

**IN THE MATTER OF A FOOTBALL ASSOCIATION
INDEPENDENT REGULATORY COMMISSION
MONDAY 30 MAY 2022**

BETWEEN:

THE FOOTBALL ASSOCIATION

And

MR FRANK LAMPARD

WRITTEN REASONS

Background

1. These are the written reasons for a decision made by an Independent Regulatory Commission which sat on Monday 30 May 2022.
2. The hearing took place by MS Teams and the members of the Regulatory Commission were Christopher Stoner QC (Chair), Faye White and Stuart Ripley. Mr John Edmunds, Judicial Services Coordinator at the FA, acted as the secretary to the Commission.
3. The FA were represented at the hearing by Ms Amina Graham of Counsel, whilst the Participant charged, Mr Frank Lampard, was represented by Mr Matthew Bennett of Centrefield LLP. Mr Lampard also attended himself and Ms Amy Wells of Everton F.C was also in attendance.
4. The Commission is most grateful to Mr Edmunds for his assistance as well as to Ms Graham and Mr Bennett for their submissions and also to Mr Lampard for his evidence, his submissions and his attendance at the Commission hearing whilst on a family holiday.
5. The Commission sat to determine a charge laid by The F.A. that Mr Lampard was guilty of misconduct for a breach of Rule E.3 in respect of comments made in post – match media comments after the Liverpool v Everton game on 24 April 2022. The F.A. alleged that the comments set out below constituted improper conduct in that they imply bias and/or attack the integrity of the referee, or referees generally, and/or bring the game into disrepute contrary to Rule E3.1.
6. The comments in question arose from the following answer Mr Lampard gave to being asked about decisions against Everton in the game, in particular a penalty appeal which did not result in the award of a penalty:

“Well, it’s a penalty in the second half, for me. I don’t, I don’t think you get them here and, I think, probably if that’s Mo Salah at the other end, I think he gets a penalty. And I’m not being, trying to create conflict here, I think it’s just a reality of football sometimes. Maybe I played at clubs, sometimes, that were top eight reaches of the league, and the crown behind them, and you do it, you get them or you don’t. For me, for sure, that was a penalty. The second one on Anthony. It’s a foul, it’s a clear foul. But we, you don’t get them here.”

7. Although it had been hoped to view a video clip of the relevant question and answer during the Commission hearing, technical difficulties intervened. However, the Commission had been supplied a clip of the relevant section of the press conference before the hearing and had viewed it and, in any event, there was no dispute that the relevant words were spoken by Mr Lampard.
8. By his Reply Form dated 12 May 2022 Mr Lampard denied the charge and requested a personal hearing. The Commission was also furnished with a letter written by Mr David Harrison, the Director of Football Operation/Club Secretary at Everton FC also dated 12 May 2022 as well as a further letter from Mr Harrison dated 28 April 2022 when Mr Lampard was asked for his observations as well as a letter from Mr Lampard himself, also dated 28 April 2022.
9. In addition to the foregoing, some statistics were admitted in evidence, out of time, those statistics being what was called a 'penalty analysis' over the last 2/3 seasons. The statistics were admitted in circumstances where The F.A. had no objection in principle to their admission, but questioned their relevance, which the Commission was satisfied it could determine during the hearing.
10. Likewise, a video clip of the penalty incident was admitted in evidence and viewed during the Commission hearing and an article from the Evening Standard on 20 December 2021 referring to alleged comments made by Jurgen Klopp was admitted, without objection from the F.A. The Commission determined it could also consider their relevance during the hearing.
11. In support of the charge and in addition to the letter of charge, The F.A. adduced evidence of three press extracts reporting the comments, one from the Daily Mail, one from The Independent and one from The Guardian, as well as the letter from Chris Hall, Integrity Investigator dated 25 April 2022 seeking Mr Lampard's observations on the comments recited above, as well as the responses from Mr Lampard and Mr Harrison referred to above.
12. Additionally, The F.A. referred to F A Rule E.3. as well as an extract from 'Essential Information for Managers, Owners and Directors 2021/22' which we will refer to below. The F.A. also adduced the video clip of the relevant question and answer in Mr Lampard's press conference, to which we have already referred.

Regulations

13. Mr Lampard is charged with misconduct by breaching Rule E3.1 of the FA Rules. That provides, as relevant:

“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 ...”

14. In establishing that Mr Lampard’s comments were improper, The F.A. also refers to a document entitled *“Essential Information for Managers, Owners and Directors: 2021/22 Level: Professional and Semi-Professional.”*

15. That document includes a page headed “Media Comments and Social Media.” It then provides:

“What happens if I make comments about the Match Officials in my pre or post-match press conference.

Managers should be aware that The FA sets standards in relation to public comments made by Participants.

