

IN THE MATTER OF A FOOTBALL ASSOCIATION
INDEPENDENT REGULATORY COMMISSION

BETWEEN:

THE FOOTBALL ASSOCIATION

and

MR RODGER GIFFORD

WRITTEN REASONS AND DECISION OF
THE INDEPENDENT REGULATORY COMMISSION FOLLOWING THE
HEARING
ON 20 MARCH 2024

Background

1. These are the written reasons for a decision made by an Independent Regulatory Commission which sat by video conference on 20 March 2024.
2. The Regulatory Commission members were Mr Gareth Farrelly, Chairman and Independent Football Panel Member, Mr Ken Monkou, Independent Football Panel Member and Mr Udo Onwere, Independent Football Panel Member.
3. Mr Paddy McCormack, The FA Judicial Services Manager acted as Secretary to the Regulatory Commission.
4. By letter dated 12 January 2024, The Football Association (“The FA”) charged Mr Rodger Gifford with Misconduct for a breach of FA Rule E3 in respect of the FA Cup 2nd Round fixture between Newport County AFC and Barnet FC on 2 December 2023.
5. It was alleged that following the above fixture, Mr Gifford’s language towards Assistant Referee Coach, [REDACTED] was abusive and/or insulting and/or improper, contrary to Rule E3.1.
6. It was further alleged that this breach of rule E3.1 was an “Aggravated Breach”, as defined in Rule E3.2, as it included a reference, whether express or implied, to colour and/or race and/or ethnic origin.
7. The FA included the following evidence it intended to rely on in support of the Charge:
 - (i) Witness Statement of Mr. James Greenaway, FA Integrity Investigator, dated 15 December 2023;
 - (ii) Exhibit JAG/01 – FA Investigation letter - Rodger Gifford, dated 5 December 2023;
 - (iii) Exhibit JAG/02 - Interview transcript - Rodger Gifford – 11 December 2023;
 - (iv) Exhibit JAG/03 - Apology email from RG to [REDACTED];
 - (v) Exhibit JAG/04 - Still images of digital advertising boards at Rodney Parade;
 - (vi) Witness Statement of [REDACTED] dated 04 December 2023;
 - (vii) Witness Statement of [REDACTED] dated 05 December 2023;
 - (viii) Exhibit JM/01 – Extraordinary Incident Report, dated 2 December 2023;
 - (ix) Witness Statement of [REDACTED] dated 06 December 2023;
 - (x) Exhibit DF/01 – Extraordinary Incident Report, dated 2 December 2023;
 - (xi) Witness Statement of [REDACTED] dated 10 December 2023;
 - (xii) Exhibit CS/01 – Extraordinary Incident Report, dated 3 December 2023;
 - (xiii) Witness Statement of [REDACTED] dated 6 December 2023; and
 - (xiv) Exhibit SF/01 – Extraordinary Incident Report, dated 2 December 2023.

8. In his Extraordinary Incident Report Form, the Referee [REDACTED] stated: –

“In the observer debrief after the match, there was a comment made by the observer (Rodger Gifford) towards the assistant referee coach ([REDACTED]) who was listening to the debrief, which was inappropriate regarding his skin colour. Whilst commenting on the brightness of the floodlights and advertising boards on the far side of the ground and how at times it was difficult to see as it was dark in areas, Mr Gifford said “it was lucky that you were not over there as assistant referee [REDACTED] as we wouldn’t have been able to see you. If you smiled though, we would be able to see your teeth. [REDACTED] is a black skinned man, so this comment was made regarding to his race. I felt this was a very inappropriate comment and although slightly laughed off in jest by [REDACTED], it made the dressing room an awkward place for a few moments due to what had been said”.

9. In his Extraordinary Incident Report Form, the Assistant Referee [REDACTED] stated: -

“During the debrief the observer, Rodger Gifford, commented to me how difficult it was to see over the far side because of the advertising boards being very bright and changing colour. He turned to [REDACTED] (AR coach) and said that he wouldn't be able to see him if he was over there. But he would see him if he smiled”.

