

**IN THE MATTER OF A HEARING  
BEFORE AN APPEAL BOARD  
OF THE FOOTBALL ASSOCIATION**

**BETWEEN:**

**PETER CAVANAGH  
DAVID MANNIX  
ANDREW MANGAN  
JAMES HARRIS  
ROBERT WILLIAMS**

**Appellants**

**and**

**THE FOOTBALL ASSOCIATION**

**Respondent**

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**STATEMENT OF REASONS ISSUED PURSUANT TO  
REGULATION 3.7 OF THE REGULATIONS  
FOR FOOTBALL ASSOCIATION  
DISCIPLINARY APPEALS**

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**FA Appeal Board**

Mr Paul Gilroy QC  
Mr Brian Jones  
Mr Alan Jones

**Venue and Date of Hearing**

Wembley Stadium  
21 and 22 September 2009

(The Appeal Board deliberated in private in Manchester on 30 September 2009).

**Appearances**

For Mr Cavanagh, Mr Harris and Mr Williams: Mr Martin Budworth of Counsel.

For Mr Mannix: Mr Jonathan Crystal of Counsel.

For Mr Mangan: Mr Mark Milliken-Smith QC.

For the Respondent: Mr Dario Giovannelli (FA Regulatory Legal Adviser).

## **Background**

1. At hearings conducted on 13 and 20 July and 7 August 2009, a Football Association (“FA”) Regulatory Commission<sup>1</sup> considered various charges brought by the FA against the players Peter Cavanagh, David Mannix, Andrew Mangan, James Harris and Robert Williams (collectively “the Appellants”) for breaches of FA Rule E8(a), which contains certain prohibitions against betting by or on behalf of football “*Players*” and/or “*Participants*” (as defined by the FA Rules) on the outcome of football matches.
2. At the time the offences were allegedly committed, all of the Appellants were registered with Accrington Stanley FC, save for Mr Mangan, who was registered with Bury FC.
3. The Regulatory Commission made findings of guilt against all five Appellants in relation to their betting, in varying degrees, on the outcome of league matches which involved either their own team or teams playing in their own division, League 2 of the Football League. All of the Appellants except Mr Harris appealed against the Regulatory Commission’s findings in relation to guilt. All five Appellants appealed against the orders made against them in relation to sanction and costs.
4. Upon the lodging of the Notices of Appeals it was apparent that Mr Mannix, Mr Mangan, and Mr Williams pursued grounds of appeal against the findings of guilt in each of their respective cases which raised issues of common application. The grounds of appeal pursued by Mr Cavanagh in relation to the findings of guilt made in his case were separate and distinct. Accordingly, the Appeal Board heard the appeal of Mr Cavanagh on 21 September, and the remaining appeals by way of a consolidated hearing on 22 September 2009.
5. Whilst the appeal of Mr Cavanagh was not joined with any of the other appeals for the purposes of the appeal hearings, this Statement of the Reasons of the Appeal Board is issued in respect of its determinations in relation to all “live” issues in respect of all five appeals.
6. At the conclusion of the hearing on 22 September 2009, the Appeal Board orally announced its decision dismissing the appeals of Mr Cavanagh, Mr Mannix, Mr Mangan, and Mr Williams against the Regulatory Commission’s findings of guilt. Given the lateness of the hour at which the hearing on 22 September 2009 concluded, the Appeal Board adjourned to consider the appeals of all five Appellants in relation to sanction and costs, and deliberated in private in respect of those matters on 30 September 2009.
7. The outcome in respect of all matters the Appeal Board was required to consider was published on 1 October 2009. This Statement of the Reasons of the Appeal Board contains the reasons for all of the determinations it made in each of the five appeals on the issues of findings of guilt, sanction and costs.

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<sup>1</sup> Mr Nicholas Stewart QC (Chairman), Mr Barry Bright, Mr Roy Carter and Mr Paul Elliott.

8. The Regulatory Commission published full written reasons in respect of its findings against each of the Appellants<sup>2</sup>. Those written reasons are taken “as read”. In other words, this Statement of the Reasons of the Appeal Board can only be fully understood by being read in conjunction with the full written reasons of the Regulatory Commission in support of its findings in each of the five cases. Save for outlining the charges and the findings made in respect of the charges by the Regulatory Commission, and referring to the substance of the mitigation raised with the Appeal Board on the Appellants’ behalf, this Statement of the Reasons of the Appeal Board does not contain a full recital of matters of fact as either admitted by the Appellants or found by the Regulatory Commission.
9. The Appeal Board was unanimous in its conclusions.

### **The charges**

10. By letters dated 6 April 2009 in each case, the FA informed each of the Appellants that they were charged with the following breaches of FA Rule E8(a):

#### Peter Cavanagh

- 1) On 4 April 2008, being a Player registered with Accrington Stanley FC, using his telephone betting account (no. c30945) with Gala Coral, he placed a stake of £40 on a double bet including Accrington Stanley FC to win the match between Accrington Stanley FC and Dagenham & Redbridge FC on 4 April 2008, thereby betting on the result and/or progress of a match in which he was participating.
- 2) On 1 May 2008, being a Player registered with Accrington Stanley FC, using his online betting account (no. 1734589) with Gala Coral, he placed a stake of £5 on a multiple bet including:
  - i. Bury FC to win the match between Accrington Stanley FC and Bury FC on 3 May 2008, thereby betting on the result and/or progress of a match in which he was participating, and/or
  - ii. Lincoln City FC v Wrexham FC, thereby betting on the result and/or progress and/or conduct of a Competition in which he was participating.
- 3) Being a Player registered with Accrington Stanley FC, using his online betting account (no. 1734589) with Gala Coral, he placed a stake or stakes on a match or matches between clubs involved in the League 2 Competition, namely:

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<sup>2</sup> Dated 23 July 2009 in the case of each of the Appellants except Mr Cavanagh, and 20 August 2009 in Mr Cavanagh’s case.

- i. on 25 April 2008, a stake of £10 on a multiple bet including Notts County FC v Wycombe Wanderers FC; and/or
- ii. on 25 April 2008, a stake of £10 on a multiple bet including Bradford City FC v MK Dons FC and Grimsby Town FC v Peterborough United FC; and/or
- iii. on 2 May 2008, a stake of £20 on a multiple bet including Lincoln City FC v Wrexham FC,

thereby betting on the result and/or progress and/or conduct of a Competition in which he was participating.

#### David Mannix

Being a Player registered with Accrington Stanley FC, he placed a stake or stakes on the match between Accrington Stanley FC and Bury FC on 3 May 2008, namely:

- i. on 2 May 2008, a stake of £1,000 on Bury FC to win that match, at Ladbrokes (Derby Lane), and/or
- ii. on 2 May 2008, further stakes totalling £3,000 on Bury FC to win that match, in various betting shops in the Liverpool area,

thereby betting on the result and/or progress and/or conduct of a match in which he had an influence and/or a Competition in which he was participating.

#### Andrew Mangan

Being a Player registered with Bury FC, he placed a stake or stakes on the match between Accrington Stanley FC and Bury FC on 3 May 2008, namely:

- i. on 2 May 2008, a stake of £1,000 on Bury FC to win that match, at Ladbrokes (Derby Lane), and/or
- ii. on 2 May 2008, a further stake of £500 on Bury FC to win that match, at Ladbrokes (Derby Lane), and/or
- iii. further stakes totalling approximately £2,000 on Bury FC to win that match, in various betting shops in the Liverpool area.

thereby betting on the result and/or progress and/or conduct of a match in which he had an influence and/or a Competition in which he was participating.

