

FA NATIONAL SERIOUS CASE PANEL

DISCIPLINARY COMMISSION

CHAIRMAN SITTING ALONE

on behalf of Amateur Football Alliance

CORRESPONDENCE HEARING

of

Mr TOBY HEWSON

NUFC Oilers FC

[Case ID: 11009868M]

THE DECISION AND REASONS OF THE COMMISSION

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Introduction

1. On 12 November 2022, NUFC Oilers FC (“NUFC Oilers”, the “Club”) Reserves team played an AFA Intermediate Cup away fixture against Civil Service FC (“Civil Service”) Reserves team – collectively the “match”.
2. The Match Referee, Mr Andreas Demetriades, reported an incident from the match.
3. Amateur Football Alliance investigated the reported incident.

The Charge

4. On 05 December 2022, Amateur Football Alliance charged Mr Toby Hewson, a NUFC Oilers player:
 - 4.1. with misconduct for a breach of FA Rule E3 – Improper Conduct (including foul and abusive language), contrary to FA Rule E3.1, (Charge 1) AND that this Improper Conduct was aggravated by a person’s Ethnic Origin, Colour, Race, Nationality, Faith, Gender, Sexual Orientation or Disability, within the meaning of FA Rule E3.2 (Charge 2 and collectively with Charge 1, “Aggravated Breach Charge”); and
 - 4.2. it was alleged that Mr Hewson used abusive and/or indecent and/or insulting language contrary to FA Rule E3.1, and it was further alleged that this is an aggravated breach as the alleged comment contained the word “*queer*”, or similar, which is a reference to sexual orientation, within the meaning of FA Rule E3.2.
5. The relevant section of FA Rule E3 states¹:

“E3.1 A Participant shall at all times act in the best interest 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,

¹ p. 141 of FA Handbook

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 they intended to rely on in this case.
7. Mr Hewson was required to respond to his charge by 19 December 2022.

The Reply

8. On 15 December 2022, the Club, on behalf of Mr Hewson, responded online by denying his charge and requested the case to be dealt with in his absence at a Correspondence Hearing.

The Commission

9. The Football Association ("The FA") appointed me, Thura KT Win, as a Chairman member of National Serious Case Panel, to this Discipline Commission as the Chairman Sitting Alone to adjudicate this case.

The Hearing & Evidence

10. I adjudicated this case on 16 December 2022 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 the evidence and materials furnished with regard to this case.
13. After prompting by Amateur Football Alliance that a notification had been received about use of homophobic comment at the match by a NUFC Oilers player, the Match Referee, Mr Andreas Demetriades, submitted a report, dated 15 November 2022, in which he stated (I quote the relevant text):

“Whilst in the process of cautioning the NUGC Oilers Captain in the 86th Minute for C1 RP, a number of Civil Service players approached me saying ‘Did you hear that Ref, did you hear that’ My reply was ‘Hear what?’

I was then informed that an NUFC Oilers player had allegedly made a homophobic remark towards one of the Civil Services players. I did not personally hear any such remarks and decided not to take any further action based on hearsay.

After the match Jim Kellett entered the field of play for a chat. We had an amicable conversation for a couple of minutes, during which he remarked that he had heard the alleged homophobic remark from the sidelines. I informed Jim that Civil Services had an absolute right to report the alleged comments to the AFA, but that I did not personally heard any homophobic remarks and my position would be reflected in my report...”

14. In response to Amateur Football Alliance seeking clarification, Mr Demetriades stated via an EMail, on 16 November 2022 at 12:02, that (I quote the relevant text):

“I was standing approximately 20 yards from the alleged incident because I had isolated the NUFC Oilers skipper to caution him. A number of Civil Services players came over to where I was and pointing in the general direction of 3/4 Oilers players. The reason for this is because the C1 FT challenged occurred 5 yards outside the Oilers penalty area and they were in the process of forming a defensive wall. No shirt number was identified, just a lot of finger pointing in the general direction of the wall.

