

**IN THE MATTER OF A FOOTBALL ASSOCIATION
INDEPENDENT REGULATORY COMMISSION**

BETWEEN

THE FOOTBALL ASSOCIATION

and

MR DANNY MACKLIN

WRITTEN REASONS AND DECISION OF THE INDEPENDENT REGULATORY COMMISSION
FOLLOWING A PERSONAL HEARING ON 19 DECEMBER 2023

1. These are the written reasons for a decision made by an Independent Regulatory Commission (the “Commission”) which sat via videoconference on 19 December 2023. These reasons have been revised from their original draft, issued on 22 December, following observations from both parties in this matter.
2. The Commission members were Ms Laura McCallum (acting as Chair and Independent Legal Panel Member), Ms Alison Royston (Independent Football Panel Member) and Mr Alan Hardy (Independent Football Panel Member).

3. Mr Paddy McCormack of the FA Judicial Services Department acted as Secretary to the Commission.

4. The following is a summary of the principal issues and matters considered by the Commission. It does not purport to contain reference to all the issues or matters considered, and the absence in these reasons of reference to any particular point or submission made by any party should not be read as implying that it was not taken into consideration. For the avoidance of doubt, all the evidence and materials provided to the Commission was taken into consideration during our deliberations but certain information heard during the Hearing has been omitted from the decision due to sensitivities, at the request of the FA.

The Charge

5. On 29 November 2023, Mr Danny Macklin (“DM”), the former Managing Director of AFC Wimbledon Football Club (“AFC Wimbledon”), was charged with a breach of FA Rule E3 in respect of comments made by DM during the course of his employment with AFC Wimbledon (the “Charge”). It was alleged that the comments made by DM, in reference to a female employee of AFC Wimbledon, were abusive and/or insulting and/or threatening, contrary to Rule E3.1. Further, it was also alleged that the breach of Rule E3.1 amounted to an “Aggravated Breach” as defined in Rule E3.2 as the language included a reference, whether express or implied, to gender.

6. The comments and words that formed the subject of the Charge were as follows:

“I’m going to put her through a fucking window. You have to read this email to believe it. Read the whole email. I literally want to put her through a fucking window. I have never wanted to kill someone, but I might have to kill her. Fucking slut. I don’t know if I’ve ever hated someone more in my life. Someone’s going to punch her in her face.”

7. To protect the individual who was the subject of the aforementioned comments, we will not use her name in these written reasons and shall instead address her as the “victim.”

8. The FA in bringing the Charge relied on the following evidence:
 - a. Witness Statement of Mr James Greenaway, FA Integrity Investigator dated 20 November 2023;
 - b. The Times Newspaper article dated 25 September 2023;
 - c. The Times audio recording;
 - d. FA investigation letter;
 - e. Transcript of Interview with DM;
 - f. Letter of apology from DM to the victim, dated 25 September 2023;
 - g. DM summary of actions and learnings;
 - h. Witness statement of the victim dated 03 November 2023;
 - i. Emails between the victim and DM dated 08 August 2023; and
 - j. Email from DM to the victim dated 12 August 2023.

9. FA Rule E3.1 provides that:

“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 of, or combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.”

10. FA Rule E3.2 states as follows:

“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.”

11. DM admitted both elements of the Charge and opted for a personal hearing to present his case.

Background

12. On 26 September 2023, the FA became aware of an article in the Times under the headline *“AFC Wimbledon boss resigns after secret recording of sexist and abusive comments.”* The article reported that DM had been covertly recorded using abusive, insulting and misogynistic language in reference to the victim. Also published within the article was a copy of the covert audio recording. Within the audio a male’s voice can be heard using abusive, insulting and threatening language. The quote from the recording can be found on page 2 and 3 of these written reasons.

13. Following publication of the Times article, the FA carried out their own investigation into the matter. In doing so they interviewed an official from AFC Wimbledon, DM, and the victim. From the information obtained during that investigation, and provided to the Commission as part of the evidential bundle, the following brief chronology can be confirmed (additional details of which are outlined further in this decision):

- a. 08 August 2023: The victim sends an email to DM to raise concerns about her workload and the impact on her mental health.
- b. 08 August 2023: DM receives the email above and in reference to that email, verbally expresses the words and language quoted at paragraph 6 of this decision.
- c. 10 August 2023: Discussions were held between AFC Wimbledon and the victim concerning mutual termination of the victim's employment.
- d. 12 August 2023: DM discovers that his office has been the subject of a covert audio recording device and that his private conversations have been recorded.
- e. 21 August 2023: The victim's employment is terminated by way of a mutual settlement agreement.