#### James Harris

Mr Harris faced two sets of charges, known as and referred to as “The Bury Charges” and “The Chester Charges”.

### The Bury Charges

Being a Player registered with Accrington Stanley FC, he placed a stake or stakes on the match between Accrington Stanley FC and Bury FC on 3 May 2008, namely:

- i. on 2 May 2008, a stake of £1,000 on Bury FC to win that match, at Ladbrokes (Derby Lane), and/or
- ii. on 2 May 2008, a further stake of £1,000 on Bury FC to win that match, at Ladbrokes (Derby Lane),

thereby betting on the result and/or progress of a match in which he was participating.

### The Chester Charges

On 5 December 2008, being a Player registered with Chester City FC, using his online betting account with William Hill (a/c no. 23G090), he placed a stake of £5 on a treble bet including:

- i. Chester City FC to win the match between AFC Bournemouth and Chester City FC, thereby betting on the result and/or progress of a match in which he had an influence, and/or
- ii. Bradford City FC v Dagenham & Redbridge FC and/or Macclesfield Town FC v Bury FC, thereby betting on the result and/or progress and/or conduct of a Competition in which he was participating.

### Robert Williams

Being a Player registered with Accrington Stanley FC, he placed a stake or stakes on the match between Accrington Stanley FC and Bury FC on 3 May 2008, namely:

- i. on 2 May 2008, a stake of £500 on Bury FC to win that match, at Ladbrokes (Mill Lane), and/or
- ii. on 2 May 2008, a further stake totalling £500 on Bury FC to win that match, in another betting shop in the Liverpool area,

thereby betting on the result and/or progress and/or conduct of a match in which he had an influence and/or a Competition in which he was participating.

### **The Regulatory Commission's findings**

11. The determinations of the Regulatory Commission were, in each case, as follows:

#### Peter Cavanagh

- 11.1. Mr Cavanagh was found guilty as charged. The Regulatory Commission imposed a single penalty to cover all breaches, in the form of a suspension from all footballing activity for 8 months, with immediate effect, together with a fine of £3,500.
- 11.2. Mr Cavanagh was also ordered to pay £5,000 towards the costs of the Regulatory Commission generally, and costs incurred by the Commission in the sum of £4,626.45 including VAT in respect of the obtaining of a report from a vocal expert who examined an audio recording which was found to be of Mr Cavanagh placing one of the relevant bets by telephone.
- 11.3. The Commission ordered that half of the fine and half of the costs of £5,000 be paid by 31 October 2009, with the whole then outstanding balance to be paid by 31 January 2010. As to the costs of the expert's report, it was ordered that payment of the sum of £4,626.45 would be by 10 instalments of £462.64 by Bankers Order commencing on 28 February 2010, with subsequent payments of that amount on the 28th day of each month until the final instalment on 28 November 2010.

David Mannix

- 11.4. Mr Mannix was found guilty as charged. The Regulatory Commission imposed a single penalty to cover both offences, in the form of a suspension from all footballing activity for 10 months, with immediate effect, together with a fine of £4,000.
- 11.5. Mr Mannix was also ordered to pay £5,000 towards the costs of the Regulatory Commission.
- 11.6. The Commission ordered that half of the fine and half of the costs of £5,000 be paid by 31 October 2009, with the whole then outstanding balance to be paid by 31 January 2010.

Andrew Mangan

- 11.7. Charge iii in Mr Mangan's case was dismissed, but he was found guilty as charged in relation to the first two charges he faced. The sanction imposed in his case, therefore, was in respect of placing a total stake of £1,500 on his then club, Bury FC, to win the match between Accrington Stanley FC and Bury FC on 3 May 2008.
- 11.8. The Regulatory Commission imposed a single penalty to cover both offences, in the form of a suspension from all footballing activity for 5 months, with immediate effect, together with a fine of £2,000.
- 11.9. Mr Mangan was also ordered to pay £5,000 towards the costs of the Regulatory Commission.

11.10. The Commission ordered that half of the fine and half of the costs of £5,000 be paid by 31 October 2009, with the whole then outstanding balance to be paid by 31 January 2010.

James Harris

11.11. Mr Harris was found guilty as charged in respect of the Bury Charges and Charge ii of the Chester Charges.

11.12. In respect of the Bury Charges, the Regulatory Commission imposed a single global penalty, namely a suspension from all footballing activity for 12 months, with immediate effect, together with a fine of £5,000.

11.13. In respect of the Chester Charge, Mr Harris was warned as to his future conduct and fined the sum of £500.

11.14. Mr Harris was also ordered to pay £5,000 towards the costs of the Regulatory Commission, by way of a global costs order relating to the Bury Charges and the Chester Charge.

11.15. The Commission ordered that half of the fine and half of the costs of £5,000 be paid by 31 October 2009, with the whole then outstanding balance to be paid by 31 January 2010.

Robert Williams

11.16. Mr Williams was found guilty as charged. The Regulatory Commission imposed a single penalty to cover both offences, in the form of a suspension from all footballing activity for 8 months, with immediate effect, together with a fine of £3,500.

11.17. Mr Williams was also ordered to pay £5,000 towards the costs of the Regulatory Commission.

11.18. The Commission ordered that half of the fine and half of the costs of £5,000 be paid by 31 October 2009, with the whole then outstanding balance to be paid by 31 January 2010.

12. Given the regularity with which the match between Accrington Stanley FC and Bury FC on 3 May 2008 features in this matter, that fixture will be referred to as “the Accrington v Bury match”.

**Relevant regulatory provisions**

13. The following regulatory provisions are material to these appeals:

Rules of the FA (Section E):

*Betting*

- 8 (a) *A Participant shall not, either directly or indirectly, bet or instruct, permit or enable any person for the Participant's benefit to bet, on the result, progress or conduct of a Match or Competition in which the Participant is participating or in which the Participant has any influence, either direct or indirect.*

Regulations for FA Disciplinary Action:

- 7.3 *The applicable standard of proof shall be the flexible civil standard of the balance of probability. The more serious the allegation, taking into account the nature of the Misconduct alleged and the context of the case, the greater the burden of evidence required to prove the matter.*

Regulations for FA Appeals:

- 1.4 *The grounds of appeal, available to Participants and The Association, shall be that the body whose decision is appealed against:*

- (1) *misinterpreted or failed to comply with the rules or regulations relevant to its decision;  
and/or*
- (2) *came to a decision to which no reasonable body could have come.*

- 1.5 *In addition:*

- (1) *Participants only, may appeal on the grounds that the penalty, award, order or sanction imposed is excessive.*
- (2) *came to a decision to which no reasonable body could have come.*

**Factual Circumstances**

14. It is important to stress that a full understanding of the factual background in relation to this matter and the rationale adopted in this Statement of the Reasons of the Appeal Board can only be gained by reading what follows in conjunction with the full written reasons of the Regulatory Commission in relation to the cases of each of the five Appellants.

**Costs**

15. An appeal against the decision of a Regulatory Commission in relation to costs is an appeal under Regulation 8.8(d) of the Regulations for Football Disciplinary Action, which falls to be determined by an Appeal Board Chairman sitting alone. Given the integral importance of the costs orders in these proceedings, however, at the suggestion of the Appeal Board Chairman, and with the consent

of the parties, in each case the Appeal Board as a whole determined the costs appeals in addition to all other issues.

### **Peter Cavanagh - Appeal against Findings of Guilt**

16. There were essentially three broad grounds of appeal against the findings of guilt in the case of Mr Cavanagh. It was said on his behalf that the Regulatory Commission:
  - 16.1. misapplied the standard of proof;
  - 16.2. demonstrated apparent pre-judgment and/or bias, and
  - 16.3. in respect of the third charge he faced, failed to deal with his argument that the bets which formed the basis of that charge were not materially different to betting on the football pools, a practice which is expressly permitted under FA Rule E8.

