

THE FOOTBALL ASSOCIATION DISCIPLINARY COMMISSION

Sitting on behalf of Amateur Football Association

A PERSONAL HEARING

of

**DEAN FLATT [61956923]
OLD SALESIANS**

THE DECISION AND REASONS OF THE COMMISSION

INTRODUCTION

1. The Football Association (“The FA”) convened a Disciplinary Commission (“the Commission”), on behalf of the Amateur Football Association (“AFA”) to adjudicate upon disciplinary charges levied against Mr Dean Flatt (“DF”) of Old Salesians (Case ID number: 9919532M) arising from a match between Bank of England Reserves v Old Salesians Reserves on 24 August 2019.
2. The Discipline Commission members were Mr Davide Corbino (Independent FA appointed Chair), Ms Naila Hadid and Mr Michael Woodhams (both Independent FA appointed Members). Mr Alastair Kay of Berks & Bucks FA acted as Secretary to the Commission. Mr John Doe, Secretary of Old Salesians, observed proceedings at DF’s request.
3. By charge letter dated 25th September 2019, DF was charged with misconduct for breaches of FA Rules E3(1) and E3(2), namely for an allegation of Improper Conduct (including foul and abusive language) and Improper Conduct aggravated by a persons Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Sexual Orientation or Disability. The player was specifically charged by making reference to sexual orientation. The charge

alleged that DF made insulting comments towards the match referee, namely “faggot”.

4. DF was further charged with a breach of FA Rule E3, namely for an allegation of Improper Conduct (not including threatening and/or abusive language/behaviour). The charge alleged that DF provided a false name to the match referee, namely ‘Christopher Robins’.
5. DF pleaded guilty to charge 1 (for a breach of FA Rule E3 – Improper Conduct (including foul and abusive language)) and tendered not guilty pleas to charges 2 and 3. DF requested a personal hearing.

PRELIMINARY MATTERS

6. The Commission was notified by the Secretary of the Commission that two of the AFA witnesses (Mr Donald O’Toole (match referee) and Mr Geno White) would not be in attendance at the hearing. The Commission was informed that the Referee had sent a text message to the Secretary of the Bank of England Club, who was at the venue of the hearing. We were unable to confirm details of witness attendance with the AFA. The Commission was also notified that the AFA had already requested one postponement in these proceedings. The Commission noted Rule 125 of the On-Field Regulations 2019-2020, which provides that “*a request for a second postponement by the same party should not ordinarily be granted*”. In any event, no such application was made by the AFA.
7. In the circumstances, the Commission informed DF of the absence of the two witnesses of the AFA and explained the consequences of proceeding without them. DF, who had been given time to consider his position, decided not to request a postponement and the hearing proceeded without the two witnesses from the AFA.

8. As a further preliminary issue, concerns were raised regarding the timing of disclosure of the documentation that related to this matter to DF. The Commission was informed that the documentation had been served upon the Club on 9th November 2019 but the Club had only provided DF with a copy on the day of the hearing. DF was given the opportunity to seek an adjournment to ensure fairness of proceedings, however DF declined the invitation, instead wishing to proceed with the case. DF was provided with as much time as he required to consider all documentation before he confirmed that he was ready to proceed.

EVIDENCE

9. The following is a summary of the principal evidence provided to the Commission. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or evidence, should not imply that the Commission did not take such point, or evidence, into consideration when the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished with regard to this case. ^[L]_[SEP]
10. The Commission considered the following written evidence:
11. Donald O'Toole: The Commission was provided with an Extraordinary Incident Report Form by the Match Referee, Mr O'Toole, dated 30 August 2019. Mr O'Toole states that the ball had gone out of play when 'Christopher Robins' from about 10 yards away said, "fuck off you jobsworth cunt!" Mr O'Toole states that as Christopher Robins was shown a red card and as he walked towards the touchline, he further insulted him by calling him "a mug" and "a faggot".
12. Geno White: The Commission was provided with an email from Mr Geno White, dated 15 October 2019. Mr White states that the words DF used to describe the referee were "jobsworth cunt" and "faggot".

13. Bartholomew O'Toole: The Commission was provided with an email from Mr Bartholomew O'Toole, dated 25 September 2019. Mr O'Toole states that he saw the referee issue a red card and calling out words to the effect of "That's a red card offence in any game. You can't say that to the referee..." Mr O'Toole states that a number of players were gathered around and there was some further discussion but he could not hear what was being said. After the game, the referee reported to him that the player had said "Fuck off you jobsworth cunt" and called him "a mug" and "a faggot".

14. At the hearing, we heard live evidence from the following witnesses:

15. Dani Lessey-Edwards: Mr Lessey-Edwards confirmed that his written report of the incident accurately reflected what he saw and heard of the incident. When questioned, Mr Lessey-Edwards stated that when the incident occurred, he was approximately 10 yards away. Mr Lessey-Edwards stated that he was absolutely sure in his mind that DF called the referee "a cunt" and "a blind faggot" and these comments were made loud enough for others to hear.

16. Dean Flatt: DF confirmed that his written reports of the incident accurately reflected what occurred. DF stated that he had been unhappy with the referee's performance during the match and that he attempted to speak to the referee about the opposing team calling "leave it" and "my ball" as this was causing confusion. The referee in response, told him to "shut up" and to carry on playing. DF stated that in response, he told the referee he was "fucking useless" and was thereafter dismissed from the field of play. DF said "are you fucking serious" and walked from the field of play. He was thereafter confronted by an opposing player who told him to "get off the pitch you fucking prick". DF denied using the words alleged, although he did state in his evidence that one of the players from his team accepted shouting "jobsworth cunt" and that his manager was present at the time. DF stated that he did not hear the word "faggot" used. With regard to identification, DF stated that the referee had not asked for his name, but after being shown the red card, the referee had asked a team mate who told

the referee he did not know DF's name. DF stated that the referee asked the same player again, and he responded 'Christopher Robins'. DF stated that he then shouted out that his name was 'Christopher Robins' followed by 'Winnie the Pooh'.