14. The FA interviewed the victim and compiled a detailed witness statement. The victim explained that she had emailed DM on 08 August 2023 to express concerns about her workload, lack of resources, and the impact this was having on her mental health. It is this email that DM refers to within the comments (under paragraph 6) that form the subject of this Charge. The FA provided a copy of this

email exchange between DM and the victim as part of the evidential bundle for this matter. The Commission notes that DM responded to that email citing a variety of solutions to assist the victim with her concerns. DM did note that given the time of year, long hours were inevitable but stressed that staff would be entitled to time off in lieu.

The victim further explained that she attended work on 10 August 2023 and was asked to attend a meeting with AFC Wimbledon's HR Department. It was at this meeting that a settlement agreement was proposed by AFC Wimbledon that would result in the victim's employment being terminated, strictly with the victim's consent. The victim explained she would consider termination of her employment if the settlement offer was fair and reasonable. These discussions took place prior to the covert audio recording being discovered on 12 August 2023.

On 12 August 2023, the victim was alerted by a colleague to the covert audio recording and comments that had been made about her therein. Later that same evening at 23:38, the victim was contacted by DM via her private email address. In that email DM confirmed that he had become aware of covert recordings of a sensitive nature and reminded the victim that *"as an employee of AFC Wimbledon, during her service with the Club she may find herself in possession of confidential, sensitive or personal information either in relation to the company, its customers or employees. It is a condition of the General Data Protection Regulation that you have a duty of confidentiality and a requirement to safeguard such information. You must not discuss, nor make available any such information whatsoever to any outside*

individual or organisation including the media. Any breach of this requirement will be considered as serious misconduct and could also result in criminal prosecution.”

At interview, the victim expressed concern at receiving this communication to her personal email address, at 23:38 at night, and without HR having been copied in. She also provided details of the stress she had endured by the publication of the Times article and raised concerns for her reputation *“knowing that whenever anyone Googles my name, these articles along with my image are out there for all to see.”*

15. The FA interviewed DM, with his legal representative present, on 02 November 2023. DM accepted that the male voice heard in the audio recording, published in The Times, was him. During the interview, DM provided context to the comments made, showed remorse for the language used and was apologetic towards the victim and the impact that the audio recording and its subsequent publication must have had on her.

16. The FA subsequently charged DM on 28 November 2023. DM admitted the Charge and elected for a personal hearing.

17. DM relied on the following evidence:

- a. A personal detailed statement from DM; and
- b. Email correspondence between DM and the FA’s Regulatory Legal Department dated 28 November 2023.

The FA's Submissions

18. The FA stressed that DM's current personal circumstances should be noted but cannot excuse DM's behaviour in this matter.

19. DM used discriminatory and violent language in the workplace and in front of two colleagues of the victim.

20. DM's comments came to the attention of AFC Wimbledon some time before they were published in the Times article and thus before they had come to the attention of the FA.

21. When DM became aware of the covert audio recording, he emailed the victim late at night and whilst on annual leave, via her private email address to remind her of her duty of confidentiality.

22. During the interview, DM provided a number of background factors which he says led to the comments being made. DM asserted that it was not the email alone that caused him to react in the way in which he did. DM provided the Commission with comment as to what these other background factors were (unsupported with evidence) but the Commission has decided not to publish same. However, we can confirm that the information submitted was taken into account when determining this matter.

23. There was nothing aggravating in the victim's email to DM of 08 August 2023. The email was reasonable and DM's reaction to it was a "huge overreaction."
24. The behaviour displayed by DM was no way for a senior management figure to behave.
25. There can never be a justification to use such words in a footballing environment. The words used were "aggressive, violent and badly misogynistic."
26. The FA asserts that there are a number of aggravating factors in this matter, namely:
- a. DM's comments and language were said in front of other AFC Wimbledon staff members, and colleagues of the victim;
 - b. DM is an experienced senior participant in the game; and
 - c. The words used were extreme and a reaction to presumed behaviours.
27. The FA highlighted a number of mitigating factors, namely:
- a. DM's co-operation with the investigation;
 - b. DM's clean disciplinary record;
 - c. DM's guilty plea; and
 - d. Should the panel wish, we may also take into consideration the manner in which the audio recording was captured.
28. Turning to extent of sanction, the FA referred the Commission to consider the imposition of a sanction in line with Regulation 47 of the FA Rules and Regulations

which in turn refers to Appendix 1 – Standard Sanctions and Guidelines for Aggravated Breaches. The sanctions referred to in this section relate to a finding of an Aggravated Breach against a player, manager or technical area occupant and as such, refer to a number of suspended “matches”. The FA identified that a suspension based on matches would not be appropriate for participants who are administrators and instead recommended a time-based approach. The Commission was told that a sanction of at least 3 months’ was required for reasonableness. This was the absolute minimum sanction.

