

IN THE MATTER OF

THE FOOTBALL ASSOCIATION

&

LEE JOHNSON (1)

SUNDERLAND AFC (2)

LINCOLN CITY FC (3)

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WRITTEN REASONS OF THE INDEPENDENT  
REGULATORY COMMISSION

BRIEF INTRODUCTION

1. On Wednesday, 9 February 2022, the Regulatory Commission ["RC"] convened to conduct a "Fast Track 2 – Non-Standard Case" hearing, in relation to consolidated charges, emanating from a football match between Sunderland AFC and Lincoln City FC, on 11 January 2022.
2. In light of the ongoing pandemic, this hearing was conducted over Microsoft Teams, without objection from any party.

## **THE REGULATORY COMMISSION**

3. The members of the RC were:
  - Lawrence Selby (Chair – Independent Legal Panel Member);
  - Shaun Turner (Independent Football Panel Member);
  - Matt Wild (Independent Football Panel Member).
4. No objection was raised concerning the composition of the RC.
5. The Secretary of the RC was Michael O'Connor, the FA Lead Judicial Services Officer, whose assistance was greatly appreciated.

## **ATTENDEES**

6. The Football Association was represented by Mr Sam Shurey ["SS"], with Mr Freddie Eastwell observing.
7. Mr Lee Johnson ["LJ"] attended the hearing and was represented by Mr Craig Harris ["CH"].

### **BRIEF BACKGROUND FACTS**

8. On 11 January 2022, a football match ("the fixture") took place between Sunderland AFC ("SAFC") and Lincoln City FC ("LCFC").
9. In, or around, the 95<sup>th</sup> minute of the fixture there was a "flashpoint", following a challenge by Callum Doyle ["CD"], of SAFC, on number 19 for LCFC.
10. Following CD's challenge, for which he was cautioned, Conor McGrandles ["CMcG"] ran over towards CD, in an aggressive fashion.
11. At this point, LJ, the manager of SAFC, and others from both sides, became involved in what was described as a mass confrontation – consequently, (a) CMcG was cautioned; (b) LJ was dismissed; and (c) the FA charged LJ; SAFC and LCFC.

### **CHARGES & PLEA**

## **Lee Johnson**

12. By letter dated 14 January 2022, the FA charged LJ with Misconduct for two breaches of FA Rule E3.1.

13. It was alleged that LJ's conduct:

- (a) in or around the 95th minute of the fixture was improper and/or violent ["Charge 1"];
- (b) following his dismissal was improper ["Charge 2"].

14. Furthermore, the FA had designated this case as non-standard due to the following reasons:

- (a) The aggressive nature of the alleged misconduct;
- (b) Multiple alleged breaches of FA Rule E3.1.

15. By a Reply Form, signed and dated 19 January 2022, LJ denied the charges and requested a personal hearing.

## **Sunderland AFC**

16. By letter dated 14 January 2022, the FA charged SAFC with Misconduct for a breach of FA Rule E20.1.

17. It was alleged that in or around the 95th minute of the fixture, SAFC failed to ensure that its players conducted themselves in an orderly fashion and/or refrained from provocative behaviour.

18. Furthermore, the FA had designated this as a Non-Standard Case due to the Club's breach of FA Rule E20.1 in the preceding 12 months.

19. By a Reply Form, signed and dated 19 January 2022, SAFC admitted the charge and requested that the matter be dealt with by way of a paper hearing.

### **Lincoln City FC**

20. By letter dated 14 January 2022, the FA charged LCFC with Misconduct for a breach of FA Rule E20.1.

21. It was alleged that in or around the 95th minute of the fixture, LCFC failed to ensure that its players conducted themselves in an orderly fashion and/or refrained from provocative behaviour.

22. Furthermore, the FA had designated this as a Non-Standard Case due to the Club's breach of FA Rule E20.1 in the preceding 12 months.

23. By a Reply Form, signed and dated 18 January 2022, LCFC admitted the charge and requested that the matter be dealt with by way of a paper hearing.

### **THE FA RULES**

24. The relevant FA Rules provide:

## **E. MISCONDUCT**

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.

**E1** The Association may act against a Participant in respect of any Misconduct, which is defined as being a breach of the following:

**E1.1** the Laws of the Game;

**E1.2** the Rules and regulations of The Association and in particular Rules E3 to E28 below;

...

## **GENERAL BEHAVIOUR**

**E3 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.

...