10. [REDACTED] the Fourth Official submitted an Extraordinary Incident Report Form, which stated: -

“After the game in the debrief attended by Observer Roger Gifford Coach [REDACTED] and trainee Observer [REDACTED] Observer Roger Gifford made a comment regarding the floodlights and how dark it was over the far side. With this the Observer said it's lucky you weren't over there [REDACTED] as we wouldn't of been able to see you, but if he smiled he we would. Observer moved on very quickly to his next points but I feel the whole room felt at unease and awkward”.

11. [REDACTED] the other Assistant Referee submitted an Extraordinary Incident Report form stating: -

“During the post match debrief, the observer Rodger Gifford, talked about the darkness on the far side of the pitch from him. He followed up his comment by turning to [REDACTED] the assistant referee coach on the day, and saying how it was lucky that he was not over there as we wouldn’t be able to see him, unless he smiled then we would see his teeth”.

12. Mr Gifford denied the charge by reply on 5 February 2024 and requested that the case be dealt with on the papers only.

13. The following is a summary of the principal submissions provided to the Commission. It does not purport to contain reference to all the points made, however the absence of a point, or submission, in these reasons should not imply that the Commission did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, the Commission has carefully considered all written evidence in respect of this case.

14. Rule E3 provides as follows:

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.

E.3.2 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 assignment, sexual orientation or disability.

15. The Appeal Board in the recent *FA v Yems* case repeated and endorsed the following comments made by the Regulatory Commission in *The FA v Suarez* case:

"[t]he use by a footballer of insulting words, which include reference to another's player's colour, is wholly unacceptable. It is wrong in principle. It is also wrong because footballers... are looked up to and admired by a great many football fans, especially young fans. If professional footballers use racially insulting language on a football pitch, this is likely to have a corrosive effect on young football fans, some of whom are the professional footballers of the future. It also has a potentially damaging effect on the wider football community and society generally. Every professional footballer should be able to play competitive football in the knowledge that references to the colour of his skin will not be tolerated. The same goes for all levels of football. Those who are victims of misconduct of this nature should know that, if they complain and their complaint is upheld, the FA will impose an appropriate penalty which reflects the gravity of this type of misconduct.

Those comments apply equally to managers and other persons, who occupy positions of trust and responsibility in the football community. Such persons are not only themselves direct role models to future generations of people who wish to be involved in the coaching and management of football, but also have the ability to shape the ethos and culture of a whole club. Any acts or omissions by persons in positions of responsibility that contribute to a discriminatory or divisive culture will inevitably harm the promotion of equality, diversity, and inclusivity in the football community".

16. The Appeal Board in *Yems* stated that the correct approach to be taken in these cases is not controversial. The test for breach of Rule E3.1 is objective. The question is simply whether the words and/or behaviour are objectively abusive or insulting. This is a matter for the Regulatory Commission to decide, having regard to all the relevant

facts and circumstances of the case. It is not necessary to prove that the alleged offender subjectively intended his words or behaviour to be threatening, abusive, indecent or insulting.

17. Further, in respect of an 'Aggravated Breach' contrary to Rule E3.2 it is a question of fact whether a breach of Rule E3.1 includes a reference to a protected characteristic. That too is to be answered objectively and no question of subjective intention arises.
18. When determining liability in a case involving an 'Aggravated Breach' the Regulatory Commission (or indeed Appeal Board) is not required to determine whether the Participant is or is not, for example, a racist. It is not uncommon for Commissions to express such an opinion. It is not required to do so. Nor often will it be well placed to do so as it would require Commissions to engage in an exercise of assessing and judging an individual's personal beliefs or prejudices. Further, to do so risks leading the Commission into serious error, in respect of the correct approach to liability or sanction or both. Instead of expressing such views, Commissions must at the liability stage focus solely on whether, assessed objectively, each of the ingredients of the Rule E3.2 breach is proved so as to establish liability. Whilst each case will always be determined on its own particular facts, it is of assistance to review the decision making and rationale of other Commissions that have been tasked with dealing with cases of this nature.
19. In summary, Mr Gifford pleaded not guilty as he did not believe the charge of "aggravated" was made out as per the definition in the Oxford dictionary. Furthermore, had he believed that the words were used or spoken in an aggressive or deliberately insulting way he would have resigned with immediate effect. He noted that [REDACTED] himself had stated that he did not believe that he meant the comments with any malice. He claimed it was a light-hearted comment designed to reflect [REDACTED] personality in that when he enters a room and smiles, he lights the place up. It was truly meant as a compliment and he would never intentionally insult a valued colleague. He also wished it to be recorded that he immediately emailed [REDACTED] a heartfelt apology.
20. [REDACTED] provided a detailed witness statement. He stated that he was shocked by the comment especially given that he was the only black male in the changing room at the time. To try and diffuse the situation and make light heart of this comment, he responded by saying, "yes if he was over that side in his day, he wouldn't have seen him as he was so quick". Even though he felt uncomfortable about the comment made by Mr Gifford, he responded in this way to try and move the conversation on out of embarrassment. Rather than leaving the conversation there, Mr Gifford responded with, "oh no we would have definitely seen you when you smiled". For him, this was the nail in the coffin and there was an awkward silence before they swiftly moved the conversation on. He was shocked and saddened by his choice of language. The conversation should never have been about him, and he can only assume that Mr Gifford made this reference because of the colour of his skin, which was extremely disappointing.

