

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

PROCEEDINGS BETWEEN:

THE FOOTBALL ASSOCIATION

And

MR EVANGELOS MARINAKIS

**WRITTEN REASONS OF
THE INDEPENDENT REGULATORY COMMISSION**

Regulatory Commission: Dominic Adamson KC (Chairman)

Bradley Pritchard

Mick Kearns

Secretary to Commission Paddy McCormack

Date: 14 October 2024

Hearing Format: Paper Hearing

Introduction

1. These are the written reasons for a decision made by an Independent Regulatory Commission which sat on 14 October 2024.
2. By a letter dated 30 September 2024 Mr Evangelos Marinakis (EM) was charged with a breach of FA Rule 3.1 in respect of an incident which occurred at the conclusion of a match between Nottingham Forest FC and Fulham FC on 28 September 2024.
3. It is alleged that in or around the tunnel area following the end of the fixture his behaviour was improper. The essence of the allegation is that EM spat on the floor as the match officials walked past him after the match.

4. On 7 October 2024 EM responded to the charge. He denied the charge. He elected a paper hearing.
5. EM is the owner of Nottingham Forest FC.

Preliminary Matters

6. EM has advanced two preliminary arguments which we must deal with first:-
 - a. First, it is contended that the defence case has been prejudiced by the FA's failure to seek preliminary observations from EM before the charge was brought. It is suggested that there is '*no apparent reason...for this departure from usual practice in cases of this nature*'. This failure has prejudiced EM's ability to defend the case. It is suggested that EM has been deprived of the opportunity to obtain footage which might exonerate EM from the broadcaster Sky because its footage has not been retained.
 - b. Secondly, it is contended that the FA should not be permitted to rely on the further evidence contained within a press article which was served following EM's denial of the charge.
7. Turning to the first submission. Regulation 5 of the Disciplinary Regulations Fast Track 2 which is headed 'Observations' (p.247 of the 2024/25 Rules) states:

"In certain cases, particularly those concerning media comments, as a preliminary step a Participant may be required by the Association to provide their observations".
8. Accordingly, regulation 5 allows the FA, in its discretion, to consult a Participant and seek their observations on as a preliminary step before making a decision on whether there is a case to answer. It is not required to do so as a matter of course.
9. One can understand how such observations could be of importance in determining whether a breach has occurred and whether a charge should be brought in certain circumstances. For example, in cases which concern media comments, it is possible that further context is required in order to understand the comments made. For

example, there may have been a language barrier or a misunderstanding which could be relevant to the FA's assessment of the conduct depending on the nature of the words used.

10. In this instance, at the time the FA decided to charge EM, it was in possession of evidence from multiple sources that EM spat on the floor next to the referee as they walked through the tunnel. We do not think in such circumstances it was obliged to seek EM's observations in those circumstances.
11. In our view the Disciplinary Regulations afford the FA a wide discretion to proceed, without seeking observations. Accordingly, we do not think there was any procedural impropriety on the part of the FA in this case. We reject the assertion that the FA was obliged to consult EM for his observations before proceeding to charge EM for a breach of rule 3.1.
12. For the avoidance of doubt, we do not accept that EM has been irredeemably prejudiced by this failure to seek his observations prior to the charge. We do not know whether and, if so, what footage might have been available and what it would have revealed. But its absence does not prevent EM from providing his account and advancing his case. The suggestion that he has been prejudiced by the absence of this evidence is speculative. EM knows the nature of the charge. He has had an opportunity to present his evidence.
13. We observe that the Commission has been furnished with ample evidence. Not only does the Commission have EM's statement and the evidence of the four match officials it also has the footage from the Nottingham Forest CCTV system which shows a view of the corridor which runs off the tunnel. This footage was produced by Craig North, the Head of Procurement and Estates at the Club. Many Regulatory Commission cases proceed where no video evidence is available.
14. Accordingly, we are satisfied that EM has not been prejudiced. We are well placed to assess the evidence and reach a safe conclusion on the key issue in the case, namely, whether EM spat on the floor as the referee walked past him.

