

Football Association Appeal Board

in the matter of a decision made by the Sussex County FA in relation to a FA Rule E3 (2) charge for misconduct brought against Mr James Marrs.

Appeal Board Decision

1. These are the written reasons for a decision made by an Independent FA Appeal Board that was convened at Wembley Stadium on 13th October 2016.
2. The Commission members were Mr. S. Ripley (Chairman), Mr. M. Armstrong and Mr. S. Turner.
3. Mr. R. Smith of the FA Judicial Services Department acted as Secretary to the FA Appeal Board.
4. Mr. J. Marrs attended the Hearing and was represented by Mr. S. Hunt.
5. Sussex County FA was represented by Mr. N. Leal.

Background

6. Mr. Marrs was employed as a coach by Brighton and Hove Albion FC ('BHAFC') to the club's women's u18's team.

7. On 31 March 2016 Mr. Marrs was taking a training session for the BHAFC women's 18's team. At the start of the training session Mr. Marrs was handing out team bibs to the girls. As he did so he was making up 'nicknames' for the girls to whom he handed the bibs.
8. As he handed a bib to a young trialist who had long dark hair and who is variously described in the correspondence available as being of '*non-white*' and 'Phillipino/Asian' appearance Mr. Marrs said to her "*There you go Pocohantas*".
9. Mr. Marrs does not dispute that he used the name '*Pocahontas*' when handing the bib to the trialist. His explanation for doing so was that the girl had long dark hair akin to the Disney characterisation of Pocahontas and by giving her a nickname he was trying to foster team spirit and to include her in that process.
10. It should be noted however that this Appeal Board is concerned solely with the '*Pocahontas*' incident as described above.
11. In a letter to Mr. Marrs dated 22nd April 2016, Mr Martin Perry, Executive Director of BHAFC, stated that taken together his actions in relation to a number of allegations constituted gross misconduct and that the cumulative effect of these actions had resulted in a breach of the mutual trust required between employer and employee.

12. On 12th July 2016 Sussex County FA charged Mr. Marrs with improper conduct in that his use of the phrase *'There you go, Pocohontas'* when handing out the bibs constituted a breach of FA Rule E3 (1) due to the language used being insulting and/or abusive. Furthermore, the said breach of FA Rule E3 (1) was said to be an *'aggravated'* breach as it allegedly contained a reference to colour and/or race and/or nationality and/or ethnic origin and as such was a breach of FA Rule E3(2).
13. Mr. Marrs denied the charge. He did not request a personal hearing and asked that the matter be dealt with by correspondence only.
14. Having considered the evidence before it, Disciplinary Commission acting on behalf of Sussex County FA (the 'Commission') stated that it was satisfied that there was sufficient evidence to substantiate the alleged aggravated breach by Mr. Marrs, and found, on the balance of probabilities, that the case was proven.
15. Mr. Marrs was suspended by Sussex County FA from all football activities for a period of 49 days commencing 5th September 2016 to 23rd October 2016 and fined £100. Mr. Marrs was also required to complete an FA Equality Education Workshop within 4 months of the decision.
16. The sanction was set aside on 13th September 2016 as Mr. Marrs appealed the decision of Sussex County FA.

17. Mr. Marrs based his appeal on two grounds:

- a. The Commission came to a decision no such body could reasonably have reached; and/or
- b. The Commission imposed an award, order or sanction that is excessive.

Appeal Board Decision

18. The Appeal Board heard oral submissions from both parties.

19. The following is a summary of the principal submissions provided to the Appeal Board. It 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 Appeal Board did not take such point, or submission, into consideration when determining the matter. For the avoidance of doubt, the Appeal Board has carefully considered all the evidence and materials furnished with regard to this case.

20. As a preliminary application submitted by Mr. Hunt to permit new evidence, the Board noted that Mr. Leale was not content and felt such evidence should have been provided at the first hearing. The Board, however, found that as a matter of fairness to all parties the application was accepted and new evidence was presented and considered.

21. It was agreed and accepted by both parties that the reference by Mr. Marris to *'Pocahontas'* was a reference to the Disney animated character.
22. Mr Marris was adamant that his reference to *'Pocahontas'* was based on the trialist having long dark hair and not made in reference to the girl's ethnic origin or skin colour.
23. Mr Leal stated that Mr. Marris' reference to *'Pocahontas'* was clearly abusive, an insult made with reference to the *'asian'* characteristics of the trialist.
24. The Board considered the first ground for appeal - whether or not the Commission had come to a decision that no such body could reasonably have reached.
25. In doing so, the Board noted that an *'aggravated'* breach as set out in FA Rule E3(2) requires an underlying breach of FA Rule E3(1) relating to improper or insulting or abusive language.
26. Having considered the phrase used by Mr. Marris in the context that it was said, the Appeal Board members unanimously agreed with Mr. Marris who stated in his correspondence that a reasonable neutral observer would not have held his comment to be insulting or improper or abusive.

27. The Board could not see how a reasonable person (or Commission) could consider a reference to the Disney '*Pocahontas*' character as being one that is abusive or insulting.
28. Pocahontas as characterised by Disney is a beautiful, strong-willed heroine of Native American origin with, as far as the Appeal Board is aware, absolutely no negativity attached to her persona.
29. The Board could not see why any reasonable person or Disciplinary Commission would consider reference to such a character as being insulting, abusive or improper.
30. The Appeal Board noted that there was no suggestion that Mr. Marrs had used swear words as part of the phrase, which may possibly have placed it in a different context.
31. The Appeal Board considered that the Commission had, given the context of the situation, unreasonably decided that the reference by Mr. Marrs to the Disney '*Pocahontas*' character was, on the balance of probabilities, an insult and abusive. The Appeal Board felt that the Commission had moved to consider the 'aggravation' of a FA Rule E3(1) breach when in fact no breach of FA Rule E3 (1) had occurred.
32. Notwithstanding the above, the Appeal Board was not wholly convinced that a reference to such a well-known Native American heroine could so easily be considered as an insulting reference to a person of '*Asian*' origin as was argued by Mr. Leal.

33. The Appeal Board noted that not every reference to a person of non-white ethnicity should automatically be considered to be an insult and that each incident of this nature ought to be considered carefully on a case-by-case basis within the context that the words are spoken.

34. The Appeal board felt that the Commission had acted unreasonably in finding the phrase used by Mr. Marrs to be an insult and/or abusive and as such the appeal was upheld on the first ground for appeal.

35. Given the above, there was no requirement for the Appeal Board to consider the second element of the Appeal.

Stuart Ripley

Appeal Board Chairman

23rd October 2016