

IN THE MATTER OF AN APPEAL FROM A DECISION OF
A FOOTBALL ASSOCIATION INDEPENDENT REGULATORY COMMISSION
BEFORE AN APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BETWEEN:

Darren Fletcher

Appellant

-and-

The Football Association

Respondent

DECISION WITH REASONS

Appeal Board:

Jonathan Bellamy C.Arb (Chairman)
Paul Raven
Matt Williams

Secretary to Appeal Board:

Paddy McCormack (Judicial Services Manager)

Date:

22 November 2024

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I: FACTUAL BACKGROUND

Manchester United FC v Brentford FC: FAPL 19.10.24

1. On 19 October 2024 Manchester United FC (“Manchester United”) played Brentford FC (“Brentford”) at Old Trafford in the FA Premier League. Manchester United won the match 2-1.

Brentford FC’s first half goal

2. During added time at the end of the first half, Brentford scored the first goal of the match. The evidence before the Regulatory Commission was that, shortly before that goal, the match referee sent a Manchester United defending player from the field of play for medical treatment. It was from a corner while that player was absent from the field of play that Brentford scored the goal.

The tunnel incidents

3. Very shortly after the goal, the match referee called time on the first half of the match and the teams left the field of play passing through the tunnel area on the way to their changing rooms. It was in this tunnel area that the Appellant confronted and abused, first, the fourth official and, secondly, the match referee in a hostile, abusive and insulting manner.
4. In relation to the nature and content of this abuse, the witness evidence before the Regulatory Commission was contained in, amongst other things, the Extraordinary Incident Reports of the fourth official and of the match referee set out in the Regulatory Commission’s Decision. The extracts from those reports set out in the Decision were as follows:

Fourth Official:

“Following the half time whistle and as I made my way up the tunnel, I was approached by Darren Fletcher of Manchester United in an extremely aggressive manner pointing and shouting at me “you are all fucking shit, that is a fucking joke, every fucking week.” I asked him to calm down and highlighted that his behaviour was completely unacceptable at this point. He then needed to be held back by another member of staff, as he tried to get closer to me. With this, I turned away and continued to make my way to the match officials changing room. Once in the changing room and when the other match officials arrived, I made them aware of the conduct of Mr Fletcher.”

Match Referee:

“Following the half time whistle, we were approached by an extremely aggressive Darren Fletcher of Manchester United in the main tunnel area of the ground. Mr

Fletcher repeatedly called me a “fucking joke and a disgrace” with him following us all the way through the main tunnel and towards the match officials changing room. His manner was completely unacceptable with his gesturing, language and behaviour being insulting and confrontational. As Mr Fletcher was not named on the team sheet no disciplinary action was taken, however I spoke with Rene Hake (Manchester United Assistant Manager) both at half time and full time to inform him that Mr Fletcher’s actions would be reported in an extraordinary report.”

5. These abusive incidents were captured on the CCTV covering the tunnel area. The CCTV footage was in evidence before the Regulatory Commission. The Regulatory Commission described this evidence in the following terms in its Decision.

“Having considered the written submissions from both parties, the Commission then watched the video evidence lodged in support of the Charges. The video evidence showed the tunnel area at Old Trafford. It provided clear colour footage of Mr Fletcher waiting in the tunnel area at Half-Time, along with a colleague. At the beginning of the footage, Mr Fletcher appears to be disgruntled. As the teams emerge from the pitch and into the tunnel area, Mr Fletcher’s demeanour becomes more animated. The footage shows the Fourth Official making his way through the tunnel area. Mr Fletcher becomes agitated and starts to remonstrate with the Fourth Official, gesturing with his hands, shouting, and attempting to get closer to the Fourth Official in a confrontational manner. He is then held back and pushed away by a Manchester United colleague. There are a number of players and technical staff in the area who watch as the remonstration occurs.

