

Football Association Independent Regulatory Commission

(the 'Commission')

**in the matter of FA Rule E3 charges for misconduct brought by The
FA against Mr Arsene Wenger of Arsenal FC.**

Regulatory Commission Decision

1. These are the written reasons for a decision made by an Independent Regulatory Commission which sat at Wembley Stadium on Friday 27th January 2017.
2. The Commission members were Mr. S. Ripley (Chairman), Mr. D. Smith and Mr. P. Raven.
3. Mr. P. McCormack of the FA Judicial Services Department acted as Secretary to the Regulatory Commission.
4. Mr. Wenger was charged by The FA with misconduct for two breaches of FA Rule E3 in relation to incidents that occurred in or around the 92nd minute of the Arsenal FC v Burnley FC Premier League fixture which took place on the 22nd January 2017.
5. The charge letter from the FA read:

Charge

You are hereby charged with misconduct for two breaches of FA Rule E3 in respect of the above fixture:

1. *It is alleged that in or around the 92nd minute of the fixture you used abusive and/or insulting words towards the Fourth Official; and*
 2. *It is alleged that following your dismissal from the technical area, your behaviour in remaining in the tunnel area and making physical contact with the Fourth Official amounts to improper conduct.*
6. The FA designated the case as being 'Non-Standard' due to the serious and/or unusual nature of the reported behaviour.
7. Mr. Wenger admitted both charges by way of the FA Disciplinary Proceedings Reply Form (NS) on the 25th January 2017 and requested an opportunity to attend a Commission for a Personal Hearing.
8. Mr. Wenger attended the Hearing. He was represented by Mr. M. Bennett of Centrefield Law. Also in attendance for Mr. Wenger were Mrs. S. Geissmar (Arsenal FC General Counsel) and Mr. A. Downie (Legal Counsel).
9. The FA was represented by Mr. Craig Harris of Furnival Chambers. Also in attendance for The FA were Miss. A. Graham (Head of Regulatory Advocates) and Mr. A. Treacher (Regulatory Legal Administrator)
10. With Mr. Wenger having admitted both charges, the only matter to be determined by the Commission was the imposition of an appropriate and proportionate sanction given all the circumstances. In order to do so, the Commission heard a plea in mitigation on behalf of Mr. Wenger and submissions from The FA. As part of this process the Commission heard testimony from Mr. Wenger.

11. The following is a summary of the principal submissions and evidence provided to the Commission. It does not purport to contain reference to all 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 determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished with regard to this case.

12. Prior to the Hearing, the Commission members were furnished with the following evidence:

- a. Charge Letter sent to Mr. Wenger, dated 23rd January 2017;
- b. Extraordinary Incident Report from Referee, Mr. Jonathan Moss;
- c. Extraordinary Incident Report from Fourth Official Mr. Anthony Taylor;
- d. Letter of Response from Arsenal FC on behalf of Mr. Wenger to The FA, dated 25th January 2017;
- e. Statement of Mr. Wenger , Arsenal FC, dated 25th January 2017;
- f. Copy of Reply Form, dated 25th January 2017;
- g. Article from Arsenal.com, dated 25th January 2017;
- h. The FA's Technical Area Code of Conduct, undated;
- i. Reasons for The FA Regulatory Commission Decision in the Matter of Mr. Jose. Mourinho, dated 2nd November 2016;
- j. Email correspondence between Ms. Amina Graham, The FA and Mr. Anthony Downie, Arsenal FC, dated 26th January 2017;
- k. The FA's Response to Mr. Wenger's Reply to the Charge, dated 26th January 2017; and

- I. Letter from Mr. Tarik Shamel, The FA to Premier League and Football League Clubs, dated 17th November 2016.