#### Misapplication of the Standard of Proof

17. Strictly speaking, this ground of appeal covered both the burden and the standard of proof. As indicated at paragraph 13 above, the question of the standard of proof is dealt with under Regulation 7.3 of the Regulations for FA Disciplinary Action, from which it is clear that the applicable standard of proof is the flexible civil standard of the balance of probability. The Regulatory Commission expressly directed itself as to Regulation 7.3, albeit there is a typographical error in its reasons, in that the Commission made reference in this context to Regulation 9. The wording of Regulation 7.3 was, however, fully set out by the Commission in its reasons, and the error is purely an error of “labelling”.
18. Mr Budworth argued on Mr Cavanagh’s behalf that the Regulatory Commission failed to have regard to the guidance provided by Lord Hope in ***R (McCann and Others) v Crown Court at Manchester and Another [2003] 1 AC 787*** (at paragraph 82) to the effect that:

*“...It is not an invariable rule that the lower standard of proof must be applied in civil proceedings. I think that there are good reasons, in the interests of fairness, for applying the higher standard when allegations are made of criminal or quasi-criminal conduct which, if proved, would have serious consequences for the person against whom they are made....I would hold that the standard of proof that ought to be applied in these cases to allegations about the defendant’s conduct is the criminal standard”.*

**McCann** was concerned with the making of anti-social behaviour orders (“ASBO’s”).
19. In the Administrative Court case of ***R (on the application of Dr Harish Doshi) v Southend-on-Sea Primary Care Trust [2007] EWHC 1361 (Admin)***, Holman

J referred to the above-quoted passage from the speech of Lord Hope in *McCann* and stated:

*“It seems to me that the speech of Lord Hope....does not amount to stating a rule of law that where an allegation is made in support of proceedings, as to criminal conduct, the criminal standard must be applied. Rather, his view, although based less on pragmatism and more on the gravity of the matter, is essentially one of policy in the specific area of ASBO’s”.*

20. Mr Budworth also relied upon the observation made by Lord Bingham of Cornhill in *B v Chief Constable of Avon and Somerset Constabulary [2001] 1 WLR 340*, a decision concerning the making of Sex Offender Orders, to the effect that for practical purposes the *“heightened civil standard and the criminal standard are indistinguishable or virtually so”*.
21. Mr Budworth contended that the effect of the judicial learning on the subject was such that before finding Mr Cavanagh guilty of the various charges he faced the Regulatory Commission had to be “sure” that he was guilty.
22. Having laid the above groundwork as to what he contended was the legal position, Mr Budworth pointed to certain aspects of the Regulatory Commission’s reasons in support of the argument that the appropriate standard of proof was not applied in Mr Cavanagh’s case. In essence, he argued that the Commission had effectively required Mr Cavanagh to prove his innocence rather than requiring the FA to prove his guilt.
23. A vocal expert was commissioned by the FA to examine a recording of the placing of the bet which formed the basis of the first charge faced by Mr Cavanagh. At this stage, Mr Cavanagh had indicated that the person who placed the bet might have been his brother, Mr Michael Cavanagh. The expert was invited to compare the relevant recording with sample recordings of the voices of the Appellant and Mr Michael Cavanagh respectively.
24. In expressing her opinion, the vocal expert explained that when conducting such an examination, a decision is made within the following categories in relation to the speech samples examined: (a) the samples are consistent with having been spoken by the same speaker; (b) the samples are not consistent with having been spoken by the same speaker, and (c) no decision was reached as to whether or not the samples were spoken by the same speaker. The distinctiveness of the consistencies between the voices in speech samples is assigned to a 5 point scale ranging from “+4” (exceptionally distinctive) to “0” (not distinctive). The decisions that speech samples are not consistent with identity between speakers may be further modified according to three categories, ranging from “-1” (*“it is unlikely that the speech in the samples originates from the same speaker”*), to “-3” (*“I am satisfied that, to the best of my opinion, the samples were spoken by different speakers”*).
25. The vocal expert concluded on a point scale of “-1” that the voice of Michael Cavanagh was not consistent with the disputed voice in the call to Coral on 4 April 2008, during the course of which a stake was placed by way of a double

bet including Accrington Stanley FC to win the match between Accrington Stanley FC and Dagenham & Redbridge FC on 4 April 2008, and that on a point scale of “+1”, the voice of Peter Cavanagh was consistent with the disputed voice in that call.

26. At paragraph 17 of its reasons the Regulatory Commission stated: “...*in the absence of any clear and convincing contrary evidence we should have felt able to conclude on the basis of the Expert Report alone that according to the standard of proof directed by Regulation 9<sup>3</sup> the caller...had been the Player Peter Cavanagh. It is clear from Expert Report that on balance of probability he was the caller*”. Mr Budworth argued that this was clear evidence of the Regulatory Commission requiring Mr Cavanagh to prove his innocence.
27. At paragraph 18 of its reasons the Regulatory Commission referred, in support of its findings as to Mr Cavanagh’s guilt, to the fact that it was only after receiving further evidence from the FA and listening to the recording of the bet being placed at Coral Gala on 4 April 2008 that he claimed that he had discussed the specific details of the FA charges with his brother and that it was at that point that his brother recalled that he had placed a bet, something which had supposedly not previously occurred to the player, and had not been discussed sufficiently with his brother to have jogged his memory beforehand. In other words, the Regulatory Commission regarded it as incriminating that Mr Cavanagh had essentially changed his story as the evidence gradually emerged. Mr Budworth argued that the matters referred to at paragraph 18 of the Regulatory Commission’s reasons were of no great weight and countered by the player’s “*clear reasons and markers for being able to remember the bet in question*”.
28. Mr Budworth argued that the conclusion that the Appellant Mr Cavanagh had placed a telephone bet was flawed and that the Regulatory Commission’s conclusions in relation to that aspect had essentially contaminated its conclusion in relation to the placing of the online bets, and unfairly so and to the disadvantage of Mr Cavanagh.
29. Mr Budworth contended that paragraph 21 of the Regulatory Commission’s reasons betrayed a thought process on the Commission’s part that Mr Cavanagh had failed to persuade the Commission that Mr McGee (now the player’s brother in law) had placed the online bets, with the consequence (so the argument ran) that the charge was proved simply as a result of Mr Cavanagh’s failure to persuade the Commission in relation to that issue.
30. The Regulatory Commission also considered the case of *In re D (Secretary of State for Northern Ireland intervening) [2008] 1 WLR 1499*, a judicial review appeal where the House of Lords overturned a decision of the Court of Appeal, itself overruling a decision of Administrative Court which had dismissed an application for judicial review of a decision of the Life Sentence Review Commissioners not to direct the release of a prisoner. In that case, Lord Carswell stated (at paragraph 82):

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<sup>3</sup> ie Regulation 7.3.