15. We now turn to the second preliminary submission. On Friday 11 October 2024 the Commission gave permission for EM to provide further written submissions in response to further material which had been served by the FA in support of the charge. EM provided those submissions in accordance with the direction we issued.

16. The supplemental submissions which are to be found at page 54 of our bundle make the following points:-

- a. The FA responded to EM's denial of charge (and supporting evidence) by serving further statements and a press article.
- b. Although it was accepted that the FA was entitled to respond pursuant to regulation 19 Fast Track 2 (page 249 of the 2024/25 handbook; see paragraph 3 of the supplementary submissions) EM argues that it was impermissible for the FA to submit evidence which was available to them before the charge was issued pursuant to rule 6.
- c. Although the rules permit the Commission to deviate from standard practice in the interests of securing a just and fair result, it is submitted that they do not permit the FA to '*hold back their best point (or one they were aware of at the time of the charge) in an ambush of a Participant*' to secure an unfair tactical advantage.
- d. The material of concern was a press report in a newspaper which quoted an unnamed '*senior Forest source*' criticising the standard of refereeing.
- e. The Commission should not entertain the press report as evidence against EM.

17. We pause to observe that EM is correct that rule 6 states a charge "*shall be accompanied by all evidence, documents and written submissions on which the FA intends to rely*" (p.247 of the 2024/25 handbook).

18. The FA's Reply to EM's case asserts that it should be read "*in conjunction with the further observations provided by the Match Officials and an article published [...] following the fixture*" (see paragraph 5 of the FA's Reply).

19. The newspaper article was published shortly after the match and before EM was charged. As noted above it quotes a senior source at the Club as follows:-

“The standard of refereeing is destroying the status of the Premier League and damaging its clubs. There appears to be no consistency of decision-making from VAR. There still isn’t sufficient transparency in the VAR process. It’s the fans who suffer too. VAR was intended to improve the game for clubs and supporters alike, but it’s failing them at the moment.”

20. The article suggests that EM was ‘*understood to be angered after Forest’s latest brush with referees*’. FA assert that it is entirely reasonable to infer that the owner of the Club would likely share those frustrations put on record by a senior source at the Club.
21. We do not know whether the FA was aware of the article at the time it issued the charge. The FA does not address this issue in its written submissions in Reply. In our view, if the article was in the FA’s possession and they wished to rely upon it as part of their case the FA ought to have served it with the Charge given the language of rule 6. No explanation has been provided as to why it was not provided at that time.
22. In its written submission, it states that the information contained in the article is relevant to the context of the fixture. In our view, the FA is plainly seeking to imply that this context could explain why EM spat on the ground as the referee walked past him as alleged.
23. In our judgement the FA should not be permitted to rely on the Press Article. No explanation has been provided as to why this was not served in conjunction with the original charge. In our view it ought to have supplied ‘*all evidence*’ on which it intended to rely when it served the charge. This information was plainly available at that time.
24. Additionally, in our view, in terms of ensuring that these proceedings are conducted fairly we do not consider that the Commission can fairly attach any weight to this evidence. In our judgment a quote from an unnamed source, at best, is of limited evidential value having regard to the core issue in the case which concerns whether EM spat on the floor as alleged. It is evidence that cannot be tested by EM. In our view it would not be safe to use this evidence to imply some animus on the part of EM towards the match officials. Whilst we do not accept the suggestion that the FA was attempting

to ‘ambush’ EM by holding back its ‘best point’ we do agree with EM that the FA should not be permitted to rely upon this evidence.

25. In all the circumstances, we exercise our discretion to disregard the article. We have taken no account of it in reaching our decision remaining evidence before us.

The Rules

26. FA Rule E3 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.”

Evidence

27. In support of the charge the FA has supplied the following evidence:-

- a. An Extraordinary Incident Report prepared on 29 September 2024 (i.e. the day after the match) prepared by the referee, Josh Smith, who states:-

“As I walked down the tunnel at the end of the match, Mr Evangelos Marinakis, the owner of Nottingham Forest was stood on my left hand side at the end of the tunnel. As I walked past him, he spat on the floor next to my left foot. This was also seen by James Mainwaring and Tim Robinson.”