No, I do not recall the alleged remarks being recounted verbatim to me.”

15. A Matchday Teamsheet for NUFC Oilers was also included in the bundle, which showed Mr Toby Hewson as Number 2 for NUFC Oilers.

16. Mr Jim Kellett, Civil Service President, submitted a statement via an EMail, on 30 November 2022 at 18:02, in which he stated (I quote the relevant text):

“I am Jim Kellett, the Civil Service Football Club President. I was present during various stages of this game as aside from supporting the reserves my son also plays. I also know the referee Andy from him officiating many times at our ground. I had come over towards the last stages of the game, I was standing beyond the half way line in the end that NUFC were defending. I saw the tackle that brought the Service player down, am pretty sure this was right towards the end of the game. Then there was a coming together of players, I heard the word queer from where I was but I cannot state who it came from given the

crowded nature of the scene. The whistle was shortly afterwards blown. I went onto the pitch to shake Andy's hand and he was spoken to by a number of players from both sides, my intention was to help calm things, Andy had a clear steer on things he advised the players he could take no action because he hadn't heard the word being said..."

17. Mr Daniel Villarreal, a Civil Service player, submitted a witness statement, dated 15 November 2022, in which he stated (I quote the relevant text):

"The incident started after an Oilers player fouled CSFC centre midfielder, Lind Osmani, on the edge of the box... I went to set up for the free kick so didn't hear or see what happened next, but it was at this point something happened between Lind and the Oilers centre back (CB) wearing number 2, with the referee close by. The referee summoned Lind over. The Oilers CB and CSFC player Owen Bird were walking over to where I stood. Owen said 'you can't call him queer' to which Oilers CB replied 'I can call him that because he looks it'. I asked Owen if the Oilers CB had called Lind queer, which Owen confirmed and the Oilers CB said to me 'I can call him that'. He repeated this statement a couple of times. The referee showed Lind a second yellow and indicated he wanted the game to proceed. I asked the referee why he had sent Lind off, to which the referee replied 'he was effing and jeffing'. Then I asked the referee why he hadn't sent off the Oilers CB for calling him queer to which he replied 'I didn't hear that and I can only call what I hear'."

18. Mr Herolind Osmani, a Civil Service player, submitted a witness statement, dated 15 November 2022, in which he stated (I quote the relevant text):

"I had just been brought down by number 4 and awarded a free kick. I complained to the referee that I thought the challenge was over the top before walking back towards the back line to position myself for the set piece. This is when number 2 looked towards me and called me a 'queer'. Two of my teammates were close by at this moment. I then asked him what he said where he responded 'you look like one, you're a queer' as he stepped closer to me. My teammates then got between us as they're trying to flag the comments to the referee... the referee from a distance had given me a second yellow for what I assumed was the additional commotion that had just occurred or the time it had taken for play to restart. I walked over to the referee to let him know what had been said to me and then walked off to the sideline."

19. Mr John Sewell, a Civil Service manager, submitted a witness statement, dated 15 November 2022, in which he stated (I quote the relevant text):

“Following another foul on Lind Osmani... As the referee was booking their player for the foul, the Oilers captain number 4 squared up to Lind, I wasn't close enough to hear so started walking over, at this point their tall number 2, dark hair, stepped in front of him and called Lind queer. At this point more of both teams stepped in so I couldn't hear the remaining conversation but heard the word queer very clearly.”

20. Mr Owen Bird, a Civil Service player, submitted a witness statement, dated 16 November 2022, in which he stated (I quote the relevant text):

“... After the free kick was given on Lind, their number 2 said 'get up you queer' to him. Lind went over to the ref to tell him what he had said.

I then said to number 2 you can't say that, to which he replied 'yes I can'.”

21. In an EMail trail, between 15 November 2022 and 22 November 2022, from Amateur Football Alliance to NUFC Oilers seeking the identity of their player Number 2 and observations on the incident, the Club responded by EMail, on 22 November 2022 at 11:12, naming Mr Toby Hewson as their player Number 2.

