

# **Football Association Disciplinary Commission**

## **In the Matter of Walshaw Sports Club Juniors**

**Case ID: 8054391M**

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### **WRITTEN REASONS**

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#### **Factual Background and Chronology**

1. These are the Reasons for the decision of the Disciplinary Commission which sat at Manchester County FA on Tuesday 19<sup>th</sup> May 2015.
2. The Commission members were Mr Yunus Lunat (Chairman), FA appointed, Mr David Addison (Manchester County FA), and Alison Warwood (Independent and Manchester County FA Appointed).
3. Mr Garry Polkey of the Cheshire County FA acted as Secretary to the Commission.
4. The charge arises out of a South Manchester Youth FA Under 14 fixture played on 30<sup>th</sup> November 2014 between Walshaw Sports Club Juniors (hereafter “Walshaw” and South Manchester Youth (hereafter “South Manchester “).
5. The Referee, James Searle, filed an extraordinary incident report form with the County FA dated 2<sup>nd</sup> December complaining of a Walshaw parent entering the field of play to shout at a South Manchester player who had tackled a Walshaw player after the final whistle. The referee reported that the parent had called the South Manchester player “dirty”, causing distress to the player making him react, with his colleagues holding him back. The report went on to note that the South Manchester player complained to the referee that the parent had used racist language towards him and that racist comments had also been made during the game. The referee had not heard any such comments.

6. By letter dated 27<sup>th</sup> February 2015 Walshaw were charged under FA Rule E20, which deals with failing to ensure players and/or officials and/or spectators conduct themselves in an orderly fashion. The charge included an allegation of aggravation by reason of discrimination.
7. FA Rule E20 provides that:

*“Each Affiliated Association, Competition and club shall be responsible for ensuring: that its directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether expressly or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, assignment, sexual orientation or disability) whilst attending at or taking part in a match in which it is involved, whether on its own ground or elsewhere.”*

FA Rule E21 provides a potential defence if a club charged:

*“..... can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control or for reasons of crowd safety, and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged.”*

Significantly, the rule goes on to state that:

*“this defence shall not apply where the misconduct by spectators or any other person purporting to be a spectator or follower of the club included a reference, whether expressed or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability.”*

8. In the circumstances, in view of the aggravated nature of the charge, the potential defence available under Rule E21 did not apply.
9. An acknowledgement to the misconduct charge was completed and filed on behalf of Walshaw by its Club Secretary dated 8<sup>TH</sup> March pleading not guilty to the charge and requesting a disciplinary hearing to deal with the charge.

10. In the circumstances a Disciplinary Commission was convened by the County FA in order to determine the charge. The Commission members are referred to above at paragraph 2.
11. The Club were represented by their under 14 manager Mr Ken O'Donoghue. Also present as an observer was the Walshaw secretary Jim Hunter. Although Mr Hunter had not witnessed any of the incident, he had sent a letter to the County FA denying the charge.
12. Mr O'Donoghue explained to the Commission that the Club's two witnesses Darren Nicholls and Ryan Davies were both police officers and although aware of the hearing, were now unable to be present. The Commission explained that the statements would be taken as read but in the absence of the witnesses being heard in person and having their evidence tested the Commission would be unlikely to be able to attach significant weight or importance to them.

### **Issues**

13. The issues for the Commission to determine were as follows:

- (i) Did the Walshaw parent/spectator behave in an "improper, abusive or insulting manner?
- (ii) If so, was the behaviour aggravated by one or more of the aggravating factors set out in FA Rule E20, namely race?

### **The Evidence**

14. The Commission had before them the following evidence:

- The referee's report referred to above and an email response from the referee to some questions sent to him by the County FA Discipline Manager, confirming he was 10 yards away and saw the incident clearly.
- A written statement by Shallom Stapleton, the South Manchester player involved.
- An undated letter from the Walshaw Secretary received by the County FA on 11 March 2015.

- A statement from the parent concerned Darren Nicholls dated 4<sup>th</sup> March 2015.
- A statement from another Walshaw parent Ryan Davies dated 8th January 2015.
- A statement from the Walshaw manager Ken O'Donoghue dated 13<sup>th</sup> February 2015.

15. The Commission first heard from the Referee Mr Searle, who confirmed his written report. The referee confirmed that the tackle by Shallom was harsh as a result of which he instantly blew his whistle, intending to deal with the situation. He was however prevented from doing so due to the parent coming on to the pitch and shouting at Shallom, causing Shallom to react. In the referee's words the "situation exploded making it harder to deal with". The referee added that the parent was intimidating and that he deemed this behaviour as misconduct, as he would have felt intimidated if he was subjected to it. Upon questioning from the Commission the referee confirmed that the parent entered the pitch without permission and that he had approached Shallom first before attending to his son. The referee confirmed upon enquiry from the Chairman that Shallom's reaction to the apparent comment from the parent was surprising, with him becoming extremely upset and angry, much worse than he would have expected if he had been called "a dirty player". The referee further confirmed that when he had sent off a South Manchester player earlier in the second half the player concerned complained that he had been called racist

16. The Commission then heard from Shallom Stapleton who was accompanied by his mum and team manager. Shallom confirmed his written statement. Shallom maintained that he was 100% certain that the parent who entered on to the pitch called him "a black shit" as outlined in his statement and that he was not mistaken as to the words or description of the parent.