## **ATTENDANCE AT AND PARTICIPATION IN MATCHES**

**E19** An individual may take part in or attend at a Match only on condition that such individual observes the Rules, and each Affiliated Association, Competition and Club is required to observe and enforce such Rules.

**E20** Each Affiliated Association, Competition and Club shall be responsible for ensuring:

**E20.1** 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 express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, 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.

## **THE EVIDENCE**

## **Introduction**

25. The following is a summary of the principal evidence/submissions provided to the RC.

26. This document does not purport to contain reference to all the points made, however the absence in these reasons of any particular point, or submission, should not imply that the Commission did not take such point, or submission, into consideration when the members considered the matter.

27. For the avoidance of doubt, the Commission carefully considered all the evidence and materials furnished with regard to this case.

## **The FA's Evidence**

28. The following is a summary of the evidence presented to the RC by the FA, in support of its case:

- Mr. S. Mather - the Fourth Official;
- Mr. J. Simpson - the Match Referee;
- Mr. C. Webster - the Match Observer;
- A video clip of the incident.

29. The salient parts of Mr Mather's Evidence in Chief may be summarized as follows:



- He was the 4<sup>th</sup> Official;
- On 12.01.22, he had submitted an Extraordinary Incident Report Form;
- On 23.01.22, he had supplemented his Report with an email;
- He agreed that the contents of both his email and Report were accurate, and adopted them as his evidence;
- He confirmed that he saw LJ grab CMcG by the throat ["Charge 1"];
- He had a clear a view of this incident and was 10/10 sure of what he had seen;
- He told the referee what he had seen over the comms;
- Following a face to face conversation with the referee, LJ was dismissed for his conduct;
- Following his dismissal, and while walking towards the tunnel, LJ bumped into him ["Charge 2"];
- He did not consider this bump to be an accident;
- There was no reason for LJ to have entered his space;
- There was no apology for the bump;
- He recorded this incident in a green card, which he gave to the referee;
- He was shown the video footage and confirmed his evidence.

30. The salient parts of Mr Mather's Cross Examination may be summarized as follows:

- LJ was sent off as a result of his account to the referee;
- He was the primary witness to LJ's conduct;
- He had only reported the bump in his Extraordinary Incident Report Form, as that was what he had been asked to do;
- He had passed on to the referee what he had seen, re the throat grab;

- After the fixture, he was asked for further information, which he provided in his email;
- He was shown a photograph and accepted that it appeared to show LJ with his hand in the lower part of CMcG's face, and not his throat;
- He accepted there were times when his view of LJ was obscured;
- He repeated that, at the start of it, he had a clear view of the incident and was 10/10 sure that LJ had grabbed CMcG by the throat;
- He did not recollect LJ's foot making contact with his own;
- His perception of the bump was that it was not accidental, as LJ had options to go round him.

31. The salient parts of Mr Simpson's Evidence in Chief may be summarized as follows:

- He was the Referee;
- On 12.01.22, he had submitted 3 (three) Extraordinary Incident Report Forms – the first giving rise to Charge 1; the second giving rise to Charge 2 and the third giving rise to the charges against SAFC and LCFC;
- He agreed that the contents of his Reports were accurate, and adopted them as his evidence;
- In the 95<sup>th</sup> minute of the fixture, there was a mass confrontation, precipitated by a bad challenge, by CD, and retaliation, by CMcG;
- He was 15 metres away to try and survey what was happening;
- He confirmed that he had not seen LJ grab CMcG by the throat ["Charge 1"];
- He confirmed that this information was passed to him by Mr Mather;
- As a result of this information, LJ was dismissed;
- He did not see the bump ["Charge 2"]

- This was reported to him in the changing room and written on 'the green card';
- The bump was reported to him as being deliberate.

32. The salient parts of Mr Simpson's Cross Examination may be summarized as follows:

- He could only give evidence about what he had been told;
- LJ was sent off based on the information he had received.

33. The salient parts of Mr Webster's Evidence in Chief may be summarized as follows:

- He was the Match Observer;
- On 12.01.22, he had submitted an Extraordinary Incident Report Form;
- He agreed that the contents of his Report was accurate, and adopted it as his evidence;
- He was not at the game;
- His evidence was limited to his observations of the footage;
- His interpretation of the footage, based on the height of the arm, was that LJ's hand was in the face of CMcG.

