

FA NATIONAL SERIOUS CASE PANEL

DISCIPLINARY COMMISSION

CHAIR PERSON SITTING ALONE

Sitting on behalf of the Amateur Football Alliance

CORRESPONDENCE HEARING

of

ASHLEY NASH

[Case ID: 10516695-M]

THE DECISION AND REASONS OF THE COMMISSION

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Introduction

1. On 2nd October 2021 Ibis Eagles Reserves played a SAL Intermediate Cup fixture against Old Finchleians Reserves, collectively called the “match”.
2. Amateur Football Alliance received a report of a derogatory comment made by an Old Finchleians Reserves player to an Ibis Eagles Reserves player during the match, the report being submitted after the match.
3. Amateur Football Alliance investigated the reported incident.

The Charge

4. On 14th October 2021, Amateur Football Alliance charged Old Finchleians :

Charge 1;

4.1 with misconduct for a breach of FA Rule E3.1 – Improper conduct (including foul and abusive language).

Charge 2:

4.2 with misconduct for a breach of FA Rule E3.2 – Improper conduct – aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Gender Reassignment, Sexual Orientation or Disability.

5. The relevant section of FA Rule E3.1 states: ¹

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.

E3.2 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.

6. Amateur Football Alliance included with the charge letter the evidence that it intended to rely on in this case.
7. The Club was required to respond to its charge by 28th October 2021.

The Reply

8. The reply from the Club was received on 27th October and was “*Accept – Correspondence*”.

The Commission

9. The Football Association (“The FA”) appointed me, Ian R. Stephenson, as a Chair Person Member of the Football Association National Serious Case Panel, to this Discipline Commission, as the Chair Person Sitting Alone to adjudicate in this case.

The Hearing & Evidence

10. I adjudicated this case on 1st November 2021 as a Correspondence Hearing (the “Hearing”).
11. I had received and read the bundle of documents prior to the Hearing.
12. The following is a summary of the principal submissions provided to me. It does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or submission, should not imply that I did not take such point, or submission, into consideration when I determined the matter. For the avoidance of doubt, I have carefully considered all of the evidence and materials furnished with regard to this case.

¹ Page 124 & Page 125 of the FA Handbook 2021/2022

13. The following evidence was provided in the case bundle:
14. The Match Referee, Mr Aidan Keightley (“AK”), dated 3rd October 2021, in which he states, and I quote: *“In the 47th minute of the game an Old Finchleans Res player, Reece Effer, Reserves was fouled by an opposing player near the halfway line. I was some 10 yards from the tackle which was neither aggressive or wild. Mr Reece reacted by shouting loudly and clearly at the Ibis player – You are a Faggot”. I took this as being an offensive (and homophobic remark) and I summoned Mr Reece and his captain to me and told them that I considered the remark offensive and homophobic and as such I was dismissing Mr Reece for making an Offensive Remark and that I would also be reporting him for a homophobic remark. Mr Reece commented that this was his first game in nearly 5 years and he didn’t realise what he said was homophobic”.*
15. An email from “AK”, dated 4th October 2021 which stated and I quote *“Yes the person I dismissed was Ashley Nash. There had been a shirt switch after the team sheet was handed in and I wasn’t informed. When I was speaking to the player I referred to him as Avi as this was the name I had on my very wet report card. Neither Ashley or the captain corrected me but this could have been down to the atrocious weather conditions at the time of the incident. At the end of the game the Old Finchleans Manager, Bob, came to see me to say that the person I had cautioned for US/FT was Reece Effer. I mistakenly thought he meant the player I dismissed. Hence my reports having the players’ names incorrect. My apologies for this but I hope it now makes some sense. Player dismissed (SO6) and reported for misconduct: Ashley Nash.....”.*
16. An email from Melanie Armstrong, dated, 4th October 2021, which was sent to the Match Referee “AK” to clarify the name of the person dismissed from the field of play in respect of the incident which is the subject of the charge.
17. An email from Ronnie Robinson, dated 3rd October 2021, to Melanie Armstrong, advising how to process the dismissal on WGS and the need to submit an extraordinary report to detail exactly what was said.
18. An email from “AK” to “Ronnie” asking for advice on how to report the incident which is the subject of the charge in this matter.

