

THE DISCIPLINARY COMMISSION

Sitting on behalf of Worcestershire Football Association

PERSONAL HEARING

of

Ben Redding

Catshill Rangers FC

[CASE REFERENCE 11360333M]

THE DECISION AND WRITTEN REASONS OF THE COMMISSION

Disclaimer:

These written reasons contain a summary of the principal evidence before the Commission and do not purport to contain reference to all the points made, however the absence in these reasons of any particular point, piece of evidence or submission, should not imply that the Commission did not take such a point, piece of evidence or submission, into consideration when determining the matter. For the avoidance of doubt, this Disciplinary Commission has carefully considered all the evidence and materials furnished with regard to this matter.

I. INTRODUCTION

1. The Football Association (“**The FA**”) convened a Disciplinary Commission (the “**Commission**”), on behalf of the Worcestershire Football Association (“**WFA**”) via Microsoft Teams on 24 October 2023 to adjudicate upon disciplinary charges levied against Mr Ben Redding (“**Mr Redding**”) (Case ID number: 11360333M).
2. The Disciplinary Commission was constituted of three members, Mr André Duarte Costa, an Independent FA appointed Chair, Ms Ellie Menezes and Ms Sue Henson-Green, Independent FA appointed Wing Members. The appointed Secretary to the Commission was Ms Ella Broad of the FA.

II. THE CHARGES

3. In summary, by Misconduct Charge Notification dated 21 September 2023 (the “**Charge Notification**”) issued by WFA against Mr Redding, Mr Redding was charged with two charges relating to alleged misconduct in a match against Astwood FC Reds First on 3 September 2023:
 - a) it was alleged that Mr Redding used abusive and/or indecent and/or insulting language contrary to FA Rule E3.1 (“**Charge 1**”);
 - b) it was also alleged that Charge 1 amounted to an aggravated breach as defined by FA Rule E3.2 because it included a reference to Sexual Orientation (“**Charge 2**”).
4. The Charge Notification referred to the comments: “*gay*” and/or “*is definitely the gay in the team and he watches us all in the showers*” or similar (the “**Alleged Comments**”).
5. The Charge Notification also referred to the Standard Sanctions and Guidelines. Furthermore, a reference to an administration fee and/or a potential fine was also made.
6. Mr Redding was required to submit a response by 5 October 2023. On 4 October 2023, Mr Redding submitted on the Whole Game System, the FA's administration system, a not guilty plea denying both charges and requested a Personal Hearing.

III. THE RULES

7. The Rules of the Association are foreseen in Section 10 of The FA Handbook 2023/2024¹.
8. Under the title "Misconduct" Section E of the Rules of the Association sets out the rules to be observed by Participants².
9. Bearing in mind the charges levied against Mr Redding the relevant rule to take into account for the purpose of the present case is FA Rule E3, in specific FA Rules E3.1 and E3.2.
10. According to FA Rule 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.
11. According to FA Rule 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.

IV. WRITTEN EVIDENCE

12. 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.
13. The evidence which the WFA relied upon in support of the charge consisted of:

¹ Available at: <https://www.thefa.com/football-rules-governance/lawsandrules/fa-handbook>.

² means an Affiliated Association, Competition, Club, Club Official (which for the avoidance of doubt shall include a Director), Intermediary, Player, Official, Manager, Match Official, Match Official observer, Match Official coach, Match Official mentor, Management Committee Member, member or employee of a Club and all persons who are from time to time participating in any activity sanctioned either directly or indirectly by The Association, as per The FA Handbook 2023/2024, Section 10, Part A, para. A2.

- a) Extraordinary Incident relating to Misconduct Report by Mr Ethan Clements (**Mr Clements**), the Referee, dated 3 September 2023³
- b) Email from Mr Clements, the Referee, dated 4 September 2023 at 14:09⁴; and
- c) Statement of Mr Roberto Morrall ("**Mr Morrall**"), Secretary for Astwood FC, dated 4 September 2023⁵;
- d) Email from Mr Morrall, Secretary for Astwood FC, dated 4 September 2023 at 09:13⁶;
- e) Statement of Mr Harrison Rhodes ("**Mr Rhodes**"), Player for Astwood FC, dated 10 September 2023⁷; and
- f) Email from Mr Rhodes, Player for Astwood FC, dated 18 September 2023 at 11:16⁸;
- g) Statement of Mr Aaron Price ("**Mr Price**"), Player Astwood FC, dated 22 September 2023⁹.