34. Mr Webster was not cross examined.

### **Lee Johnson's Evidence**

35. The salient parts of LJ's Evidence in Chief may be summarized as follows:

- He was the manager of SAFC;
- He had provided a statement, setting out his version of events, which was signed and dated 19.01.22;
- He stood by the contents of this statement;
- LJ was in a calm state of mind throughout the fixture, notwithstanding goading by a former player, who had scored a hat-trick for LCFC;
- In the 95<sup>th</sup> minute there was a "big tackle" by CD;
- LJ was resigned to the fact that the game was lost;
- As a result of the CD tackle, CMcG approached CD aggressively;
- Instinctively, LJ tried to protect CD by using due force to control CMcG's head;
- LJ was not using aggression and was trying to diffuse the situation;
- LJ was trying to prevent an attack and, given their relative sizes, LJ tried to make contact with CMcG's head (face/chin) to control him;
- He considered this to be reasonable force, given the scenario;
- Although he understood why he had been sent off, he considered the 4<sup>th</sup> official to be wrong;
- LJ stated that he had never grabbed the windpipe ["Charge 1"];
- He felt the sending off was unfair, having been told by the referee that it was based on what the 4<sup>th</sup> official had seen;
- As such, he wanted to argue his point with the 4<sup>th</sup> Official;
- As he approached the 4<sup>th</sup> Official, his foot slipped and collided with the 4<sup>th</sup> Official's foot;
- He didn't deny the contact, but, there was no intention to bump/barge the 4<sup>th</sup> Official;
- His conduct was not improper.

36. The salient parts of LJ's Cross Examination may be summarized as follows:

[NB. This is limited to Charge 1, as LJ admitted Charge 2 during the course of Cross Examination.]

- LJ confirmed that his reaction was instinctive;
- He believed he needed to get involved;
- He didn't believe his involvement increased the risk of an escalation;
- Although the situation did escalate, it might have been worse had he not stopped CMcG;
- In hindsight, he wished he'd left the matter to the officials;
- He used reasonable force to protect his player;
- He had been taught that the best form of defence is to control a person's head, to quash momentum;
- When young, he had been a judo champion;
- He was certain he didn't grab the wind-pipe, as that would have been an act of aggression;
- Grabbing the face is an aggressive action, but was with reasonable force;
- LJ insisted that he didn't make contact with the throat area;
- When paragraph 15 of his statement was put to him – namely "I didn't pinch or apply pressure to the player's windpipe (if that is what is meant by me grabbing his throat), although I accept my hand would have made contact with him in that area." – LJ said that it might have looked like that;
- LJ confirmed that he didn't make contact with CMcG's throat;
- When pressed, LJ said that he might have made contact with the throat, but, didn't apply any pressure.

- LJ said that he didn't lose his temper or composure.

37. Immediately prior to submissions, and in light of his answers in Cross Examination, LJ admitted Charge 2.

### **The FA's Closing Submissions**

38. In summary, the RC understood SS's submissions to be as follows:

- The FA's case was that LJ had grabbed CMcG by the throat, and this was violent conduct;
- Even if, on the balance of probabilities, the RC was not sure that LJ had grabbed CMcG by the throat, by his own admission, LJ had made deliberate contact with the face of CMcG;
- Both of these scenarios would equate to violent conduct;
- The concept of self defence has no role in the FA Regulations and does not apply, as it might in the criminal law;
- In any event, LJ's actions were neither necessary nor proportionate;
- Mr Mather's evidence was contemporaneous, consistent and compelling;
- LJ's evidence was a "complex description" of what had occurred;
- There was nothing to undermine the FA's evidence.

### **Closing Submissions on behalf Lee Johnson**

39. In summary, the RC understood CH's submissions to be as follows:

- Self defence is not set out in either the FA Regulations or the Case Law;

- Notwithstanding, if LJ's actions were justified, they could not be said to be improper;
- The RC should ask itself the following question: "Was the act, which it finds established, improper?"
- LJ's actions were both necessary and proportionate;
- The referee gave evidence of CMcG's behaviour;
- Although compelling, the 4<sup>th</sup> Official could be mistaken – he only had a fleeting glance;
- There was no reason to prefer the 4<sup>th</sup> Official's evidence to LJ's account;
- The photograph showed LJ 's hand in contact with CMcG's face, and not throat;
- The Match Observer said that he thought the contact was to the face;
- LJ was a candid, reflective witness, who had told the truth, as highlighted by his admissions to Charge 2;
- In the circumstances as presented to him, LJ had used a degree of force to stop CMcG – to suggest that this should not be permitted would be to sanitise reality;
- Regardless, LJ had done nothing improper.