The Fourth Official makes his way into what is presumed to be the Old Trafford changing room area. He disappears out of the camera frame. At this point, Mr Fletcher turns on his heels and makes his way to, we initially presume, the Referee (the area in which Mr Fletcher initially walks to is out of the camera frame). As he does so, a Manchester United colleague chases after him. A number of players are present in the camera frame and look back in the direction of Mr Fletcher (we presume because Mr Fletcher is remonstrating loudly). A Brentford Coach also stops in the middle of the tunnel area and looks back in the direction of Mr Fletcher. Mr Fletcher then appears back in the camera frame and is walking just ahead of the Referee. Mr Fletcher is again remonstrating, gesturing with his hands and acting, in our opinion, in an aggressive manner. There are a number of players and coaches watching as the remonstration unfolds.

II: THE APPELLANT

Player

6. The Appellant had a very successful career as a professional footballer spending the majority of that time at Manchester United. He made over 340 appearances for the club. In his final season at the club, he was named vice-captain. In addition, the Appellant made 80 appearances for the Scottish national team of which he

captained the side on 34 occasions. The evidence before the Regulatory Commission in the club's submissions dated 29 October 2024 was that, during his career as a professional footballer, he played over 490 club matches and received only one straight red card. He had never been sent off for violent conduct.

Coach

7. In March 2021 the Appellant was appointed technical director at Manchester United. At the time of the tunnel incidents, he was the coach of the first team of Manchester United.

III: THE FA RULES OF THE ASSOCIATION

Part E: Misconduct

Rule 3.1: General Behaviour

8. This Rule states that:

“Save for where otherwise set out in these Rules, procedural matters concerning Misconduct shall be dealt with in accordance with the Association’s Disciplinary Regulations.

.....

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.”

IV: THE FA DISCIPLINARY REGULATIONS

Part E: Fast Track Regulations: Fast Track 2

General

9. Fast Track 2 cases include incidents on or around the field of play. They apply to, among others, Participants affiliated to clubs in Category 1, such as Manchester United.

Designation of cases

10. Regulation 8 states that the Football Association *“may in its absolute discretion designate a case as a “Standard Case””*.

Non-Standard Cases

11. Regulation 12 states that, where the Football Association does not designate a case as a Standard Case, it is a non-Standard Case and that, where such a charge is admitted or proved, a Standard Penalty will not be offered. In a non-Standard Case,

the Regulatory Commission has a discretion to impose any penalty it considers appropriate.

Appeals

12. Regulation 35 states that the parties, including a Participant, have the right to appeal against, among other things, a penalty imposed by a Regulatory Commission to an Appeal Board.

Part E: Fast Track Regulations: Fast Track 7: Appeals – Fast Track

Reg 6.4: Grounds of Appeal

13. Regulation 6.4 states that a Participant may appeal the decision of a Regulatory Commission on sanction on the ground that it imposed a penalty that was “excessive”.

Reg 12: Procedure

14. Regulation 12 states that an appeal shall be by way of review of documents and oral submissions only and shall not involve a rehearing of the evidence considered by the Regulatory Commission.

Reg 17: Decisions

15. Regulation 17 states that a decision of the Appeal Board shall be final and binding and there shall be no right of further challenge.

Reg 19: Costs

16. Regulation 19 states that costs of an appeal to the Appeal Board shall be determined in accordance with the provisions of paragraph 52 of Part A: General Provisions.

Part A: General Provisions: Penalties and Orders

Penalties and Orders

17. Regulation 41 states that a Regulatory Commission has power to impose a penalty on the Participant charged including a fine and suspension from any football activity for a stated number of Matches.

Suspended Penalty

18. Regulation 44 states, among other things that, before imposing a suspended penalty, a Regulatory Commission shall consider, whether there is a clear and compelling reason or reasons for suspending that penalty and identify that reason or those reasons.

Costs Orders

19. Regulation 52 states that, save where otherwise ordered, any costs incurred in bringing or defending a Charge will be borne by the party incurring the costs.

