

IN THE MATTER OF A FOOTBALL ASSOCIATION
INDEPENDENT REGULATORY COMMISSION

BETWEEN:

THE FOOTBALL ASSOCIATION

and

MR JOSE MOURINHO

WRITTEN REASONS AND DECISION OF
THE INDEPENDENT REGULATORY COMMISSION
FOLLOWING THE HEARING ON
2 NOVEMBER 2016

Background

1. These are the written reasons for a decision made by an Independent Regulatory Commission which sat on 2 November 2016.
2. The Regulatory Commission members were Mr G Farrelly, Chairman, Mr M Robinson and Mr T Agana.
3. Mr P McCormack of the FA Judicial Services Department acted as Secretary to the Regulatory Commission.
4. By letter dated 26 October 2016, The Football Association (“The FA”) charged Mr Jose Mourinho with Misconduct for a breach of FA Rule E3, alleging that his comments in a pre-match press conference for the Liverpool v Manchester United fixture, 17 October 2016 constituted improper conduct and/or brought the game into disrepute.
5. Mr Mourinho was asked his view on the appointment of Mr Anthony Taylor to officiate on the Liverpool v Manchester United fixture. For completeness, the journalist asked; *“Because much has been made on Merseyside about the fact that the referee is from Manchester. Do you have any view on that?”*
6. Mr Mourinho responded to the journalist stating; *“I have my view but I was, I understood and I learn if you want to call it, I learn a lesson by being so many times punished by some words, so I don’t want to say anything about it, but I think Mr Taylor is a very good referee. But I think somebody with intention, is putting much pressure on him, that I feel it will be difficult for him to have a very good performance.”*

The Regulatory Framework

7. FA Rule E3(1) provides as follows:
“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.”
8. The FA’s Guidance for Participants and Clubs for the 2016/17 Season was prepared “... to provide helpful guidance to Clubs and Participants on the disciplinary procedures for the 2016/17 Season”, contains the following guidance in relation to media comments:
“Players and Club Officials should be aware that The FA sets standards in relation to public comments made by Participants. This means that the following types of comments by Managers, Players or Club Officials may lead to disciplinary charges:

- *Any comment, whether positive or negative about an appointed match official made prior to the game.*
- *Implication of bias: any comment which alleges or implies bias on the part of a match official.*
- *Questioning integrity: any comment which questions the integrity of a match official.*
- *Personal/offensive: comments which are personally offensive, particularly in relation to match officials.*
- *Threatening/Abusive/Insulting/Indecent: comments which fall into these categories may be subject to disciplinary action.*
- *Discriminatory: any comments which are improper or indecent, abusive or insulting and which include a reference to ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.*
- *Detriment to the Game: the concepts of “disrepute” and “best interests of the game” are inherently broad and cannot be precisely defined. Charges may be brought where comments cause, and/or may cause, damage to the wider interests of football and/or to the image of the Game.”*

The Regulatory Decision

9. Mr Mourinho did not request a personal hearing and the matter was dealt with on the papers only.
10. The Regulatory Commission had to deal with Mr Mourinho’s formal reply, admitting the first element of the charge – “*improper conduct*” but denying the second element of the charge – “*bringing the game into disrepute*”. With regard to the denied element of the charge, the applicable standard of proof is the balance of probability. 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.
11. It is not for the Regulatory Commission to comment on the drafting of the Charge or the broad interpretation given to bringing the game into disrepute.
12. The Regulatory Commission gave consideration to:
 - (1) The documentation submitted by The FA including the transcript and a video clip of the interview itself;
 - (2) Letter dated 31 October 2016 from Mr John Alexander, Club Secretary of Manchester United Football Club , containing a number of points relating to the Charge, context, the comments themselves, the Guidance, summary and mitigation; and

(3) Statement of Mr Mourinho himself.