13. In his Report the Match Referee, Mr. J. Moss stated... *"In the 92nd minute of the game, following the award of a penalty against Arsenal, I was informed by Mr Taylor that he had been confronted by Mr Wenger in the technical area. He informed me that despite being warned to consider his conduct, Mr Wenger stated to Mr Taylor "You are dishonest to your federation!" Mr Taylor told me that he told Mr Wenger that this was not acceptable to which Mr Wenger replied "Fuck off". After the penalty kick was scored I walked over to the technical area and asked Mr Wenger to leave the area for inappropriate conduct. I restarted play as Mr Wenger reached the tunnel mouth. Mr Taylor will be adding his report which will include further misconduct following Mr Wenger's dismissal, which I did not witness. "*

14. The Fourth Official, Mr. A. Taylor, stated in his report... *"Following the award of a penalty kick against his team in approx. 92nd min, Mr Wenger left his technical area to confront me in disagreement at the decision. Before he said anything I said "think carefully before you say anything". He responded by saying "you are dishonest to your federation". I considered this to be questioning both mine and the referee, Jon Moss's integrity and impartiality. I stated to Mr. Wenger that such a comment was not acceptable and he told me to "fuck off" on two separate occasions. Once Burnley had taken the penalty and before the game restarted I informed the referee, Jon Moss, what Mr Wenger had said and he subsequently dismissed Mr Wenger from the technical area. Initially Mr Wenger wanted*

to return to his technical area and I had to ask him again to leave the vicinity as required. He then chose to stand at the opening of the tunnel. I again approached him and asked him to go to the dressing room area. At this point Mr Wenger pushed me twice and I had to ask the security staff present to escort Mr Wenger to the dressing room area. At the conclusion of the match Mr Wenger visited the officials changing room and apologised to myself and Mr Moss for his earlier actions.”

15. The Commission noted that each of the charges brought against Mr Wenger had two elements.

16. The first charge of using abusive and/or insulting words to the Fourth official was based on (a) Mr Wenger saying to Mr Taylor that he was “dishonest to [his] federation”; and (b) Mr Wenger saying to Mr Taylor “Fuck off” twice.

17. The second charge of improper conduct was based on (a) Mr Wenger remaining in the tunnel area after having been told by Mr Taylor to leave and (b) Mr Wenger making physical contact with the Fourth Official by pushing Mr Taylor twice.

The Hearing

18. On behalf of The FA, Mr Harris reminded the Commission that, because the case had been designated as Non-Standard, in accordance with the powers granted to it (see p353 FA Handbook 2016-17), the Commission could impose any sanction it felt appropriate under the circumstances.

19. Mr Harris pointed out that, with regard to the first charge, the sanction for a Standard case, where it included abusive/insulting language, would be a minimum one match suspension and a fine. This was a Non-standard case. He drew the attention of the Commission to the fact that the Fourth Official had been sworn at twice and that he had taken offence at Mr Wenger's comment that he was "*dishonest to [his] federation*" believing this comment to have called into question his and the referee's integrity.
20. Mr Harris pointed out that FA Rule E3(1) is drafted broadly to capture the many varied ways in which a Participant's conduct within football may fall short of the expected standards and that, in any event, the determination of whether, on this occasion, the comment made by Mr Wenger to Mr Taylor, "*you are dishonest to your federation*", implied bias or questioned the integrity of the Match Official(s)/ brought the game into disrepute was ultimately one for the Commission.
21. With regard to the second charge, Mr Harris questioned Mr Wenger's assertion that, having been dismissed, he was unsure as to where he should go. He drew the attention of the Commission to the letter sent by the FA to Premier League and Football League Clubs dated 17th November 2016 which sets out clearly the procedures to be followed when there is a 'Technical Area Dismissal'.
22. The above mentioned letter from The FA reads:

Dear Secretary

TECHNICAL AREA DISMISSALS

We are writing further to a number of recent instances where there appears to have been confusion as to where a dismissed member of a technical area

should be located. In light of this we would be grateful if you could ensure that all relevant members of your staff are reminded of the below:

- (i) It is the responsibility of each club to identify seats in the Director's Box which can be occupied by members of the technical area should they be dismissed.*
- (ii) Any non-playing Participant who is removed from the technical area must directly leave the vicinity of the touchline and take up one of the designated seats in the Directors' Box.*
- (iii) Once the Participant has left the technical area the Match Officials are not required to ensure that this instruction is complied with. **It then becomes the responsibility of the home club's stewards to ensure the dismissed Participant is safely chaperoned to a designated seat in the Director's Box.***
- (iv) If a club do not have a place in the Directors' Box then it must notify the Football Association of the designated area where dismissed technical area occupants will be seated. The alternative designated area must be located away from opposition supporters and cannot be located behind the area of the dugout or any barrier adjacent to the touchline or goal line.*

We are grateful for your assistance in this matter.