V: PROCEDURAL HISTORY

The charges

20. On 22 October 2024 the Football Association charged the Appellant with Misconduct under Rule E3.1 of Section 10 of the Rules of the Association arising from the tunnel incidents. The first charge related to the Appellant's behaviour towards the Fourth Official ("Charge 1). The second charge related to the Appellant's abusive behaviour towards the Match Referee ("Charge 2").
21. Charge 1 stated that *"in or around the tunnel area during half time [the Appellant] acted in an improper and/or confrontational manner and/or used abusive and/or insulting words toward a Match Official (Fourth Official)"*.
22. Charge 2 used the same words save that the Match Official was stated as *"(Referee and/or assistant referees)"*.
23. In relation to Charge 2, the Regulatory Commission proceeded, correctly, on the basis that the evidence was that the Appellant's Misconduct was directed only to the Match Referee.
24. The Football Association chose not to designate the charges as Standard Cases and it followed that they were designated as non-Standard cases.

The admissions

25. On 29 October 2024, the Appellant admitted the Charges. When replying to the Charges, he stated his relevant football income.
26. In an undated witness statement filed on 29 October 2024 in evidence before the Regulatory Commission, the Appellant denied using all the language reported by the match officials and that his behaviour was abusive to them. He stated that he *"confronted the Fourth Official and Referee and that I used strong language, but I categorically did not abuse the officials and never would."* He stated that his *"emotions were still running high"* after the Manchester United player was required to leave the field of play shortly before Brentford scored the goal in added time at the end of the first half. The Appellant's witness statement stated, among other things, that he accepted that his actions were *"improper"* and that he should not

have spoken to the match officials in the way he did. He said that his actions did not *“reflect how I usually conduct myself and the approach I have taken throughout my career as both a player and a coach.”* The Appellant stated also he prided himself on the positive interactions he has with match officials. He said also that, at the end of the match, he considered whether he should apologise to the match officials concerned but was unsure whether that would be appropriate and therefore did not do so. He apologised for his behaviour in the tunnel incidents and said that he was taking the opportunity to *“convey his apologies”* to the match officials. The Appellant concluded his statement by saying that he *“will learn from this incident and will conduct myself appropriately going forward in the same manner as I have done throughout my career to this point.”*

The Appellant’s submissions to the Regulatory Commission

27. The Appellant filed submissions by way of a letter dated 29 October 2024. These submissions referred to, among other things, his admission of the Charges, his apology for his behaviour and what was described as his *“exemplary disciplinary record”* as a player and as a coach.
28. These submissions did not refer to any comparator decisions.

The FA’s submissions to the Regulatory Commission

29. The FA filed submissions on sanction dated 31 October 2024. These submissions emphasised the seriousness of the tunnel incidents and that *“Match officials must feel able to enter the tunnel area without fear of being confronted by irate members of team staff who proceed to behave in the manner [the Appellant] did.”* They stated, correctly, that the Appellant *“is to be credited for admitting the Charges and the apology offered.”*
30. These submissions did not refer to any comparator decisions.
31. It was submitted that an appropriate sanction, after taking account of the admission, was no less than an immediate three-match extended touchline suspension.

The hearing

32. The Appellant waived his right to an oral hearing and the hearing before the Regulatory Commission proceeded on the documents.

VI: THE REGULATORY COMMISSION DECISION

The facts

33. In view of the Appellant's admission to the Charges, the Regulatory Commission decision dated 4 November 2024 was limited to sanction. In relation to the facts of the tunnel incidents it found that the Appellant's behaviour the subject of each charge was abusive as well as insulting:

"Having deliberated on the matter, we considered that the video evidence largely spoke for itself. It showed Mr Fletcher acting in a manner that we consider to be aggressive. The behaviour, the gesturing, and the body language was confrontational and improper. Whilst there was no sound on the camera footage, having watched Mr Fletcher's body language and facial reactions, we considered on the balance of probabilities that it was more likely than not that the words used towards the Referee and the Fourth Official were abusive and/or insulting."

