

IN THE MATTER OF A REGULATORY COMMISSION

BETWEEN

THE FOOTBALL ASSOCIATION

AND

MOHAMMED KUDUS

AND

WEST HAM UNITED FC

WRITTEN REASONS OF THE REGULATORY COMMISSION

Regulatory Commission: Sally Davenport (Chair) – Independent Legal Panel Member

Tony Agana – Independent Football Panel Member

Stuart Ripley – Independent Football Panel Member

Secretary: Michael O’Connor –Judicial Services Assistant Manager

Date: 30 October 2024

Venue: Held remotely via Microsoft Teams

Introduction

1. These are the written reasons of the Regulatory Commission that considered the charges against Mohammed Kudus (“MK”) and West Ham United FC (“West Ham”).

2. By letter dated 21 October 2024, The Football Association (“The FA”) charged MK with misconduct amounting to a breach of FA rule E3.1 (“the MK Charge”). The MK Charge arose out of a Premier League match against Tottenham Hotspur FC (“Spurs”) that was played on 19 October 2024 (“the Match”).
3. By a second letter dated 21 October 2024, The FA charged West Ham with misconduct during the Match amounting to a breach of FA rule E20.1 (“the Club Charge”).
4. The FA informed West Ham and MK that pursuant to Regulation 13 of the Disciplinary Regulations 2024/25, their cases were being consolidated and would be determined together at a joint hearing. It also informed them that their cases were being consolidated with a charge against Spurs. In the event, the Commission was not required to deal with the charge against Spurs because Spurs was offered, and accepted, a Standard Penalty.

Relevant Rules

5. FA Rule E3.1 states:

“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.”

6. FA Rule E20 states:

“Each Affiliated Association, Competition and Club shall be responsible for ensuring that its Directors, players, officials, employees, servants and representatives, attending any Match do not:

E20.1 behave in a way which is improper, offensive, violent, threatening, abusive, indecent, insulting or provocative”.

The Charges

7. The FA charged MK with a breach of FA Rule E3.1, on the ground that in or around the 82nd minute of the Match, following the offence for which he was dismissed, MK acted in an improper manner and/or used violent conduct. The MK Charge related to an incident involving a Spurs player, Pape Sarr (“PS”), and MK (“the Incident with PS”).
8. The FA designated the MK Charge as a Non-Standard Case due to the Incident with PS occurring outside the jurisdiction of the Match Officials and/or the serious and/or violent nature of it.
9. The FA charged West Ham with a breach of FA Rule E20.1, on the ground that in or around the 82nd minute of the Match it failed to ensure that its players did not behave in a manner which was improper and/or provocative and/or violent. The charge related to a mass confrontation between players of both teams (“the Confrontation”). The FA brought the same charge against Spurs.
10. The FA designated the Club Charge as a Non-Standard Case due to the violent and/or serious nature of the reported misconduct.
11. With their respective Charge letters, The FA sent MK and West Ham reports from the referee, Andy Madley (“the Referee”) and video clips of the Match.

Responses from MK and West Ham

12. On 24 October 2024, MK submitted a Disciplinary Proceedings Reply Form. He admitted the charge against him. He did not request a personal hearing. He submitted a letter of the same date in which he commented on the MK Charge and put forward mitigation.
13. Similarly, on 24 October 2024, West Ham submitted a Disciplinary Proceedings Reply Form. It admitted the charge against it. It did not request a personal hearing.

It also submitted a letter of the same date signed by the Club Secretary in which it commented on the Club Charge and put forward mitigation.

The Hearing

14. In advance of the hearing the Commission read the documents referred to in paragraphs 2, 3 and 11-13 above and viewed the video footage provided by The FA.
15. Given that both Charges were accepted, the Commission treated them as proven and reviewed the evidence and submissions purely in order to determine sanction, as set out below.
16. The following paragraphs summarise the evidence and written submissions considered by the Commission. They do not purport to cover all the points made. However, the absence of a point or submission in these reasons should not imply that the Commission did not take that point or submission into account when determining the sanctions.