This means that the following types of public comments by Managers, Players of Club Officials may lead to disciplinary charges.

...

- *Implication of bias: any comment which implies or alleges bias on the part of a Match Official.*
- *Questioning Integrity: any comment which questions the integrity of a Match Official.*

...

- *Detriment to the Game: the concepts of “disrepute” and “best interests of the game” are inherently broad and cannot be precisely defined. Charges may be brought where comments cause, and/or may cause, damage to the wider interests of football and/or the image of the Game.”*

Issues and Decision

16. There is no dispute that the burden is on the F.A. to prove the charge and to do so on the balance of probabilities. Thus, the question for the Commission is one of whether it is more likely than not that the comments made by Mr Lampard are improper and, as such, amount to misconduct, whether by implying bias, attacking the integrity of the referee, or referees generally, or whether they bring the game into disrepute.
17. The Commission is satisfied that the appropriate approach is to consider this question from the perspective of the 'reasonable bystander'. On behalf of Mr Lampard, Mr Bennett suggested that the Commission was not bound to follow that course and that, for example, we were not bound to follow the examples of the Commissions in the cases cited to us where previous Commissions had applied a 'reasonable bystander' test.
18. However, the Commission considers the reasonable bystander test to be the correct approach to determining breaches of Rule E3.1. It is difficult, if not impossible, to see how a consistent application of rules to all Participants preventing improper conduct and conduct which is prejudicial to the game could possibly be usefully applied, let alone enforced, if there were other than a standard objective approach, applicable to all Participants.
19. The Commission did not consider that a viable alternative to the reasonable bystander test was actually suggested or advanced on behalf of Mr Lampard. In being invited to apply common-sense and logic, the Commission considers it is doing so by applying the reasonable bystander test in any event. Nor does the Commission consider that it needs to seek an alternative test, as the objective assessment inherent in the 'reasonable bystander' test is, in the Commission's view, the best and the appropriate means of considering the application of the facts to Rule E3.1.
20. Mr Bennett also stated that the reasonable bystander should be someone who has sports knowledge/knowledge of the game of football and Ms Graham accepted that it should be taken as someone who had some knowledge of the sport.

21. Where the line for the extent of that knowledge is to be drawn is not a matter we need to consider, although the Commission does not accept, if it were to be suggested, that such a knowledge of the sport is other than general. There can, for example, be no suggestion in the Commission's view that the 'reasonable bystander' would be someone imbued with the details of the statistical penalty analysis which was shown to us which during the hearing.
22. Turning to submissions made in respect of the comments in issue, these reasons do not record all the points that were submitted and canvassed, both in writing and during the personal hearing. The absence in these reasons of reference to any particular point or submission should not imply that the Commission did not have regard to the point or submissions, many of which advanced during the main part of the hearing were taken into account in any event when considering mitigation.
23. Mr Lampard was clear that he never intended to be personally critical of the Match Referee, Mr Stuart Atwell and nor did he mean to question his integrity or imply or allege that he was biased against Everton F.C.
24. Based on the statistical analysis and in particular that part of it addressing the awarding of penalties during the Covid pandemic when games were played behind closed doors, Mr Bennett suggested Mr Lampard's point during the press conference was a nuanced one, albeit one then based on Mr Lampard's undoubted experience as a player and manager at the top level of the game as opposed to any particular statistical analysis, which was rather introduced to support Mr Lampard's view. That nuanced point, which it was said was made without suggesting any bias or prejudice on the part of Match Officials, referred to the human reaction to the influence of a home crowd which means it is more likely that a home side will be awarded a penalty. This was the effect of the so-called '12th man'.
25. This approach is highlighted in the letter in response to the request for observations sent in support of Mr Lampard by Mr Harrison of Everton F.C. dated 28 April 2022, when he said:

“Mr Lampard’s comments were a general statement based on his long experience in football both as a player and a manager at club and international level, about the difficulty of being awarded penalties when you are playing away from home in front of large, vocal and supportive crowd – in his view “it’s just the reality of football sometimes” that it is harder for away teams to be awarded penalties. This is an objective statement supported by fact as over the thirty Premier League seasons, there have been approximately 2,431 penalties awarded, with 61% (approximately) being awarded to the home team – it being further noted that Liverpool have not had a penalty awarded against them in 46 Premier League matches which is the longest run for any club in Premier League history.”