14. There was no evidence submitted in defence of the charge.

- a) Statement of Mr Stuart Bolton ("**Mr Bolton**"), Manager for Catshill Rangers FC, undated¹⁰;
- b) Messages from Mr Redding, Participant charged and Player for Catshill Rangers FC, undated¹¹; and
- c) Statement of Mr Connor Davies ("**Mr Davies**"), Player for Catshill Rangers FC, undated¹².

³ P. 6 of the case bundle.

⁴ P. 10 of the case bundle.

⁵ PP. 13-15 of the case bundle.

⁶ PP. 17-18 of the case bundle.

⁷ PP. 21-22 of the case bundle.

⁸ P. 24 of the case bundle.

⁹ PP. 27-28 of the case bundle.

¹⁰ P. 34 of the case bundle.

¹¹ PP. 19-23 of the case bundle.

¹² P. 37 of the case bundle.

V. ORAL EVIDENCE**A. GENERAL CONSIDERATIONS**

15. In accordance with the Serious Case Bundle Cover Sheet provided to the Commission prior to the hearing, it expected to hear evidence in support of the charge from Mr Clements, Mr Morrall, Mr Rhodes and Mr Price. From all the foregoing witnesses, Mr Rhodes and Mr Price failed to attend the hearing, which meant that the Commission was not able to test their written evidence, thus attaching little weight to it.
16. Moreover, also in accordance with the Serious Case Bundle Cover Sheet provided to the Commission prior to the hearing, it expected to hear evidence in defence of the charges from Mr Redding, Mr Davies and Mr Bolton, which it did.

B. 24 OCTOBER 2023 HEARING

17. The Commission heard from Mr Clements. In addition to his report, he gave oral evidence as follows:

Mr Clements is a level 7 referee. Mr Clements was appointed by the league chairman to the match. Mr Clements does not think he refereed any of the teams before. Mr Clements stated that Mr Redding was getting rallied up by the Astwood FC bench. Mr Clements stated that the comment was mentioned during a pause in play due to an altercation in the box. Mr Clements stated that there was a free kick for Astwood FC on the right-hand side, he was then alerted for pushing and shoving taking place in the box. Mr Clements had to deal with that at the same time. Mr Clements stated that then the allegation was made. Mr Clements stated that it was one of the Astwood FC coaches that reported it to him. Mr Clements stated that the coach who reported the allegation was calm. Mr Clements stated that his demeanour was fine. Mr Clements wrote down what the Astwood FC coach had reported to him. Mr Clements stated that it happened during the second half. The altercation had already happened when it was reported to him. Mr Clements could not remember the name of the person who reported the incident to him. Mr Clements stated that after the match one Astwood FC player reported the same thing. Mr Clements could not remember the name or face of said player. The term gay was the alleged word. Nothing else was reported to him, just the

term. It was suggested that Ben Redding made the comment. Mr Clements believed the incident happened before the altercation. Mr Clements did not speak to Mr Redding about the allegation. Mr Clements did not hear Mr Redding saying the alleged words. Mr Clements stated that after the altercation there was a report on groping. Mr Clements did not see it happening. It was a separate incident not related to the altercation in the box. Mr Clements could not remember which players were involved in the groping incident. Mr Clements stated that the allegation was the only thing that was brought to his attention. Mr Clements was not sure to whom the comment was aimed at. Mr Clements was only told it was directed towards an Astwood FC player. Mr Clements only knew about the allegation because the coach reported it to him. Mr Clements clarified that Mr Redding was sent off before the allegations were reported to him.

18. The Commission heard from Mr Morrall. In addition to his written statement, he gave oral evidence as follows:

Mr Morrall knew the player who made the comment, it was number 3. Mr Morrall confirmed the name with the match official. The player had also been dismissed by the match official. Mr Morrall stated that the comment was made 55 minutes into the match. Mr Morrall heard the comment very clearly. Mr Morrall wrote what the player had said and the approximate time it was said. Mr Morrall approached the opposition manager and asked for the player's name. Mr Morrall wrote down the word "gay". All Mr Morrall heard was the word "gay". Mr Morrall did not hear anything what the player said afterwards. Mr Morrall knew the player's voice because he was pretty vocal throughout the game. Mr Morrall could see the player saying the word. The comment was made before the player was sent off. Mr Morrall told the opposition coach that his number 3 had used the word "gay" and asked him to confirm his name. Mr Morrall approached the opposition coach 10 to 15 minutes after the player was sent off. Mr Morrall stated that there were about 50 persons at the game. Mr Morrall stated that it was not a noisy match. Mr Morrall was informed the comment was made towards Elliot Fergie. Mr Morrall knows who Elliot Fergie is. Mr Morrall does not think Elliot Fergie heard it. Mr Morrall stated that Elliot Fergie is quite a lad that sometimes is in his own world. Mr Morrall stated that the comment was made in a calm and not aggressive

manner. The player said the comment twice. Mr Morrall heard him in the first time and also saw it in the second time. Mr Morrall did not see where Elliot Fergie was at the time he made the comment. Other players were in the area where the player made the comment. Mr Morrall stated that Arron Price and Harrison Rhodes were in that area at the time the comments were made. Mr Morrall stated that Mr Redding had a few issues with his players during the match. Mr Morrall stated that Mr Redding was a little bit hot headed. Mr Morrall stated that there were people winding each other up from both teams during the match. Mr Morrall did not hear the comment referencing the showers.