17. The Commission then heard from Mr Ken O'Donoghue who was Walshaw's only witness to attend the hearing. Mr O'Donoghue confirmed his email statement and did not wish to add to it. He was then questioned by the panel. He explained that due to his positioning on the opposite touchline he did not witness the parent (Darren Nicholls) enter the pitch but that a second parent Ryan Davies also came on to the pitch. Mr O'Donoghue could not explain who was responsible from the Club to maintain order on the day, and felt that it was the parents' responsibility to

maintain control. He felt that the referee was not capable of maintaining control due to his young age with many players looking bigger than the referee.

18. In his closing submissions Mr O'Donoghue emphasised that both the parents who came on to the pitch were police officers and that in his opinion it was important that the incident was dealt with immediately. He maintained that the referee was closer to the incident than the other witnesses had described (including the referee himself) and referred to the failure by anyone other than Shallom to hear the alleged racist remark by the parent and the discrepancies in the description provided by Shallom.

19. The Commission also considered the written statements filed by Darren Nicholls and Ryan Davies on behalf of Walshaw. The Commission did not however attach much significance to the statements because the witnesses had not appeared to give live evidence. Their statements therefore remained untested. The witnesses were both aware of the hearing and had confirmed their availability.

### **Decision**

20. As part of their deliberations the Commission reminded itself of the standard of proof which is required in order to find the charge proven, which is on a balance of probability.

21. After considering all of the evidence and submissions, it was the unanimous decision of the Commission that the E20 aggravated charge was proven to the requisite standard. As part of its deliberations the Commission considered all of the evidence that had been placed before it. The Commission noted that the referee's evidence went unchallenged, so far as the facts concerning the ingredients of the E20 charge was concerned, namely the fact of the parent entering the field of play in an intimidating manner without consent, acting in an abusive and insulting manner towards Shallom and causing the situation to escalate.

22. As to aggravation, the Commission preferred the written and oral testimony of Shallom on a balance of probability, who the Commission found to be a credible and reliable witness. He did not prevaricate with answers to questions, which were consistent with his statement. On the point of aggravation the Commission

had before them the oral and written evidence of Shallom on the one hand and the written and untested statement of Mr Nicholls. It was undisputed that Mr Nicholls was very agitated and perhaps understandably upset and angry at witnessing the harsh challenge by Shallom upon his son. Both the referee and Shallom stated that Mr Nicholls had approached Shallom first rather than attend upon his son. In those circumstances the panel felt it more likely than not on balance that Mr Nicholls would have reacted with something stronger than refer to Shallom as “a dirty player”. The Commission felt these words to be too mild and controlled in what was an intimidating and according to the referee, “an exploding situation”. The Commission would have expected a harsher form of words to have been applied in such a situation and on balance, for the reasons outlined above, the Commission came to the conclusion of accepting Shallom’s testimony and version as to the words used, namely “You black shit”. The Commission also noted that the referee was unsure and only *believed* Shallom was called “dirty”. Shallom was the only witness who confirmed he was 100% sure of what he heard and he was right at the centre of the incident.

23. The Commission took into account the conflicting evidence surrounding the description of the parent who entered on to the pitch. The Commission did not however consider this to be central to the issue to be determined because it was an undisputed fact and admitted by all concerned that it was Mr Nicholls who entered the field of play. Therefore the fact that his description was disputed was not crucial.

24. It was an unfortunate feature of this case that there was a total lack of awareness and understanding on the part of Mr O’Donoghue and Walshaw as to the nature of the charge that the club faced. This was apparent from the questions and closing submissions where Mr O’Donoghue seemed to solely concentrate on the racial aspect, and with an over emphasis on the fact that the two parents who entered the field were police officers. Mr O’Donoghue was mistaken in his belief that they therefore superseded the referee’s authority. The referee was clear in his evidence that he was about to deal with the situation and he should have been allowed to do so. .

### **Sanction**

25. Having found the charge proven, the Commission allowed Mr O'Donoghue an opportunity to provide mitigation. Beyond maintaining a denial of the charge, Mr O'Donoghue only referred to the incident occurring after the final whistle.
26. In determining sanction the Commission referred to the Disciplinary Sanctions Guidelines issued by the FA. The Commission also took into account the following:
- the referee's young age
  - the express criticisms of the referee's age and maturity
  - the lack of remorse or apology
  - two previous E20 breaches in 2012 and 2013
  - the fact that it was an impulsive reaction
27. Mr Polkey then advised the Commission of the previous disciplinary record. The Commission noted that whilst the club had been found guilty of two E20 charges in the last five years, neither of these were of an aggravating nature. After deliberation, the Commission severely cautioned and warned Walshaw as to their future conduct and imposed a fine of £75, which is in the middle of the high range of the Sanctions Guidelines
28. There is the right of appeal in accordance with the FA Regulations.

21 May 2015

Yunus Lunat – Chairman

David Addison

Alison Warwood