

## FOOTBALL ASSOCIATION REGULATORY COMMISSION

*In the matter of disciplinary proceedings brought pursuant to the Football Association Rules for the season 2017-2018*

### THE FOOTBALL ASSOCIATION

- and -

### JAY RODRIGUEZ

Commission: Christopher Quinlan QC (Chairman)  
Gareth Farrelly - Independent Football Panel Member  
Tony Agana - Independent Football Panel Member

Mark Ives, Head of Judicial Services & Commission Secretary  
Paddy McCormack - Judicial Services Manager – Secretary

Date: 11 April 2018

Appearances: *Football Association*  
Jonathan Laidlaw QC – Counsel and advocate for The FA  
Amina Graham - Head of Regulatory Legal, The FA  
Blake Lewendon - FA Investigator - observer

#### *Player*

Jay Rodriguez ('the Player')  
Nick De Marco QC, Counsel  
Nick Phillips – Partner at Beswicks Legal – legal advisor  
James Doherty – Paralegal at Beswicks Legal – legal advisor  
Simone Rodriguez – Player's wife - observer  
Richard Garlick – West Bromwich Albion FC – club representative - observer  
Simon Barker – PFA - observer

#### *Others*

Charlotte Watts (Counsel, 2 Hare Court) – observer

## REASONS OF THE REGULATORY COMMISSION

### A. INTRODUCTION

1. The Regulatory Commission ('the Commission') was appointed to hear and determine proceedings brought against Jay Rodriguez ('JR/the Player') following his being charged with Misconduct.
2. The Player denied Misconduct.
3. The hearing took place at Wembley Stadium on 11 April 2018. Submissions finished at approximately 14.30. The Commission deliberated for the remainder of the afternoon and then, necessarily, the Commission reserved its decision. This document constitutes its final reasoned Decision, reached after due consideration of the evidence, submissions and the other material placed before it.
4. This is a summary. The Commission considered all the material placed before it and the written and oral submissions advanced on behalf of The FA and the Player and it was all considered and given due weight.

### B. MISCONDUCT

#### (1) The Charge

5. At all material times the Player was a professional footballer and was bound by the Rules of the Football Association ('the Rules'). Part E of the Rules is headed "Conduct". By Rule E1 the Football Association ('FA') may act against a Participant in respect of any "Misconduct" which includes a breach of "the Rules and Regulations of The Association and in particular Rules E3 to 28" (Rule E1(b)).
6. The relevant Rule is Rule E3. Rule E3(1) provides:

*“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.”*

7. Rule E3(2) provides:

*“A breach of Rule E3(1) is an ‘Aggravated Breach’ where it includes a reference, whether express or implied, to any one or more of the following:- ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability”.*

8. The Player was charged by letter dated 8 February 2018 (‘the charging letter’). The charging letter alleged:

*“You are hereby charged with misconduct for a breach of FA Rule E3 in respect of the above fixture. It is alleged that in or around the 58th minute of the fixture, you used abusive and/or insulting words towards Brighton & Hove Albion FC player Gaetan Bong, contrary to Rule E3(1). It is alleged that this breach of Rule E3(1) is an “Aggravated Breach” as defined in Rule E3(2), as it included a reference to ethnic origin and/or colour and/or race.”*

9. The Player denied the charge. His case, in a sentence, was that he did not utter the words alleged, but said something quite different.

10. It was common ground between the parties that the burden of proving the allegation rests upon the FA.

11. Further, the standard of proof is the civil standard of the balance of probabilities (General Provisions under the Disciplinary Procedures, 1.5). That is the “single unvarying standard” *per* Mitting J in *R. (Independent Police Complaints Commission) v Asst. Commissioner Hayman* [2008] EWHC 2191 Admin at para.20 we applied, giving appropriate careful consideration to all the evidence in this serious matter (as described by Lord Carswell in *In re D (Secretary of State for Northern Ireland intervening)* [2008] UKHL 33; see also *FA v Luis Suarez, Regulatory*

*Commission, 30 December 2011, FA v John Terry, Regulatory Commission, 4 October 2012 & FA v Nicolas Anelka, Regulatory Commission, 3 March 2014).*

## (2) The Evidence

### (a) Background

12. Jay Rodriguez is a professional footballer registered with West Bromwich Albion FC ('WBA'). His professional career started at Burnley FC, and he has played for Stirling Albion FC, Barnsley FC and Southampton FC (2012-2017). He signed for WBA from Southampton FC last summer.

13. He grew up and went to school in the Barden area of Burnley. He said it was a multicultural society made up of people from various ethnic backgrounds, particularly Asian and Afro-Caribbean. Many of his school friends, including many of those with whom he remains friends, are of Asian heritage.

### (b) The incident

14. The incident occurred in the Premier League match between Brighton & Hove Albion FC ('BHA') and WBA played on the 13 January 2018 ('the match'). In about the 58<sup>th</sup> minute, the WBA midfielder Gareth Barry played a through ball into BHA penalty box. The Player pursued it. As he did so Gaëtan Bong ('GB') ran across the Player's path and blocked his run. Thereafter there was an exchange, face to face, between the two, out of which the charge arose.

15. We saw and had regard to footage from different cameras, providing us with view of the incident from different angles. We saw it at full speed and in slow-motion. It was without sound. What that footage shows clearly is:

- a. GB ran across the Player and baulked his run. As he did so, he raised his left arm and caught the Player in the throat.