22. In relation to the observations, the Club responded by EMail, on 28 November 2022 at 19:42, in which they stated (I quote the relevant text):

“Thank you for your patience, we have been asking the team if they heard anything and speaking with Toby.

In summary, no-one on our team heard the interchange, I was on the sideline for that game and didn't hear or see anything either. The first I was made aware of it was when the Civil Service players were reporting it to the referee at the end of the game. Our number 2, Toby, insists that no such interchange occurred and believes that they were trying to distract the referee from sending one of their players off. I am just reporting what Toby has told me, again I did not hear or see anything.

For what it's worth, Toby is a founding member of the club and has never acted, spoken or behaved in a homophobic manner in the 10 years we have been in existence. It would not be tolerated at this club...”

23. Mr Hewson did not submit a statement from himself.

24. That concluded all relevant evidence in this case.

Standard of Proof

25. 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

26. In relation to the identity: whilst the Referee, Mr Demetriades², and Mr Kellett³ did not know who had made the alleged comment, other witnesses – Mr Villarreal⁴, Mr Osmani⁵, Mr Sewell⁶ and Mr Bird⁷ – had only identified the NUFC Oilers players as Number 2 in their statements. According to the Matchday Teamsheet⁸ and submission from the Club⁹, the NUFC Oilers player Number 2 at the match was Mr Toby Hewson.

27. Therefore, I was satisfied that the identity of the NUFC Oilers player who was alleged by Civil Service members to have made the reported comment was Mr Hewson. I had also noted that neither possible mistaken identity had been raised nor anyone else offered to be the person who had made the alleged comment.

28. The evidence relating to whether, how and what the alleged comment was made:

28.1. Mr Demetriades had said “*I did not personally hear any such remarks*”¹⁰, but he had indicated the approximate location of the incident as “*challenged occurred 5 yards outside the Oilers penalty area and they were in the process of forming a defensive wall*”¹¹;

28.2. Mr Demetriades had added that “*After the match Jim Kellett entered the field of play for a chat. We had an amicable conversation for a couple of minutes, during which he remarked that he had heard the alleged homophobic remark from the sidelines*”¹²;

² paras 13 and 14

³ para 16

⁴ para 17

⁵ para 18

⁶ para 19

⁷ para 20

⁸ para 15

⁹ para 21

¹⁰ para 13

¹¹ para 14

¹² para 13

- 28.3. Mr Kellett had said *"I was standing beyond the half way line in the end that NUFC were defending. I saw the tackle that brought the Service player down... Then there was a coming together of players, I heard the word queer from where I was"*¹³;
- 28.4. Mr Villarreal had said *"I went to set up for the free kick so didn't hear or see what happened next, but it was at this point something happened between Lind and the Oilers centre back (CB) wearing number 2, with the referee close by. The referee summoned Lind over. The Oilers CB and CSFC player Owen Bird were walking over to where I stood. Owen said 'you can't call him queer' to which Oilers CB replied 'I can call him that because he looks it'. I asked Owen if the Oilers CB had called Lind queer, which Owen confirmed and the Oilers CB said to me 'I can call him that'. He repeated this statement a couple of times"*¹⁴;
- 28.5. Mr Osmani had said *"I had just been brought down by number 4 and awarded a free kick. I complained to the referee that I thought the challenge was over the top before walking back towards the back line to position myself for the set piece. This is when number 2 looked towards me and called me a 'queer'. Two of my teammates were close by at this moment. I then asked him what he said where he responded 'you look like one, you're a queer' as he stepped closer to me. My teammates then got between us as they're trying to flag the comments to the referee"*¹⁵;
- 28.6. Mr Sewell had said *"As the referee was booking their player for the foul, the Oilers captain number 4 squared up to Lind, I wasn't close enough to hear so started walking over, at this point their tall number 2, dark hair, stepped in front of him and called Lind queer. At this point more of both teams stepped in so I couldn't hear the remaining conversation but heard the word queer very clearly"*¹⁶;
- 28.7. Mr Bird had said *"After the free kick was given on Lind, their number 2 said 'get up you queer' to him. Lind went over to the ref to tell him what he had said. I then said to number 2 you can't say that, to which he replied 'yes I can'."*¹⁷;

