel were unable to hear them on review of the video. The FA invited us to not to rely on the subtitles. We did not do so.

### **Preliminary ruling**

23. At the outset of the hearing it was argued on behalf of Mr Mangan that the FA should only be permitted to advance the Express Allegations, as it had only made clear immediately prior to the hearing that it also relied upon the Implied Allegations. The Express Allegations reflected the basis of Mr Rose’s complaint. It was argued that Mr Mangan would be prejudiced if the hearing were to go ahead on the basis now advanced by the FA. He would have wished to address the Commission with evidence and submissions as to the use of “industrial language” in the game.
24. The Commission ruled that the FA should be allowed to pursue its case on the basis that Mr Mangan had made an express or implied reference to sexual orientation. The wording of the charge was sufficiently broad to enable it to do so and had not changed. The material the FA relied upon was addressed by both Mr Mangan and Mr Rose in their witness statements. Mr Mangan would be able to address the Commission on the matter of “industrial language” and the Commission included two highly experienced football members. We would have been prepared to consider an application for an adjournment by Mr Mangan, but Mr De Marco KC indicated this would not be pursued on grounds of costs. We also indicated we would be prepared to give Mr De Marco KC further time to take instructions, and to ask supplementary questions of his witnesses if he wished.
25. We further note that in his written closing submissions Mr Mangan stated “it is accepted that any substantial prejudice [arising out of this course] can be mitigated by the written closings”, albeit that the Commission was urged to be “careful” before finding the implied case to be proven.

### **The Express Allegations**

26. The FA advances the Express Allegations on the basis of Mr Rose’s evidence. On behalf of Mr Mangan, it was pointed out that Mr Rose’s account of the words said to form the basis of the express allegations had changed:

- a. In a Whatsapp to Mr Newton at 19.57 on the day of the match Mr Rose had said Mr Mangan had called him “a creepy cunt”, a “paedophile” and a “batty”.
  - b. In his email to Mr Newton at 19.58 that day Mr Rose alleged Mr Mangan called him a “creepy cunt”, a “gay cunt”, a “paedophile”, but not “batty”.
  - c. In the subtitles added to the video by Mr Rose the next day he had included “gay cunt” and “gay bastard”.
  - d. In his interview with Mr Williamson, he alleged the terms “gay cunt” and “bender” had been used.
  - e. In a first draft of his witness statement, prepared by Mr Williamson and dated 28 October 2022, Mr Rose alleged Mr Mangan had called him a “gay bastard” .
  - f. Prompted by Mr Williamson that the video contained a word ending in “der”, the final version of Mr Rose’s statement contained an allegation that Mr Mangan had called him a “bender”. The word “bender” was suggested by Mr Williamson based on what he thought he could hear on the video. Mr Rose had also told Mr Williamson by email “I specifically remember him calling me that and “gay cunt”.
  - g. The final version of Mr Rose’s witness statement signed on 2 November 2022 referred to “gay bastard”, “gay cunt” and “bender”.
  - h. Mr Rose had changed his account as to the time during the period captured by the video at which the Express Allegations were made.
27. In cross-examination, Mr Rose accepted that he was not sure when the term “gay cunt” had been used, notwithstanding that it appears in the subtitles that he added to the video.
28. The express allegations were denied by Mr Mangan, Mr Ventre and Mr Coutts. Ms Kelly said that she did not believe the “homophobic allegation” to be consistent with what occurred.

### **Mr Mangan’s interview with the FA**

29. On 28 October 2022, the FA wrote to Mr Mangan stating:

#### **“Allegation of discrimination**

I am writing to you in relation to an allegation reported to The FA, that during the half-time period of the above noted fixture, you used abusive and discriminatory language towards a Plymouth Argyle FC employee.

I therefore require you to make yourself available for an interview regarding this allegation. The interview will be conducted in person at Wembley Stadium. You may have a legal representative and/or a club representative and/or LMA or PFA representative with you during the interview if you so wish.”

30. Mr Mangan was interviewed by the FA on 8 November 2022. The interview was conducted by Mr Williamson and James Greenway. Mr Mangan was accompanied by a solicitor. At the beginning of the interview Mr Williamson explained that the purpose was to put to Mr Mangan the allegation that at half time in the match between BR and PA on 22 October 2022:

“you become involved in the confrontation with a staff member from Plymouth Argyle, he’s employed by the club as the media and content manager, and during that verbal confrontation in the tunnel, you used offensive homophobic language towards him.”

31. It was then explained that Mr Rose:

“stated that he was in the tunnel, like I said, filming the away changing room when you challenged him and questioned what he was doing. He said the conversation lasted approximately about a minute and a half with you coming away, going away and then coming back and challenging him again for a second time, and he stated that during that conversation amongst other things you called him, a gay cunt, a bender and a gay bastard, as well as some other comments that we can put to you in due course. Can you remember having a confrontation with anyone in the tunnel at half time during that fixture?”