*“...In some contexts a Court or Tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard. The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place....the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a Tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established. The seriousness of the consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the Tribunal before it is satisfied of the matter which has to be established”.*

31. The Regulatory Commission stated at paragraph 9 of its reasons that it understood Regulation 7.3 (albeit it incorrectly labelled the provision as Regulation 9) as reflecting, with no inconsistency, the explanation and guidance contained in the case of *In Re D*.
32. The Appeal Board dismissed the ground of appeal in Mr Cavanagh’s case relating to the misapplication of the standard of proof. The Appeal Board’s conclusions were as follows:
  - 32.1. It is clear that in relation to the disciplinary proceedings which are the subject of these appeals, the standard of proof is the balance of probabilities, and that there is no “sliding scale” or intermediate standard of proof between the civil and criminal standard. As Lord Nicholls of Birkenhead said in *In re H (Minors) Sexual Abuse: Standard of Proof [1996] AC 563* at p.586:

*“although the result is much the same this does not mean that a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probabilities or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”*
  - 32.2. The Regulatory Commission did not need to require a different standard of proof or a specially cogent standard of evidence in relation to the charges faced by the Appellants in the instant proceedings. What was required of the Regulatory Commission was that it gave appropriately careful consideration to the facts, given the seriousness of the allegations (see the speech of Lord Carswell in *In Re D* (at paragraph 82).

- 32.3. The Regulatory Commission did not simply proceed from the starting point that because the expert's report pointed to the guilt of the Appellant Mr Cavanagh, all other aspects of the evidence must be viewed with great suspicion. The Commission took account of the fact that Mr Cavanagh did not, in his interview with the FA, mention Mr McGee's alleged use of his betting accounts (paragraph 11 of the Regulatory Commission's reasons), the fact that Mr Cavanagh's brother Michael was not mentioned during the interview (paragraph 12 of the Regulatory Commission's reasons), and that it was only after receiving further evidence from the FA and listening to the recording of the disputed call that Mr Cavanagh claimed he had discussed the specific details of the FA charges with his brother Michael (paragraph 18 of the Regulatory Commission's reasons).
- 32.4. The Regulatory Commission was entitled, however regrettable the conclusion may have been, to conclude that the evidence given by the Appellant Mr Cavanagh and his brother Michael was “*false*” and “*concocted*” (see paragraphs 23 and 26 of the Regulatory Commission's reasons). Paragraph 23 of the Regulatory Commission's reasons is important. When charged by the FA, Mr Cavanagh presented the case that it was Mr McGee who placed all the relevant bets and Mr Cavanagh's first statement and a statement obtained from Mr McGee were based upon that factual premise. The FA then served upon Mr Cavanagh a tape and transcript of a telephone conversation on 4 April 2008 between an unidentified person said to be Mr Cavanagh placing the bet with Coral Gala. It was only at that stage that Mr Cavanagh suggested that may have been his brother, Michael Cavanagh, who had placed the telephone bet. The Appeal Board was told by Mr Giovannelli (and this does not appear in the Regulatory Commission's findings but it was not challenged by Mr Budworth) that during cross-examination of the Appellant Mr Cavanagh, he stated for the first time that another three or four people may have used his betting accounts and in particular his telephone account.
- 32.5. In short, the Appeal Board concluded that the Regulatory Commission directed itself as to the appropriate test and that it applied that test when considering the evidence and making its conclusions in the light of its material findings of fact.

#### Apparent Pre-judgment/Apparent Bias

#### 33. Mr Budworth submitted as follows:

- 33.1. The test in relation to apparent pre-judgment/apparent bias is whether a fair minded and informed observer would think that there was a real possibility of bias arising and, if so, the decision must not be allowed to stand - see *Re: Medicaments (No.2) [2001] 1 WLR 700*, and *Modhal v BAF [2002] 1 WLR 1192*, at paragraph 63.

- 33.2. An appearance of bias will not be dispelled by the fact that only one member of the Tribunal is alleged to have shown bias, at least where that member is the Judge or legally qualified Chairman - see *Lodwick v Southwark LBC [2004] EWCA Civ 306*, at paragraph 20, and *Lawal v Northern Spirit Limited [2003] UKHL 35*, at paragraphs 14 and 22.
34. There were four aspects to this ground of appeal, as follows:
- 34.1. The hearings in the cases of the Appellants Mr Mannix and Mr Mangan took place on 13 July 2009, whilst those in respect Mr Harris and Mr Williams took place on 20 July 2009. Reasons were published (separately) in all four cases on 23 July 2009. It was said on Mr Cavanagh's behalf that after the announcement of the ban and fine in his case, the Regulatory Commission Chairman had stated that costs of £5,000 would be payable and that the Commission would not receive any argument on the amount because it had "*already agreed and applied a 5-way split with the other players*". Mr Budworth submitted that the prior decision to divide the costs by five rather than attempt to attribute costs on a case by case basis made it hard for Mr Cavanagh to accept that his case had been heard by an impartial commission which had approached the matter with an open mind.
- 34.2. During the course of the evidence of Michael Cavanagh before the Regulatory Commission, it was said that the Chairman observed to Mr Budworth that he (ie the Chairman) expected that the player's position was being considered, and that the Chairman asked specifically whether the player wanted to change his plea.
- 34.3. It was said that in various respects the Chairman effectively became a second prosecutor and made expressions of opinion which were negative to Mr Cavanagh during the course of the evidence, in particular demonstrating sarcasm as to the factual account which was being offered either by Mr Cavanagh or on his behalf.
- 34.4. Following the July hearings, the Chairman of the Regulatory Commission made a short press statement which included the following passage:
- "The Regulatory Commission has serious concerns that the outcome of the match<sup>4</sup> may have been fixed albeit none of the players were charged with these offences. The suspensions and fines are imposed because the FA rules restricting betting by players (and others) on matches or competitions in which they are involved are vital to ensure public confidence and the integrity of football and the absolute straightness of all football matches"*.
- Mr Budworth observed that no player had been charged with match fixing, that match fixing should not have been mentioned in the press

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<sup>4</sup> This is a reference to the Accrington v Bury match.

statement, and the fact that it would lead a fair minded observer to conclude that there was an inability on the part of the Regulatory Commission to ignore extraneous considerations in bringing an objective judgment to bear on the material issues.

35. The Chairman of the Appeal Board requested that the Chairman of the Regulatory Commission provide his comments in relation to each of the above four matters, and those comments were duly provided to both the Appeal Board and Mr Cavanagh's representatives prior to the commencement of the appeal hearing on 21 September 2009. The Regulatory Commission Chairman's comments can essentially be summarised as follows (adopting the numbering of the sub-paragraphs of paragraph 34 above):

35.1. The Commission had enquired what the total costs of the proceedings involving all of the Appellants were, and when informed that they were at least £25,000, the Commission ignored any excess over £25,000 rather than attempt some detailed accounting exercise. The Commission Chairman had no recollection of his precise words as to any suggestion of an *“agreed 5-way split with the other players”* but maintained that any such agreement would only have been an agreement among the members of the Commission, that there was no attempt to reach any such agreement with any of the parties or any branch of the FA, and that there had been no suggestion from the players who had been represented at the July hearings that apportionment was a wrong or unfair way of dealing with the matter, although of course their approach could not commit or bind Mr Cavanagh. When the Commission convened in July 2009 it was aware that arrangements had been made to accommodate Mr Cavanagh and his representatives for a hearing date in August and it would not have been fair to leave any part of the decisions on the other cases including costs hanging in the balance until then. The Regulatory Commission Chairman denied that there had been any decision in advance of the hearing in respect of Mr Cavanagh to recoup *“the remaining £5,000”* from Mr Cavanagh. If the case had been found not to be proven against him he would not have been made the subject of an order for costs. Equally, if the case against him were proven it was very likely that the Commission would order him to pay the same amount of costs as the other four players had been ordered to pay.