34. The Regulatory Commission then addressed, and dismissed, the Appellant's submission that the tunnel incidents should be regarded as one because they took place so close to each other in time.

Mitigation

35. In paragraph 17 of its Decision, the Regulatory Commission set out its summary of the Appellant's case in mitigation as follows:

- a) *Mr Fletcher has had an exemplary disciplinary record both throughout his professional playing career and his more recent career as a coach;*
- b) *Darren's reaction was triggered by an on-field incident involving the decision to send a Manchester United player from the pitch for treatment just before half-time as a corner was being awarded to the opposition, from which they subsequently scored;*
- c) *Manchester United has been on the receiving end of two or three costly mistakes made by Match Officials this season in the Premier League, and as confirmed by PGMOL Chief Refereeing Officer;*
- d) *The incident was brief and took place away from the pitch. It was not witnessed by supporters or the media;*
- e) *Mr Fletcher was not abusive towards the Fourth Official or the Match Official, and his words were criticism (1) towards the process for managing medical treatment of the particular football player in this matter and (2) in reference to an incident in a previous home game where at a similar stage of the game a red card was incorrectly issued to a Manchester United player;*
- f) *Mr Fletcher's emotions were running high as he returned to the tunnel area. If there had been a period of time to calm down, he would have likely acted differently;*
- g) *Mr Fletcher maintains that he tried to keep a respectful distance from the Match Officials whilst venting his frustrations; and*
- h) *Mr Fletcher apologises for his actions."*

36. In paragraph 22 of its Decision, the Regulatory Commission addressed the Appellant's mitigation in the following terms:

"The Commission took full consideration of Mr Fletcher's submissions in mitigation. We accepted that he had a good disciplinary record but that there was no other mitigation."

Sanction

37. In paragraph 24 of its Decision, the Regulatory Commission set out its Decision in the following terms:

"In determining sanction, the Commission considered that a three (3) match extended touchline suspension was a fair and reasonable sanction given the confrontational behaviour displayed on the video evidence and the fact that there was an opportunity to leave the remonstrations with the Fourth Official, but Mr Fletcher decided to carry on. Having reflected on the level of fine, the Commission considered it appropriate to impose a fine in the sum of £7,500."

38. The Regulatory Commission did not refer in its Decision to any clear and compelling reason(s) for suspending the penalty.

VII: THE APPEAL

The Appeal Board

39. The Appeal Board was chaired by Jonathan Bellamy C.Arb sitting with Paul Raven and Matt Williams.

The Appellant's grounds of appeal

40. The grounds of appeal were set out in a letter from Manchester United dated 11 November 2024 as follows:

- (1) *"the Commission has erred in treating the incident as two separate rule breaches but imposing a cumulative sanction, which fails to adhere to the principle of totality of sanction";*
- (2) *"the sanction is disproportionate to the misconduct found by the Commission";*
- (3) *"the sanction is inconsistent with other decisions of previous FA Regulatory Commissions in like cases";*
- (4) *"the Commission has failed to properly take into account the submissions in mitigation made by the Club on behalf of Mr. Fletcher and has failed to reduce the sanction imposed accordingly";*
- (5) *"the fine imposed on Mr. Fletcher is excessive".*