Yours sincerely

Tarik Shamel

Head of On-Field Football Regulation

23. Mr Harris, with regard to the second charge, pointed out the seriousness of an official having been the recipient of physical contact from a

Participant. As such, he reminded the Commission that all options were open to it with regard to sanction.

24. Mr Harris highlighted that Mr Wenger's refusal to leave the tunnel area and his push on the Fourth Official took place only yards from the field of play and was caught on camera and as such was seen by millions around the world, such is the popularity and global appeal of the Premier League.

25. With regard to element (a) of the first charge Mr Wenger stated that he could not recall saying to Mr Taylor *"You are dishonest to your federation"*. Although, later in his testimony he said that he had said something with the intention of questioning the *"quality"* of the officials' decision making but not the integrity of their decision making.

26. With regard to element (b) of the first charge Mr Wenger told the Commission that he recalled telling Mr Taylor to *"Fuck off"* and that, although to his mind this is a phrase commonly used in football and one that rarely results in a dismissal, he acknowledged that it was an abusive phrase and that he regretted saying it.

27. In respect to the first charge Mr Wenger said that he *"regretted the choice of language used"* and was *"very unhappy with [his] behaviour"*.

28. With regard to element (a) of the second charge Mr Wenger told the Commission that, following his dismissal he *"thought [he] could go to the*

tunnel and watch the game from there” and that “nobody had given [him] instructions as to where [he] ought to go”.

29. Mr Wenger revealed that the letter from The FA regarding Technical Area Dismissals had been received by the Club but that he had not read it.

30. It was also disclosed to the Commission that the Senior Steward at Arsenal FC was absent from the fixture in question. There had been a replacement Steward covering the Senior Steward’s position and it was suggested by Mr Wenger’s representatives that perhaps the replacement Steward did not have the confidence to usher Mr Wenger away from the tunnel area.

31. With regard to element (b) of the second charge, Mr Wenger told the Commission that when the Fourth Official had raised his arm/hand to indicate that he should leave the tunnel area, he felt that his personal space was being invaded and he acted *“instinctively”* to push the Fourth Official away. Mr Wenger said the incident with the Fourth Official had come about due to a *“misunderstanding”* following a controversial penalty decision, late on in the game. It was a high pressure moment in an already high pressure Premier League fixture. Nevertheless, Mr Wenger said that, after completing his media obligations, he went to the Officials’ dressing room to apologise because, *“my behaviour was not what I expect of myself”*.

32. Mr Bennett, on behalf of Mr Wenger submitted that The FA’s charge letter had not explicitly set out, in respect to the first charge, that Mr Wenger was being charged with bringing the game into disrepute for

questioning the integrity of the Officials. Mr Bennett argued that Mr Wenger was entitled to know precisely what he was being charged with and that Mr Wenger's admission to the charges brought against him was based on the understanding that he was not being charged with disreputably calling into question the integrity of the Match Officials. On this basis, Mr Bennett submitted that the Commission ought to consider the first charge brought against Mr Wenger as being of a Standard nature and as such the sanction for this charge should reflect this.

33. Mr Bennett told the Commission that element (a) of the second charge was brought about through confusion and misunderstanding as opposed to a blatant refusal to leave the tunnel area and as such this should be taken into consideration by the Commission. Mr Bennett, whilst accepting that the Club had not complied with the instructions in The FA's letter, pointed out that (i) the existence of the letter itself shows that confusion has been an issue with regard to Technical Area Dismissal's; (ii) Mr Wenger was wrongly told by the Fourth Official to go to the Dressing Room area and not the Director's Box; and (iii) the Fourth Official ought not to have confronted Mr Wenger as according to the guidance issued by The FA's letter, "*Once the Participant has left the technical area the Match Officials are not required to ensure that this instruction is complied with*".

34. Mr Bennett pointed out that Mr Wenger had apologised privately to the Officials as soon as he was able. He had also apologised publicly during media interviews and also to the Commission during his testimony.