35.2. The Commission Chairman accepted that he did indeed during the evidence suggest that Mr Cavanagh should consider his position. In his comments to the Appeal Board, the Chairman stated that he was aware that his colleagues were highly sceptical of Mr Cavanagh's account of his brother's and Mr McGee's involvement (as was the Commission Chairman). By the time the Chairman's comment was made the Commission was not beginning the hearing with a *“blank sheet”* as far as evidence was concerned. It already had the written evidence and the Chairman maintained that there was nothing improper in inviting Mr Cavanagh, through his representative, to consider his position. The suggestion was not adopted and the defence immediately proceeded without any obstruction.

- 35.3. In relation to the Chairman's questioning of the player Mr Cavanagh, the Chairman observed that it was the Commission's responsibility to get to the bottom of the matter as far as possible, that the account of Mr Cavanagh and his supporting witnesses required thorough testing, and that there was nothing objectionable in the Chairman indicating scepticism about specific answers, in that the witness is thereby given the opportunity there and then of re-considering his answer.
- 35.4. With regard to the issuing of the press statement after the July hearings, the question of match fixing was raised by another Commission member (and, to the recollection of the Commission Chairman, by one of the Counsel in the other cases) as the "*elephant in the room*". The Chairman's judgment was that it was best to mention the elephant than to pretend that it was not there. A full press statement and indeed the full written reasons in all of the cases made it clear that the Commission did not make any finding of match fixing, and further that no player was being convicted or punished for any involvement in match fixing.
36. The Appeal Board dismissed the ground of appeal relating to apparent pre-judgment/apparent bias in the case of Mr Cavanagh. Adopting again the numbering of the sub-paragraphs of paragraph 34 above, the Appeal Board's conclusions were as follows:
- 36.1. With regard to the allocation of £5,000 costs to Mr Cavanagh, the Secretary to the Appeal Board at Mr Cavanagh's appeal, Mr Mark Ives, who was also the Secretary to the Regulatory Commission at the hearings concerning the other players, informed the Appeal Board (and the Appeal Board Chairman confirmed the same to the parties in order that they could deal with the issue) that there had been a discussion by the Regulatory Commission about allocating to each player a portion of the costs at the July hearings on the basis that if Mr Cavanagh was found not guilty he would not be ordered to pay one fifth of the costs. The Appeal Board was satisfied that the Regulatory Commission was not pre-judging Mr Cavanagh's case by happening to order him, at the conclusion of his hearing, to pay the same amount of costs as the other Appellants in the earlier appeals. The Appeal Board considered that it was appropriate for the Regulatory Commission to adopt a broad-based approach to the question of costs. The mere fact that £20,000 worth of costs had been "catered for" by the time of the hearing of Mr Cavanagh's case did not, in the judgment of the Appeal Board, support the conclusion that a £5,000 share in the global costs had been "reserved" for him in anticipation of his being convicted at the hearing of his case in August.
- 36.2. The suggestion by the Regulatory Commission Chairman that Mr Cavanagh might consider his position, was in the judgment of the Appeal Board, merely a demonstration of judicial robustness as the Appellant Mr Cavanagh's case (as the Commission was to find) unravelled in front of it. The evidence against Mr Cavanagh was, in the

judgment of the Appeal Board, very strong and such that would entitle the Regulatory Commission Chairman to make the comment attributed to him, strictly on the basis that if the suggestion was not taken up on the player's behalf the hearing could proceed and all aspects of the defence could be considered. The Appeal Board was satisfied that all aspects of Mr Cavanagh's defence were considered.

36.3. The Appeal Board's approach in relation to the Chairman's questioning of the Mr Cavanagh was essentially the same as its approach in relation to the Chairman's invitation that the player might consider his position. In the judgment of the Appeal Board, the matters complained of in this regard amounted to a complaint as to the exercise of judicial robustness in circumstances where the Regulatory Commission Chairman was entitled to test and probe the evidence being provided by the defence.

36.4. At the risk of inviting the criticism that the Appeal Board, like the Regulatory Commission, approached this case on the basis that it was condemning a player with a conviction of match fixing by the back door, the Appeal Board entirely agreed with the observation that match fixing was indeed the "*elephant in the room*", and that it was better to address the issue rather than ignore it. If a footballer involves himself in placing bets on a game involving his own team or between teams in his own league it is highly likely that the ordinary football supporter, upon learning of such a matter, would have a concern as to that player's motivation for having done so. The fact that he may be charged with an allegation of something less than match fixing does not dissipate the concerns of the normal football supporter in such circumstances. The Appeal Board could find nothing objectionable in the remarks made in the press statement of the Regulatory Commission Chairman following the hearings in July 2009 such as would suggest that there was an apparent pre-judgment or bias on the part of the Commission and/or its Chairman against Mr Cavanagh by the time the Commission considered the case of Mr Cavanagh in August 2009.

### Charge 3

37. All of the fixtures referred to in the third charge faced by Mr Cavanagh involved clubs other than his own. Those fixtures were caught by Rule E8(a) because they were fixtures in League 2, which was the division in which Mr Cavanagh's club played at the material time. Mr Budworth questioned whether multiple bets in stakes of between £10 and £20 could really be said to be bets on the result and/or progress and/or conduct of the League 2 Competition. Only one of the seven selections in the multiple under the first limb of the third charge involved a League 2 club. Only two of the nine selections in the multiple bet under the second limb of the third charge involved League 2 teams. Only one of the four selections under the third limb of the third charge involved a League 2 team. Mr Budworth submitted that, in all the circumstances, Mr Cavanagh's multiple bets which formed the basis of the third charge against him were not materially different to betting on the football pools which is expressly permitted by FA Rule E8.

38. In the judgment of the Appeal Board Mr Budworth was correct to submit that the Regulatory Commission did not deal in its reasons with this aspect of Mr Cavanagh's case. However, in the judgment of the Appeal Board, the argument is flawed. The matches which formed the content of the third charge faced by Mr Cavanagh were all matches within (for Mr Cavanagh's purposes) a "*Competition in which he was participating*", ie the League 2 Competition for Season 2007/2008. The fact that he placed such small stakes, combined with the fact that the matches which the third charge comprised all involved teams other than his own club, could only, in the judgment of the Appeal Board, go to the issue of the seriousness of the offence and not to the question of his guilt or otherwise of the charge.
39. Accordingly, for the above-stated reasons, the Appeal Board dismissed the appeal of Peter Cavanagh against the findings of guilt made in his case by the Regulatory Commission.

**Grounds of Appeal common to the Appeals Against Findings of Guilt of David Mannix, Andrew Mangan and James Williams**

40. As indicated above, Mr Mannix, Mr Mangan and Mr Williams pursued grounds of appeal of common application in relation to the Regulatory Commission's findings of guilt made in each of their respective cases.
41. Mr Mannix, Mr Mangan and Mr Williams (and Mr Harris) all admitted placing the relevant bets, but denied that in doing so they acted in breach of Rule E8(a).
42. The grounds of appeal of common application to the appeals of Mr Mannix, Mr Mangan and Mr Williams were as follows:
  - 42.1. In the FA Rules for the 2009/2010 Season, Rule E8(a) was amended so as to read as follows:

*"A Participant shall not, either directly or indirectly, bet or instruct, permit or enable any person for the Participant's benefit to bet, on the result, progress or conduct of a Match or Competition in which the Participant is participating, or has participated in that season, or in which the Participant has any influence, either direct or indirect"* (words of amendment underlined).

The fact the Rule was amended, and the way it was amended, it was argued, meant that the conduct Mr Mannix, Mr Mangan and Mr Williams were said to have been guilty of, could not have been caught by Rule E8(a) in its 2007/2008 formulation or, at the very least, it was unclear whether their conduct was so caught, with the result that it would be unsafe and/or inappropriate for any of the three players affected to have been charged as they were, far less to be convicted of those charges.