The Evidence

17. In his report on the Confrontation, the Referee stated as follows:

“in the 82nd minute of the match, following an altercation between Mohammed Kudus of West Ham United and Micky Van de Ven of Tottenham, a large number of players from both sides rushed onto the scene. This resulted in a mass confrontation between both sets of players. There appeared to be pushing and shoving from both teams. The incident was swept up by the VAR and highlighted one particular incident relating to Kudus and Violent conduct. This is highlighted in a separate report. The players did not surround me or try to apply pressure on myself or any other match official.”

18. In his second report, dealing with the Incident with PS, the Referee stated as follows:

“In the 82nd minute, following a confrontation between Mohammed Kudus of West Ham United and Micky Van de Ven of Tottenham, a mass confrontation occurred. My initial observations were that both players should be cautioned for their part in adopting an aggressive attitude. I was asked to review my initial decision and I chose to upgrade the yellow card to a red card for Violent Conduct for Mr Kudus. During the Mass confrontation, an incident was spotted by the VAR and brought to my attention whilst I was in the Referee Review Area. I was shown the initial push to the face by Kudus on Van de Ven, which was, in my opinion, sufficient to upgrade the card. However, I was also shown a separate incident in the melee, where Mr Kudus struck an opponent, Pape Sarr, with both hands with open palms, in the face. Although this was missed onfield, had this have been seen, I would have sent Mr Kudus off for Violent conduct.”

MK’s submissions

19. MK began his letter by apologising, stating that he was deeply embarrassed by his behaviour in the 20 seconds following his foul on Micky Van de Ven (“MVdV”). He accepted that he had lost his cool and said that his behaviour was out of character. He stated that he could not recall the events clearly, but having viewed the footage, he felt that MVdV had exaggerated the incident as there was minimal contact from him. He had only been reacting to a push from MVdV. He felt that the Referee’s original decision to give him a yellow card was correct and that his actions in relation to MVdV did not merit a red card. As far as the Incident with PS was concerned, MK stated that after his push on MVdV, he was quickly surrounded and was pushed into Richarlison by Pape Sarr (“PS”) and then into PS by Destiny Udogie. He was repeatedly pushed and shoved and felt intimidated. He accepted that he should not have pushed PS in the face and that his action merited a red card. However, he did not injure anyone, or use force.
20. MK stated that his preparation for the Match had been mentally and physically challenging because he had travelled for a midweek international fixture and had received various negative comments on social media. He referred to his work within the community and in his home country of Ghana, stressing how he tried to be a role model.
21. MK stated that he had left the pitch immediately when issued with the red card and had not shown dissent or argued further with any Spurs players. He said that

he was not sure whether the Referee had sent him off for his interaction with MVdV, for the Incident with PS or for a combination of the two. He submitted that his three match ban for the red card was sufficient punishment for his actions as a whole.

West Ham's submissions

22. In its letter, West Ham submitted that apart from MK, none of its players acted violently; on the contrary, everyone else had been seeking to keep the peace and to avoid further retribution being exacted against MK. In its submission the conduct of its players was of a higher standard (or no worse) than that of the Spurs players. It made the same points as MK about negligible force, the fact that MK was being repeatedly manhandled and MK's good disciplinary record. It highlighted the positive actions of a number of West Ham players during the Confrontation. It invited the Commission to treat the Club Charge as a Standard Charge and to impose the same penalty as Spurs had received. It highlighted its own good record and the fact that it had not received any charges for mass confrontations in the past five seasons.

The FA's submissions

23. The FA highlighted the fact that MK's case had been designated Non-Standard because of its serious nature and the fact that it was outside the jurisdiction of the Match Officials. It did not accept that there was any uncertainty about the reason for the red card. It emphasised that there were two acts of violent conduct in short compass. It reminded the Commission that MK had conceded that his push on PS deserved a red card. It submitted that he should receive no less than an immediate three-match suspension for the Incident with PS, together with a financial penalty commensurate with his weekly football income.

24. In the case of West Ham, The FA submitted that the Commission must consider the gravity of the team's conduct in its entirety, including MK's conduct. MK was one of, if not the main, protagonist in the Confrontation and his actions were plainly

relevant to West Ham's liability under FA Rule E20. His conduct could not be put to one side when considering the severity of the breach.