35. It was also brought to the attention of the Commission that Mr Wenger has an excellent previous disciplinary record, having managed for the last

7 years and over 250 matches without being charged by The FA. It was earlier confirmed by Mr McCormack that Mr Wenger had no previous misconduct offences in the relevant parameters noted by The FA, which were within the current season and the preceding five seasons. Mr Bennett submitted that due to Mr Wenger's exemplary record that the Commission should only look to impose a touchline ban. Mr Harris again clarified that the Commission had absolute discretion as to sanction. Regarding this point, the Commission was aware that within that absolute discretion it could impose a ground ban if the members deemed it appropriate.

36. As part of the mitigation on behalf of Mr Wenger, the Commission were shown a number of clips relating to the dismissal of other Premier League managers and coaches where disciplinary charges had been raised by The FA (Mark Hughes, Alan Pardew (twice), Jose Mourinho and Rui Faria). The Commission viewed the above mentioned footage but noted that all of these previous cases were missing elements that were present in this particular case. They were considered by the Commission to have been of some use but clearly they were not sufficiently so close to the case at hand that the Commission could justifiably base its sanction upon them. The Commission does not intend to set out an in-depth comparative analysis of each of these cases as against that of Mr Wenger's, but in order to make it's point the Commission would draw attention to the fact that in only one of these five cases is there actual physical contact made upon a match official, that case being the August 2012 Pardew incident when, in the technical area, Mr Pardew pushed the Assistant Referee while play was on-going. However, the contact made in this case was contextually

very different in nature to the one this Commission is tasked with assessing and there was no suggestion that Mr Pardew had insulted the officials or had refused to take up the correct position in the stand having been dismissed. Additionally, the Commission noted that each of these Participants would have had previous disciplinary records that were unique to them at the time the charges were heard and those unique records would have been considered in mitigation before the sanctions were handed down by the Commissions that heard those particular cases.

The Commission's Decision

37. The Commission did not agree with Mr. Bennett's submissions regarding the first element of the first charge. Although it would have been preferable for The FA to have explicitly set out in the charge letter that the abusive and/or insulting language used by Mr. Wenger included the allegation that the words he had used were improper and brought the game into disrepute by calling into question the integrity of the Officials, it was clear to the Commission that anyone who read the Charge Letter in conjunction with the Fourth Official's report (both of which were made available by The FA to Mr Wenger in the Notice of Charge, prior to Mr Wenger returning his response form) would understand that the allegation of Mr Wenger questioning the integrity of the Officials was encapsulated within the wording of the first charge and that this element of the charge would have to be considered by the Commission when determining a proportionate level of sanction. The wording of the first charge stated that

Mr Wenger was accused of using *“abusive and/or insulting words towards the Fourth Official”*. It was therefore incumbent upon the Commission to consider and analyse, on the balance of probability, firstly if the words were said and secondly, if they were said, whether or not those words were abusive and/or insulting in nature. Even though Mr Wenger stated that he could not recall using the phrase *“You are dishonest to your Federation”*, on the balance of probabilities, the Commission decided that he did use that phrase. This conclusion was based on the distinctive nature of the phrase itself and the contemporaneous and corroborating reports of the Referee and the Fourth Official. It should also be noted that Mr Wenger advanced no argument at the Hearing that the Officials were mistaken but merely stated that he could not remember saying the phrase.

38. As such the Commission considered the first charge to be of a Non-Standard nature and serious in itself as the phrase *“You are dishonest to your Federation”* clearly calls into question the integrity of the Officials and is therefore clearly abusive and/or insulting. The Commission decided that, on the balance of probabilities, Mr Wenger knew, or ought to have known, that when he used the word *‘dishonest’* towards the Fourth Official he was aware that his language was insulting and that he was calling into question the integrity of the Officials decision making. To the mind of the Commission this is what he had been charged for and what he had made his admission to. The seriousness of the words used would inform the thinking of the Commission when deciding the level of overall sanction to be imposed on Mr Wenger, although the Commission was aware that calling into question the integrity of the Officials decision making did not

necessarily mean that Mr Wenger was implying bias on their part. Whatever Mr Wenger meant by his remark to the Fourth Official - *“You are dishonest to your Federation”* the Commission felt that the comment had been meant as an insult, had been taken by Mr Taylor as having questioned his and the Referee’s integrity and had therefore aggravated the first charge.