32. Mr Mangan replied:

“Well I remember the issue, but I definitely didn't say any of those words.”

33. Mr Mangan has maintained that denial consistently throughout these proceedings. He went on to give his own account of the incident. He explained:

“I come up this tunnel at this point and Paul Coutts says to me, 'This lad's just been in the back of our changing rooms near the shower area.' Obviously, tensions are high, I walk past. I definitely have an issue with that, I think I said, 'What are you a paedophile?' You know, I'm thinking to myself we've got young kids, we've got seventeen-year-olds, we've got eighteen year old's, nineteen year old's in the changing room, he's at the back of the shower area with a camera I thought it was pretty creepy.

I actually think I did say something, I think I said, 'Bit creepy that.' And then I walked off with the if I can remember with the girl physio.

JW: Okay. As far as you're aware is that the extent of the confrontation?

AM: Yes, I mean the fact that he said a minute and a half, you know, absolutely no way. I mean you don't have a minute and a half in a fifteen minute half time period. There'd be players in and around that area coming out, so a minute and a half seems very long to me, you know, like we spoke about before I was a little bit gutted the fact the allegation was actually what it was because it's just completely out of character if I'm being totally honest."

34. Later in the interview, Mr Williams asked:

"JW: Okay. You then stated earlier Andy that you think you may have called him a paedophile.

AM: No, I asked.

JW: You asked if he's a paedophile?

AM: Yes."

35. Later in the interview Mr Mangan twice confirmed that he had asked Mr Rose if he was a paedophile.

36. We considered the transcript of the interview in its entirety.

37. In his written closing submissions, Mr Mangan made a number of criticisms of the FA's investigation, including an objection that Mr Mangan "ought to have been told the nature of the allegations before the interview took place". We consider that whilst it would have been preferable for the FA to have been more specific in its letter inviting Mr Mangan to interview, it was made sufficiently clear what the nature of the allegations against Mr Mangan were, and he had no apparent difficulty in recalling the incident and giving his version of events. We further note that the interview took place less than three weeks after the incident and that Mr Mangan was accompanied by a solicitor. In light of the findings we have reached, we do not consider it necessary to address the issues raised in regard to the investigation further.

### **Conclusion: the Express Allegations**

38. We consider that Mr Rose was sincere in the evidence he gave and was doing his best to provide a truthful recollection of events. Even immediately after the incident, however, he was evidently in some doubt as to exactly what had happened. The Express Allegations have been consistently and robustly denied by Mr Mangan and other witnesses who have provided evidence about the incident. There is no corroborating evidence to support Mr Rose's account, and some support for Mr Mangan's version of events. The video evidence did not support the express allegations made, whilst picking up a substantial amount of interaction between Mr Rose and Mr Mangan
39. We also note that Mr Mangan has adduced extensive character evidence which supports his contention he would not use such language. A point was also made that this language would not be used by a Liverpudlian even if intending to be derogatory on grounds of sexual orientation. We did not form a view on this.
40. Having regard to all of the evidence, we conclude that the FA has not discharged its burden of proving the Express Allegations.

### **The Implied Allegations**

41. The facts of what was said at points b, d and e of the above transcript are not in dispute. They form the basis of the FA's implied allegation. The Commission accordingly proceeds to consider the implied allegation on the basis of these agreed facts. The issues are:
- a. Was the language used abusive and/or insulting?
  - b. If so, did that amount to an implied reference to sexual orientation?

### **Were the Admitted Words abusive or insulting?**

42. Mr Mangan submitted that the words used did not meet the standard of being abusive and/or insulting. To hold otherwise would be an "egg shell approach". It is further said that to make such a finding would "set a most chilling and dangerous precedent", given the

importance of being able to freely report or challenge any manifestation of potential abuse involving young players in sport. It was pointed out that the FA had failed to provide any examples of cases where the type of words used would amount to abusive and/or insulting language. Mr Mangan was in a rush and was understandably concerned about the filming behind the home dressing room.

43. We consider that the words were clearly and objectively abusive and insulting. Mr Mangan was a member of the management team and accordingly in a position of responsibility. Mr Rose was visiting the club in a professional capacity. Mr Rose should not have been subject to a personal attack of this kind – even in the football context relied upon by Mr Mangan.
44. As to the supposed “chilling effect”, concerns about abuse can, and should, be investigated in a professional manner and without recourse to insults.