42.2. In each of the relevant charge letters of 6 April 2009 it was said that Messrs Mannix, Mangan and Williams were, by reason of their placing of bets on the Accrington v Bury match, “*thereby betting on the result and/or progress and/or conduct of a Match in which they had an influence and/or of a Competition in which they were participating*”. It was said on behalf of all three players that Rule E8(a) does not contain the expression “*and/or*”. It refers to betting “*on the result, progress or conduct of the Match or Competition in which the Participant is participating or in which the participant has any influence, either direct or indirect*”. In other words, it was argued that Rule E8(a) refers to “*a Match*” or “*a Competition*”, and that the FA had to rely on the “*Competition*” element of the Rule because neither Mr Mannix, Mr Mangan nor Mr Williams had participated in or had any involvement in the relevant fixture.

#### Mr Mannix

42.2.1. Mr Mannix did not play in the Accrington v Bury match and was not involved in the preparations for it. It was his case that he had been informed by the Accrington Stanley FC Manager well before 3 May 2008 that he was being released and as the match against Bury was the last of the season his involvement with Accrington Stanley FC had thus come to an end. It was his case that because of his lack of participation in the match or the preparations for it he could not have influenced the match directly or indirectly, and that as of 3 May 2008 he had ceased to be “*a Participant*” in “*the Competition*” because his services were no longer required by Accrington Stanley FC.

42.2.2. Mr Mannix’s contract with Accrington Stanley FC ran until 30 June 2008.

42.2.3. Mr Crystal submitted that in the case of Mr Mannix, the Regulatory Commission misinterpreted Rule E8(a) and/or came to a decision that no reasonable body could have come to in concluding that Mr Mannix placed a bet on the result, progress or conduct of a Match or Competition in which he (Mr Mannix) was participating. Mr Crystal submitted, directing the Appeal Board’s attention to paragraphs 15 and 16 of the Regulatory Commission’s reasons in the case of Mr Mannix, that the Commission had fallen into error because it had equated the concept of a player who was under contract with the concept of someone who was “*participating in a Match or Competition*”.

#### Mr Mangan

42.2.4. Mr Mangan did not play in the Accrington v Bury match for Bury, nor was he on the substitutes’ bench. Mr Mangan contended that by the time he placed his bets on 2 May 2008 he had been released by Bury FC and his contract had already

been terminated by mutual agreement between him and that Club. Bury FC's position, as adopted by the FA for the purposes of the charges against Mr Mangan, was that his contract was indeed terminated by mutual agreement, but not until 15 May 2008, 13 days after the Accrington v Bury match.

#### Mr Williams

42.2.5. Mr Williams did not play in the Accrington Stanley v Bury match. He was unavailable for selection because of injury. Mr Budworth argued that Mr Williams did not bet on the progress of a match, nor did he bet on the result of a Competition. He placed a bet on a single match and not a bet on the progress of a Competition. It was argued that absolute precision is required in the formulation of penal allegations, and that to be guilty as charged, Mr Williams would have had to bet on the outcome of Football League 2 for the 2007/2008 Season, ie for Accrington Stanley FC to win Football League 2 that season.

43. Mr Giovannelli produced to the Appeal Board and the Appellants' representatives a memorandum dated 4 March 2009 from Mr Matthew Johnson of the FA to the FA Council on the subject of the changes to the FA Rules for Season 2009/2010 including the amendment to Rule E8(a) resulting in the inclusion of the words "*or has participated in that season*". Mr Giovannelli initially thought that the rule change had come about in the light of the FA's experience in the cases which are the subject of the present appeals and indeed he indicated that he had raised the suggested rule change in view of the matters which had come to light in the instant appeals but he later confirmed, by reference to the above-mentioned memorandum of 4 March 2009 that, insofar as this aspect is relevant, the FA Council was invited to consider the change to the rule in the light of experience with a player who went on loan to a club in a different division and then placed bets on his old club.
44. The Appeal Board concluded as follows in relation to the grounds of appeal common to the appeals of Mr Mannix, Mr Mangan and Mr Williams:
  - 44.1. Whereas the rule change for Season 2009/2010 did indeed clarify that "*Participants*" are caught by Rule E8(a) where they *have* participated in a Competition in a particular season even when their participation in that Competition has ceased by the time they place the relevant bet, this does not mean that Rule E8(a) as it was formulated in the 2007/2008 Season was in any way unclear as to the position of players in the position of Messrs Mannix, Mangan and Williams.
  - 44.2. Rule E8(a) is designed to "catch" betting by a Participant on the result, progress or conduct of the match or a competition in which the Participant is participating (amongst other things). If a match is being played in a competition, the result of the match goes to the result of the Competition. The result of the Competition is not simply which team comes first. The result of the Competition includes the particular order in

which the teams feature at the conclusion of the season in the league table. The Rule clearly states “*or*” throughout. All of the players were entitled to and did receive payment from their respective clubs after the date of the Accrington v Bury match.

#### Mr Mannix

44.2.1. Mr Mannix accepted that the bets he placed were bets on the progress or conduct of the League 2 Competition. He was clearly a “*Participant*” for the purposes of Rule E8(a). The key question in his case was whether he was, at the material time, participating in the League 2 Competition. The Regulatory Commission accepted that well before 2 May 2008, Mr Coleman, the manager of Accrington Stanley FC, had told Mr Mannix that he was to be released, but also found that that release did not occur until 30 June 2008, with the result that he remained a Contract Player with Accrington Stanley FC, registered with the FA as an Accrington Stanley FC player, and eligible at all times for selection for the Match, although by the time he placed the relevant bets he knew that he was not going to be selected either for the starting line-up or the substitutes’ bench in the Accrington Stanley v Bury match. On that basis, the Regulatory Commission concluded that, at the material time, Mr Mannix was participating in the League 2 Competition. In the judgment of the Appeal Board the Regulatory Commission was not only entitled to reach that conclusion, that conclusion was the only proper conclusion to draw from the evidence.

#### Mr Mangan

44.2.2. The Regulatory Commission accepted the factual account given by Bury FC, as adopted by the FA, that Mr Mangan was not released by Bury FC until 15 May 2008. The Regulatory Commission concluded that Mr Mangan was still a “*Participant*” on 2 and 3 May 2008, and that on those dates he was still “*participating*” in the League 2 Competition for the purposes of Rule E8(a) and the charges he faced. In the judgment of the Appeal Board, the Regulatory Commission was entitled to conclude that Mr Mangan was still “*participating in the Competition*” given that he remained on Bury FC’s books until, on the Commission’s findings, 15 May 2008.

#### Mr Williams

44.2.3. The Appeal Board rejected the argument that to be guilty as charged, Mr Williams would have had to bet on the outcome of Football League 2 for the 2007/2008 Season, ie for Accrington Stanley FC to win Football League 2 that season. The Appeal

Board agreed with the analysis of the Regulatory Commission as set out at paragraph 8 of its Reasons in Mr Williams', case that the charges against him were based on allegations including the allegation of Mr Williams having bet on the result and/or progress and/or conduct of the Competition in which he was participating, and that whereas the bets were not on the "result" of League 2, they were wagers on the "progress or conduct" of League 2.

- 44.2.4. Mr Williams was participating in the League 2 Competition at the time he placed his bets and this was therefore enough to have constituted the offence without any element of betting on the "result". Notwithstanding that he was, by reason of injury, unavailable for selection at the time of the Accrington v Bury match, Mr Williams was nevertheless still an Accrington Stanley FC player, and his bet therefore involved him betting on the result and/or progress and/or conduct of a Competition in which he was participating.