## **STANDARD/BURDEN OF PROOF**

40. The RC confirmed that:

- (a) it was for the FA to satisfy the RC that LJ had committed the breaches of E3.1, as alleged;

- (b) the applicable standard of proof required for this case was the civil standard, namely, the balance of probability – ie was it more likely than not that LJ had committed the breaches of E3.1, as alleged.

## DISCUSSION

41. The RC thanked the parties for their assistance and retired to consider its findings.

42. In summary, the RC reached the following, unanimous conclusions on the evidence of the witnesses:

- Mr Mather's evidence was credible, cogent and consistent, and had not been undermined by CH;
- The evidence of both Mr Simpson and Mr Webster did not, in reality, assist or undermine the case of either party;
- LJ's evidence was confused, and confusing, and his answers, when asked to explain paragraph 15 of his statement, were elusive and inconsistent.

## DECISION

43. Accordingly, the RC found, as matters of fact based on all of the evidence, that:



- LJ was the aggressor;
- LJ did make contact to the throat of CMcG;
- This contact was a deliberate act of violence by LJ;
- Consequently, this act was also improper.

44. In light of these findings of fact, LJ's behaviour could not be said to have been justified, nor could it be said to have been either proportionate or necessary.

45. It follows that the RC found the case against LJ proven, and this decision was communicated to the parties.

## MITIGATION

46. On behalf of LJ, CH made the following submissions:

- A sporting sanction and fine were inevitable;
- LJ was of previous good character;
- LJ was unemployed – as such any touchline ban, which CH conceded would have to start once LJ was re-employed, might be unattractive to any potential employer and, as such, hinder LJ's job opportunities;
- Charge 1 was a momentary incident, and the incident came to LJ;
- Charge 2 was a petulant act, of the shortest duration;
- The RC should have regard to totality.

## DISCUSSION

47. Mindful that the charges against LJ had been consolidated with the charges against SAFC and LCFC, the RC determined that it would (a) first, consider, and announce, the appropriate sanction against LJ; and (b) thereafter, consider, and announce, the appropriate sanctions against SAFC and LCFC.

48. The RC reminded itself that, as these cases were non-standard, there are no applicable guidelines and, as such, sanction was a matter of discretion for the RC.

## SANCTION

### Lee Johnson

49. The RC accepted the mitigation, advanced by CH, and came to the unanimous decision that, in all the circumstances of this case, and having considered all its available options, the appropriate sanction was:

- 4 game touchline ban, to be served once LJ had been re-employed;
- Fine of £3,000;
- Costs of £900.

50. This sanction was broken down as follows:

Charge 1: 3 game touchline ban, and a fine in the sum of £2,250;

Charge 2: 2 game touchline ban, and a fine in the sum £1,500,

And reduced, accordingly, to take into account totality.

51. This sanction, and its reasoning, was communicated to the parties.

### **Sunderland AFC**

52. Having regard to (a) the aggravating factors – namely 6 previous breaches of E20.1 in the last 5 years, and 2 breaches in the last year; and (b) the mitigation advanced by SAFC, by way of letter dated 20.01.22, the RC considered the appropriate sanction was £5,000.

### **Lincoln City FC**

53. Having regard to (a) the aggravating factors – namely 5 previous breaches of E20.1 in the last 5 years, and 1 breach in the last year; and (b) the mitigation advanced by LCFC, by way of letter dated 18.01.22, the RC considered the appropriate sanction was £4,000.

## **SUMMARY OF FINDINGS**

**Lee Johnson**

54. The RC found both charges proven against LJ, for breaches of FA Rule E3.1, and imposed the following sanction:

- 4 game touchline ban, to be served once LJ had been re-employed;
- Fine of £3,000;
- Costs of £900.

#### **Sunderland AFC**

55. SAFC admitted the charge, for a breach of FA Rule E20, and the RC imposed the following sanction – namely, a fine in the sum of £5,000.

#### **Lincoln City FC**

56. SAFC admitted the charge, for a breach of FA Rule E20, and the RC imposed the following sanction – namely, a fine in the sum of £4,000.

#### **APPEAL**

57. These decisions are subject to the right of appeal under the relevant FA Rules and Regulations and each party should be informed of the same.

Signed:

12 February 2022

Lawrence Selby

[for and on behalf of the Commission]