Evidence in The Response to the Charge

19. A Witness Statement from Ashley Nash, (“AN”) dated 7th October 2021 which states and I quote: *A few minutes into the second half I had the ball in the centre circle when an opposing player challenged me unfairly, we both ended up on the ground. The referee blew his whistle for a free kick to us. The player concerned looked at me and said something which I didn’t hear, I said – Shut up you fag”. The referee was right there and immediately showed me the red card. I fully appreciate that in some circles the offending word could have homophobic connotations but I stress that in the circles I move in it simply means -Soft- which is what I wanted to say to the player who fouled me. It has been explained to me since how serious the FA take homophobic abuse and I agree with that, but I honestly didn’t mean it in that way. I apologise if I offended anyone and I have learned a lesson not to use such language in the future”.*

20. An email from Robert Howard, dated 6th October 2021, requesting “AN” if he would complete a statement in relation to the incident.

Standard of Proof

21. The applicable standard of proof required for this case is the civil standard of the balance of probability. This standard means, I would be satisfied that an event occurred if I considered that, on the evidence, it was more likely than not to have happened.

The Findings & Decision

22. In summary, it was alleged that “AN” had said to an opponent “*You are a faggot*”
23. The Commission reminded itself that the burden of proving a charge falls upon the County FA, in this case it falls upon the Amateur Football Alliance.
24. In a Commission such as this, the assessment of the evidence is entirely a matter for the Commission. I have to assess the credibility of the witness, (that is whether the 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.
25. Where there are discrepancies between witnesses, it is for the Commission to accept 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 the Commission to assess if the discrepancy is important. Having considered which evidence to accept and which to reject, the Commission then has to decide if, on the balance of probabilities, the alleged breach of the FA Rules is established.²
26. The Commission noted the following discrepancies between the Witness account provided by the Match Referee “AK” and the Witness account provided by Ashley Nash “AN”. In his Witness statement “AK”³ stated that he heard the player say “*You are a faggot*”. In the Witness statement from the player (“AN”) he states that the words he used were “*You are a fag*”.
27. It should be noted that where direct speech is quoted in a witness statement, I have recorded it exactly in the wording and grammar in which it appears in the witness statement, without making any grammatical or typing alterations to obvious typo errors.
28. Taking into account all of the available evidence and the plea of acceptance submitted by the Club, I find that both charges⁴ E3.1 and E3.2 to be PROVEN.

² Paragraph 21

⁴ Paragraph 4

Previous Disciplinary Record

29. After finding the charge proven, I sought the player's offence history. The player has no prior misconduct record in the previous five seasons.

Mitigation

30. "AN" has provided a Witness statement⁵ in which he apologises for his use of the language and apologises for any offence that his actions may have caused.

The Sanction

31. I noted that the Sanction Guideline for Aggravated Breaches stipulates that the sanctioning range is 6-12 matches. 6 matches is the standard minimum, and a Commission may impose a suspension in excess of 12 matches where there are significant aggravating factors. A Participant found to have committed an aggravated breach will be subject to an education programme.⁶

FA Rule E3.2 – Improper Conduct – aggravated by a person's Ethnic Origin, Colour, Race, Nationality, Faith, Gender Reassignment, Sexual Orientation or Disability.

32. This was an aggravated breach as it referred to a person's Sexual Orientation.

33. As the Club had accepted the charge, I am able to allow "*credit for Guilty Plea*".

34. As Ashley Nash has no previous findings of misconduct against him in the last five years, I am able to take account of that in his favour.

35. After taking into consideration all of the circumstances in this case, Ashley Nash is:

35.1 To serve a 6 matches suspension

35.2 Monetary fine of £75.00 (seventy-five pounds)

35.3 He must attend an ONLINE Education programme. This MUST be undertaken before the match-based suspension is served.

Failure to comply with this order will result in a Sine-Die suspension being issued against the Participant until they have fulfilled this order in its entirety.

35.4 6 Club Disciplinary Points to be recorded.

36. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed: *Ian R Stephenson*

FA National Serious Case Panel Chair

⁵ Paragraph 19

⁶ Page 195 of the FA Handbook 2021/2022

1st November 2021.