26. There is no dispute that in the comments made during the press conference and now in issue, Mr Lampard did not refer to any statistics, specifically or generally.
27. In the view of the Commission, it is also clear that in the context of the totality of the comments in issue, Mr Lampard would not have left the reasonable bystander, or reasonable person, with the view that he was simply making a generic comment about the percentage of penalties awarded to away teams. That possibility, in the Commission’s view, was destroyed by stating at the outset: “I don’t think you get them here and, I think, probably if that’s Mo Salah at the other end, I think he gets a penalty”, as well as stating at the end “But we, you don’t get them here.”
28. Inherent in those words, in the Commission’s view, is a specificity which clearly elevates the comments well beyond any form of generic comment. The words used refer to ‘here’, namely Anfield, and unquestionably in the view of the Commission would leave any reasonable person with the view that Mr Lampard was stating that if a similar challenge had been made on a Liverpool player in the penalty box, indeed specifically on Mo Salah, then a penalty would have been awarded, but because it was an Everton player, no penalty was awarded.
29. On any view, the nuanced view Mr Lampard was trying to explain was a difficult one to articulate, especially so when the essence of his point appears to be more about penalties being awarded to home sides, due to human factors such as the presence and influence of the home crowd, and yet he was seeking to answer a question about why his team, as the away side, had not been given a penalty. Furthermore, there is, in any view, a very fine line between discussing the influence of a crowd on ‘match

officials' without, for example, implying bias, even if it is unconscious bias, on the part of the Match Officials.

30. Mr Lampard has told us that it was not his intention, when answering a direction question about his view on a decision not to award his team a penalty, to criticise the Match Referee in any way. The Commission has no doubt whatsoever that there was no malice whatsoever in the comments Mr Lampard made. However, the Commission equally has no doubt, when considering the comments as a whole, that the reasonable man hearing them would think the words implied bias on the part of the Match Referee, because it was said, in the Commission's view, that if two similar challenges were made, one on an Everton player and one on a Liverpool player, the Match Referee would not give the former as a penalty, but he would give the later.
31. In the Commission's view, the comments made by Mr Lampard are clearly comments of the sort that the 'Essential Information' guidance document recited above and produced by The F.A. was intended to avoid.
32. In such circumstances, the Commission concludes that the reasonable man would consider that Mr Lampard was implying bias on the part of the Match Referee or otherwise attacking his integrity and that, accordingly, his conduct was improper and in breach of Rule E3.1.
33. Accordingly, the Charge is proven.

Mitigation

34. The Commission considered points advanced by way of mitigation, namely:
 - 34.1. The fact the Commission accepts that Mr Lampard comments were made without any malice.
 - 34.2. The fact the comments were made in a press conference in an intense pressure scenario, not only after a defeat in the Merseyside Derby but also a defeat which saw Everton drop into the relegation zone and against a wider backdrop of decisions having gone against Everton in the games prior to the game on that day.

- 34.3. The fact the point Mr Lampard was seeking to make, however ill-advisedly in that forum and in response to that question, was one which has at least some support for debate in the statistical analysis undertaken during the pandemic when games were played behind closed doors.
- 34.4. The fact that Mr Lampard had no previous record of any sanctions in respect of any media comments; and
35. It must also be observed that Mr Lampard contested the charge and so cannot benefit from any credit for pleading guilty. Furthermore, it was said that Mr Lampard had apologised. That is true, but the apology is qualified by the fact that Mr Lampard maintained throughout the personal hearing that the comments made did not amount to misconduct. However, the Commission were quite clear that Mr Lampard was saying to it that if, contrary to his position and as we ultimately found to be the case, the comments were misconduct, then he apologised and it was not his intention to say something wrong. The apology was accepted by the Commission in that spirit.
36. The Commission also noted, when questioned, Mr Lampard's clear regret that he mentioned a Liverpool player by name. He said he would take that away if he could.
37. The Commission was also impressed that Mr Lampard took the Charge seriously and was prepared to attend in person, interrupting his family holiday to do so. Aside from this it was said that Mr Lampard had fully co-operated with The F.A., notwithstanding his disputing the charge, at all stages of the process. This was undoubtedly true, but the Commission considers that an entirely neutral point. The Commission would expect any Participant to co-operate with the process.

Sanction

38. Having regard to all the matters submitted to us, both on the issue of whether the charge was proven or not and, once we had determined it was, on the issue of mitigation and sanction, the Commission is of the view that a financial penalty is the correct penalty in this instance, having regard to all the circumstances including Mr Lampard's weekly income which had been provided in confidence.

39. Having determined that a financial penalty was an appropriate one and having regard to all the submissions made and information available, the Commission was initially minded to impose a sanction of a fine of £45,000. However, having regard to matters raised in mitigation, as discussed above, the Commission considers that the appropriate sanction is a **fine in the sum of £30,000**.

40. In addition, the Commission orders Mr Lampard to pay the costs of the Regulatory Commission itself.

41. This decision is subject to the relevant Appeal Regulations.

Christopher Stoner QC (Chair)

Faye White

Stuart Ripley

31 May 2022.