

IN THE MATTER OF AN APPEAL BOARD HEARING

BETWEEN

THE FOOTBALL ASSOCIATION

and

CALLUM MONAGHAN

**WRITTEN REASONS AND DECISION OF THE APPEAL BOARD HEARING HELD ON 22
FEBRUARY 2023**

- 1) These are the written reasons for a decision made by an Appeal Board (the “Board”) which sat via videoconference on 22 February 2023.
- 2) The Appeal Board was appointed to determine an appeal brought by The FA (the “Appellant”) against a decision imposed by a Commission in a case against Mr Callum Monaghan (the “Respondent”). The members of the Appeal Board were Ms Laura McCallum (acting as Chair and Independent Legal Panel Member), John Murphy (Independent Legal Panel Member) and Marvin Robinson (Independent Football Panel Member).
- 3) Mr Conrad Gibbons of the FA Judicial Services Department acted as Secretary to the Appeal Board.
- 4) The following is a summary of the principal issues and matters considered by the Appeal Board. It does not purport to contain reference to all the issues or matters considered, and the absence in these reasons of reference to any particular point or submission made by any party should not be read as implying that it was not taken into consideration. For the avoidance of doubt, all the evidence and materials provided to the Appeal Board by both parties was taken into consideration during our deliberations.

Background

- 5) By letter dated 22 November 2022, the Respondent was charged following an allegation that he had breached FA Rule E3.1 in that he failed to comply with the rules and regulations of the Football Association by using abusive and/or indecent and/or insulting language when he called a female member of staff (of opponent club) a “*slag*” (Charge 1). It was further alleged that that charge amounted to an aggravated breach because it included a reference to a protected characteristic under FA Rule E3.2, namely gender (Charge 2).
- 6) On 23 November 2022, the Respondent responded to the charges to indicate that it was his intention to plead not guilty to some or all of the charges. The Respondent requested that the matter be determined by way of a non-personal hearing (‘on the papers’ only).
- 7) The Respondent subsequently accepted Charge 1 – namely that he directed the phrase “*you slag*” to a female member of staff (of opponent club) – but denied Charge 2 in that he disagreed that the phrase “*you slag*” contained a reference to a protected characteristic (namely gender) under FA Rule E3.2.
- 8) At the first instance Disciplinary Hearing, the Commission was provided with the following documents as relied upon by the BCFA in pursuing the Charge:
 - a) Extraordinary incident report relating to a Misconduct Report by Mr Richard Wood, the referee, dated 29 October 2022;
 - b) Email from Jim Conneen, Secretary for Shortwood United, dated 29 October 2022 and sent to Mr Brian King and Mr Chris Lucker of Gloucestershire FA;
 - c) Statement by Mr Cuneen, Secretary for Shortwood United, dated 09 November 2022;
 - d) Statement by the Subject of the remark, dated 12 November 2022;
 - e) Statement by Mr Ian Soule (“Mr Soule”), Manager for Shortwood United, dated 13 November 2022; and

- f) Statement by Mr Ethan Gilson-Clarke, Player for Shortwood United, dated 15 November 2022.
- 9) The Commission was also provided with the following documents as relied upon by the Respondent in his defence of Charge 2:
- a) Email from Mr Chris Stephens, Secretary for Stratford Town FC United, dated 11 November 2022 sent to Ms Jemma Edwards of BCFA;
 - b) Statement by Mr Monaghan, the Respondent, and Player for Stratford Town FC, all dated 22 November 2022; and
 - c) Statement by Mr Stephen Sykes, Chairman for Stratford Town FC, dated 22 November 2022.
- 10) Having noted that the Respondent admitted to calling a female member of staff a “slag” but expressly denied the reference to relate to gender, the Commission was tasked with determining its own interpretation of the term. It stated as follows:

“The word “slag” is an offensive term used to describe a promiscuous woman, but also used against a man, although with less frequency. Bearing this in mind, it was the opinion of the Commission that said term does not entail a reference to one’s gender but rather to one’s behaviour, i.e. acting in a promiscuous way”

Having determined that the term related to behaviour rather than any one particular gender, the Commission found, on the balance of probabilities, that Charge 2 in particular was not proven. The Respondent was sanctioned with a two-match suspension and a £30 fine (due to admitting Charge 1) (the ‘Decision’). This Decision was communicated on 15 December 2022.

The Appeal

The Appellant’s case

- 11) The Appellant lodged their appeal against the Decision on 20 January 2023 on the ground that the Commission came to a decision which no reasonable body could have come.
- 12) The Appellant submitted that the Commission’s reasoning (at paragraph 10 above) was unsound and led the Commission to reach a decision to which no reasonable body could have come.
- 13) The Appellant contended that the word “slag” is irrefutably a derogatory term that is predominantly directed towards females. The Appellant referred to the dictionary definition of the noun which includes “a woman who has many casual sexual encounters or relationships”.
- 14) The Appellant argued that the Commission were aware that the word “slag” is an offensive term used to describe a promiscuous woman (an understanding that is in accordance with the dictionary definition). That being so, the Commission should have found Charge 2 proven. However, the Commission thereafter fell into error when it started to consider that

the word “*slag*” could also be used against a man (even if such use is less common). The Appellant stated that the Commission misdirected itself when forming this opinion.