The Appellant's submissions

41. The Appellant's submissions were also set out in that letter. These submissions were that:
- (1) The Regulatory Commission's Decision did not set out "*the regulatory or jurisprudential basis for the level of sanction arrived at in the Decision.*"
 - (2) The reasoning of the Regulatory Commission in explaining how it reached its decision, as to both the extended touchline suspension and the fine, in particular in relation to how it took into account the Appellant's mitigation, was inadequate and therefore difficult to challenge.
 - (3) The Regulatory Commission referred to the Appellant's mitigation but did not apply it in reduction of the sanction.
 - (4) The Regulatory Commission should have set a starting point for the sanction and then reduced it to reflect the Appellant's mitigation.
 - (5) The Appellant's mitigation included not only his "*exemplary disciplinary record*" but also his acknowledgment of his wrongdoing at the first opportunity and his statement that he would "*conduct myself appropriately going forward*". It was submitted, in addition, that "*Mr Fletcher's actions were not made public at the time they occurred*".
 - (6) The finding that the Appellant's actions were abusive to the match officials was a necessary element of each Charge and not, in itself, an aggravating feature.
 - (7) Although accepting that "*there is no scope to relitigate the question of how many charges should arise out of Mr Fletcher's conduct*", the Regulatory Commission "*seemingly accepted*" the Football Association's submission that the appropriate sanction was a three-match suspension by deciding that there should be a one match suspension on each Charge and adding a third match suspension because the Association had designated the matter as a non-Standard Case.
 - (8) The sanction was "*wholly inconsistent*" with the decision of the Regulatory Commission in the cases of:
 - a. Jack Stephens decided in September 2024, which the Football Association designated as a non-Standard Case, in which a player captain made three separate highly offensive comments to match officials and was sanctioned by a two-match suspension and a fine of £50,000;
 - b. Nuno Espirito Santo, in which a FAPL Head Coach made an offensive comment to a match official on the pitch and was sanctioned by a two-match suspension and a fine of £55,000;
 - c. Matt Hobbs, in which a FAPL Director of Football made an offensive comment to the match referee in the vicinity of the tunnel area and was sanctioned by a two-match ground suspension and a fine of £7,000;

- (9) The Regulatory Commission's Decision does not state whether it considered suspending all or any number of the match suspensions.
- (10) The Appellant's is a "paradigm case" for suspension of "some element" of the sanction.
- (11) The Regulatory Commission's Decision does not state whether it considered the effect of the match suspension on the Appellant due to the requirement that, to discharge his matchday role, he was to sit on the substitutes bench during matches.
- (12) The sanction was "disproportionate". In support of this decision, the Appellant relied on the decision of the FA Appeal Board in *The FA v Klopp* (11 November 2022) in which it was said:
"While a Regulatory Commission is entitled to impose a sanction which has combined aims of punishing the offender, deterring him and others from offending and protecting/preventing harm to the integrity, reputation and image of the game, the sanction imposed must remain a proportionate response to the facts of the case under consideration and the offending in question".
- (13) The starting point for the sanction in this matter, before reduction for the Appellant's mitigation, should be a two-match suspension by way of a touchline suspension and that, after consideration of the Appellant's mitigation, a non-excessive sanction was a one-match touchline suspension, not an extended touchline suspension, and a fine of £5,000.

The FA's submissions

42. The Football Association filed submissions dated 13 November 2024 in response to the Appellant's submissions. Those submissions included the legal principles we have adopted set out in paragraphs 45 – 49 below from the decision of the FA Appeal Board in *The FA v Klopp* as to (1) review and not rehearing (2) margin of appreciation (3) excessive sanction and (4) comparator decisions. We therefore accept those submissions.
43. The Football Association submitted further that:
- (1) It was right to charge the Appellant with two separate charges of Misconduct because there were two separate incidents of abusive and insulting behaviour, each to a different match official. The fact that the incidents took place within a short space of time from each other does not affect that position.
- (2) The sanction imposed by the Regulatory Commission was correct, and therefore within its margin of appreciation, due to the seriousness of the tunnel incidents, whether they had been the subject of one charge of Misconduct or two. It submitted that *"Participants must be deterred from hijacking Match Officials as*

they leave the field of play in this manner.” The Appeal Board should not “*engage in tinkering*”. Any reduction in the sanction would result in an unduly lenient sanction.

