

BEFORE A FOOTBALL ASSOCIATION

REGULATORY COMMISSION

THE FOOTBALL ASSOCIATION

-V-

DANIEL SENDA

WRITTEN REASONS ON SANCTION

Introduction

1. Daniel Senda (DS) admitted two charges and requested a paper hearing.

Consequently, the panel was required only to determine sanction and the matter was heard by a virtual meeting of the Regulatory Commission on the evening of the 11 December 2023. No oral representations were received from either party. The RC consisted of;

Jane Bickerstaff KC – Chair

Laura McCallum

Martin Hill

Paddy McCormack acted as secretary to the panel.

2. The panel was provided with the following documents;
 - a. The file of the FA investigation, including a number of witness statements and the record of DS interview with the FA on 26.7.23
 - b. Witness statements from Complainant A and Complainant B
 - c. Further statements from Complainant A and Complainant B in relation to the aftermath of the incidents and the effects on them
 - d. The reply documentation from DS, including mitigation, a personal statement and a number of character references
 - e. The FA's submissions on sanction, including the case of *FA v Jurgen Klopp*
 - f. Further observations from DS on the FA's submissions

The Charges

3. The charges related to two breaches of FA Rule E3.1 in respect of DS's conduct on a course in June 2023.

The charges were as follows:

Charge 1

It is alleged that your words and/or behaviour towards Complainant A on the relevant evening and night in June 2023 was improper and/or indecent and/or insulting, contrary to FA Rule E3.1.

Charge 2

It is alleged that your words and/or behaviour towards Complainant B on the relevant evening and night in June 2023 was improper and/or indecent and/or insulting, contrary to FA Rule E3.1.

4. Rule FA E3.1 states:

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.

The Facts

5. In June 2023, DS travelled with a cohort of coaches who were all taking part in a course. The course participants included Complainant A and Complainant B.
6. On the evening in June 2023, DS went to socialise at a local bar with a number of other participants on the course. DS states that he remembers consuming alcohol whilst at the bar. Complainant A and Complainant B arrived at the bar with a small group of others some time after DS. Neither Complainant A nor Complainant B knew DS prior to studying on the course, and neither of them had spent any time with him on the course outside of group discussions.
7. Complainant A states that at some point after arriving at the bar, DS approached her and pulled her towards him. DS then proceeded to put his left arm around the back of her right shoulder and put his other hand down the front of her shorts. He placed his hand inside of her shorts "*roughly up to the palm of his hand*" so that his fingers were also inside her shorts.

8. Complainant A pushed DS's arm away and said, "*what the fuck are you doing?*". DS responded by putting one hand on Complainant A's back and the other on her arm and said, "*you're fucking coming back to my room*". Complainant A responded by saying "*No I'm fucking not*" and removed his arms from hers.
9. It is clear from what Complainant A describes that DS perpetrated a criminal, sexual assault on her. His motivation is clear, not only because of the obviously intimate area that he chose to touch, but also because of the words spoken.
10. Complainant A describes herself as being shocked and stunned by DS's actions. She asked if she could sit with a colleague who she recognised on the course to make sure she was safe, and then explained to them what had happened. Two other colleagues approached Complainant A to ask whether she was ok. Complainant A began to cry and stood up to leave to avoid others seeing her upset.
11. As Complainant A stood up to leave, she saw DS "*grab hold of*" Complainant B and place his arms around her. Complainant B describes this same incident. She said she felt someone's hands come from behind her, rest upon her chest and place one hand on each of her breasts. She turned around and saw that it was DS; his face was very close to hers and he said words to the effect of "*you're coming back to mine tonight*". Complainant B walked away from DS, and followed Complainant A who she spotted leaving the bar.