**Did the Admitted Words make an implied reference to sexual orientation?**

45. The FA submitted that underlying the allegation of “Peeping Tom” was an insinuation that Mr Rose had a sexual interest in men, and that Mr Mangan had “slipped into a well-established trope that conflates homosexuality with paedophilia”. It explained that it did not contend that an allegation of paedophilia would be a reference to sexual orientation.
46. In the course of cross examination, Mr Mangan sought to resist the suggestion that the language used was an allegation of a sexual nature against Mr Rose. He insisted that the language used was broader and less specific.
47. We note, however, that in his initial account of the incident he volunteered that he had asked Mr Rose if was a paedophile – albeit before he was shown the video. Neither the FA nor Mr Rose asserts that the word “paedophile” was used. Nevertheless, we consider it was informative as to the gist of what was said and that this was Mr Mangan’s recollection.
48. In his closing submissions, Mr Mangan contended that “any reference to sexual activity had the meaning that AM admitted, a concern about CR filming minors, not about being gay.”

49. We consider that taken together, the Admitted Words amount to an allegation of sexual impropriety. In particular, the threat to “check your computer”, carried the implication that improper images might be found there. There was not, however a sufficiently clear implied reference to sexual orientation to make out the element of aggravation relied on by the FA.

### **Sanction**

50. We accordingly conclude that the FA has established the charge of misconduct in breach of Rule E3.1, but not the allegation of aggravated breach pursuant to rule E3.2. As a consequence, the FA Disciplinary Regulations do not impose any minimum sanction. The FA made no specific submissions as to the appropriate level of sanction in the event of a finding of breach Rule E3.1 only. Mr Mangan argued that in those circumstances the sanction should be a warning and reprimand.

51. We consider that the Admitted Words were clearly abusive and insulting and whilst a reprimand and warning as to future conduct are appropriate, they are not a sufficient sanction. The breach was aggravated by Mr Mangan’s position of responsibility as a First Team coach. We do not accept that Mr Mangan’s concerns at the time provide mitigation. The incident was not of the most serious kind, however.

52. We were supplied with information as to Mr Mangan’s football income which it also took into account.

53. Having regard to all the circumstances of this case, we impose the following sanctions upon Mr Mangan:

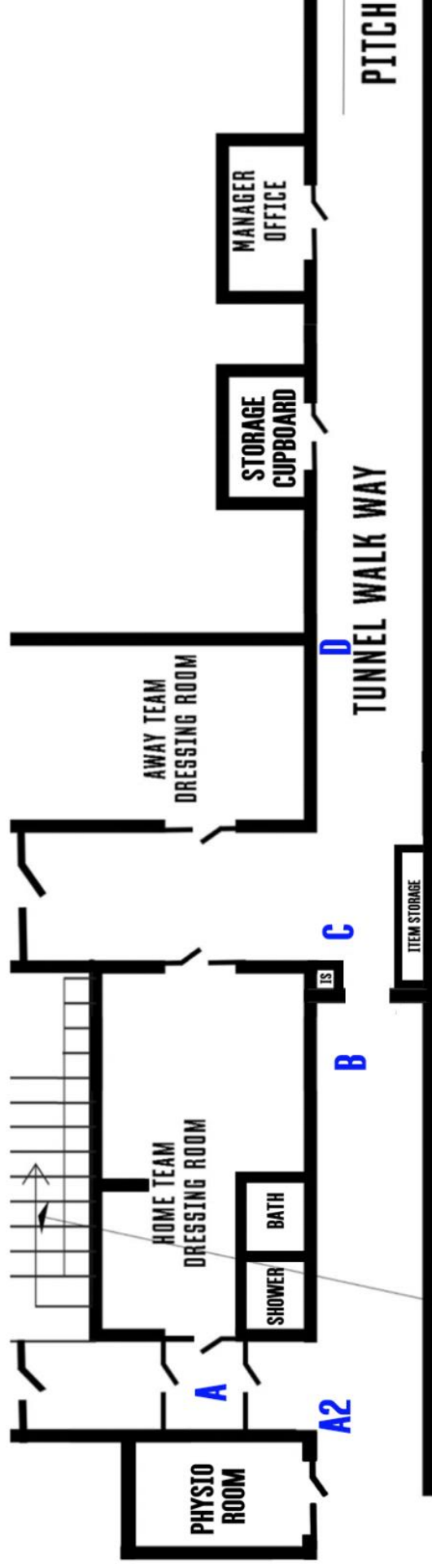
- a. A reprimand and warning as to Mr Mangan’s future conduct.
- b. A fine of £1200.
- c. A contribution of £300 towards the costs of the Regulatory Commission, reflecting the Commission’s decision to uphold the charge in part.

Tim Ward KC  
22 September 2023

Signed on behalf of the Regulatory Commission

# ANNEX 1

EXTERNAL ENTRANCE  
TO STAIRWELL



STAIRWELL TO CLASSROOMS  
AND MEDIA AREA