19. The Commission heard from Mr Redding. In addition to his written statement, he gave oral evidence as follows:

Mr Redding stated that an opposition player grabbed his bum. Mr Redding asked such player multiple times during the match if he was gay. Mr Redding stated that when he was marking the player, he asked the question if he was gay. Mr Redding reported to the referee that an opposition player was touching his bum. Throughout the match he and his teammate got inappropriately grabbed by the opposition players. Mr Redding asked the question because his bum got touched. Mr Redding made the question in a normal speaking tone. Mr Redding stated that the opposition player was laughing about it because as Mr Redding was moving away from him. When Mr Redding asked if he was gay, the opposition player laughed. Mr Redding never got a response to his question. Mr Redding carried on asking the question because the opposition players continued groping and touching their bums. Mr Redding was not angry; he was more shocked than anything. Mr Redding stated that there was an altercation when one of the opposition players grabbed one of his teammates' bums. Then another one of the opposition players put one of his teammates in a headlock. The altercation then started. Mr Redding was kicked, grabbed and scratched on the arm by the opposition players. Mr Redding then got sent off. Mr Redding could not remember if the player he kicked was the same he asked if he was gay. Mr Redding did not say the comment *"is definitely the gay in the team and he watches us all in the showers"* nor used the word *"queer"*. Mr Redding would say he asked the opposition player if he was gay on 3 or 4 occasion maximum. Mr Redding was pretty sure the name of the player who grabbed his bum was corrie. Mr Redding does not know who Elliot Fergie is.

20. The Commission heard from Mr Davies. In addition to his written statement, he gave oral evidence as follows:

Mr Davies was the person who was touched in the bum. Mr Davies did not hear Mr Redding saying "*queer*" or the comment making reference to the showers. Mr Davies was too far on the pitch to hear what was said. Mr Davies did hear Mr Redding asking "*are you gay*". He did not hear anything of what was alleged. Mr Davies was playing in the centre of the field. The incident Mr Davies mentioned does not have nothing to do with Mr Redding's allegations.

21. The Commission heard from Mr Bolton. In addition to his written statement, he gave oral evidence as follows:

Mr Bolton was not at the match as he was not part of the club at the time.

VI. THE STANDARD OF PROOF

22. The Disciplinary Regulations are foreseen in Section 11 of The FA Handbook 2023/2024.
23. Under the title "General Provisions" Part A of the Disciplinary Regulations sets out in Section One the provisions applicable to All Panels and in Section Two the provisions applicable to Regulatory Commissions.
24. Paragraph 8 of the above mentioned "General Provisions" states that save where otherwise stated, the applicable standard of proof shall be the civil standard of the balance of probabilities.
25. Therefore, the applicable standard of proof required for this case is the civil standard of 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.

VII. FINDINGS & DECISION

A. GENERAL CONSIDERATIONS

26. The Commission reminded itself that the burden of proving a charge falls upon the WFA.

27. In a Commission such as this, the assessment of the evidence is entirely a matter for the Commission to consider. We must 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).
28. 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. Having considered which evidence we accept and reject, we then must decide if, on the balance of probabilities, the alleged breach of the FA Rules is established.
29. In assessing liability, the Commission was mindful of the issues to be determined in the present case. The issues were whether the Commission was satisfied to the requisite standard that the evidence before it proved that the Alleged Comment was either:
- a) Foul and/or abusive, for the purposes of Charge 1; and/or
 - b) Made reference to Sexual Orientation so as to satisfy the aggravated Charge 2; and
30. In this context, the terms "foul" and "abusive" are not strictly defined by the Regulations, therefore the Commission considers that they should be given their ordinary meaning.
31. The ordinary meaning of abusive language generally refers to offensive and insulting words directed at another person. In respect of foul language its meaning does not appear to be contentious.
32. In regard to the wording of Charges 1 and 2 as set out in the Charge Notification, specifically to the word "and" in "foul and abusive language", the Commission found it important, for the sake of clarification, to address such wording as it can lead one to understand that both foul and the abusive language must be present for a charge to be found proven, that is not correct. As put forward in *The FA v. Neil Fishman* heard on 15th February 2021¹³: *"For the sake of completeness, the Commission considers it prudent to address the issue in any event. The E3 Charge [...] is not intended to be conditional on both elements being found proven, namely foul and abusive language. Indeed, the Rule*

¹³ Available at: <https://www.thefa.com/football-rules-governance/discipline/written-reasons>.