- b. An Extraordinary Incident Report prepared on 30 September 2024 prepared by Tim Robinson, the fourth official, who states:-

“At the end of the match, as the 4th official I walked up the tunnel to monitor players and staff as they went to their respected changing rooms. As I got to the tunnel I could see Mr Evangelos Marinakis the owner of Nottingham Forest FC standing at the top of the tunnel, I walked past him and went to put the spare equipment into the match officials changing room. I then came back out to continue monitoring the tunnel area and witnessed Mr Evangelos Marinakis

making a spitting action as the match officials walked past him. All the match officials at this point then entered the match officials changing room.”

- c. An e-mail from James Mainwaring, assistant referee, dated 30 September 2024 who states:

“At the end of the game, myself, Josh Smith (referee) and Neil Davies (assistant referee) were walking up the tunnel towards our changing room. The fourth official, Tim Robinson, was already at the top of the tunnel in the corridor.

*At the top of the tunnel, on our left-hand side, Mr Marinakis was stood. **He did not say anything but as we approached him and was close, he spat on the ground in front of us.”***

- d. An e-mail from Neil Davies, assistant referee, dated 30 September 2024 who states:

“At the end of the game, I left the field of play, along with my colleagues Josh and James. Tim, the 4th official, had entered the tunnel area before us. There were a number of players and other team officials in the tunnel at the same time.

*I was behind the referee, and followed him down the tunnel. We turned right at the end of the tunnel, towards our changing room, and closed the door. **When we entered, Josh then told me that Mr Marinakis had spat on the floor in his direction as he walked past him.***

*I can confirm that Mr Marinakis stood on our left hand side, in front of the home team changing room door, as we turned right towards our changing room. **I did not witness the reported spitting incident.”***

28. In response to the charge we have been provided the following written submissions and the following evidence in response to the charge:

- a. A statement from EM;

- b. A statement from Craig North (Head of Estates at the Club).
- c. Still photographs of the location of the incident.

29. In the witness statement from EM dated 7 October 2024 he states:-

- a. He smokes 2 or 3 cigars a day. He often needs to expectorate and/or coughs. His coughs contain phlegm.
- b. If he has to spit, he spits in a tissue if one is available or on the floor if he does not have one available. Sometimes when he coughs spit or phlegm can go to the floor.
- c. On the day of the incident he was suffering from a hacking cough. He was taking lozenges.
- d. As the officials approached he felt a cough coming and he coughed on the floor, down and to his right which was away from the path the officials were taking. He did not speak to the officials.
- e. He cannot now remember if any spittle left his mouth but if it did (and he does not challenge that some might well have done) it certainly was not aimed at the referee's feet and did not hit anybody.
- f. He fails to see how coughing (where spit or phlegm can come out from any person) towards the floor in a relatively crowded tunnel is misconduct.

30. We have reviewed Mr North's statement. He annexes images of the tunnel area. He attaches a short video of footage of the tunnel from the security camera system in place at the ground. He also explains that enquiries have been made with Sky Sports and any footage that existed has not been retained. He points out that a Sky Sports reporter Jonny Philips and a floor manager John Smart appear in the footage.

31. We have also been provided with further observations from the match officials who were asked to comment on EM's explanation for the incident:-

- a. Mr Smith states that he did not see EM cough when he was stood at the end of the tunnel.
- b. Mr Robinson did not see EM coughing previously whilst he was monitoring the staff enter the tunnel area.

- c. Mr Mainwaring states that EM's action "*was spitting not coughing and it was directly on the floor in front of us. No attempt was made to turn away from us.*"

32. We have viewed footage. We note as follows:-

- a. NNFC1 is a camera angle which is of the corridor which runs perpendicular to the tunnel.
- b. EM can be seen standing in the corridor at the end of the tunnel.
- c. Approximately, 15 seconds into the 21 second clip EM can be seen leaning forward and looking down.
- d. Almost immediately thereafter, 16 seconds into the clip the referee enters the corridor from the tunnel and turns right. He is followed by the other match officials.

The Key Factual Dispute

33. The key factual dispute which we have to resolve is whether EM spat on the floor towards the match officials or whether he expectorated because he had a '*hacking cough*' and/or because he is a regular smoker of cigars.