25. The FA pointed out that the footage showed that all eleven West Ham players were involved in the Confrontation to some extent and reminded the Commission of the accepted principle that although individuals may have been seeking to act as peacemakers, their intervention rarely had the effect of de-escalation. It cited the cases of *The FA v Ipswich Town FC U18 and AFC Bournemouth U18, 18 April 2024* and *The FA v Nottingham Forest FC & Wolverhampton Wanderers FC, 24 January 2023* in support of this proposition.

Sanction

26. As the breaches of Rules E3.1 and E20.1 were admitted by MK and West Ham respectively, the Commission considered the comments and submissions made by the parties in the context of its decisions on sanction. Before the Commission deliberated on the appropriate sanction for each of the Charges, it was advised of the respective party's disciplinary record.

27. The Commission was advised that MK had no previous misconduct charges in the current and past five seasons.

28. Having read the Referee's reports and repeatedly viewed the video footage, the Commission agreed with The FA that the Referee had clearly issued the red card for the incident with MVdV. The Commission was satisfied that MK had committed two acts of violent conduct within a short period of time, both of which merited a red card. It was totally unacceptable for MK to hit opposition players in the face, even if this was done with the palm of the hand rather than a clenched fist. The fact that MK did not cause injury did not lessen the severity of the offence. The two offences could not be treated as a single and/or ongoing act, as two separate Spurs players were involved. The FA had therefore been correct to treat the Incident with PS as a separate offence

29. The Commission noted The FA's submission that MK should be sanctioned with no less than an immediate three-match suspension. It rejected the submission from MK that no further penalty should be imposed. It unanimously agreed that three matches should be the starting point. However, the Commission was split on the number of games for which MK should be banned. One member felt that a ban in excess of three matches would be appropriate for the Incident with PS, in view of the following:
- This was a London Derby which had a high profile and was being screened live globally.
 - The sustained and public nature of MK's aggressive behaviour, with him confronting multiple Spurs players before finally being pulled away by one of his own players.
 - The level of force used towards PS.
30. The member also felt that the Commission's sanction should include a deterrent element, sending a clear message that such public displays of violent conduct are unwelcome.
31. The other two members of the Commission, while agreeing that the Incident with PS was a serious offence and MK's behaviour could in no way be condoned, did not consider that the matters referred to in paragraph 29 above were sufficiently aggravating to merit an increase from the Commission's starting point. In reaching their conclusion they took account of the fact that MK had been jostled by Spurs players and was not solely to blame for what occurred.
32. The Commission agreed unanimously that MK's acceptance of the Charge and his apology, which it found to be sincere, coupled with his clean disciplinary record, were mitigating factors, albeit that the dissenting member felt that they were outweighed by the aggravating factors referred to in paragraphs 29 and 30. By majority decision the Commission agreed to reduce the ban for the Incident with PS by one match and ordered that MK serve a two-match ban for it.

33. The Commission unanimously agreed that a financial penalty was also appropriate, given the serious nature of the Incident with PS. It initially considered that a fine of £90,000 would be commensurate with an offence of violent conduct, noting that MK had struck an opponent. It took account of the mitigating factors referred to in paragraph 32 above and concluded that a fine of £60,000 would be appropriate.
34. In relation to the Club Charge, the Commission was advised that West Ham had one previous proven breach of Rule E20. That charge, for surrounding a Match Official, arose out of a game against Southampton FC in October 2022.
35. The Commission reminded itself that the Standard Penalty for an accepted charge at this level of the game would be £20,000 and that it was free to impose whatever sanction it deemed fit, given that this was not a standard case, subject to a maximum of £250,000. It rejected the suggestion that it should apply the same penalty to West Ham as it had done to Spurs. During the Confrontation MK had committed two separate acts of violent conduct. This could not be ignored. MK's actions were the catalyst for the Confrontation and had to be factored into the sanction against West Ham. It was this violent conduct that distinguished the behaviour of the two sets of players. The absence of violent conduct by any other West Ham player and the relatively short duration of the Confrontation, meant that the Commission was minded to apply a sanction towards the lower end of the range. It took the figure of £40,000 (double the Standard Penalty) as its starting point and agreed that limited credit should be given for the acceptance of the Club Charge and West Ham's reasonably good disciplinary record. It unanimously ordered that West Ham should pay a fine of £30,000.
36. The decisions of this Commission may be appealed in accordance with the applicable Regulations.

Sally Davenport
Tony Agana
Stuart Ripley
4 November 2024