- (3) It was right not to designate this case as a Standard Case due to the seriousness of the tunnel incidents. The designation decision was a matter within its absolute discretion.
- (4) The tunnel incidents were of a very different nature to the insulting language used by the player in the Jack Stephens case and that, being a coach rather than a player, the Appellant may be expected to be held to a high standard in this regard.
- (5) An extended touchline suspension was appropriate to ensure that the sanction would affect him and to ensure that, for the period of the suspension, the Appellant would be prohibited from being in the position where the tunnel incidents took place. This is because during the period of an extended touchline suspension the Appellant may not enter the changing rooms or field of play at any time from 30 minutes before the start of the match to 30 minutes from the end of the match, including half time.
- (6) There is no basis to suspend the penalty. The Appellant did not present any evidence or reasons to persuade the Appeal Board to do so.

The appeal hearing

44. The Appellant waived his right to an oral hearing and the hearing before the Appeal Board proceeded on the documents at a hearing on 19 November 2024.

VIII: LEGAL PRINCIPLES

Review and not rehearing

45. This Appeal Board adopts the position taken by the FA Appeal Board in *The FA v Klopp* which stated the following:
 - (1) the appeal is by way of a review of the decision of the Regulatory Commission, not a rehearing;
 - (2) the burden rests with the Appellant to establish that the Regulatory Commission’s decision was one to which no reasonable Regulatory Commission could have come. The hurdle for the Appellant to clear is thus a high one;
 - (3) when assessing whether the RC’s decision was one to which no reasonable Regulatory Commission could have come, an Appeal Board is entitled to examine both
 - a. the route by which the Regulatory Commission reached its decision, and
 - b. the ultimate decision reached by the Regulatory Commission.

46. This position on review rather than rehearing is reflected, from a procedural perspective, by the FA Disciplinary Regulations Part E: Fast Track Regulations: Fast Track 7: Appeals – Fast Track, Regulation 12, set out in paragraph 14 above.

Margin of appreciation

47. This Appeal Board further adopts the position taken by the FA Appeal Board in *The FA v Klopp* which stated the following:
- (1) when considering evidential assessments, factual findings and the exercise of a judicial discretion in the context of an appeal by way of a review, a Regulatory Commission made up of individuals with considerable sporting and dispute resolution experience should be accorded a generous and significant margin of appreciation by an Appeal Board;
 - (2) evidential assessments and factual findings made by a Regulatory Commission should only be disturbed by an Appeal Board if they are clearly or wrong principles have been applied; it is not for an Appeal Board to substitute its own view simply because it might have reached a different decision.

Excessive sanction

48. This Appeal Board further adopts the position taken by the FA Appeal Board in *The FA v Klopp* which stated the following:
- (1) when assessing whether a sanction is unreasonable, the same generous and significant margin of appreciation applies. It is not for an Appeal Board to substitute its own opinion on sanction unless it finds that the Regulatory Commission's decision was unreasonable or one that it was not open to the Commission to have reached:
 - (2) by analogy with the decision in *Wilfred Zaha v The FA* 17 February 2019) where the issue was whether the sanction imposed by the Regulatory Commission had been 'excessive'), it would be 'wrong for an Appeal Board to interfere with a sanction imposed by a Regulatory Commission simply because the Appeal Board would itself have imposed a slightly lower (sic) sanction.

Comparator decisions

49. This Appeal Board further adopts the position taken by the FA Appeal Board in *The FA v Klopp* which stated the following:
- Absent good reason to the contrary, parties charged with a breach of the FA Rules are entitled to expect a broad consistency of approach by Regulatory Commissions

tasked with sanctioning them if that breach is admitted or found proven. Achieving that requires any Regulatory Commission:

- (a) To have regard to any guidelines in place as to sanction for breaches of particular Rules or Regulations – in this case, the Standard Penalty Guidelines – and ask itself how, if at all, those guidelines might apply or be relevant to the facts of the case before it as the Regulatory Commission finds them to be;
- (b) To have regard to previous decisions of other Regulatory Commissions and/or Appeal Boards and once again ask itself how, if at all, those decisions might be relevant to the facts of the case before it. As was said in *The FA v Everton FC* (supra) that does not mean that a Regulatory Commission should ‘*slavishly*’ follow the approach of an earlier Regulatory Commission. Nor does it mean that a Regulatory Commission can never adopt a different approach or arrive at a decision that might be considered inconsistent with that reached by an earlier Regulatory Commission. Not only do cases vary on their facts, but attitudes and approaches may, for good reason, change over time. The perceived gravity of what might have been considered trivial misconduct (or even acceptable conduct) at a particular point in time can alter. Provided that the approach taken by a Regulatory Commission and the decision reached by a Regulatory Commission is justifiable and reasonable on the facts of the particular case, it will be a rare case in which an Appeal Board will interfere.

IX: ANALYSIS

The charges

- 50. The Appellant has admitted each of the two Charges. This is an appeal on sanction. He accepts he may not dispute the question of how many charges should have been brought by the Football Association arising from the tunnel incidents.
- 51. We refer to this point because it is apparent that the question of how many charges should have been brought and the fact that the Football Association did not designate this case as a Standard Case has formed an important part of the Appellant’s approach to this case both before the Regulatory Commission and in this appeal. As a non-Standard Case, the Regulatory Commission was exercising a discretion as to the appropriate sanction and this Appeal Board is reviewing the exercise of that discretion in the form of its sanction. In our view, of greater importance were the aggravating and mitigating features of this case and, in particular, the Regulatory Commission’s approach to mitigation.

Comparator decisions

52. The Regulatory Commission did not receive submissions from either the Appellant or the Football Association on comparator decisions. This explains the absence of reference to such decisions in its Decision.
53. This is a review of the Regulatory Commission's Decision and, in those circumstances, we see no reason to embark on an analysis of the cases referred to by the parties in this appeal.

Aggravating features

54. The Regulatory Commission concluded that each of the tunnel incidents was a serious act of Misconduct. We have no doubt that the Regulatory Commission was entitled to reach that conclusion on the basis of the Extraordinary Incident Reports and the video evidence before it. The abusive and insulting behaviour was directed at match officials in the confined area of the tunnel in the presence and close proximity of a large number of individuals including players and coaching staff. We endorse the Football Association's submission to the Regulatory Commission that match officials must feel free to enter the tunnel area without fear of being confronted by irate members of team staff who behave as the Appellant did and its submission before this Appeal Board that Participants must be deterred from hijacking Match Officials as they leave the field of play as the Appellant did.
55. We consider that the Appellant's submissions about the footballing trigger for his abusive behaviour are misconceived on sanction and miss the point. Participants, including the first team coach of a prominent FAPL team, must accept decisions of match officials whether they consider them to be right or wrong without any such abusive or insulting behaviour to them.
56. The position of the Appellant as a successful player and now first team coach at Manchester United made it all the more important that he fulfilled his position as a role model in all footballing respects and in particular in his behaviour to match officials.

Mitigating features

57. The Regulatory Commission recorded its summary of the Appellant's case on mitigation in paragraph 17 of its Decision, as set out in paragraph 35 above. This summary included his good disciplinary record (described as "*exemplary*") and his apology for his actions but not his admissions of the Charges.