- 15) Furthermore, the Appellant stressed that even if it were accepted that the word “*slag*” may be used against people of different genders, the consequence of that cannot be to deprive the word of its inherent and most commonly understood meaning. If such an approach were to be adopted, logic dictates that any offensive word referencing any protected characteristics could never aggravate a breach of FA Rule E3.1 simply because the particular offensive word is thought to also be used against persons not possessing that characteristic. It is a fact that any word can be used against any person, but that cannot serve to strip the word of its well established and long-standing meaning.
- 16) The Appellant submitted that calling a woman a “*slag*” is inextricably linked to gender. The fact that the word (like any word) may be used against a man (although in this case it was not) cannot extinguish the inherent reference to gender.
- 17) The Commission were asked to consider the case of *The FA v Alan McCormack 2016*. In that case, the FA alleged that Mr McCormack used abusive and/or insulting words towards a match official contrary to Rule E3(1) when he called her a “*fucking slut*”. It was further alleged that this breach of Rule E3 was an Aggravated Breach due to the word “*slut*” containing a reference to gender. The Commission, in that matter, were “wholly satisfied” that the comment made reference to gender. The FA, in the present case, submitted that there was no material difference between the words “*slag*” and “*slut*” nor the context within which they were used by the Respondent in this case and Mr McCormack. The FA referred to the dictionary definition of the word “*slut*” which reads: “*a woman who has many casual sexual partners.*” The Appellant invited us to adopt and apply the interpretation given to the word “*slut*”, by the Commission in the case of *The FA v Alan McCormack 2016*.
- 18) Additionally, the FA referred to us the case of *The FA v Rio Ferdinand (Queens Park Rangers) 2014*. This case involved an alleged breach of FA Rule E3(1) that was further alleged to be an Aggravated Breach as defined in Rule E3(2) as it included reference to gender. It was alleged that Mr Ferdinand made certain comments via Twitter, including the word “*skef*”. Expert evidence was adduced confirming that the word meant “*a promiscuous and/or disreputable female. A term used by young street-gang members in London since around 2000.*” The Commission, in that case, considered that “*the word in almost every case cited refers to the female gender, and in this instance follows closely on from a reference to a mother.*” It was concluded that the word contained “*a clear reference to gender*” and thus the Commission the breach to be proven and aggravated. The Appellant stressed that in the present case and the cases of *McCormack* and *Ferdinand*, all comments were directed towards women.
- 19) The Birmingham County FA provided written support of the Appellant’s case.

The Respondent’s case

- 20) In response to the Appellant’s case, the Respondent re-iterated that he had apologised and had offered to undergo a course of education. The Respondent has been educated by his Club’s Welfare Officer and warned as to future conduct. There were no further submissions from the Respondent.

Decision of the Appeal Board

- 21) The Appeal Board reminded itself of the limitations on an appeal before it. It is not permitted to effectively rehear the matter and provide the Appellant with a '*second bite of the cherry*'. The Appeal takes the form of a review of the original decision, based on the documents that were originally before the Commission, and any new information permitted under Regulation 10.
- 22) The Appeal Board carefully considered all submissions lodged by the parties in determining the appeal and any level of sanction that should be imposed.
- 23) The Appellant appeals on the ground that no reasonable body could have come to the decision that the Commission came to. The Appeal Board reminded itself of the *Wednesbury* test in this regard - that is that we must find that the decision is so unreasonable in that it is irrational and that no reasonable body could have come to it. It is not enough for this Appeal Board to find it unreasonable because we may have come to a different decision (that is an entirely different matter altogether), we must be satisfied that given the decision's level of unreasonableness **no** body acting reasonably could have possibly arrived at the same decision.
- 24) In assessing the level of unreasonableness, the Appeal Board considered the dictionary definition of the term "slag" as well as that of the reasonable person. We unanimously agreed with the dictionary definition and discussed our own understanding of the word and its inherent reference to gender, namely female.
- 25) Whilst we agreed that the word "slag" may, on occasion, be directed at a man (and usually in different fashion), we are of the view that it is done so far less commonly but, in any event, we found this particular line of reasoning to be weak because, in the case before us, the word was directed at a female member of staff not a man. Thus, the ordinary meaning behind the word has even more importance and relevance, in our opinion, when context is taken into account.
- 26) We agree with the opinions in both *McCormack* and *Ferdinand* whereby there need not be complete exclusivity to the use of a term against one gender or the other to find that its inherent use is more closely related to one particular gender – in this case, the female gender.
- 27) We are wholly satisfied that the term "slag" refers to the female gender in describing a promiscuous woman or a woman who has many sexual partners. We firmly believe that this definition is most commonly understood to the ordinary person on the street and it also accords with the dictionary meaning. On that basis, we are of the view that the decision reached at first instance is one that no other reasonable body could have come to.
- 28) To conclude, having considered the grounds of appeal, the Appeal Board unanimously upheld the appeal for the reasons we have articulated.
- 29) When deliberating on the sanction in this matter, the Appeal Board considered any mitigation that was put forward by the player at first instance. However, we considered any mitigation available to the Player to be limited to an apology and offer to attend a course of education (a provision of which is mandatory for aggravated breaches of this nature).

30) At a time when we are trying to encourage more female participation across all roles within the game, we believe there is a strong need to protect females working in football against derogatory language and opinions such as that which was directed in this case. On that basis, the Appeal Board imposes a six (6) match suspension (of which two matches have already been served) and orders that the Respondent attend a mandatory course of education.

31) The Appeal Board's decision is final and binding on all parties.

Appeal Board

Ms Laura McCallum (Chair)

John Murphy

Marvin Robinson

10 March 2023