34. We are struck by the following:-

- a. In their initial accounts of the incident both Mr Smith (the referee) and Mr Mainwaring (the assistant referee) referred to EM spitting.
- b. If this conduct had been triggered by a cough, in our view, it is likely that they would not have regarded it as a significant event.
- c. Neither mentioned a cough. We think it is likely that this is because there was no such cough.
- d. Very shortly after the incident, Mr Smith told Mr Davies (the other assistant referee) that EM had spat on the floor in his direction. In our view this conversation – very shortly after the incident – supports the view that Mr Smith did consider that EM had spat on the floor as he walked towards and past EM.

35. We have reviewed the video footage. We are of the view that the footage does not support the suggestion that EM coughed. Typically, if someone was about to cough,

common decency demands that one covers one's mouth. We are sure that EM would have covered his mouth if he was about to cough as someone was approaching in the opposite direction. Alternatively, he could have turned away. In our view the footage does not suggest he turned away at all. We do not accept that the video is '*wholly consistent with the explanation of EM and is inconsistent with large parts of the evidence of the officials*' (see EM's Submissions paragraph 22). The video indicates that EM looked down. He does not turn to his right. On our assessment he does not appear to cough. In our view, the footage is consistent with the thrust of the allegation that EM spat on the floor as the referee walked by.

36. The match officials were asked to respond to EM's account. The gist of EM's account – namely that he had a cough – was put to each of them. Each rejected the account advanced by EM. Mr Mainwaring was particularly clear: EM was spitting not coughing and no attempt was made by EM to turn away.

37. EM invites the Commission to approach the further evidence from the match officials with caution (see paragraph 12 of the Supplemental Submissions). It is suggested that the summary of EM's account that the FA provided to the match officials '*did not fully reflect the case for EM*'. Each of Mr Smith, Mr Mainwaring and Mr Robinson was told as follows:-

"The basis of Mr Marinakis' denial [of the charge] is that he was suffering from a hacking cough on the day of the fixture and, as the Match Officials approached, he felt a cough coming and thus coughed on the floor, down and to his right, away from the path the Match Officials were taking. Whilst he accepts that phlegm or spittle may have been produced this was as a result of coughing."

38. In our view this was a sufficient and accurate reflection of the account provided by EM. We reject EM's criticism of it. The substance of the responses from Messrs Smith, Mainwaring and Robinson was consistent. They did not see EM cough. Together with their initial accounts, we conclude that Messrs Smith, Mainwaring and Robinson have been clear and consistent. Mr Smith and Mr Mainwaring clearly observed the spit. Mr Robinson observed a spitting action. We accept their evidence individually and collectively.

39. We are not persuaded by EM's attempt to identify inconsistencies between the accounts. The thrust of what the witnesses say is clear and consistent.
40. EM suggests that the absence of a visible reaction from the match officials is inconsistent with what – as a matter of basic common sense – one would expect if one had been spat at or towards. We do not accept that there is a uniform human reaction that one can expect. There is nothing inconsistent with the reactions of the officials and the allegation that has been made. Mr Smith did raise the conduct with Mr Daniels after they entered the match officials room. That was very shortly after the alleged conduct.
41. EM argues that there is no evidence that EM was aggressive or hostile even in demeanour at the time of the alleged conduct and that no-one else reacts (see paragraph 27 and 28 of his EM's initial submissions). The allegation against EM is not that he was aggressive or hostile. The allegation is that he spat. Such conduct does not have to be accompanied by aggression or hostility.
42. The absence of a visible reaction from other people in the tunnel is not determinative. We think it is most likely that those individuals did not see the spit given their positions. Those best placed to observe the conduct were the referee and the other match officials whose accounts we have considered and accept.
43. We would add one final observation, in its reply to the charge the FA sought to portray EM's denial of the charge as an attempt by EM to portray the match officials as having lied and/or concocted their accounts. This was not a helpful submission. It did not in our view reflect EM's original submission. At no stage has EM accused the match officials of lying or concocting their accounts.
44. Nevertheless, in conclusion, in our judgment we unhesitatingly reject EM's account that he spat or expectorated as a result of a cough. We are satisfied that he deliberately spat on the floor as the referee walked past him. Regrettably, we regard EM's attempt to explain and justify his conduct as completely implausible.