29. It was recognised by the FA that DM is no longer in employment and is finding it difficult to gain employment, in any industry. The FA recommended that any sanction imposed should commence immediately (it should not be backdated to the date on which DM found himself unemployed). Further, there was no requirement for the effect of any sanction to wait until DM found another role under the FA’s jurisdiction.

30. The FA stressed that their primary focus was a sporting sanction to address the wrongdoing and, in their opinion, a monetary sanction would not be appropriate. A course of education should, however, be imposed along with the sporting sanction.

DM’s Submissions

31. DM is exceptionally remorseful and contends that his language was out of character.

32. DM's mental health has suffered greatly since The Times article and he has attempted to commit suicide on a number of occasions since its publication. Both he and his family have suffered tremendously.

33. The comments were made in the heat of the moment and in response to other background factors which have not been published.

34. DM has championed several equality and diversity initiatives during his career. DM states that this establishes that he is not sexist or misogynistic. A list of said initiatives were provided to the Commission as follows:

- a. *"Promoted two female members of staff into the SLT of the Club (representing a total of 40%) at AFC Wimbledon;*
- b. *Introduction of E,D&I training;*
- c. *Encouraged more female representation within Club's Committees and Trust's*
- d. *Appointed additional resource for staff members to voice any concerns they had re E,D&I;*
- e. *Hosted a workshop on neurodiversity to aid impact this has on individuals;*
- f. *Created a safe space for women to visit within stadium;*
- g. *Had women's team General Manager report to me directly for first time;*
- h. *Met regularly with members of women's team;*
- i. *Encouraged Wimbledon fans to stop singing a song that was sexist in references made to female anatomy;*
- j. *Invited Women's Team Board Members to Club Board meetings;*
- k. *Set-up a focused game to celebrate and promote E,D&I at all former clubs*

- l. Advocate for AFC Wimbledon joining the Her Game Too movement;*
- m. Opened club facilities early for England Women World Cup games to be viewed prior to men's game;*
- n. Whilst at former cricket club I spent hours and days personally flyering and promoting the England Women's cricket games at Chelmsford;*
- o. Added female mascots to the male 'fluffy' mascots at former clubs;*
- p. Provide monthly free facility (via wife's business) to WI at my cost;*
- q. Increased by circa 20% the number of women working in administrative roles within AFC Wimbledon*
- r. Would not allow female members of staff to walk to transport hubs / station at night alone;*
- s. Provided additional funds for women's and girls-teams;*
- t. Helped launched Club's first Women's Supporter Association and hosted a game to celebrate its launch;*
- u. Included women's team in all relevant staff meetings and events;*
- v. Attempted to ban sexist and homophobic songs that fans were singing;*
- w. Extensively introduced new campaigns to drive awareness of pathways for girls to play the game;*
- x. Doubled the number of women's team games hosted at the stadium rather than at external venue;*
- y. Used members of women's first team squad in public events / fan forums / community visits/ school visits / kit launches;*
- z. Launched female fit and sizes for replica clothing and leisure wear; and*
- aa. Introduced free sanitary products across the stadium."*

35. During the hearing, DM provided further context to the Commission around his frame of mind on or around 08 August 2023 and the comments/language expressed to colleagues about the victim.
36. DM asserted that he had an exemplary character and career. The audio recording picked up a 20 second reaction in private. He had been angry having heard about the rumours and was concerned for his reputation, and the impact on his career and marriage. He was aware of the impact that such rumours can have on individuals even when not true.
37. DM confirmed that he was unaware of the covert audio recording and had he known he was being recorded, he would never have expressed the words used. It was a lapse of character that lasted 20 seconds out of a recording in excess of 211 hours.
38. DM referred the Commission to a previous FA disciplinary case concerning a player who made a racial remark to another player during a match (the "Racial Case"). DM did not provide any written reasons for the Commission to consider and the submissions in this regard were based on DM's understanding only. DM asked the Commission to differentiate between the Racial Case and his own. DM asserted that his own comments were made in private and were never intended to be heard by the victim. DM contrasted this with the Racial Case where the Player made the racial remark to the individual's face with the intent to provoke a reaction. DM stressed that any punishment coming his way should be no more severe than that faced by the player in the Racial Case.

39. DM asserts that he drafted a sincere apology letter to the victim, a copy of which was provided to the Commission for review. DM also provided examples of ways in which he had supported the victim during the course of her employment including sourcing tickets to a football match which she attended on 12 August 2023..

40. DM has been using his time out of employment to further learn and develop in this area of equality and diversity. He has been attending workshops, listening to podcasts, has purchased reference books, and continues to explore further opportunities for learning and development. DM has also since become a patron of Her Game Too and pays a monthly fee in support of the organisation.