17. Nick Burridge: Mr Burridge stated that he was the player-manager for Old Salesians Reserves and was playing during the match in question. Mr Burridge stated that he was playing as a centre-back and so was quite far from the incident. He confirmed that he had heard someone say "jobsworth cunt" and that he thought it either came from another one of his players or perhaps someone from near the touchline. Mr Burridge stated that he did not hear DF say the words he is alleged to have said. Mr Burridge stated that he was not present when the referee had asked what DF's name was and that he was not aware that a player from his team had disclosed that he had called the referee a "jobsworth cunt".

DECISION

18. In a Commission such as this, the assessment of the evidence is entirely a matter for the Commission members. We have to assess the credibility of the witness (that is whether a witness is attempting to tell the truth) and the reliability of the witness (that is whether, even though a witness may be attempting to tell the truth, their evidence might not be relied upon).
19. Where there are discrepancies between witnesses, it is for us to decide which witnesses to accept and which to reject. Even where there are discrepancies between witnesses or within a witness's own evidence, it is for us to assess if the discrepancy is important and lends assistance to the determination of whether or not a charge is proved or not proved. ^[1]_[SEP]
20. Having decided which evidence we accept and reject, we then have to decide if, on the balance of probabilities, the alleged breach of the FA Rules is established. The balance of probability standard means that the

Commission is satisfied an event occurred if the Commission considers that, on the evidence, the occurrence of the event was more likely than not.

21. The Commission reminded itself that DF had pleaded guilty to Charge 1, and thus it was Charges 2 and 3 that required determination.
22. In assessing the evidence in respect of DF, we were mindful of the issues to be determined under the various charges: ^[1]_[SEP]
23. Charge 2 essentially posed the following two stage test: firstly, the Commission had to determine what, if any, comments were made by DF towards the match referee and whether they were improper; and secondly whether the language (if found to be used by DF) was aggravated by reference to sexual orientation. The determinative issue therefore was whether the Commission was satisfied on the balance of probabilities that DF had called the referee “a faggot”.
24. In respect of Charge 3 the Commission had to determine whether DF had provided a false name to the match referee in accordance with the charge. ^[1]_[SEP]

Charge 2

25. The Commission took into account all of the evidence presented to it. There was a simple conflict of evidence as to whether DF had called the match referee “a faggot”.
26. The Commission was impressed with the evidence of Mr Lessey-Edwards. Mr Lessey-Edwards was clear that the comment had been made, and that it was DF who made it. We found him to be a credible witness and his evidence appeared to us to be honest and fair. There appeared to be no reason to suggest a motive for him to invent such an allegation against DF.
27. The Commission considered the issues raised by DF with regard to the inconsistencies of the wording alleged between Mr Lessey-Edwards and the

written evidence of Mr O'Toole and Mr White. The Commission did not find those inconsistencies material; indeed the evidence of Mr O'Toole, Mr White and Mr Lessey-Edwards was all consistent in that it alleged that the word "faggot" was used.

28. On the other hand, DF denied making or hearing any such comment. Mr Burridge also denied hearing the word "faggot" said by DF or at all.
29. The Commission considered the inherent probability of the competing cases. DF conceded that he had been unhappy with referee's performance during the fixture and that he had said, "are you fucking serious" or words to that effect. DF's case was, in essence, however that he never said the comment and that he did not hear it being said by another. The Commission preferred the evidence of Mr Lessey-Edwards and considered it inherently unlikely that he was mistaken on this point.
30. On balance, and taking into account all the evidence, the Commission found that DF had called the match referee "a faggot", that the comment was improper and aggravated by sexual orientation and thus found the charge proven.

Charge 3

31. We then turned to Charge 3, and specifically the question of whether DF had provided a false name to the referee.
32. The Commission was satisfied from DF's evidence that he was clearly responding to the referee's request for his name, notwithstanding that the referee had not asked him directly, and on his own admission affirmed that his name was 'Christopher Robins', which was false.
33. The Commission therefore found, on balance, the Charge 3 proven.

SANCTION

34. In considering sanction with respect to all charges, the Commission was guided by the FA Sanctioning Guidelines. The Commission also reminded itself of FA Regulation 47 which states that: *“Where a Participant commits an Aggravated Breach for the first time, a Regulatory Commission shall impose an immediate suspension of at least six Matches on that Participant. The Regulatory Commission may increase the suspension where additional aggravating factors are present”*.
35. With regard to mitigation, the Commission was told that DF had sourced two sets of football kits that he subsequently provided to the Club and that this had significantly assisted the Club financially. DF stated that he had recently been diagnosed with spinal arthritis, which will require surgery and that he may not be able to continue playing football for as long as he had hoped.
36. The Commission was also made aware that DF had one previous incident of improper conduct, including abusive language and/or behaviour in January 2019 in which he received a 2-match suspension and a fine of £30.
37. After having considered all the circumstances in the case, the guidelines under FA Regulations, and the principle of totality, the Commission imposed the following sanction with respect to all charges:
- i. Seven match suspension;
 - ii. Monetary penalty of £75.00;
 - iii. DF to satisfactorily complete a mandatory online education programme;
 - iv. Seven Club Disciplinary Points.
38. Failure of the participant to complete the education course within four months shall result in his immediate suspension from all football activity until such time as he has completed the course.

39. This decision is subject to the right of appeal under the relevant FA rules and Regulations.

Mr Davide Corbino (Chair)

Naila Hadid

Michael Woodhams

15 November 2019