13. In relation to the first element of the Charge, this was admitted and does not require further scrutiny. The Guidance states: “*Any comment, whether positive or negative about an appointed match official made prior to the game*”, may lead to disciplinary Charges.
14. With regard to the second element of the Charge, the Regulatory Commission analysed in detail what was actually said by Mr Mourinho. This invariably focussed on the objective and subjective element of what was said and how this could be construed.
15. Mr Mourinho, as per his Witness Statement, is an incredibly experienced football manager. He has managed at the highest level in Portugal, Spain, Italy and England and is highly skilled at dealing with the media. He would have been better served by offering no comment or encouragement to the question posed. It is accepted that Mr Mourinho operates under an intense level of scrutiny and any comment can be interpreted or manipulated to suit.
16. However, he stated “*so I don’t want to say anything about it, but I think Mr Taylor is a very good referee. But I think somebody with intention, is putting much pressure on him, that I feel it will be difficult for him to have a very good performance.*” Despite saying that he did not want to say anything, he contradicts himself by offering actual comment on the Match Official. This opinion, his opinion, was that he felt it would be difficult for Anthony Taylor to have a very good performance. There was no need for Mr Mourinho to be drawn into offering an opinion.
17. The Regulatory Commission considered this opinion to bring an additional layer of pressure and implication onto the Referee which could have had a negative impact on the game. The Guidance has been prepared purely to prevent this exact issue. The Regulatory Commission do not consider it necessary to discuss this in any greater detail or the hypothetical consequences the comments may have had but did take it into account in their deliberations.
18. The Referee’s performance in the game appeared to have been unaffected by this additional pressure. Nonetheless, the Regulatory Commission judged Mr Mourinho’s comments to have brought the game into disrepute. In many ways, they created a sword of Damocles situation. The Referee was damned if he did and damned if he didn’t.
19. Despite Mr Mourinho’s assertions that the comments were not intended to be critical of Mr Taylor and were positive in nature, the Regulatory Commission did not share this view.
20. The Regulatory Commission were unanimous in their view that these comments had brought the game into disrepute and that the second element of the Charge had been proven.

Mitigation

21. The Regulatory Commission has given consideration to all the points raised on behalf of Mr Mourinho in mitigation. Some of these points have been addressed earlier in the Written Reasons. The rest will be dealt with forthwith.
22. As to the points concerning the factual context in which the comments were made, the comments not intending to breach Rule E3, the comments not intending to be critical of Mr Taylor and being positive in nature, the Regulatory Commission considered these points and agreed they offered little by way of mitigation.
23. It is accepted that Mr Mourinho has co-operated fully with the FA investigation and offered a sincere apology.
24. Although Mr Mourinho admitted the first element of the charge at the earliest opportunity, the second element of the Charge was denied and has subsequently been proven against him.
25. The Regulatory Commission considered previous sanctions imposed on Mr Mourinho with regard to breach of Rule E3 which are detailed as follows:
 - (1) In October 2013, he was fined £8,000 for improper conduct in or around the 69th minute of a fixture against Cardiff City FC while manager of Chelsea FC;
 - (2) In March 2014, he was fined £8,000 for improper conduct in or around the 90th minute of a fixture against Aston Villa FC. This decision was upheld on appeal;
 - (3) Arising from a fixture in April 2014 against Sunderland AFC, he was fined £10,000 and warned as to his future conduct for post-match media comments. It was noted this decision was unsuccessfully appealed by Mr Mourinho;
 - (4) In January 2015, he was fined £25,000 and warned as to future conduct for post-match media comments made after a match on 28 December 2014;
 - (5) In October 2015, he was fined £50,000 and given a one-match stadium ban, suspended for 12 months following a fixture against Southampton FC. This sanction was upheld on appeal;
 - (6) Arising from a fixture in October 2015 against West Ham United FC, he was fined £40,000 and issued with a one match stadium ban for improper conduct during the half-time period of the relevant fixture.
26. The Regulatory Commission did not consider a sporting sanction.

Regulatory Commission order

27. The Regulatory Commission has made the following order against Mr Mourinho for this breach of FA Rule E3:

- (1) Mr Mourinho is fined £50,000; and
- (2) Warned as to his future conduct.

28. This decision may be appealed in accordance with the relevant provisions within The FA Handbook.

Mr G Farrelly, Chairman

Mr M Robinson

Mr T Agana

7 November 2016