12. It is clear from what Complainant B describes that DS also perpetrated a criminal, sexual assault on her. Again, his motivation is clear, not only because of the obviously intimate area that he chose to touch, but also because of the words spoken.
13. Complainant A and Complainant B walked back to the hotel together, with two other colleagues and discussed what had happened. On arriving back at the hotel, Complainant A and Complainant B attempted to contact their course tutors to make them aware of what happened, but they were unable to get through.
14. The following morning, both Complainant A and Complainant B reported the two incidents to one of the course tutors who escalated the matter to the lead tutor. DS was then spoken to by the course tutors and was asked to leave the course and return home. DS requested to meet with Complainant A and Complainant B to apologise for his actions, which he did. All parties described being upset and emotional during the apology. DS flew back home later that day.
15. Complainant A and Complainant B made formal complaints to The FA following the incident. DS was interviewed by The FA on 26 July 2023. He stated he had no recollection of committing the offences, which he ascribed to his consumption of alcohol, but did not deny committing them. DS continues to maintain that he has no recollection of the events.
16. Complainant A and Complainant B were asked whether they wished to report the matter to the police and stated that they did not. However, due to the incident taking

place abroad, the UK authorities would have had no jurisdiction over the incident in any event.

17. Both Complainant A and Complainant B have provided further statements detailing the impact of the incidents on them.

18. Complainant A describes feeling a sense of guilt for reporting the incident and says she feels there are still issues for women in football in many areas of the game. She states that she felt she had to earn the respect of her male counterparts on the course and believed she had done so. She says she told DS during his apology that she had never been made to feel as bad as he had made her feel in her entire career. She also expressed concern about the impact that reporting the incident might have on her future career prospects.

19. With respect to the apology, Complainant A states she felt '*railroaded*' into this, and it made her feel worse. She says she felt the apology was focused on DS and the impact on him, as opposed to her and Complainant B.

20. DS submits that both women accepted his apology. He advances this as part of his mitigation. Complainant A does not agree with DS's assertion that she accepted his apology and recognised that this was 'out of character' for him.

21. Complainant B also expressed feeling concerned about the impact that reporting the incident might have on her future career, as well as how other people in the game might perceive her.
22. She states that there were only 3 females on the course (including her and Complainant A), and that at the time of the incident, the other female was not present. Complainant B states that she feels it is important for her to report the incident so that this does not happen to anyone else, and so that other women in the game feel safe in a male-dominated environment.
23. Complainant B also describes DS's apology as causing her to feel sorry for him rather than concerned for herself. She states that she didn't accept the apology for what had happened but appreciated the apology gesture.
24. Although the panel accepts that this was not DS's intention, the apology (a situation both women felt forced into) seems to have worsened the impact of DS's actions.

The Panel's Assessment

25. The RC considered that these were breaches of the utmost seriousness. As already observed, they amounted to the commission of criminal offences that could never be condoned or tolerated in any environment. There was not one, but two offences, that were very publicly perpetrated, one after the other, on the only two women who were present in an otherwise all male environment. This was a professional event, in which all participants were there on equal merit, to advance and improve

their skills in the workplace. Complainant A and Complainant B were singled out by DS precisely because they were the only women present, and therefore suffered his unwanted attentions in a way that would never have happened to a male colleague.

26. The effect of this on the two women concerned is all too evident. Initially they were shocked and upset. This was closely followed by embarrassment at others having witnessed what happened and at others seeing that a normally composed professional colleague was reduced to tears. Both report a sense of guilt for reporting the matter and a concern about the effects of reporting on their own future career prospects. Finally, there is a fear of how they will be perceived by others, even though they have done nothing. The entire process left one woman feeling that she had “never been made to feel as bad in an entire career”. The RC was conscious that these effects will no doubt persist into the future for Complainant A and Complainant B.

The Mitigation

27. DS advanced three areas of mitigation

- a. His acknowledgement of wrongdoing including his early apology and his admission on the papers
- b. His character and the fact that this behaviour was out of character
- c. Personal mitigation that may explain (but not excuse) his behaviour

28. The RC considered in turn the effect of each of these matters.

29. The most powerful mitigation on behalf of DS was his early admission and guilty pleas. Although his apology was in fact not well received by Complainant A and Complainant B, the panel accepted that it was well intentioned, and most importantly, it signalled to the two victims, from an early stage, that their word was not being called into question and they would be unlikely to have to relive events through the process of giving evidence. The panel noted that DS had followed up the apology with an admission on the papers and no requirement for an oral hearing. The panel felt that this demonstrated his remorse to best effect and was sure that this would have been appreciated by all concerned, particularly Complainant A and Complainant B.