The Regulatory Commission's approach to mitigation

58. The Regulatory Commission's approach to mitigation was set out at paragraph 22 of its Decision in the terms set out in paragraph 36 above. This paragraph preceded the paragraph (number 24) stating the sanction.
59. The Regulatory Commission recited that it had given "*full consideration*" to the Appellant's submissions in mitigation. It stated that it accepted that he had "*a good disciplinary record but that there was no other mitigation*".
60. We have concluded that the Regulatory Commission was in error in stating that there was no relevant mitigation available to the Appellant other than his good disciplinary record. We refer to the Appellant's admission of the Charges at the first opportunity, to his apology for his behaviour in the tunnel incidents and to his statement that he will learn from this incident and conduct himself appropriately in future. We have concluded that this was an omission that no reasonable Regulatory Commission would have made and took this Regulatory Commission outside the margin of appreciation properly afforded to it.
61. The Regulatory Commission's Decision on sanction was set out in paragraph 24 of its decision, in the terms set out in paragraph 37 above. This paragraph does not state the sanction it would have decided upon absent the mitigation available to the Appellant. It does not therefore state the Regulatory Commission's starting point before reduction for such mitigation. It is therefore not possible to assess the way and/or extent to which the Regulatory Commission gave effect to the Appellant's good disciplinary record.
62. Further for the reasons set out in paragraph 60 above, the Regulatory Commission did not take into account the Appellant's admission of the Charges at the first opportunity and to his apology for his behaviour in the tunnel incidents. Both points were of relevance to the sanction. The first of these points was of particular importance.
63. We recognise that in paragraph 13 of its Decision the Regulatory Commission recorded the fact that the Appellant had admitted the Charges. This does not however explain the way and extent to which the admissions were reflected in the sanction.

64. We have therefore concluded that the basis for the sanction ordered by the Regulatory Commission was inadequately reasoned and failed to take into account the Appellant's admission of the Charges at the first opportunity, his apology for his behaviour in the tunnel incidents and his statement that he will learn from this incident and conduct himself appropriately in future.
65. We emphasise that we reach this conclusion by a review of the Regulatory Commission's Decision and the process by which it reached its sanction and without expressing any view as to how this Appeal Board would have decided the appropriate sanction.

X: CONCLUSION

The sanction

66. In the circumstances, we consider that the appropriate course is to allow the appeal and to reduce the Regulatory Commission's sanction to the level we consider correct on the basis that it failed to take into account the Appellant's admission at the first opportunity, his apology for his behaviour and his statement that he will learn from this incident and conduct himself appropriately in future.

Extended touchline suspension

67. On this basis, we reduce the extended touchline suspension from three to two matches. This sanction will operate from 4 November 2024, being the date of the Regulatory Commission's Decision.
68. We see no basis to vary the extended form of the touchline suspension. We accept the Football Association's submission that an extended touchline suspension was appropriate to ensure that, for the period of the suspension, the Appellant will be prohibited from being in the position where the tunnel incidents took place.

Fine

69. Taking into account the Appellant's football income noted in paragraph 25 above, we reduce the fine by 20% from £7,500 to £6,000. We accept the Football Association's submission that this Appeal Board should not generally "tinker" with the sanction ordered by the Regulatory Commission. However, in circumstances where we consider that the Regulatory Commission's approach to mitigation was flawed, we consider that the fine should also be reduced to reflect that error.

Suspended penalty

70. We consider the Regulatory Commission was correct to impose an immediate sanction. The Appellant's submissions before the Regulatory Commission and before this Appeal Board did not identify any clear and compelling reasons for suspension.

XI: DECISION

71. The Appellant, Darren Fletcher:
- (1) shall serve an extended touchline suspension effective 4 November 2024 until such time as Manchester United has completed two Category 1 First Team Competitive Matches in approved competitions;
 - (2) is fined £6,000.
72. Under Regulation 17 of the FA Disciplinary Regulations Part E: Fast Track Regulations: Fast Track 7: Appeals – Fast Track, this decision is final and binding and there shall be no right of further challenge.

XII: COSTS

73. Under Regulation 52 of the FA Disciplinary Regulations Part E: Fast Track Regulations: Fast Track 7: Appeals – Fast Track, the costs incurred the Appellant and the Football Association will be borne by the party incurring the costs.

J.M. Bellamy, C. Arb
Chairman

Dated: 22 November 2024