¹³ para 16

¹⁴ para 17

¹⁵ para 18

¹⁶ para 19

¹⁷ para 20

- 28.8. Mr Hewson did not submit a statement from himself¹⁸ to give his version of events. However, the observations from the Club included *“Our number 2, Toby, insists that no such interchange occurred and believes that they were trying to distract the referee from sending one of their players off. I am just reporting what Toby has told me”*¹⁹; and
- 28.9. The Club also added that *“we have been asking the team if they heard anything and speaking with Toby... no-one on our team heard the interchange”*²⁰.
29. The allegation was that: Mr Hewson was alleged to have called Mr Osmani a *“queer”*, which was also heard by Mr Sewell and Mr Bird; Mr Osmani had challenged Mr Hewson and as did Mr Bird, which was witnessed by Mr Villarreal; Mr Hewson was alleged to have made further responses and other comments to different Civil Service players; and Mr Kellett had heard *“queer”* from the touchline where he was watching from and, after the final whistle, he entered the field of play and spoke with, and reported what he had heard to Mr Demetriades, who confirmed this. A number of Civil Service players also reported the alleged comment at the time, which was confirmed by Mr Demetriades in his report that *“a number of Civil Service players approached me saying ‘Did you hear that Ref, did you hear that’ My reply was ‘Hear what?’”*²¹.
30. From the evidence provided by Civil Service players, there appeared to be, not one but, multiple verbal exchanges between different Civil Service players and Mr Hewson at that time, but Mr Hewson, through the Club, had simply said *“no such interchange occurred”*, which implied that all Civil Service members must have colluded and made up the story, including various verbal exchanges between themselves and Mr Hewson. Mr Hewson had not given his own version of where he was at that time, what happened or what exchanges took place to allow me to assess the credibility and reliability of his evidence.
31. Mr Hewson’s statement of his belief that these Civil Service players’ actions were *“trying to distract the referee from sending one of their players off”* also seemed not credible. It would be normal for a Referee to take appropriate disciplinary action, once they had made the decision that a disciplinary action was warranted, even

¹⁸ para 23

¹⁹ para 22

²⁰ para 22

²¹ para 13 (also 14)

- if that action is delayed due to other interruptions. Even if credence was to be given that these Civil Service players made this allegation up with the motive to distract the Referee as Mr Hewson suggested, it would mean Mr Kellett must have been involved in this collusion too – but he just came in from the touchline and reported to the Referee that he heard the word “*queer*” from where he was.
32. There was no credible and reliable evidence from Mr Hewson, but I found the evidence from Civil Service witnesses corroborating to the required degree and to be credible. I was not persuaded that these Civil Service players, manager and Mr Kellett, its President, all had colluded in advance of the match and made this allegation to come from the same moment in the match “*to distract the referee from sending one of their players off*”.
33. I also noted that there were immediate challenges made by multiple players to Mr Hewson after this alleged comment was made and immediate reporting to the Referee by different people, as well as prompt reporting to Amateur Football Alliance, which are the associated consequential behaviours in cases generally involving allegation of derogatory comments.
34. Based on the evidence before me and on the standard of proof required, being the balance of probability, I found it was more likely than not that the events as reported by the Civil Service players had taken place and that Mr Hewson had called Mr Osmani a “*queer*”.
35. Calling someone a “*queer*” is abusive and/or insulting (Charge 1), and it is a reference to a person’s sexual orientation, within the meaning of FA Rule E3.2 (Charge 2). I, therefore, found the Aggravated Breach Charge ²² PROVEN.
36. I found no other aggravating factors in this case.

Previous Disciplinary Record

37. After finding the charge proven, I sought Mr Hewson’s previous disciplinary record. Other than seven cautions, Mr Hewson has no previous misconduct record over the past five seasons.