- b. GB ran ahead of the Player, towards his goal line, as the ball ran out of play (for a goal kick).
- c. GB then turned and walked towards the Player, who walked backwards and began to turn to his right. GB walked up to the Player, such that they were face to face, almost touching. GB spoke to the Player and they touched, GB's right shoulder, upper arm and chest with the left side of the Player's chest.
- d. GB then continued to walk past the Player, as the Player turned through 180 degrees (to face the halfway line). GB was walking in the (general) direction of the halfway line.
- e. After contact, and as GB was walking past him, the Player put his right hand up to and pinched his own nose between his thumb and forefinger. At the time of doing so, his lips were moving.
- f. The view of his mouth was obscured (from the camera) by his right hand, as he pinched his nose, for approximately one second before he moves his hand away.
- g. Thereafter the Player waved his flat hand, fingers together, essentially parallel to the ground up and down a few times.
- h. Thereafter GB approached and spoke immediately and animatedly to the referee. The Player then joined them.

(c) FA's Case

16. The FA's case was that during the incident described above, the Player spoke the following words: *"you're black and you stink"*. It was no part of the FA's case, as Mr Laidlaw QC made clear, that the Player is a racist. The FA's case was that he uttered those words, out of a sense of frustration or in a momentary loss of temper.

17. The alleged words were attributed to him by GB, whose statement we read. In that statement he described the incident thus (including reference to the footage counter times):

*"11. Then we came face to face and we made a few comments to each other, but it was nothing insulting, just the usual back and forth. It's the type of squaring up that you might laugh about with the other player later in the game."*

12. *I was switching my focus from JR back to the game when I heard him say something. It wasn't clear to me what he said because I wasn't concentrating on him anymore, but it caught my attention so I focused back on him.*

13. *Then JR pinched his nose and said 'You're black and you stink'. He followed up the comment with a waving gesture in front of his face, this can be seen on BL1 between 00:14-00:16, 00:40-00:42 and 02:42-02:44.*

14. *My instant feeling was that the waving gesture showed that he didn't care who saw that insult, but by covering his mouth when he said the comment, it showed that he didn't want anyone else to hear or see what he said because he knew it was wrong.*

15. *JR performed the waving gesture as I was turning towards the Referee to report the comments I had already heard JR say when he pinched his nose, this can be seen on BL1 at 00:42 and 02:42."*

18. In his second signed statement he said:

*"5. For the avoidance of doubt, as JR made the comment and pinched his nose, his hand was covering his mouth. This meant that I could not see the words being said or the movement of his mouth due to his hand being in the way.*

*6. However I have no doubt about the words I heard JR say to me as we were stood very close together and stood face to face when he said them. I am 100% certain that JR said the words 'You're black and you stink' to me, at the moment his hand was covering his mouth."*

19. In his statement he expressed himself to be "100%" certain about the words used. He has never before received racist abuse in England. Without the reference to his colour he said he would have responded in kind. Indeed, he said that had JR admitted it at the time and said he did not mean it, he would have taken it no further.

20. He gave evidence and remains absolutely resolute that he had heard the Player utter those words, save for one modest variation. He did say that the Player may in fact have said, "you're black you stink". He did not accept that he had, or might have, made a mistake in respect of hearing the word, "black". He confirmed (in case there be doubt) that the words

were said when the Player was pinching his nose and his mouth was thereby obscured from view.

21. GB made an immediate complaint to the referee on the pitch. He repeated that to the referee after the match. The match referee, Martin Atkinson ('MA'), prepared an Extraordinary Incident Report ('EIR') and a witness statement. In the EIR he reported the following about what was reported to him on the pitch:

*"In the 58th minute as I awarded a goal kick to Brighton, I was aware of a coming together of two players, BONG (3) and RODRIGUEZ(19). As I approached the two players, BONG pointed at RODRIGUEZ and said to me "he has been racist"*

*BONG insisted that RODRIGUEZ had said something. From what I could gather from BONG he had been called 'black something'.*

*RODRIGUEZ asked me what he (BONG) was saying, 'what did I say?'".*

22. In his statement he stated this about the incident:

*"10. Then I saw GB point towards JR and say 'He has been racist'. That is when alarm bells started ringing in my head and I knew I needed to speak to the players.*

*11. GB was insistent that JR had said something racist. GB was talking quickly and was clearly upset about he thought had heard. GB told me that JR had said the word 'black' and then something else, but it was not clear what GB said as he was talking so fast and with such emotion."*

23. He noted the allegation on the match card, a copy of which he exhibited to his statement (MA/1). After the match he spoke to GB, in the presence of others. GB said, *"Rodriguez had his hand across his mouth and said, 'You black, you stink' with two fingers on his nose"*. When he spoke to him after the match, MA observed that GB did not appear upset or angry, just certain and insistent about what had happened. MA noted GB's comment on his match report card (a copy exhibited MA2). Neither party required him to give evidence and he did not. GB said, when asked in cross-examination, that he did not say the words "black

something” to the referee nor did he tell the referee that he had been called a black anything.

