

**THE FOOTBALL ASSOCIATION DISCIPLINARY
COMMISSION**

Sitting on behalf of the Amateur Football Alliance

NON-PERSONAL HEARING

Of

CHRIS THURGOOD

Case ref: 11394413M

Warning to the reader of this document. This document contains reference to offensive and/or discriminatory language or behaviour.

THE DECISION AND THE REASONS OF THE COMMISSION

Introduction

1. These are the written reasons of Ruth Mann (“Chair” or the “Commission”), having considered the matter on the papers as Chair alone on a Non-Personal Hearing basis.
2. These written reasons obtain a summary of the principal evidence before the Chair and does not purport to contain reference to all points made. The absence in these reasons of any particular point, piece of evidence or submission should not imply that the Chair did not take such point, piece of evidence or submission into consideration when determining the matter. For the avoidance of doubt, the Chair has carefully considered all the evidence and materials provided in this matter.

The Charges

3. By a Misconduct Charge Notification dated 10th October 2023 (the “Charge Notification”) issued by the Amateur Football Alliance against Chris Thurgood (CT), CT was charged as follows:
 - a) CT used abusive and or indecent and / or insulting words or behaviour contrary to Rule E3.1
 - b) The breach of Rule E3.1 is an “Aggravated Breach” as defined by FA Rule, E3.2 as the language included reference to sexual orientation. This refers to the comment “get up you poof” or similar.
4. CT admitted Charge 1, but pleaded not guilty to Charge 2. CT was satisfied for the matter to be dealt with by way of a paper, Non-Personal Hearing.
5. Accordingly, this matter has been dealt with by me, as Chair alone on a Non-Personal Hearing basis.

Evidence

6. As aforementioned, the following is a summary of the principal evidence only. Where the written statements provided to the Commission contain typographical and/or grammatical errors, they have been recorded as drafted, without correction, to provide a true and accurate reflection of the evidence which has been submitted.
7. Following a fixture between Old Tiffinians First and Dorkinians Third (“the match”) on Saturday 23rd September 2023, the Match Referee, Matthew David (MD) submitted an Extraordinary Report Form on 29th September 2023, which stated inter alia:

“In the second half an Old Tiffinian’s player said that he heard a homophobic word, possibly ‘poof’ from the Dorkinian’s centre forward. I did not hear it myself. I spoke to the player about the use of such words not being acceptable. He was apologetic. Nothing more of this was witnessed or heard. I am only aware of one of Old Tiffinian’s players coming to me about this”.

8. On 29th September 2023 James Kimber (JK) emailed AFC intermediate South¹ highlighting there had been an incident of homophobic abuse at the match. The ‘abuse report’ states *“after the referee gave a foul against a Dorkinians player their striker shouted very aggressively to “get up you *homophobic slur* at our player...”* A reply to the email is noted by the Commission which was from a Melanie Armstrong and dated 29th September 2023². This explains what information was required of JK and or a ‘Will’.
9. On 1st October 2023 Keiran Olivares Whitaker (KOW) provided a statement³. He states that he was fouled near the half way line during the second half of the match. KOW states *“While I did not hear what was being said, after standing up following the challenge, both our captain and vice-captain were speaking to the referee within earshot where they had mentioned there had been an incident of using a homophobic slur by Dorking’s tall number 5 (who was playing up front), who said “get up you poof” as he thought I had dived”.*
10. On 1st October 2023 James Kimber (JK) provided a statement.⁴ He states inter alia, *“After the referee gave a foul against a Dorkinians player, their tall, well built & brown haired lone striker (number 5 on the day) shouted very aggressively to “get up you poof” at our player (Keiran Olivares Whitaker) who had just been fouled as adjudged by the referee. Myself and our captain Will Forsyth both immediately informed the referee that this had taken place and was unacceptable language/abuse to hear on a football pitch.”*
11. JK goes on to say that the player *“did not deny what he had said, he in admitted that “it slipped out” and even attempted to apologise after we’d flagged his comment to the referee”.*

¹ Page 8 of Case bundle.

² Page 9 of Case bundle.

³ Page 11 of Case bundle.

⁴ Page 12 of Case bundle.

12. On 3rd October 2023 CT submitted a statement⁵. He states during the second half, inter alia *“One of the Tiff players threw themselves to the ground after a good tackle was made by one of my teammate’s. After the tackle encountered I said ‘get up you fucking puss’ as at the time I was frustrated with the player’s simulation”*.
13. CT goes on to say that he was challenged by the Tiff’ captain. CT states he *“apologised for swearing and stated it was made out of frustration”*. CT states at no point during the encounter did the captain reference homophobic language. CT states *“if he did I would have corrected him on what he thought he heard”*. CT explains later in his statement *“The referee called me over and started “I didn’t hear anything but just mind your language’I apologised again for swearing at the player. The refsaid ‘ok that’s the end of the matter’*.
14. CT states *“ I want to make it clear that it was not the case and the terminology used by myself must have been misconstrued.”*

Liability

15. The Commission reminded itself that the burden of proving a charge falls upon the County FA.
16. CT accepts in his statement that he used the words ‘get up you fucking puss’. Those words are abusive and/or indecent and/or insulting. CT accepted Charge 1; and thus the Commission formally records that Charge 1 is found proven by admission. The Commission went on to consider liability in relation to the charge which CT denied (Charge 2).
17. The applicable standard of proof required for this case is the civil standard of proof, namely, the balance of probability. This standard means the Commission would be satisfied that an event occurred if it considered that, on the evidence, it was more likely than not to have happened.