30. The panel noted that DS had a clean disciplinary history. A number of character references were provided although all were related to performance at work in the coaching environment and none referenced his attitude or behaviour towards women. It was noteworthy that none referenced a knowledge of the details of these offences, such as to be able to comment with authority that this was out of character. None the less, the panel noted that no previous complaints of any nature had ever been made against DS despite his having worked within football for many years.

31. The panel read a lengthy statement from DS in regard to his personal and family circumstances. We agreed with the FA submissions that this could never provide any form of excuse for what happened and indeed could see no logical factual nexus from those circumstances to explain DS's behaviour. At its highest, it seemed to the panel to be DS explaining why it was that he let his hair down that night and drank

too much alcohol. DS has always maintained that he has no recollection of his actions towards Complainant A or Complainant B. His explanation for such memory loss can only be related to the amount of alcohol he had consumed. The panel did not view his drunkenness as mitigation, but rather as aggravation. Both Complainant A and Complainant B had also consumed some alcohol that night. Any attendee at the course should feel able to relax at the end of a hard day without concern that another delegate will drink so much that they will behave in this disgraceful manner and then seek to blame alcohol for their actions.

The Appropriate Sanction

32. There are no standard penalties or sanction guidelines for a breach of FA Rule E3.1.

33. Whilst there are separate offences and guidelines in existence for Aggravated Breaches and Discrimination, no such offences or guidelines exist in respect of sexual offences/assaults. The RC did take note of the recent suspension for a period of 3 years, imposed upon Luis Rubiales. The RC noted that his conduct was arguably not as serious as the instant case, and involved only 1 victim, but equally, it was perpetrated by a very high profile individual in football, and on the most public of stages. The case provided some context for the sanction in this case, but was not determinative.

34. Regulation 41 of the Disciplinary Regulations provides the Commission with the power to impose any one or more of the following sanctions:

- *a reprimand and/or warning as to future conduct;*
- *a fine;*
- *suspension from all or any specified football activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of matches;*
- *such further or other penalty or order as it considers appropriate.*

35. The RC was unanimous that the only appropriate sanction in a case of this nature and seriousness was an immediate suspension from all or any football related activity. The panel's discussions were focussed around the length of such a suspension.

36. The FA submitted that there should be an element of deterrence in the sanction imposed. Their submissions in writing to the panel included the following;

"The FA submits that DS's conduct is so serious that an immediate suspension from all football and football activity is necessary. This is necessary both to mark the seriousness of the breach, and to serve as a deterrent.

Women deserve to be involved in professional football without the threat or fear of any form of abuse. Football is for all; however, incidents such as this set the whole game back in terms of its progression and inclusivity. In those circumstances a deterrent sanction is also necessary. As stated at paragraph 40 in *The FA v Klopp*:

... a Regulatory Commission is entitled to have regard to issues of deterrence as a legitimate sanctioning objective (along with other legitimate sanctioning objectives such as punishment of the offender and wider issues such as protecting/preventing harm to the integrity, reputation and image of the game) if it considers the same to be relevant.

In considering any deterrent sanction a Commission must ensure that the overall sanction remains proportionate.

In determining the appropriate sanction, the Commission shall have due regard to the circumstances and seriousness of the incident, taking into account the relevant aggravating and mitigating factors.”

37. The RC accepted these submissions. We had read, and carefully considered, the ruling in *Klopp* and were mindful that even including a deterrent element, the overall length of sanction must remain proportionate.

38. Taking into account all the matters outlined, the RC determined that an appropriate suspension in this case would have been a period of 6 years, but allowing the fullest credit to DS for his early admission of his wrongdoing, which he continued with his admission by correspondence, the length of suspension is reduced to 4 years.

39. Regulation 56 of the FA Handbook 2023/2024 states; “Unless the Regulatory Commission determines otherwise, a penalty or order shall come into effect immediately at the date of the notification of the decision.”

40. The sanction is therefore a suspension from all or any football related activity for a period of 4 years from the date of notification of the sanction.

Jane Bickerstaff KC

14th December 2023

Updated: 3rd January 2024