24. Bruno Saltor (‘BS’) is the BHA club captain. He was playing the match and provided a signed statement. Therein he stated that following the incident the referee called him over; GB was with the referee and said to him “*words along the lines of him being called "black" and that he "stinks" or that he "smells". I can't remember exactly what he said to me, but that was the general feeling of the words that he had said*”. Though he attended, he was not required to give evidence.
25. Lewis Dunk (‘LD’) was playing for BHA in the match. In his witness statement he recalled seeing GB speaking to the referee and heard him accuse the Player of being “racist”. By reference to clip BL1 he identified in the footage a passage thereafter where the Player said repeatedly to him that it was “*embarrassing*”. He knows both the Player and GB and opined that GB was “*a polite and professional*” player.
26. Shane Duffy (‘SD’) was also playing for BHA in the match. In his witness statement he recalled seeing the Player make a “*gesture with his hand that suggested something smelled and [he] saw GB go to the referee*”. The referee spoke to both the Player and GB. By reference to clip BL1 he identified in the footage a passage thereafter where the Player said to him that looked (on the footage) like, “*that’s embarrassing*”. A few minutes later, when talking about the incident, the Player repeated the phrase *that’s embarrassing*”.
27. Chris Hughton (‘CH’), the BHA manager provided a witness statement. He too attended but ultimately was not required to give live evidence. In his statement he recalled being told by the fourth official that GB had alleged a racist remark had been made to him. When the match finished, he asked GB what the Player had said to him. He replied: “*He said, you’re black and you smell*”. He observed that GB was “*animated and completely clear and seemed very sure*”. Thereafter he spoke to the match referee, along with GB and Alan Pardew, (then) the WBA manager. In evidence GB said he did not use the word “*smell*” to CH.

(d) Expert Evidence

28. The FA relied upon a lipreading expert, James Freestone ('JF'). He provided two reports (dated 6 February 2018 and 4 April 2018). Therein, he provided transcripts based upon his analysis of the silent footage. We have set out those transcripts in Appendix A.

29. It is important to note that in his first report he observed:

*"I only report back on what I am 100% certain on, the earlier section of the clip is hard to transcribe as a lot of the speech is obscured and the players are moving quickly. I really can't see anything said by JR in those early exchanges, he doesn't seem to be speaking much except "Fuck" muttered under his breath at the very start of the clip as already set out in my report. However at 0:05 of BL2 I think GB possibly says "are you calling me" but I can't make out the rest of what he is saying."* [emphasis added]

30. The words underlined in the passage cited above, reflect the moment when the offending words were allegedly spoken. The agreed position between the parties was that the moment when the Player was alleged to have spoken the offending words, he was holding his nose and the view of his mouth was obscured by his hand.

31. The Player also relied upon a lipreading expert, from whom we heard, Sue Whitehead ('SW'). Like JF, she set out her own transcripts based upon her analysis of the silent footage. We have set out her transcript in Appendix A.

32. Both experts gave evidence before us. Helpfully, the experts met in advance of the hearing and produced a joint report. There is merit in setting the material part of the report (drafted by JF):

*"Firstly, both experts were given various video clips to view taken of said incident to transcribe and ascertain whether any racist language had indeed been used. Neither of us have any affiliation to either football club, we do not support either club, nor do we know any of the players concerned or their families and friends, and this is a totally independent and impartial report.*

There are three main people speaking in the footage. Gaetan Bong (referred to as GB/M1), Jay Rodriguez (referred to as JR/M3) and the referee (referred to as Referee/M2).

Unfortunately, the clips all had different timings and namings, plus some clips were montages of multiple angles and rehashes of earlier clips so there was no consistency with the timings. As a result our individual reports show different timings.

The gist of our transcripts were similar, there were some differences which we agreed to disagree on, and some words I picked up when she did not and vice versa. It was brought to my attention that in the clip BL3.mp4 / BL4.mp4 at 0:16 SW lip-read the word "Garlic" said by M3/JR and I agree with the finding even though it wasn't in my original report.

We both unanimously agreed from the clips given to us both agreed overall, that M3/JR did not say anything racist towards M1/GB."

33. The areas of dispute were narrow and as follows.

- a. In clip BL/4 (mislabelled BL/1 in the report) at 42 seconds, JF saw the Player say twice "he's a bastard". SW saw him say "that's embarrassing" twice.
- b. In the same clip, but at 45 seconds JF saw the Player say (to Dunk) "he's a blackie". SW saw him say, "I don't know at the moment".

34. As is to be noted from the transcript of clip BL/6 (referred to as BL/2 in the report) JF also interpreted GB to say to BS (after he had run to the referee) "he said you are black, you stink? I swear he said that".

35. Both experts acknowledged the limitations inherent in their craft. JF stated in his first report that it "can be open to misconstruction" and lipreading recorded material is "inherently difficult". One has to have regard, for example, to the quality and clarity of the source material. He (fairly) stated that it should not be "seen as a completely reliable source of evidence'. SW said it was not "an exact science".

(e) The Player's Case

36. The Player denied in terms saying, "you're black and you stink". It was not something he said or would ever say. His case was that he used three words: "breath fucking stinks".

37. In his witness statement he described the incident in these terms:

*"11. Around the 58th minute, the ball was played through from the midfield by Gareth Barry, and I tried to run in behind the defence, at which point GB blocked me off and caught me in the throat with his elbow. This prompted me to nudge him back and tell him to 'fuck off'. GB moved aggressively towards me, and I asked 'what the fuck are you going to do' as he began shouting in my face in what I believe to be French.*

*12. I wanted to stop him shouting so close to me and so said to him "breath fucking stinks" and made a waving gesture whilst holding my nose with my thumb and index finger. In retrospect, I realise that was childish and inappropriate, but I just wanted to close down the encounter. I had seen the gesture before. I remember Thierry Henry doing it. And there was an incident between Diego Costa and Ryan Shawcross last season. I also frequently made the gesture and comment with friends when I was a kid. That doesn't make the gesture the right thing to do, I know, but it was in no way racially motivated. It was just my attempt at a put down."*

38. He gave evidence before us. He denied saying GB was a bastard. His case was that he said, "it's embarrassing". He also denied using the word, "blackie". He accepted he swore first. At no point before the incident had he been close to GB and had not been able to smell his breath. He understood GB to be speaking French and could not remember using the word "garlic". He had not heard of the insult as it is sometimes offered to the French that they all smell of garlic.