#### Apparent Pre-judgment/Apparent Bias (appeal of Mr Mannix)

45. Mr Mannix also pursued a ground of appeal in relation to apparent bias, it being argued on his behalf that the hearing before the Regulatory Commission was manifestly unfair in that the Chairman informed Mr Mannix at the beginning of his hearing that he had just rejected a similar defence on the construction of Rule E8(a) by another player and that thereafter the Chairman of the Regulatory Commission was said to have repeatedly interrupted the presentation of Mr Mannix's defence "with negative and hostile comments".
46. As was the position concerning the appeal of Mr Cavanagh on the issue of apparent pre-judgment and/or apparent bias, the Regulatory Commission Chairman, in response to a request from the Appeal Board Chairman, provided comments in respect of the allegations made on behalf of Mr Mannix. The Regulatory Commission Chairman accepted that he did inform Mr Mannix at the beginning of his hearing that he had just rejected a similar defence by another player and that while the Commission was not strictly bound by precedent it was not realistically likely that the Commission would reach a different conclusion in the case of Mannix unless Mr Crystal on his behalf had a convincing new argument which had not been put in the previous case. The Regulatory Commission Chairman maintained that this was a fair and common sense indication to Mr Crystal that his time and energy would be better spent on something other than repeating arguments which the Commission had so recently rejected. As to the suggestion that the Chairman repeatedly interrupted the presentation of Mr Mannix's defence with negative and hostile comments, the Regulatory Commission Chairman accepted that Mr Crystal's submissions did lead to more frequent and sharper exchanges between Counsel and the Chairman than happens in most cases, but that this did not deflect Mr Crystal from making his submissions. The Regulatory Commission Chairman indicated that he did make negative comments by way of discouragement of submissions by Mr Crystal that he felt were not helpful to Mr Mannix's case. For example, a

submission was made which seemed to the Chairman to run contrary to the basic principle that ignorance of the law was no excuse. In oral argument before the Appeal Board, Mr Crystal realistically indicated that he did not feel it was necessarily possible for him to seek to persuade the Appeal Board to overturn the findings of guilt made in the case of Mr Mannix on the basis of the remarks said to have been made by the Regulatory Commission Chairman.

47. The Appeal Board could find nothing in the comments attributed to the Chairman to suggest that there was either actual or apparent bias against Mr Mannix in the presentation of his case, a matter which Mr Crystal essentially accepted in the course of his oral submissions. On that basis, the Appeal Board did not feel able, on the basis of the unfairness alleged in the Notice of Appeal filed in his case, to interfere with the decision made by the Regulatory Commission that Mr Mannix was guilty as charged.

### **Peter Cavanagh - Appeal against Sanction and Costs Orders**

48. On behalf of Mr Cavanagh, it was submitted that the sanction imposed was excessive and disproportionate. Reliance was placed upon cases from other sports and other jurisdictions. All of the other Appellants also relied upon these cases cited by Mr Budworth during the course of his submissions in the appeal of Mr Cavanagh:

- 48.1. Grant Brebner (Football, Australia, December 2008)

- 2 match ban and \$3,000 fine for betting on two matches, one involving his own team to lose. He collected \$540 on that bet after correctly predicting a 3-1 result.

- 48.2. Gary Dempsey (Football, Ireland, December 2008)

- 5 match ban. 20 Euro bet on his own team to lose. No evidence he sought to manipulate the outcome of the game.

- 48.3. David Di Michele (Football, Italy, July 2007)

- 3 month ban. One of more than 20 players accused of having placed bets totalling \$14,000,000 through an illegal bookmaker.

- 48.4. Sean Long and Martin Gleeson (Rugby League, UK, June 2004)

- 3 and 4 months bans respectively and £7,500 fines for betting successfully on own team to lose. Gleeson played in the game, Long did not. Both bet £1,000.

- 48.5. Henry Williams (Cricket, South Africa, October 2001)

- 6 month ban after accepting \$10,000 from Hansie Cronje in order to concede more than 50 runs from his 10 overs in a one day international match. Cronje had already aborted the plan by the time Williams came on to bowl.

48.6. Botito Starache (Tennis, ATP, December 2007)

6 week ban and \$30,000 fine for 5 prohibited bets on matches in which he was not involved.

48.7. Montcourt v ATP Tour (Tennis, Court of Arbitration for Sport) (2008/A/1630)

36 prohibited bets on tennis matches involving other players. Context: tennis - sufficient to corrupt a single player to affect the outcome. 5 week ban and \$12,000 fine. Career earnings between 2003 and 2005 of \$260,000.

48.8. Roman Bednar (FA, August 2009)

3 month ban for use and possession of cocaine. Example to children. Ban backdated to May 2009 in order that the ban was served in the close season.

48.9. Steve Claridge (FA, April 2000)

Fined £900 for betting on his own side, Portsmouth FC, to win a match against Barnsley FC. He played in the game and scored a hat trick to secure victory.

48.10. Paul Scally (FA, July 2004)

Gillingham FC Chairman, fined £10,000 for correctly forecasting that Gillingham FC would lose the 1998/99 League 2 play-off final to Manchester City FC.

48.11. Richard Hughes (FA, August 2006)

Portsmouth FC midfielder cleared of passing on “inside information” after betting on the manager Harry Redknapp’s return to Portsmouth from Southampton in December 2005.

49. According to a report in the Independent newspaper in February 2005, the FA conducted 30 investigations, most of them secret, into suspected cases of illegal gambling by players and officials involved in English football in the preceding 14 years, with 8 of those investigations leading to formal disciplinary proceedings. One of those cases was the Scally matter - see paragraph 48.10 above. Mr Giovannelli was not in a position to provide any information in relation to these matters above and beyond that supplied by the defence side.
50. Mr Budworth produced the minutes of proceedings before an All Party Parliamentary Betting and Gaming Group Enquiry into the Effects of Betting on Sport on 9 December 2004, attended by representatives of the FA, the Rugby Football League, the Lawn Tennis Association, the Rugby Football Union, and the National Greyhound Racing Club. Mr Steven Barrow, then Head of Regulation of the FA, but who has since left the organisation, is quoted in those

minutes as saying: *“In our case, probably going back over the last 14 years or so, we have had a total of 29 or 30 investigations of which eight have led to disciplinary proceedings being instituted against Participants”*.

51. Mr Budworth drew attention to the following specific matters by way of mitigation in the case of Mr Cavanagh:
  - 51.1. Charge 2 in his case was a bet against his team but at only £5, and where the bet relied on five other results in the accumulator the mischief was diluted to the point of being inconsequential.
  - 51.2. It was wrong to increase the sanction because the player was first team captain.
  - 51.3. The prosecution said it required forensic voice analysis as part of its case. It was clear from the written reasons that the prosecution only succeeded by being able to rely on that evidence. It was wrong to order Mr Cavanagh to pay all of the expert’s fee, the effect of which is that he paid to find himself guilty.
  - 51.4. Mr Cavanagh was out of contract as at 31 July 2009. He has no prospect of getting another contract until the expiry of the ban imposed on him. By that time there will be little of the 2009/2010 Season left and he will be approaching 29 years of age with no match fitness.
  - 51.5. Bearing in mind the mischief that the rule intended to guard against, it would be a sufficient sanction to ban Mr Cavanagh from playing. Banning him from all football activity, thereby denying him the chance to continue coaching junior teams at Liverpool FC, could not be justified, given the wider detriment to his future career prospects and current livelihood.
  - 51.6. Mr Cavanagh will have no income from football for the duration of the ban. Professional football has been his only ever livelihood. It will not be easy to find any alternative income.
  - 51.7. Through no fault of his own, Mr Cavanagh’s hearing could not take place in early/mid-July as originally anticipated, and as happened with the other players. Had it been heard at the anticipated time, the ban would actually have been shorter as a number of weeks could have been served in the close season. The other players had that opportunity. Mr Cavanagh did not. The FA took 11 months to lay the charges. The fact that they were still outstanding at the expiry of Mr Cavanagh’s playing contract meant that it was not renewed or replaced by a contract with any other Club.
  - 51.8. In relation to the third charge Mr Cavanagh was found guilty of (the charge where the defence ran the “football pools” argument), Mr Cavanagh supplied the Appeal Board with the FA’s Response to the Gambling Commission Consultation Integrity in Sports Betting Issues

paper published in August 2007 in which the FA was reported as stating to the Gambling Commission: *“The FA does not want to pre-judge the risk assessment. However the following summary outlines the approach that could be adopted for different risk models:....where bets are of very low risk, then these should generally be permitted without any qualification, for instance pools betting and ‘trebles’.”*