Does spitting on the floor in front of or next to a referee amount to misconduct?

45. In his initial submission EM suggested that:-

“It cannot amount to misconduct to spit on the floor to clear your throat, or for a cough to result in spit going to the floor. Players and coaches are seen, on live broadcasts viewed by millions around the globe, spitting on the floor or clearing their noses on countless occasions during games.”

46. This is not a convincing argument. We have rejected EM’s explanation that he coughed. Therefore, the premise on which his argument is advanced falls away. In any event, we would add that EM was not a player or a coach on or by the pitch who needed to clear his nose. He was standing in a corridor. We observe that it is curious – to say the least – that coaches find it necessary to spit in the circumstances highlighted by EM in his submission. Be that as it may, those are not the circumstances we are dealing with here and we say no more about it.

47. In our view, the only reasonable inference we can draw from our rejection of EM’s explanation for the spit is that EM deliberately spat in a disrespectful and disgusting display of contempt towards the match officials. In our view, there is no other credible explanation for his conduct. In the circumstances, it clearly amounts to misconduct within the meaning of Rule E3. Consequently, we found the charge proven.

Sanction

48. Regulation 12 of the Fast Track 2 Regulations states:

“Where a case is not designated as a Standard Case (a “non-Standard Case”), a Standard Penalty will not be offered and, where such a Charge is admitted or found proven, the Regulatory Commission shall have a discretion to impose such penalty as it considers appropriate.”

49. The FA submits that EM ought to be sanctioned by way of a sporting sanction and a financial penalty (see paragraph 35 of the FA’s Reply). The FA submit that the spitting was ‘entirely unprovoked’ and ‘no match official should be expected to tolerate such a flagrant display of disrespectful behaviour’. We agree.

50. The FA submit that a ground suspension for a minimum of four matches is appropriate in addition to a financial penalty commensurate with the seriousness of the charge and EM's position in the Club.
51. An egregious display of disrespectful behaviour such as this fuels disrespect towards match officials. We take account of the fact that the conduct was not on the field of play and so was not broadcast on television. However, this was not conduct triggered in the heat of the moment as a result of a decision on the field. It was after the game had ended. There is no excuse for it. EM's position as the owner of a football club aggravates the situation. His conduct was entirely unacceptable and deserving of a serious punishment. We also regard his implausible attempt to explain his conduct as aggravating.
52. There is very little mitigation available to EM. We are informed that EM has no previous breaches of misconduct. Accordingly, we take account of this fact.
53. As noted in the submissions of EM there is no minimum sanction which applies to this case. It is not a case of spitting on an official or an opponent. That would have been more serious but we still consider that this is serious misconduct. EM submits that the Commission is best placed to make a decision on the appropriate sanction unaided by a review of comparable cases. No specific decisions have been drawn to our attention by EM or the FA. We intend to determine our sanction based on our own assessment of the case.
54. We conclude a sporting sanction is undoubtedly necessary in this case. EM submits that if any exclusion from the Stadium were to be considered then a ban from the tunnel and dressing room areas would suffice. We disagree. EM is not required in the tunnel or the dressing room areas in the aftermath of a game. Such a limited exclusion would not be an effective sanction commensurate with the seriousness of the misconduct.
55. We have concluded that EM should be the subject of a ground ban from Nottingham Forest's next 5 first team games (home, away or neutral venue). We consider that such a ban will have a real impact on EM and will act as a deterrent to others from behaving in a similar manner.

56. We have concluded that a ground ban alone is a sufficient penalty on the facts of this case. Accordingly, we impose no separate financial penalty.

57. We consider that EM should pay the costs of the Commission pursuant to Regulation 53.2 of the General Provisions Disciplinary Regulations.

58. This decision is subject to any appeal as provided for by the Regulations.

Dominic Adamson KC (Chairman)

Bradley Pritchard

Mick Kearns

17 October 2024