39. He explained his use of the words "it's embarrassing" thus: "I think it's embarrassing that he's took what I've said, whether it be the gesture or what I've said, to be racist".

40. Alan Pardew also gave evidence and expanded on his signed statement.

41. The Player drew the Commission's attention to the statement of Allan Nyom ('AN') taken by The FA, upon which it did not rely, but (fairly) included within our bundle. He heard GB tell the referee that the Player had said "'black' something" to him. He knows and spoke

well of both players. He spoke to GB after the match. He told him the Player had used the words “black” and “stink”. He also said that when GB asked him what he had said, the Player replied, “*breath stink*”. The Player pointed to that as evidence for a number of reasons. It was to be compared with GB’s account (in his statement) of what he told AN. Further, it was evidence of the consistency of the Player’s denial and of his account. AN opined, “*I do not know what happened on the pitch but I do not see either of them lying about it*”.

42. He also relied up – and we had regard to – character evidence in the form of statements and letters from the following:

- a. Jamie Howson.
- b. Adam Lallana.
- c. Mauricio Pochettino.
- d. Shane Long.
- e. Maya Yoshida.
- f. Kelvin Davis.
- g. Aleksander Gross.
- h. Les Reed.
- i. Rosalyn Wheeler-Osman
- j. Eddie Howe.
- k. Dr Ben Chell.

43. Those documents spoke in glowing terms of, *inter alia*, his honesty, integrity, industry, capabilities as footballer and character as a person. He is described variously as “*humble*” and “*genuine*” and “*respectful*” and “*an excellent role model*”. They speak of his unimpeachable conduct in multi-cultural dressing rooms.

44. Jamie Howson has known him since he was 11 years of age. He observes that the Player has “*never judged people on their skin colour*” and comments “*that I absolutely refuse to accept the player has ever racially abused another person*”.

45. Adam Lallana played with him at Southampton football Club. He states that he has never heard or witnessed the Player “*demonstrate any behaviour that could be described as discriminatory*”. He also stated that he has “*great admiration for him as a professional*”.

46. We gave each of them due weight.

### (3) Factual Conclusions

47. The essential issue for us boiled down to one question: are we satisfied the Player probably said to GB: “*you’re black you stink?*”

48. With respect the experts could not help on the core issue. The Player’s mouth was obscured, and neither could see sufficient to interpret his moving lips. We agree with Mr Laidlaw QC that it is in that context that this sentence in the joint report must be read: “*We both unanimously agreed from the clips given to us both agreed overall, that M3/JR did not say anything racist towards M1/GB.*” We agreed with Mr Laidlaw QC that the accurate position is better expressed by the insertion of the words, “*and from what we could see*” between the word “*us*” and the second “*both*”.

49. GB reacted immediately, and consistently with believing he’d heard something which offended him greatly. No one suggested he was lying and had made up the alleged words. The Player’s case was that GB must have made a genuine mistake.

50. It is right that there have been very modest changes in GB’s account. He was not sure whether the Player used the word “*and*”. That was very modest and without any significance in our judgement. Further, we were asked to consider whether he had been inconsistent and if so, to what extent such affected his reliability. The inconsistencies – the referee recording him as having said “*black*” something and to CH “*smell*” rather than “*stink*” – are explicable as being errors on the part of the auditors (MA and CH). Further there is evidence from BS and JF (clip BL/6, 44 seconds) that he gave a consistent account on the pitch to BS.

51. We therefore think it fair to characterise GB as having been consistent on the essential elements of the words he attributed to the Player. However, in the circumstances of this case, that consistency is, in our judgement as consistent with an immediate mistake as it is with GB being accurate on what he actually (rather than genuinely believed) heard.
52. Like GB, the Player's case - "*breath fucking stinks*" - was also essentially consistent from start to end. Like GB, he remained adamant and withstood cross-examination. His denial was immediate. We could read nothing adverse to him from his reaction on the pitch, nor from his use of the expression "*it's embarrassing*".
53. Not only has it been consistent, but it has inherent logicity. First, the 'your breath smells/stinks' insult is not unknown, in the context in which it was used. There are other public examples of it. Second, it fits with his hand gesture. Third, it fits with the context in which he said he uttered it. As for his character, such is not a defence. It cannot and does not prove that he did not utter the words in question or is incapable of so doing. It does, though at least suggest he is not given to making such comments, even in private.
54. We were somewhat exercised by the scope for there to be a mistake. They were close together when the words were spoken. However, on that we note that the Player's hand was across his mouth at the crucial time and he does have (or did before us) a tendency to somewhat mumble.
55. We noted a further inconsistency between GB's evidence to us and parts of an interview on SFR Sport. He told us "*I don't know what the mean the gesture [sic], I'm not looking for the gesture*" and "*...it's not even like the gesture, it's the words*". However, during the SFR interview he said "*he did that because of the colour of my skin. Everybody can see this gesture, and I asked him to repeat what he said*" and "*...I signalled the gesture to the referee. This specific gesture to accentuate his comments...this gesture must be banned....*".
56. As to the other salient points:

- a. We are satisfied the Player did not deliberately cover his mouth. His hand did obscure his mouth but that was part and parcel of, and incidental to, the action of pinching his nose.
- b. We are satisfied that he did not use the word “*bastard*” at the moment suggested by Mr Freestone. We accepted the evidence of LD and SD that at that moment he was saying “*it’s embarrassing*”. That is also what the Player told us he said at that moment. Further, we note – though this was not dispositive – that their unchallenged evidence happens also to be supported by the evidence of Ms Whitewood.
- c. Further, we are not satisfied that he used the word “*blackie*”. In assessing whether we accepted the evidence of Mr Freestone, we agreed with Mr De Marco QC in two important respects. First the person best placed to say what was being said (in addition to the speaker) was the person to whom it was said, namely LD. We agreed with Mr De Marco QC that had LD told the person taking his statement that the Player mentioned the word “*black*” or “*blackie*” it would have been in the statement. It was not. Second, it is a (offensive) word from another era.
- d. We also agree that the alleged insult is somewhat unusual: “*you’re black, you stink*” or “*you’re black and you smell*”. We agree that one might more generally expect the word black to be followed by a noun, probably an offensive one. That is far from decisive, but we could not overlook it either.
- e. If the Player said “*garlic*”, it was after the time when he was alleged to have used the offending words. We find it difficult to link that with colour as opposed to nationality (and that itself was predicated on knowledge of the link between the France and garlic, which the Player denied). In any event if, by then, he had already made reference to colour (“*black*”), we cannot see why he might then make reference to garlic.
- f. Further with respect to Mr Laidlaw QC, we think the fact he did not smell GB’s breath is nothing to the point. The words were designed to be an insult, not an opinion based in fact.

57. Ultimately, after much deliberation we were left in the position where the case distilled to the evidence of each player. We could not say that any of the other evidence or competing arguments lead us to prefer one over the other. When the burden and standard of proof is applied, we could not properly say we were satisfied that the Player probably spoke the offending words.

**(4) Determination**

58. It follows from our factual conclusions that we do not find the charge of Misconduct proved.

59. Understandably, we were not asked to consider the alternative and less serious charge contrary to E3(1) and did not do so.

**C. SUMMARY**

60. We are not at all surprised that The FA brought this charge. We agree with Mr De Marco QC that it was right that they did so. We gave anxious and careful consideration to the evidence. Rightly, no one suggested this was a malicious complaint nor that GB was lying. Ultimately, we did not reach the position where we were satisfied the Player probably spoke offending words. In those circumstances, we could not and therefore did not find the charge of Misconduct proved.

61. Finally, we repeat our gratitude for the economy and skill with which Leading Counsel presented their respective cases.



13<sup>th</sup> April 2018

**Christopher Quinlan QC**

Chairman

Signed by the Chairman on behalf of the Regulatory Commission

## APPENDIX A

### JAMES FREEMAN'S TRANSCRIPTS

#### 4 April Report

IMPORTANT NOTE - THE TIMINGS ON THIS CLIP DO NOT MATCH UP WITH THE TIMINGS ON MY ORIGINAL REPORT AS THESE CLIPS ARE OF DIFFERENT LENGTHS AND ANGLES TO THE ONES I DID MY ORIGINAL TRANSCRIPT FROM.

I STICK TO MY ORIGINAL REPORT AND I HAVE NOT REPEATED ANYTHING THAT I ALREADY TRANSCRIBED, I HAVE ONLY PUT DOWN NEW MATERIAL THAT HAS EMERGED BELOW THAT I DID NOT CATCH LAST TIME ROUND DUE TO THE DIFFERENT ANGLES ETC.

BL1.mp4

00:47 Bong: Do you know what he said?

00:50 Bong: Did you hear what I said? Did you hear what I said?

00:59 Referee: come here [beckoning to Bong]

01:10 Referee: [blows whistle] BRUNO!

01:14 Referee: I don't want anyone else, sorry - I want Bruno... Bruno! [Bruno runs up to referee]

01:15 Bong: I will tell you his name and what he said

01:20 Referee: Listen to me, listen to me

02:08 Bong: You are racist. You said it. You are racist [towards Rodriguez]

02:15 Bong: He's fucking racist

02:46 Bong: [to referee] He's fucking racist, he's fucking racist! Did you hear what I said?  
Did you hear what I said? [pointing to his ear]

02:58 Rodriguez: What did I say? What did I say?

03:02 Referee: Come here

BL2.mp4

00:50 Bong: He said you are black you stink, I swear he said that, I swear, I swear he said that

01:03 Referee: in the matter, listen, listen

05:49 4th official: There's an allegation made by  
Clip BL3.mp4 has nothing new that I haven't already transcribed.

## APPENDIX A

### JAMES FREEMAN'S TRANSCRIPTS

#### 6 April 2018 Report

There are two clips. Both center around the same incident, a verbal exchange involving two footballers, Jay Rodriguez and Gaetan Bong, just from different angles. The timestamps in my transcripts are taken direct from the running times of the two separate clips.

#### Clip 1 (BL1 - Zoom.mp4)

0:10 GB: He's fucking racist!  
0:18 JR: What did I say? What did I say? 0:27 JR: HEY!  
0:33 JR: ...for barging/pushing him  
0:42 JR: He's a bastard! He is a bastard!  
0:45 JR [said to Dunk] I didn't call him a blackie

*[NB – clip 1 is BL4 ]*

#### Clip 2 (BL2 - Zoom.mp4)

0:02 JR: Fuck  
0:21JR: What did I say? What did I say?  
0:22 Referee: Jay. Jay. Jay. JAY! JAY! Walk away  
0:26 JR: [talking to referee] He's a bastard, he's a bastard 0:29 Referee: Walk away! WALK AWAY!  
0:35 JR: [to an approaching Duffy] He said I'm racist? 0:42 GB: Racist!  
0:44 GB: [speaking to Bruno who has run up to the referee] He said you are black, you stink! I swear he said that

*[NB – clip 2 is BL6 ]*

#### 4 April Report

IMPORTANT NOTE - THE TIMINGS ON THIS CLIP DO NOT MATCH UP WITH THE TIMINGS ON MY ORIGINAL REPORT AS THESE CLIPS ARE OF DIFFERENT LENGTHS AND ANGLES TO THE ONES I DID MY ORIGINAL TRANSCRIPT FROM.