Decision

21. On any objective assessment, the comments made by Mr Gifford were abusive and insulting. His submissions that his comments were in some way light-hearted designed to reflect ██████████ personality were not accepted. The Regulatory Commission unanimously found the charge proven. As to Rule E3.2, it is evident that the comments made by Mr Gifford included a reference to race. It is difficult to reconcile Mr Gifford's position. He held a position of trust and responsibility within PGMOL. There is no place in the game, or society, for comments of this nature. There is no other position. Again, it was averred that there was no malice in the comments made, and it was ill-judged banter but this lacks any merit. Moreover, Mr Gifford denied the charge.

22. ██████████ in his place of work, was put in a difficult position where he was required to react to the comments in order to maintain professionalism, and attempt to return to the debrief itself, a situation not of this making, yet he was required to deal with. It caused embarrassment. Mr Gifford appeared oblivious to this. This was clearly recognised by the Match Officials who immediately after the incident raised it with him, and subsequently submitted their extraordinary incident reports.

23. Furthermore, this was Mr Gifford's second aggravated breach. In 2022, he had admitted a similar breach and was suspended for 8 weeks, fined the sum of £200.00 and ordered to undertake an education programme.

Sanction

24. Regulation 47 of the FA Disciplinary Regulations states that where an 'Aggravated Breach' is found proven, a Regulatory Commission shall apply The FA's sanction guidelines for Aggravated Breaches, set out in Appendix 1 to Part A: Section One: General Provisions ("Appendix 1").

25. Appendix 1 sets out the following, *inter alia*: -

Sanction Range

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

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

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

A Regulatory Commission may impose an immediate suspension in excess of 12 Matches in circumstances where aggravating factors of significant number or weight are present.

Exceptions to the Standard Minimum

A Regulatory Commission may only consider imposing a suspension below the Standard Minimum where the following specific (and exhaustive) circumstances arise such that the Regulatory Commission determines that the Standard Minimum would be excessive:

Where the offence was committed in writing only or via the use of any communication device and:

- Where the Regulatory Commission is satisfied that there was no genuine intent on the part of the Participant charged to be discriminatory or offensive in any way and could not reasonably have known that any such offence would be caused; or
- The age of the Participant at time of the offence (e.g. where the Participant was a minor at the time the offence was committed); or
- The age of the offence (e.g. a social media post made a considerable time ago).

For the avoidance of doubt, the existence of the circumstances above will not necessarily result in a departure from the Standard Minimum. A Regulatory Commission must be satisfied that the unique circumstances and facts of a particular case are of such significance that a departure from the Standard Minimum is justified to avoid an unjust outcome for the Participant Charged. In reaching a decision, the Regulatory Commission must also consider whether or not it is in the best interests of the game in tackling all forms of discrimination to depart from the Standard Minimum. In any event, a Regulatory Commission shall impose a suspension of no less than 3 Matches.