⁵ Page 15 of case bundle.

18. In a Commission such as this, the assessment of the evidence is entirely a matter for the Commission. The Commission has to assess the credibility of the witnesses (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 the Commission to accept which witnesses to accept and which to reject. Even where there are no discrepancies between witnesses or within witnesses' own evidence, it is for the Commission to assess whether that discrepancy is important. It for the Commission to determine how much weight to attach to evidence and whether, on the balance of probabilities the alleged breach of the FA Rules is established.
20. In assessing liability, the Commission was mindful of the issues to be determined. The Commission went on to consider whether it was satisfied, on the balance of probabilities, that CT made the comment "*get up you poof*" as alleged.
21. The Commission was not so satisfied given the following features in the County FA evidence:
 - a) The only direct evidence provided by the FA regarding the alleged comment being made was from JK. The Commission found the evidence to be brief and lacking in detail, including: where he was when the alleged comment was made on the pitch, whether anyone else in the vicinity had heard the comment, the distance JK was from CT when the alleged comment was made etc. JK states he went with the Captain Will Forsyth to inform the Match Referee. It is not clear from the evidence of JK whether Will Forsyth heard CT make any comment/s. JK states that CT "*shouted very aggressively get up you poof*". However, as stated above it is unclear how close or not the parties were in proximity to each other.

- b) JK states the words were shouted aggressively ‘*at our player*’. The player being Keiran Olivares Whitaker (KOW). KOW stated in his account that he did not hear what was said. There are many reasons for this, for instance he was on the floor or having been tackled. JK’s evidence contains hearsay.
- c) There is no direct evidence from the captain who is believed to be a Will Forsyth. It is unclear and cannot be assumed that he too heard what was said or not said.
- d) MD, the Match Referee did not hear the alleged comment. It is accepted by the Commission this is not a requirement for Match Referee to hear all alleged abusive/insulting comments. However, the Commission notes MD stated “*an Old Tiffinian’s player said that he had heard a homophobic word, possibly ‘poof’*”. It is therefore apparent that there may have been some degree of doubt as to what had been heard due to MD’s reference to ‘possibly’.
- e) There is a discrepancy between what is alleged to have been said by CT when challenged by MD and JK. CT states he was not aware he was being accused of saying or making a homophobic comment. CT states he apologised for swearing, whereas JK states ‘*the player did not deny what he had said*’. CT is adamant that at no point was he challenged about using homophobic language. He states MD told him to ‘mind’ his language to which CT promptly apologised. The evidence of MD is devoid of crucial detail, such as what was said to CT about the language used or alleged and whether there was a direct admission to the use of homophobic language.
- f) The Commission considered the possibility of JK being mistaken as to what was heard. To that end, the Commission considered the wording of the comment which CT accepts he said “*get up you fucking puss*”. The Commission considered the words ‘*poof*’ and ‘*puss*’ were not phonetically dissimilar and could be mistaken, particularly in a match situation.
- g) Those features of the Amateur Football Alliance’s evidence need to be seen in the context of CT’s evidence. CT denied having made the comment and the only direct evidence that such comment was made has come from one witness, namely JK.
- h) There is no other evidence that has been submitted by the FA. It is unclear whether Will Forsyth heard any comments made by CT and whether WF was privy to any discussion with CT and MD about the alleged use of homophobic language.

22. It must be reminded that the Commission did not have the opportunity to test the evidence in this case. There has not been a Personal Hearing. The Commission was unable to hear any oral evidence and has dealt with the case solely on the basis of written evidence.
23. Taking into consideration the above the Commission could not say that the evidence was sufficiently compelling to safely base a judgement upon it, in respect of the allegation that CT made the comment, '*get up you poof*'. On that basis, the Commission concludes that the Amateur Football Alliance has failed to discharge the burden of proving the element of the charge against CT. Therefore, that element of the charge is dismissed.
24. CT will be sanctioned for the Charge 1. The charge is proven by the admission of CT which he accepts was '*get up you fucking puss*'. This could be deemed improper conduct (foul and abusive language).

Sanction

25. The Commission went on to consider sanction. The comment made was foul and abusive. However, it was only made once and not repeatedly.
26. The Commission was provided with the previous record of CT. There are no misconduct charges. There are 2 cautions for unsporting behaviour from the 2018/19 season.

Outcome

27. For the reasons set out above:

- Fine £25
- Dorkinians to receive 5 penalty points.

28. Whereby the participant fails to comply with the order, a Sine-Die (indefinite) suspension shall be imposed until such time as the participant becomes compliant with the order of the Disciplinary Commission.

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

Ruth Mann

30th October 2023

Independent legal Panel Member, Disciplinary Commission Chair