I STICK TO MY ORIGINAL REPORT AND I HAVE NOT REPEATED ANYTHING THAT I ALREADY TRANSCRIBED, I HAVE ONLY PUT DOWN NEW MATERIAL THAT HAS EMERGED BELOW THAT I DID NOT CATCH LAST TIME ROUND DUE TO THE DIFFERENT ANGLES ETC.

#### BL1.mp4

00:47 Bong: Do you know what he said?

00:50 Bong: Did you hear what I said? Did you hear what I said?

00:59 Referee: come here [beckoning to Bong]

01:10 Referee: [blows whistle] BRUNO!

01:14 Referee: I don't want anyone else, sorry - I want Bruno... Bruno! [Bruno runs up to referee]

01:15 Bong: I will tell you his name and what he said

01:20 Referee: Listen to me, listen to me

02:08 Bong: You are racist. You said it. You are racist [towards Rodriguez]

02:15 Bong: He's fucking racist

02:46 Bong: [to referee] He's fucking racist, he's fucking racist! Did you hear what I said?

Did you hear what I said? [pointing to his ear]

02:58 Rodriguez: What did I say? What did I say?

03:02 Referee: Come here

#### BL2.mp4

00:50 Bong: He said you are black you stink, I swear he said that, I swear, I swear he said that

01:03 Referee: in the matter, listen, listen

05:49 4th official: There's an allegation made by

Clip BL3.mp4 has nothing new that I haven't already transcribed.

## LIP-READING TRANSCRIPT – Sue Whitewood

BL1.mp4

00:00 00:39	to	The view is of a football pitch with players. They are too far away for lip-reading.
00:39		(The camera pans in on M1 and M2)
00:40	M1	(The camera pans in on M1 and M2. M1 walks and talks at the same time) “* * (pause) put a stop to it” (he continues walking)
00:43	M1	(M1 continues walking and points) “he (pause) he (slight pause) is very racist (he speaks to M2) look at what he’s saying (he repeats) look at what he’s saying he’s very racist (M1 turns to his left, walking and pointing his finger. M2 walks away) * * he’s fucking racist * *”
00:52	M2	(The camera pans in as he speaks) “* listen to me
00:53	M1	(M1 stops and talks to M2 again. He has his hand to his ear) “did you hear what I said”
00:53	M2	(M2 continues) “listen (he is briefly obstructed) * whow whow”
00:54		(M1 is obstructed by M2. M3 joins them)
00:56	M2	“just walk away”
00:56	M1	(M1 moves away from M2) “* that is racist (he points) you’re fucking” (he goes off screen)
00:57	M2	“* ?Shane/Jay (repeats a further four times ) ?Shane/Jay, ?Shane/Jay ?Shane/Jay ?Shane/Jay walk away (he pauses) out here” (he beckons)
01:02	M3	(M3 is turned away from the camera) “* * * (slight pause) * *”
01:02	M2	“walk away (he nods) walk away (he repeats) walk away (M1 returns and obstructs M2 briefly) you walk away” (he points to M3)
01:06	M1	(M1 turns towards the camera and walks) “* * * * *”
01:07	M2	(M2 points) “walk away ?Shane/Jay”
01:08	M2	(M2 points to his left) “* you come here”
01:11	M1	(M1 walks towards M2) ‘he was * * right before he hit me”

01:12	M2	“stop * * * one more word ok * *” (he is briefly obstructed)
01:13	M1	(M1 continues and speaks at the same time as M2) “I (he stops talking and pauses) I will say * (he is briefly obstructed by a player) in front of him (he repeats) I will say it in front of him what he said” (he stops speaking)
01:16	M2	“one more word (he turns to his right) hang on one more word * *”
01:19	M2	(M2 continues. A player runs to M2 and obstructs M1) “listen to me (he pauses) listen to me (he repeats) listen to me (pause) hey (pause) if I find it yes (M2 turns to his tight) listen to me right (he turns to his left) listen (repeats) listen (he turns away) you calm your self down * * * *” (he turns away from the camera)
01:33	M2	(M2 continues and turns towards the camera) “* it might be better (they nod) ok listen (repeats) listen”
01:35	M1	“* ok” (this is said at the same time as listen, listen above)
01:35	M2	(M2 continues) “I’ll report it (he turns away from the camera) * * * *”
01:36	M1	(M1 walks backwards) “* ok * (pause) *” (the camera follows M1)
01:40		Viewing Ends – As instructed.