TIME-BASED SUSPENSIONS

A Regulatory Commission may assess that a Match-based suspension is not appropriate due to the specific circumstances of a case; the nature of the role of a Participant, and/or whether they are currently engaged by a Club. A Regulatory Commission should have regard to the Sanction Range as set out in this Appendix as well as the mitigating and aggravating factors when determining sanction. However, a Regulatory Commission shall be entitled to impose an appropriate time-based suspension that is commensurate with the breach, having regard to the specific roles and responsibilities of the Participant.

EDUCATION

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

OTHER PENALTIES

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

FACTORS TO BE CONSIDERED WHEN DETERMINING SANCTION

A Regulatory Commission will have due regard to the circumstances and seriousness of the incident when determining the appropriate sanction and whether (and to what extent) to depart from the Sanction Range or when setting an appropriate time-based suspension. For the avoidance of doubt, any departure from the Sanction Range below the Standard Minimum may only be considered by a Regulatory Commission where the specific (and exhaustive) circumstances listed above arise.

In so doing, the Regulatory Commission shall give consideration to any aggravating and mitigating factors, to include but not limited to:

Aggravating factors

- Repeated use of discriminatory language or conduct during commission of the offence or offences.
- Multiple offences over a period of time.
- The public nature of the offence(s) (e.g. the commission of the offence(s) in a public place, via broadcast media or a social media platform (particularly via an account on a social media platform with a high number of followers in relative terms)).
- The profile of the Participant, including where they hold a position of responsibility within their Club or organisation (e.g. Club captain, Manager, Chairman, member of senior management).
- The relative ages of the Participant and the victim(s) at the time of the offence, particularly where the victim was a minor and the Participant was not.
- Failure to co-operate with The Association.
- Previous disciplinary record of the Participant.
- Any attempt to conceal the breach.
- The extent of any premeditation.
- Lack of remorse or insight and/or failure to understand and/or appreciate the severity of the conduct and/or its impact.

Mitigating Factors

- Admission at the earliest opportunity where the factual conduct forming the basis for the charge would be capable of being disputed.
- Demonstration of genuine remorse.
- Co-operation with The Association.
- Where it is accepted that the Participant had a legitimate expectation of privacy.
- Inexperience of the Participant by reference to their age or background at the time of the offence.

- Lack of remorse or insight and/or failure to understand and/or appreciate the severity of the conduct and/or its impact.

SECOND OR FURTHER OFFENCES

Second or further offences will be treated with the utmost seriousness.

There will be a presumption that the sanction for a second or further offence will be higher than the top end of the Sanction Range (i.e. 12 Matches), however the Regulatory Commission shall in any event impose an immediate suspension of no fewer than 7 Matches. Where a Regulatory Commission deems it appropriate to issue a time-based suspension it should consider all relevant factors including but not limited to the number and severity of any previous offences when determining sanction. A Regulatory Commission should have regard to the Sanction Range as set out in this Appendix as well as the mitigating and aggravating factors when determining sanction. However, in all cases a Regulatory Commission shall be able to impose any punishment it deems appropriate and proportionate in the circumstances.

26. The Commission considered all of the relevant aggravating and mitigating factors in this case. These factors are not exhaustive. For completeness, Mr Gifford denied the charge. This was his second breach in close proximity. There were two discriminatory comments made to [REDACTED]. The comments were made in Mr Gifford's professional capacity in front of the Match Officials he was there to assess. He is hugely experienced and held a position of trust and responsibility. By way of mitigation, it was noted that Mr Gifford did apologise to [REDACTED] however, he appeared to lack any insight and failed to understand or appreciate the severity of the conduct or its impact. There is no credit to be given for an early admission.

Conclusion

27. The Regulatory Commission came to a unanimous decision, having carefully considered all of the evidence, and Mr Gifford shall receive the following sanction:
- (i) He is suspended for five (5) months;
 - (ii) Fined the sum of £400; and
 - (iii) Ordered to attend a mandatory face-to-face education programme the details of which will be provided by The FA.
28. This decision is subject to the relevant Appeal Regulations.

Gareth Farrelly, Chairman and Independent Football Panel Member

Ken Monkou, Independent Football Panel Member

Udo Onwere, Independent Football Panel Member

04 April 2024