39. The Commission felt that there had been a certain amount of confusion surrounding Mr Wenger not taking up the correct position following his dismissal. This confusion had seemingly arisen due to Mr Wenger not having read The FA’s letter of guidance in respect to Technical Area Dismissal’s and the absence of Arsenal FC’s Senior Steward on the day. The fact that Mr Wenger’s dismissal was so late in the game, in and around the 92nd minute and following a disputed penalty decision may have added to the confusion but essentially the situation arose because Arsenal FC and Mr Wenger had not fulfilled their respective responsibilities as a Premier League Club and a Premier League Manager.

40. The Commission considered that Mr Taylor, the Fourth Official, was well within his remit when he approached Mr Wenger having seen that, following his dismissal, Mr Wenger had not taken up the correct position. Although the wording of the FA’s guidance on Technical Area Dismissal’s states that the Officials are *‘not required’* to ensure that a person dismissed from the technical area takes up the designated position in the Director’s Box, this does not forbid that official from doing so when he notices that the correct protocol has not been adhered to. However, the Commission recognised that Mr Taylor, in fact, gave Mr Wenger the wrong instruction in telling him to go to the dressing room which would

seem to indicate that despite the issuance of The FA's guidance letter there still remains some confusion with regard to the correct protocol attached to Technical Area Dismissal's, even with the Official's themselves.

41. Notwithstanding the above, what was clear, and is well known, is that any Participant dismissed from the technical area would not be permitted to remain within the confines of the tunnel area, which in this case was also in very close proximity to the technical area.

42. With regard to the second element of the second charge, the Commission acknowledged that physical contact made upon an official is a serious matter and simply should not happen. However, the Commission did not consider Mr Wenger's contact with Mr Taylor as being particularly 'violent' in nature. Mr Wenger had initially taken up a stance with his arms folded and the pushing actions he made were, to the mind of the Commission, more akin to Mr Wenger moving the Fourth Official out of his personal space and asking to be left alone than an act of overt aggression. Nevertheless, all officials ought to be able to do their jobs without fear of being manhandled and the Commission determined that the sanction attached to the charges levied against Mr Wenger should reflect this.

43. That said, Mr Wenger could rightly claim to have a number of mitigating factors in his favour.

44. The Commission considered that Mr. Wenger ought to be credited for his early admission to the Charge.

45. The Commission also considered that Mr. Wenger should gain credit for his timely private apology to the Officials and his public acknowledgment that he had done wrong and subsequent apology through the media.
46. Equally, when considering the appropriate level of sanction, the Commission felt that Mr Wenger should be credited for his excellent disciplinary record prior to these charges being brought against him.
47. Having heard and considered the mitigation on behalf of Mr Wenger, with particular consideration given to Mr Wenger's previous disciplinary record, the Commission did not feel that imposing a Stadium ban on Mr Wenger would be proportionate in these particular circumstances, although it was a serious consideration for the Commission and one that took some deliberation by the Members of the Commission.
48. The Commission viewed the footage of the dismissals of the other managers and coaches but did not feel that any of these previous cases were particularly helpful in assessing the entirety of the case at hand because each was missing a significant element or elements that were present in Mr Wenger's case. Whilst the Commission was mindful that consistency is important when sanctioning and as such it considered carefully the sanctions attached to those other cases, the Commission also felt that this particular case should be assessed on its own particular facts. In those circumstances, given that the case at hand included two charges, both containing two elements of which one element in each charge could be considered as being of a more serious nature, the Commission considered a six match (6) ban as being appropriate and proportionate in respect to the imposition of a sporting sanction before considering the

mitigation put forward on Mr Wenger's behalf. Additionally, the Commission were aware of Mr Wenger's remuneration from Arsenal FC and took that into consideration when imposing the financial penalty which was also reduced with mitigation.

49. Thus, having considered all the evidence before it, the Commission decided that an appropriate and proportionate sanction, given all the circumstances and including the mitigation put forward, would be that Mr. Wenger receive an immediate four (4) match touchline ban and a fine of £25,000. He is also warned as to his future conduct.

50. This decision may be appealed in accordance with the relevant regulations of the prevailing FA Handbook.

Stuart Ripley

Regulatory Commission Chairman

17th February 2017