²² para 4

Mitigation

38. Mr Hewson had not submitted any mitigation and I found none in the case. The Club's submission that "*Toby is a founding member of the club and has never acted, spoken or behaved in a homophobic manner in the 10 years we have been in existence*"²³ is consistent, as far as Mr Hewson's previous five seasons' disciplinary record is concerned, which would be taken into consideration in sanctioning.

The Sanction

39. The *Penalties and Orders on Aggravated Breaches (Rule E3.2)*²⁴ states that:

"47 Where an Aggravated Breach is found proven, a Regulatory Commission shall apply The Association's sanction guidelines for Aggravated Breaches set out at Appendix 1 to Part A: Section One: General Provisions."

40. *Sanction Range under Appendix 1 – Standard Sanctions and Guidelines for Aggravated Breaches for Players, Managers and Technical Area Occupants*²⁵ states that (I quote the relevant text):

"A finding of an Aggravated Breach against a Player, Manager or Technical Area Occupant will attract an immediate suspension of between 6 Matches and 12 Matches ('Sanction Range') [for first offence].

A Regulatory Commission shall take all aggravating and mitigating factors into account, including but not limited to those listed in these guidelines when determining the level of sanction within the Sanction Range.

The lowest end of the Sanction Range (i.e. 6 Matches) shall operate as a standard minimum punishment (the 'Standard Minimum').

Where a Player is aged 12-15 (inclusive) a Regulatory Commission may suspend any number of Matches on terms and for such period as it considers appropriate provided that a suspension of no less than one Match is served. [...]"

41. *Education*²⁶ in *Appendix 1 – Standard Sanctions and Guidelines for Aggravated Breaches* states that (we quote the relevant text):

²³ para 22

²⁴ p. 175 of FA Handbook

²⁵ p. 177 of FA Handbook

²⁶ p. 178 of FA Handbook

“Any Participant who is found to have committed an Aggravated Breach shall be made subject to an education programme, the details of which will be provided to the Participant by The Association.”

42. *Other Penalties*²⁷ in Appendix 1 – *Standard Sanctions and Guidelines for Aggravated Breaches* states that (I quote the relevant text):

“A Regulatory Commission may impose any one or more of the other penalties as provided by paragraph 41 of Part A to the Disciplinary Regulations.”

43. With this Aggravated Breach charge being Mr Hewson’s first such offence, the starting point of sanction for this offence would be at the lowest end, being the *Standard Minimum*, of the *Sanction Range* which, is an immediate suspension of six matches²⁸, a mandatory education programme²⁹ and a fine³⁰.

44. As Mr Hewson denied the charge, which had been subsequently found proven, *“credit for guilty plea”* is not available to Mr Hewson. There was no aggravating factor found in this case³¹ but the mitigation³², which includes Mr Hewson’s previous good disciplinary record, would help reduce the sanction.

45. After considering the starting point, aggravating and mitigating factors, the *Standard Minimum* sanction of six matches for this offence, which I cannot go below, would be the appropriate and proportionate sporting sanction.

46. In addition to the mandatory education programme, a fine of £75 would be an appropriate and proportionate financial penalty.

47. After taking into consideration all circumstances in his case, Mr Hewson is:

47.1. to serve an immediate ground ban suspension from all football activity until NUFC Oilers Reserves team completes 6 (six) matches in approved competitions;

47.2. to satisfactorily complete an online mandatory education programme before this six-match suspension is served, or Mr Hewson be suspended until such time he successfully completes the online mandatory education programme, the details of which will be provided to Mr Hewson;

²⁷ p. 178 of FA Handbook

²⁸ para 40

²⁹ para 41

³⁰ para 42

³¹ para 36

³² paras 37 and 38

- 47.3. a fine of £75 (seventy-five pounds); and
- 47.4. 6 (six) Club Disciplinary Points to be recorded.
48. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed...

Thura KT Win JP LLM MCI Arb (Commission Chair)

18 December 2022