E3 does not even contain a provision dealing with "foul language" per se, although this can be implied into the extremely wide scope of the Rule. To find otherwise and require foul language to be proved would be contrary to the actual Rules, it would lead to a triumph of form over substance and further, open the way to an array of irregularities where obvious abhorrent language may circumvent sanction. This is entirely inconsistent with the General Provisions of the Disciplinary Regulations.¹⁴" This is an approach with which this Commission respectfully agreed.

33. Furthermore, in cases such as this the success of an FA Rule E3.2 – Aggravated charge is dependent on the prior success of an FA Rule E3.1 – Improper Conduct (including foul and abusive language) charge. Whereas the latter could be found proven on its own merits if a Commission finds, on the balance of probabilities, that foul and/or abusive language was indeed expressed by a Participant, that cannot happen with the former. This is because the reference to a person's ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability does not constitute, *per se*, discriminatory behaviour, but needs to be subjected to the objective test previously mentioned. Therefore, if a Commission, when considering the charges, finds that there was no foul and/or abusive language expressed by a Participant, the Commission is barred from considering the aggravated charge, unless the reference is itself, considering the context in which it was made, of an abusive nature.
34. The appropriate test is an objective one, commonly known as the "reasonable observer" test. In other words, the Commission was to consider how a reasonable observer would perceive the words used in the given context. The objective person would be someone of reasonable fortitude.

B. FINDINGS

35. In the present case the allegation was that Mr Redding, the Participant charged and a Player for Catshill Rangers FC, had made a foul and/or abusive comment referring to Sexual Orientation at an opposition player.

¹⁴ Para. 16 of the Written Reasons.

36. According to the evidence provided to the Commission the allegation was that Mr Redding had said *“gay” and/or “is definitely the gay in the team and he watches us all in the showers”*.
37. The Commission noted that Mr Redding did not deny saying the word *“gay”*. However, Mr Redding clarified that the word was used in the context of a question posed to an opposition player who grabbed his *“bum”*. Said question, Mr Redding stated, did not have the purpose of offending or being discriminatory. According to Mr Redding, the question was only made because he was shocked at what had happened and wished to know why the player behaved in such a manner. As for the other allegations, Mr Redding denied having used the term *“queer”* or make the comment *“is definitely the gay in the team and he watches us all in the showers”*.
38. From the individuals who attended the hearing, neither Mr Davies nor Mr Clements heard the Alleged Comments being made by Mr Redding. The Commission noted that Mr Morrall stated only hearing the word *“gay”* being said by Mr Redding twice. In this regard, it is worth noting that Mr Morrall stated that the word was said in a calm manner, although quite loud. Further to this, Mr Morrall also stated that comment was not made in an aggressive manner.
39. The Commission also heard evidence concerning acts of groping by the players of Astwood FC on Catshill Rangers FC players. Both Mr Redding and Mr Davis stated being inappropriately touched by the players of Astwood FC. In this respect, Mr Clements also stated that after the altercation in the box had taken place, there was a report on groping.
40. Against this background, and in the absence of any cogent evidence to the contrary, the Commission was satisfied that Mr Redding did not say the word *“queer”* nor made the comment *“is definitely the gay in the team and he watches us all in the showers”*. In relation to the use of the word *“gay”*, the Commission considered that it did not fall in the category of foul and/or abusive language. Further to this, the Commission also found that the word *“gay” per se*, in the context it was used, could not be deemed foul and/or abusive. Consequently, the Commission was barred from considering Charge 2. Indeed, Mr Redding said the word *“gay”*. After all, he was the one admitting having used it. However, the Commission considered that the use of the term *“gay”* in the question

“are you gay?” following an incident of groping in which Mr Redding was the victim, could not be considered as an improper use of such word.

41. In light of the above, the Commission was satisfied, on the balance of probabilities, that word *“gay”* did not constitute foul and/or abusive language.

42. As a result of the aforementioned, the Commission found, on the balance of probabilities, both Charge 1 and Charge 2 not proven.

VIII. SANCTION

A. SANCTION

43. As the Commission found both charges not proven there was no sanction to be imposed on Mr Redding.

IX. RIGHT TO APPEAL

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

André Duarte Costa

Ellie Menezes

Sue Henson-Green

27 October 2023