41. DM left his former employer on 08 September 2023. Since the exposure caused by The Times article, DM has struggled to find any kind of employment. DM has applied for more than 200 jobs and has been unsuccessful thus far because, as DM asserts, recruiters are googling his name and finding media articles about the matter before us today. This is causing financial difficulties for DM and his family due to the family business also struggling to sustain itself.

42. In closing, DM stressed that he has learned immensely from this experience and that any suspension would simply have the impact of delaying his ability to earn and support his family, which includes a young child. DM has and continues to suffer (as explained above) regardless of sanction.

Commission Deliberations

43. The Commission considered the verbal submissions of both parties along with all written submissions and evidence submitted as part of the evidential bundle provided to the Commission before the Hearing.
44. DM had admitted the Charge which meant that the Commission required to determine the nature and extent of sanction only.
45. The Commission considered that a suspension from all football activity was unavoidable given the gravity of the breach. DM was a senior, and very experienced, participant in the industry. The victim had voiced concerns, in writing, about the workload capacity in her department. DM states a number of reasons for the manner in which he reacted, including receiving the email immediately at the same time as hearing rumours concerning himself and the victim. The comments made by DM were not only sexist and misogynistic but were aggressive and violent in nature. There is no excuse for such comments in any environment let alone towards an employee who was voicing concerns about their workload and impact on staff welfare.
46. The Commission considered DM's submissions concerning the Racial Case but, without having the benefit of written reasons, couldn't explore the case in any detail. We did not give much weight to the fact that DM never intended for the victim to hear the comments made against her, compared to the player in the Racial Case who made the remarks to his victim's face. DM made the comments in the workplace to two of the victim's colleagues. Whether there was an intention for

the victim to hear those comments or not are irrelevant. It can never be the case that it should be considered acceptable or less serious to use such words so long as the victim doesn't hear same. Further, the words used were not restricted to those considered sexist, but also included aggressive and violent words constituting threatening behaviour. This is a clear differentiating factor to the Racial Case.

47. In determining sanction, we considered both aggravating and mitigating factors.

48. Appendix 1 – Standard Sanctions and Guidelines for Aggravated Breaches states that the range for such a breach is between 6 and 12 matches (weeks in this case) but that a Regulatory Commission may impose an immediate suspension in excess of 12 matches (weeks in this case) in circumstances where aggravating factors of a significant number or weight are present.

49. Whilst DM's submissions heavily focused on the words used against the victim's gender (ie. those of a sexist nature), it's important not to forget the other words used which were of an extremely violent and aggressive nature, including threats to kill. This was an aggravating factor of particular weight. For the avoidance of doubt, the Commission has not given extra weight to the sexist nature of the words used (as this is already caught as an Aggravated Breach).

50. Additionally, we considered that the environment in which these words were used and the fact they were said to two of the victim's colleagues to be a further aggravating factor.

51. Finally, we took into account DM's seniority and experience in the industry. DM should have been someone that the victim could approach to raise concerns without anxiety or fear, and certainly without the response which has become the subject of these disciplinary proceedings.

52. Thereafter, the Commission considered mitigating factors. The Commission considered DM's legitimate expectation of privacy. Whilst we accept DM was covertly recorded, the comments were made on AFC Wimbledon's premises (which was also the victim's workplace) and were said to two of the victim's colleagues. They were not said in the privacy of one's home or through electronic communications such as mobile phone messaging. It was not outside the realm of possibility that someone else may have overheard the comments being made given where they were made and the fact that DM is clearly enraged in the recording. Whilst we are willing to apply a discount for this factor as mitigation, we don't apply considerable weight to it.

53. The Commission also considered DM's clean disciplinary record to be a mitigating factor. Whilst we considered DM's apology to the victim, we note that this letter of apology was sent after The Times had published their article. Upon DM discovering the covert recording, DM initially contacted the victim via her private email address to remind her of her duty of confidentiality where the contents of the entire recording were concerned which the Commission were told included private and sensitive club information as well as the subject comments from DM on 12 August 2023. There was no such apology at that time and as such, no mitigation is applied for the apology.

54. Taking all that into account, the Commission determined that a suspension of 14 weeks from all football activity was reasonable. The Commission did consider whether a ground ban would be necessary but given DM is no longer employed, we did not consider that to be appropriate. Whilst no evidence was submitted to support DM's financial position, the Commission took DM's submissions in this regard at face value, and considered that a fine would not be appropriate in the circumstances.

55. The Commission ordered DM to undergo a course of FA education which is to be completed no later than 18 March 2024. For the avoidance of doubt, such education is to be carried out face to face and not remote.

56. The Commission ordered that DM cover the costs of the Hearing as per the usual and normal practice.

Ms Laura McCallum

Ms Alison Royston

Mr Alan Hardy

05 January 2024