

IN THE MATTER OF A FOOTBALL ASSOCIATION
INDEPENDENT REGULATORY COMMISSION

BETWEEN:

THE FOOTBALL ASSOCIATION

and

MR KENNY MCLEAN;
NORWICH CITY FC.

WRITTEN REASONS AND DECISION OF
THE INDEPENDENT REGULATORY COMMISSION FOLLOWING THE
HEARING
ON 10 DECEMBER 2024

Background

1. These are the written reasons for a decision made by an Independent Regulatory Commission (“the Commission”) which sat by video conference on 10 December 2024.
2. The Commission members were Mr Gareth Farrelly, Chairman and Independent Football Panel Member, Ms Faye White, Independent Football Panel Member and Mr Lawrie Sanchez, Independent Football Panel Member.
3. Mr Nathan Greenslade, Judicial Services Administrator acted as Secretary to the Regulatory Commission.

Charges and Replies

4. By letter dated 9 December 2024, The Football Association (“The FA”) charged Mr Kenny McLean with misconduct for a breach of The FA Rules pursuant to FA Rule E1.1 in respect of the EFL Championship fixture between Queens Park Rangers FC and Norwich City FC on 7 December 2024.
5. It was alleged that Mr McLean’s behaviour in or around the 24th minute of the fixture constituted violent conduct.
6. The FA relied on the following evidence:
 - Email correspondence between Mr. J. Gillett of The Football Association and Mr. A. Backhouse, Match Referee, dated 9 December 2024;
 - Email correspondence between Mr. J. Gillett of The Football Association and Mr. M. Mullarkey, PGMOL Senior Referee Coach, dated 9 December 2024;
 - Email correspondence between Mr. J. Gillett of The Football Association and Mr. S. Dunn, PGMOL Senior Referee Coach, dated 9 December 2024;
 - Email correspondence between Mr. J. Gillett of The Football Association and Mr. E. Wolstenholme, PGMOL Senior Referee Coach, dated 9 December 2024;
 - Two video clips of the incident.
8. With regard to the incident, the Match Referee, Mr Anthony Backhouse confirmed by email that neither he nor his colleagues had witnessed it in real time. There was an issue raised by the club that the Match Referee had stated in his communication with his colleagues at the time that there had been minimal contact. Therefore, The FA should have been estopped from bringing the charge due to the fact that the Match Referee spoke to the players about the incident. It was submitted that this demonstrated that he had seen the incident and dealt with it at the time, precluding The FA from bringing the charge. For completeness, Mr Backhouse stated that this communication to the players was an assumption and reading the reaction of the players looking to avoid any escalation.
9. The Charge was denied by reply on 10 December 2024. The Club submitted a detailed written statement and two video clips from Mr James Hill, the Legal and Governance Director, the contents of which the Commission read and noted. For completeness, the Mr McLean also provided a witness statement.
10. The Regulatory Commission were also provided with the observations of three Referee Advisory Panel (“RAP”) members, who are all former Match Officials, in relation to the incident,

each of whom opined that if the Match Referee had witnessed the incident, he would have dismissed the Player from the field of play for violent conduct. In cases of this nature, it is noted that the threshold for a charge to be issued is that all three RAP members, independently of each other, unanimously agree that the relevant incident warrants a dismissal if witnessed and a charge cannot be raised in a majority finding.

11. The following is a summary of the principal submissions provided to the Commission. It does not purport to contain reference to all the points made, however the absence of a point, or submission, in these reasons should not imply that the Commission did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all written and video evidence in respect of this case.

12. Under normal circumstances, the Regulatory Commission are required to consider the relevant Laws of the Game in relation to Violent Conduct. It is defined as follows;

“Violent conduct is when a player uses or attempts to use excessive force or brutality against an opponent when not challenging for the ball, or against a team-mate, team official, match official, spectator or any other person, regardless of whether contact is made.

In addition, a player who, when not challenging for the ball, deliberately strikes an opponent or any other person on the head or face with the hand or arm, is guilty of violent conduct unless the force used was negligible”.

13. In summary, it was the club’s position that as QPR prepared to take a throw-in, KM took his position and scanned in-field towards where the QPR player was positioned. As he approached KM from behind, he moved to KM’s left side. KM therefore stepped across to his left and put his left arm out to block the QPR player’s run. KM puts his arm out in the normal manner that you would expect from a defender when attempting to block a player. In particular, his arm was straight rather than bent, it was not clenched or taut with a view to making contact with the QPR player or hitting him in any way, and his arm was placed outwards rather than being drawn back with force to strike him. In this regard, it was submitted that KM did not look at the player as he attempted to block him. KM was entitled to attempt to block the QPR player and that is what he did in an entirely legitimate way. It was claimed that any contact with the QPR player’s face was negligible and, in their opinion, purely accidental rather than deliberate. This account was not accepted by the Commission. The video evidence submitted by the club was inconclusive and did little to assist their case. However, the first video submitted by The FA was determinative. It is correct that the player was screening the area in advance of the throw in. He was aware of the opposing player’s movement and any attempt to get behind him. It was not accepted that this was simply an attempt to block the player. Mr McLean knew what he was doing. It was a clear, deliberate act with Mr McLean striking the opposing player in the face with his left arm, all before the throw in was actually taken. The force used was excessive. It is difficult to reconcile how this could be considered as anything other than an act of violent conduct.

14. On this basis it was determined by the Commission that the Charge was found proven. It was agreed, as with all three RAPs who independently reviewed the incident, that if seen, it would have warranted a sending off.

15. The club submitted a further claim that the standard punishment would be clearly excessive as the circumstances of the incident were truly exceptional.

16. This provision can be found in the FA Handbook 2024/25. Under Fast Track 1, Regulation 22, it is stated that:

In such cases the Regulatory Commission shall decrease the standard punishment only where it is satisfied so that it is sure that the circumstances of the incident under review are truly exceptional, such that the standard punishment should not be applied, and the standard punishment would be clearly excessive, having regard to the following:

22.1 the applicable Law(s) of the Game and any relevant FIFA instructions and / or guidelines;

22.2 the nature of the incident including the Player's state of mind, in particular any intent, recklessness or negligence;

22.3 where applicable, the level of force used;

22.4 any injury to an opponent caused by the incident;

22.5 any other impact on the game in which the incident occurred;

22.6 the prevalence of the type of incident in question in football generally;

22.7 the wider interests of football in applying consistent punishments for dismissal offences.

17. Having considered the criteria and taking into account the decision in relation to the violent conduct claim set out above, the Regulatory Commission found that there were no circumstances in this incident that could in any way be deemed truly exceptional.

Conclusion

18. The Commission, having carefully considered all of the written and video evidence found the charge proven, and impose the following sanction:

- (i) Mr McLean is given a four match (4) suspension.

19. This is due to the fact that the automatic penalty for violent conduct is increased by 1 game due to a previous suspension for his dismissal in the fixture against Middlesbrough FC on 27 October 2024.

20. Pursuant to the relevant Regulations, this decision of the Regulatory Commission is final and binding and there shall be no right of appeal.

Mr Gareth Farrelly, Chairman and Independent Football Panel Member
Ms Faye White, Independent Football Panel Member
Mr Lawrie Sanchez, Independent Football Panel Member

11 December 2024