BL2.mp4

00:12 00:16	to	(View of players. The camera pans in on a player it then pans out to the field)
00:16	M1	(The camera pans in on M1 and M2) “* what he’s saying * *” (he is them obstructed by M2)
00:20	M1	(He moves away from M2) “racist (he points his finger) he’s fucking racist did you * (he points to his ear then goes off screen. The camera pans out)
00:26	M1	(The camera follows the players and pans in) “fucking said it (he points his finger) it’s fucking racist”
00:27	M2	?”Shane/Jay (he repeats) ?Shane/Jay”
00:27	M1	(He speaks at the same time as M2 and repeats) “you’re fucking racist” (he turns away)

00:28	M3	“what’d I say what’d did I say” (M1 goes off screen)
00:28	M2	(He repeats the name several times) ?Shane/Jay walk away”
00:32	M1	(He points then beckons) “Carl come here (he turns to M3) walk away”
00:33	M3	M3 speaks to M2) “that’s embarrassing that is embarrassing”
00:34	M2	(M2 continues) “walk away”
00:35	M2	(M2 continues again) “walk away” (M1 returns and obstructs M2)
00:37	M2	(M1 moves and M2 speaks and raises his arm) “walk away”
00:37	M2	(M2 continues and pulls a face) “walk away (he then turns) * * you come here” (M1 returns)
00:40	M3	(M3 walks and faces the camera and speaks to another player) “he’s saying * *” (he goes off screen)
00:41	M2	(M2 beckons someone) “* *” (M1 speaks to M2 but is away from the camera)
00:43	M2	“* * * one more word”
00:45	M2	(he continues) “you and him less (slight pause) shut it”
00:45	M1	“he was saying * * * *”
00:47	M2	(M2 continues) “* one more word (he turns) hang on * * * more word” (a player runs towards M2)
00:50	M1	(He speaks to player No.2) “he said * * * * I swear he said it (M1 turns to M2) I swear I swear he said it”
00:55	M2	(M2 is partly obstructed) “* * (he moves away) listen to me right” (he is then obstructed)
00:59	M2	(M2 moves away from the obstruction) “calm yourself down (he’s partly obstructed) * * if they * * then we report the matter (pause) alright”
01:05	M1	“ok” (he nods)
01:05	M2	(M2 speaks at the same time) “listen (repeats) listen I (he is then

obstructed briefly) \* officially then he's \* \* \* \* \* from me"

01:06 M1 (he nods and continues) "thank you"

01:07 M1 "ok"

01:08 M2 (M2 moves and continues) "\* officially then he's \* \* \* \* \* from me in any action"

01:10 M1 (M1 puts his thumb up) "ok (pause) thank you" (he goes off screen)

01:12 M2 "no more" (he makes a movement with his hands)

01:12 Viewing ends - As instructed

02:00 Viewing begins - As instructed

02:00 to (View of players. The camera moves then settles on M2 and M3)

02:04

02:05 (M3 holds his nose and then waves his hand)

02:07 M1 (M1 faces the camera and walks to M2) "he's fucking racist look (he turns briefly) \* \* he's saying you see what he's say he's fucking racist (he is then briefly obstructed) \* \* \* (he points to his ear) you hear what I said" (he's then obstructed)

02:17 M1 (M3 joins M1 and M2) "you are racist"

02:19 M3 "\* \* \*"

02:19 M1 (said at the same time as M3) "you are" (he turns away)

02:20 M3 "what'd I'd say what'd did I say"

02:20 M2 "?"Shane/Jay (repeats) ?Shane/Jay, ?Shane/Jay" (he is then obstructed)

02:24 M2 (He turns to the camera and beckons) "Carl come here"

02:25 M3 "that's embarrassing that is embarrassing"

02:28 M2 "you walk (he is then obstructed briefly) away (he repeats and pulls a face) walk \*" (he's obstructed and the camera moves)

02:33	M2	(M2 beckons) m~ (pause) come here * tell * * m~" (he is then obstructed)
02:40	M2	(he moves from the obstruction) "hang on a moment * *"
02:42	M1	(A player joins M1 and M2. M1 speaks to the player) "he said * * * * I swear he said it"
02:44	M2	"listen to me (he repeats) listen to me" (he is then obstructed)
02:48	M2	(The obstruction moves) "listen to me right listen (he repeats) listen (M2 is obstructed briefly. The camera moves) * * * (he's then obstructed briefly) * *" (he is obstructed again)
02:54 02:58	to	(The camera pans to the left and settles on other players)
02:58		Viewing Ends - As instructed
03:00		Viewing Begins (The camera pans in on M3)
03:01	M3	"*"
03:02	M1	(M1 speaks to M3) "you think (he's briefly obstructed by M3) * * * (pause) for sure"
03:04		(M3 holds his nose then waves his hand. He is away from the camera)
03:06	M1	"hey (pause) hey (pause) he's fucking racist look (he's joined by M2. The camera pans out. M1 is then obstructed)
03:13	M1	"racist he's fucking racist are you hearing that (he has his hand to his ear) *" (he is then obstructed by M2)
03:18	M1	(The camera pans in and M1 moves) "I said (pause) that's fucking racist you're fucking racist *" (he turns away)
03:20:	M3	"what'd I say what'd did I say"
03:20		Viewing Ends - As instructed
BL3.mp4		
00:12	to	(View is of a football pitch with players. The view changes to a lone

00:15		player, No.18)
00:16	M3	(The view changes to M1 and M2. M3 waves his hand) “?garlic”
00:17	M1	“hey (he pauses and is briefly obstructed) hey he’s fucking raci <sup>est</sup> (pause) you look at what he’s saying look at what he’s saying he’s fucking racist he’s fucking racist are you hearing what I said”
00:26		(M3 turns quickly)
00:27	M1	(M1 continues) “did you hear what I said” (he has his finger to his ear. M2 has his back to the camera)
00:28	M3	(M3 moves away from M2) “* * (he’s briefly obstructed by M1) wha’d I say what did I say”
00:34	M2	“Carl come here”
00:38	M1	(M1 walks up to M2) “* * say” (he turns away)
00:39	M3	“eh (pause) he’s making * * (brief obstruction) * trouble this man”
00:43	M3	“he’s saying * * *”
00:44		(View changes to M1, M2 and player No.5. M1 speaks to M2 but is away from the camera)
00:46	M2	(M2 speaks to player No.22) “stop * * one more word”
00:47	M1	“I will say it in front of him”
00:48	M2	(M2 talks at the same time as M1) “keep it * * shut it” (he speaks to player No.5)
00:49	M1	(he continues) “I will say it right in front of him”
00:50	M2	(M2 closes his eyes briefly) “* one more word (he turns to his right) hang on one more word”
00:51	M1	(M1 continues) “* racist”
00:53	M1	(M1 is joined by player No.2) “he said * * * * I swear he said it (he turns to face M2) I swear”

