

THE FA DISCIPLINARY COMMISSION

On behalf of Amateur Football Association Limited

A PERSONAL HEARING (via WebEX)

OF

CHARLIE HEATH [56735267]

THE DECISION AND REASONS OF THE COMMISSION

MISCONDUCT REPORT NO: 10183311M

18 August 2020

THE COMMISSION

1. Evans Amoah - Nyamekye – Chair
2. Kate Rogers – Member
3. Ian Stephenson – Member

SUMMARY OF DECISION

The Commission unanimously found the charge of FA Rule E3 'improper conduct – including *foul and abusive language* aggravated by a person's ***Ethnic origin, Colour, Race, Nationality***, Faith, Gender, Sexual Orientation or disability' **not** proved.

The reasons for the decision are stated in full below.

INTRODUCTION

1. On 7 March 2020, a match between UCL Academicals Reserves V Old Parmiterians II took place.
2. Following an investigation by the Amateur FA it was alleged that Mr Charlie Heath as a **participant** used improper conduct including foul and abusive language which was aggravated in that he used the words '*hairline was going back to Africa*".
3. Charlie Heath acknowledged the misconduct charge. Charlie Heath pleaded not guilty to the charge and requested a personal hearing.
4. The case was presented before a Disciplinary Commission appointed by The Football Association ("The FA") as a personal hearing via WebEX.

THE CHARGE

5. Charlie Heath faced two charges of misconduct for breaches of FA Rule E3 for an allegation of (1) Improper Conduct - *including foul and abusive language* (2) aggravated by a person's colour and or race.

THE PLEA

6. In response Charlie Heath pleaded not guilty to the charge and requested to be present at the hearing.

THE FA RULES

The applicable FA Rule E3 states:

GENERAL BEHAVIOUR

7. *E3 (1) 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.*

(2) 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.

DEFINITION AND INTERPRETATION

8. “Participant” means an Affiliated Association, Authorised Agent, Competition, Club, Club Official, Licensed Agent, Player, Official, Match Official, Management Committee Member, Member or Employee of an affiliated Club and all such persons who are from time to time participating in any activity sanctioned either directly or indirectly by The Association.

THE COMMISSION

9. The following members were appointed to the Disciplinary Commission (“the Commission”, We/us”) to hear the case were:

- I. Evans Amoah - Nyamekye – Chair
- II. Kate Rogers – Member
- III. Ian Stephenson – Member

The Secretary to the Commission was Colin Hills and Branden Kelly acted as an observer for the participant.

THE HEARING

10. There was a slight delay as Charlie Heath needed to walk home from work, given the current pandemic the Commission agreed to a 30 mins delay as he was a willing participant.

11. In advance of the “Hearing” we had received and read the bundle of documents containing the submissions and statements from all of the parties.

12. Before the commencement of the hearing we were informed that Charlie Heath had received all the necessary documents.

13. In essence the case against Charlie Heath was that he used improper conduct which was said to be aggravated by the use of abusive *language/behaviour* towards UCL Academical's player Damilola Oyetan, by saying to him his *"hairline was going back to Africa"*. There was no live evidence from Damilola Ovetan to this effect.

14. We received the case papers in advance of the hearing.

15. From Charlie Heath's response he had fair notice of the allegation made against him. It was evident from the response to the charge from Charlie Heath he had received the said material and was aware of the facts of the allegations.

16. Charlie Heath had prepared a statement prior to the hearing.

THE EVIDENCE GIVEN DURING THE COMMISSION

The following is a record of the salient points which we heard and is not intended to be and should not be taken as a verbatim record of the evidence.

THE COUNTY FA'S CASE

Mr Toyin Ibrahim-Igbo evidence

17. Mr Toyin Ibrahim-Igbo the match referee in his report it states: *'On one or two occasions I have had to verbally remind certain players of their comments and warned against incitement..... The scorer, Charlie Heath of Parmiterians was a little slower in responding. At that moment Dami Oyetan of UCL Academicals got involved by telling Charlie Heath to hurry up. The comments from Dami Oyetan were along the lines of 'we haven't got all day'..... Charlie Heath took exception to that comment and he reply by saying to Dami Oyetan something along the line of 'Can't you see your hairline rescinding all the way back to Africa'..... The players from UCL Academicals felt aggrieved by that comment against one of their players and indicated that Charlie Heath was being racist..... At that moment Charlie Heath raced 20 yards head on towards Dami Oyetan and Mayhem ensued. Both Dami Oyetan and Charlie Heath squared up to each other whilst they were being restrained by their own teammates..... I told Charlie Heath that I dismissed him for violent conduct and that is what I would be reporting him for. I also told him that I have noted the comment he made that led to the confrontation, but I am not reporting him for racism.'*

Assessment of Mr Toyin Ibrahim-Igbo evidence to the Commission

- 17.1. The Commission concluded that the match report from Toyin Ibrahim-Igbo was clear. Like other live evidence it was able to be vigorously tested by the Commission and the participant.
- 17.2. The Commission accepted his evidence as trying to be helpful.
- 17.3. Charlie Heath did not have any questions as he in the main agreed with the evidence.

- 17.4. When questioned by the Commission Toyin Ibrahim-Igbo accepted that he did not hear the full comment from Charlie Heath.
- 17.5. The Commission concluded that Toyin Ibrahim-Igbo evidence could be relied upon to conclude that Charlie Heath was responsible for the alleged words used.
- 17.6. The Commission noted with concern that the initial report indicated that incident would not be reported to the county FA.

Evidence from Michael Stark

- 17.7. The Commission considered the live evidence of Michael Stark as very helpful and honest.
- 17.8. Michael Stark's evidence was clear in that he heard the comments '*his hairline was going back to Africa*'. Michael Stark was of the view that the comments were connected to the skin colour of the opposition player in question.
- 17.9. Michael Stark also stated that Charlie Heath '*...was ultimately sent off by the referee for his conduct and left the field promising to 'split his [Mr Oyetan's] jaw' following the game*'. Charlie Heath did not recall this.
- 17.10. The Commission concluded that Michael Stark's evidence could be relied upon as corroborative evidence that alleged words were used by Charlie Heath.

THE PARTICIPANT'S CASE**THE EVIDENCE OF CHARLIE HEATH**

- 17.11. Charlie Heath had prepared a statement prior to the hearing.
- 17.12. To his credit Charlie Heath did not try to deny that he used the words alleged. Charlie Heath gave a full and frank admission regarding the use of the words.
- 17.13. With the benefit of hindsight Charlie Heath that stated that he should not have used the words and was apologetic. Charlie Heath accepted when questioned by the Commission that he could have used the words without the reference to Africa.
- 17.14. Charlie Heath was adamant in his evidence and questioning of witnesses that his use of the words was not connected to the skin colour of the opposing player but rather was simply an “*off the cuff*” comment about his receding hair line. Charlie Heath stated that he received similar comments about his hairline, which he is ‘*insecure*’ about, and that this made him react the way he did.
- 17.15. Charlie Heath went to great lengths to explain to the Commission that he was not a racist and that his family was made up of people from ethnic backgrounds. The Commission reminded Charlie Heath that it was not within the remit of the Commission to determine such an issue and that the focus of the Commission was to consider whether the FA Rules have been infringed.
- 17.16. The Commission concluded that Charlie Heath did use such language as described.
- 17.17. The Commission did not accept that the use of the words “*Can't you see your hairline rescinding all the way back to Africa*” amounted to improper conduct including foul and abusive language to the required evidential standard.

Evidence of Atiba Jackson

18. Atiba Jackson gave evidence which in essence amounted to his interpretation of the use of the words "*Can't you see your hairline rescinding all the way back to Africa*".
19. Atiba Jackson stated in his opinion that the comment was not related to race or nationality but was rather focused toward the actual hairline '*distance*' of the opposing player.
20. Atiba Jackson stated that he would not question the person who Charlie Heath was.

Evidence of Christophe Kane

21. Christophe Kane stated that he had known Charlie for two years via the team and that he considered him a good friend.
22. Christophe Kane further stated that he understood why the opposing player reacted the way he did however his view was that the player simply '*took it the wrong way*'.
23. When questioned by the Commission Christophe Kane stated that the comments were not related to race or nationality and explained that the opposing player had a receding hair line.

THE COMMISSIONS CONCLUSIONS

- 23.1. The Commission concluded Charlie Heath was found to have used the alleged words. The reasonable inferences which could be drawn are from the circumstances of the case were namely:
- 23.1.1. Charlie Heath admits the use of the words '*Can't you see your hairline rescinding all the way back to Africa*'.
 - 23.1.2. There was corroborative evidence to support Charlie Heath used the words alleged.
24. The Commission found that the charges as drafted was not proven on the evidence presented.
25. The Commission did not accept that words '*Can't you see your hairline rescinding all the way back to Africa*' amounted to improper conduct including *foul and abusive* language to the required evidential standard. Therefore the words could not then be said to trigger the aggravated element of the E3(2) charge.

BURDEN OF PROOF

- 25.1. The applicable standard of proof required for this case is the civil standard of the balance of probability.

OUR FINDINGS OF FACT

On the balance of the burden required, we are satisfied to make the following findings of fact that:

- 25.2. On 7 March 2020, a match between UCL Academicals Reserves V Old Parmiterians took place.
- 25.3. The Commission concluded that the evidence presented could **not** be relied upon to conclude that Charlie Heath used the words that amounted to *improper conduct including foul and abusive language* to the required evidential standard.
- 25.4. The Commission unanimously found the charge of FA Rule E3 *'improper conduct including foul and abusive language – aggravated by a person's ethnicity, colour or nationality'* **not** proved against Mr Charlie Heath.

THE DECISION

- 25.5. Having heard and read the evidence, the assessment of the evidence is entirely a matter for the Commission members.
- 25.6. We have to assess the reliability of the witness (*that is whether, even although a witness may be attempting to tell the truth their evidence might not be relied upon for differing reasons*) and the credibility of a witness (*that is whether a witness is attempting to tell the truth*). Of course such an assessment is difficult to make if the evidence being considered is in written form. We are entitled to take into account the demeanour of the witness who appeared before us.
- 25.7. Ultimately it is for the Commission to accept or reject each piece of evidence they are considering. Even where there are discrepancies between witnesses or within a witness's own evidence, it is for us to assess if the

discrepancies are important and leads assistance to the determination on the balance of probabilities.

- 25.8. Having decided which evidence we accept and rejected; we then have to decide on the balance of probabilities if the alleged breach of the FA Rule is established.
- 25.9. We considered all of the evidence written, oral, and visual and the final submissions.
- 25.10. We find the charges not proven.

Signed The Commission:

THE COMMISSION

1. Evans Amoah - Nyamekye – Chair
2. Kate Rogers – Member
3. Ian Stephenson – Member

20 August 2020