00:58	M2	(M2 is partly obstructed by player No.2) “* * * (he moves away) listen (repeats) listen to me (he turns to his right) right” (he turns and is obstructed)
00:58	M1	(M1 continues and speaks at the same time as M2. He repeats) “I swear he said that”
01:01	M2	(M2 moves from the obstruction) “calm yourself down (he is partly obstructed) * * * (he moves away slightly) if I say * * * then we report the matter”
01:08	M1	(He nods) “ok”
01:08	M2	(he continues) “right listen (he repeats) listen I’ll report (he’s obstructed briefly) * officially and then”
01:11	M1	“ok”
01:11	M2	(M2 continues) “he’s then * * * that from me”
01:12	M1	“ok” (he puts his thumb up)
01:12		Viewings Ends – As instructed

BL4.mp4

00:00		(View of two players, M1 and M3)
00:00	M1	“* * * * *” (M1 walks off screen)
00:03	M3	(M3 holds his nose then waves his hand) “garlic”
00:06	M1	(M1 then walks back onto the screen) hey (he pauses) he’s fucking racist (he turns away from the camera) look at what he’s saying look * * saying”
00:10	M2	(he turns briefly) “* *” (he turns away)
00:10:	M1	(M1 talks at the same time as M2) “look * * saying he’s fucking racist (he repeats) he’s fucking racist are you hearing what I said (he has his finger to his ear) did you hear what I said” (M1 turns away from the camera)
00:16	M3	(M3 moves from his obstruction) “* * I’m racist” (he’s then

obstructed)

00:19 M3 (moves away from the obstruction) “\* \* what’d I say what did I say”  
(he looks in the direction of M1)

00:22 M2 (M2 raises and moves his finger) “Carl come here” (he turns away)

00:27 M3 “eh he’ making (he moves away) \* \* \* trouble this man”

00:31 M3 (He walks and speaks ) “\* he’s saying (he points his finger) I’m  
racist \* \* (he is obstructed briefly) coz I punch him”

00:35 to (He is then obstructed briefly by a player. The player moves. M3 nods  
00:42 but does not speak)

00:42 M3 “it’s embarrassing (pause) and that’s (he turns away briefly) \* \* \* I  
suppose (he faces the camera and speaks to a player) that’s  
embarrassing \* (he’s briefly obstructed) I don’t know at the moment  
(he pulls a face. He pauses then looks away) \* \*”

00:49 to (M3 does not speak)  
00:56

00:56 to (view changes. This is of a male in a suit who does not speak)  
00:58

00:58 Viewing Ends – As instructed

BL5.mp4

This clip has been rejected. The filming is in slow motion and can distort the lip patterns.

BL6.mp4

00:00 to (The view is of football players. The camera then pans in on M3)  
00:04

00:04 (M3 moves his mouth briefly but I can not confirm if he speaks)

00:04 M1 (he speaks to M3) “you fink (he is then obstructed briefly by M3)  
\* \* \* \*”

00:08 M3 (M3 holds his nose. M1 goes off screen) “\* \*” (M3 waves his hand)

00:08 00:14	to	(M3 walks alone. The camera pans out slightly)
00:14 00:19	to	(M1 and M2 move into view. They are away from the camera. They both go off screen. M3 continues to be on screen. He speaks but is away from the camera)
00:19	M2	(M1 and M2 appear on screen. The camera pans in) “* * *” (he is then briefly obstructed by a player)
00:20	M1	“what I said” (he has his finger to his ear then goes off screen)
00:20	M2	(he turns to M3) “just walk away” (said at the same time as M1 above)
00:21	M2	(M2 continues speaking to M3) ?”Shane/Jay (he repeats several times) ?Shane/Jay”
00:22	M1	(said at the same time as M2 above) “* you’re fucking * *”
00:22	M3	(said at the same time) “what’d I say what’d did I say”
00:22	M2	(said at the same time) ?”Shane/Jay (he states this three more times) walk away (he beckons but is briefly obstructed) * out here”
00:27	M3	(m3 speaks to M2) “that’s embarrassing (he repeats) that’s embarrassing”
00:28	M2	(He nods) “walk away (he pauses then repeats) walk away” (he is then obstructed by M1)
00:30	M2	(he moves away from M1) “walk away ?Shane/Jay * come here”
00:35	M3	(M3 faces the camera and speaks to a player) “he says I got racist with him *” (he turns away)
00:38		(The camera pans back to M1 and M2)
00:39	M1	“* say it front of him”
00:39	M2	(The player moves away from M2. M2 speaks at the same time as M1) “* * shut it”
00:40	M1	(M1 continues talking) “I will say this in front of him”
00:41	M2	“hang on a * * *”

00:42	M1	“he’s racist”
00:42	M2	(M2 turns to his right) “hang on * * * *” (he turns to a player running towards him)
00:44	M1	(A player obstructs M2. M1 speaks to the player) “he said * * * * I swear he *” (he is then obstructed)
00:48	M2	(M1 moves away from the player) “*”
00:48		Filming Ends

BL7.mp4

This clip has been rejected. The filming is in slow motion and can distort the lip patterns.