52. Mr Giovannelli replied in relation to Mr Cavanagh’s appeal against sanction and costs as follows:

52.1. The Commission took appropriate account of the Appellant’s exemplary record and commitment to youth coaching and otherwise positive contribution to the game of football and the modest size of the bets placed (reasons paragraph 28 in that case); the fact that there was no indication of Mr Cavanagh being involved in any match fixing despite betting against his own team (reasons paragraphs 28 to 31); the fact that the payment of any fine or costs ordered would be very difficult, given the imposition of the 8 month suspension (reasons paragraph 39).

52.2. Against the above, the Commission also took account of the fact that the offences were repeated and deliberate (reasons paragraph 32), and the fact that the Appellant as Club Captain would be expected to set an example (reasons paragraph 33).

52.3. The Regulatory Commission commented (at reasons paragraph 26) upon the conduct of Mr Cavanagh’s defence and declined to give him any credit for his co-operation given that he ran what was akin to two false alibi defences and came up with a concocted story.

52.4. A bet on any game in which the Participant is actually playing can never be considered to be inconsequential. It goes to the very heart of the integrity of the sport.

52.5. By maintaining what proved to be a “false alibi” defence, a voice expert’s analysis was required to be commissioned in order to either substantiate the defence or show it to be false. Had the expert concluded that the voice was in fact that of Michael Cavanagh then one of the charges against the Appellant Mr Peter Cavanagh would have been dropped or found not proven and the FA would probably have borne the cost of the forensic analysis.

52.6. After hearing submissions from the Appellant’s representatives as to the timing of the hearing at the preliminary hearing on 19 June 2009, Mr Cavanagh’s case was listed to be heard on 17 July 2009. On 22 June 2009 the Appellant’s representatives wrote by e-mail seeking an adjournment of that date by reason of Mr Cavanagh’s representative’s unavailability. The hearing was then re-listed for the first available date thereafter. The fact that this hearing did not take place before the commencement of the playing season was not a matter which could be called upon to reduce the period of suspension imposed.

- 52.7. Mr Cavanagh was found guilty of a gravely serious offence, and the effect of his conduct undoubtedly had the effect of undermining public confidence in the particular fixture and in the game of football in England in general.
- 52.8. Mr Cavanagh bet on his own Club on two separate occasions. On one of those occasions he bet on his own Club to lose. He then bet on the competition in which he was competing (ie League 2) on numerous further occasions.

### **David Mannix - Appeal against Sanction and Costs Orders**

53. Mr Crystal advanced the following points in mitigation on behalf of Mr Mannix:
  - 53.1. The defence which Mr Mannix had run before the Regulatory Commission was a technical defence on a matter of construction of the relevant rule rather than a root and branch defence of all aspects of the charges.
  - 53.2. In terms of the placing of the bets, Mr Mannix had given a full and frank account in interview with the Football Regulation Department. He did so largely because he did not consider that he had anything to hide. Mr Crystal did not accept that it was appropriate for the Regulatory Commission to have said of Mr Mannix (see paragraph 20 of its reasons in that case) that it had been “*reckless and irresponsible*” of Mr Mannix to place the bets in question.
  - 53.3. Mr Crystal also argued that it was not appropriate for the Commission to state (see paragraph 18 of the reasons in that case) that Mr Mannix had been guilty of a “*persistent denial of the charges on a whole range of other grounds*”. It was, submitted Mr Crystal, in the light of this finding that the Commission denied Mr Mannix the credit he would otherwise have been given for his ready admission of the bets in interview.
  - 53.4. Mr Crystal submitted that the Commission's observations in relation to match fixing (see the reasons at paragraph 23 in that case) were of concern.
  - 53.5. Mr Mannix's contract had been terminated and he could not obtain another one. He had no income. A fine is normally paid out of income and he effectively cannot earn for an entire football season. The sanction against him has a double effect as he cannot pursue his chosen career. He must pay from a source which is not immediately obvious. The sanction has to achieve a legitimate sporting aim.
  - 53.6. Mr Mannix had not been habitually gambling on matches in which he was involved.

- 53.7. Mr Mannix is a “marked man” in professional football as a result of this affair.
- 53.8. He should have received either a suspension or a fine, the latter being imposed on the basis of an ability on his part to pay the fine.
- 53.9. In all the circumstances, Mr Crystal submitted that the appropriate penalty in Mr Mannix's case would have been a fine.
54. Mr Giovannelli replied in relation to Mr Mannix’s appeal against sanction and costs as follows:
- 54.1. The Commission took due account (a) of the fact that the Appellant did not play in the match (reasons at paragraph 9) and had been informed prior to placing the bets that he would be released by the Club at the expiry of his contract with Accrington Stanley FC (reasons at paragraph 15).
- 54.2. The Commission commented (reasons paragraph 18) on the conduct of Mr Mannix's defence and declined to give him credit for his candour and admission of placing the stakes on the basis that this should be viewed in the context of the compelling photographic and other evidence which would unquestionably have demonstrated that he was present in Ladbrokes in Derby Lane on 2 May 2008 placing bets together with two of the other players.
- 54.3. The Commission took account of Mr Mannix's admission that at the time he placed the bets he had been told that the odds were going down because a lot of people were betting on the game and that he knew enough to have real suspicions about the straightness of the match (reasons paragraph 22).
- 54.4. It is clear from paragraph 21 to 24 of the Commission's reasons that they did not have regard to match fixing in any way and did not consider that Mr Mannix was guilty of match fixing in any way.
- 54.5. Mr Mannix placed stakes to a total value of £4,000 at odds in the region of 7/4 on Bury FC to win the match, entitling Mr Mannix to collect a sum in the region of £11,000.
- 54.6. Mr Mannix was found guilty of a serious offence as the effect of his betting had had an undermining effect on public confidence in the match in particular and in the game of football in England in general. The impact on public confidence was exacerbated by the fact that Mr Mannix bet on his own Club to lose.
- 54.7. The fact that Mr Mannix was aware of unusually heavy betting on the match prior to placing his stakes, the significant sums he staked on the match, and the fact that he placed at least some of the stakes in the company and presence of another Accrington Stanley FC player, Mr

Harris, who actually played in the match, and Mr Mangan of his Club's opposition, Bury FC, were aggravating factors.

**Andrew Mangan - Appeal against Sanction and Costs Orders**

55. Mr Milliken-Smith QC urged the following matters on Mr Mangan's behalf:
- 55.1. The rule Mr Mangan had been found to have acted in breach of was sufficiently poorly drafted that this in itself should afford some mitigation.
  - 55.2. Mr Mangan had been told in terms he was to be released well before the match. He was not in the squad the previous week. He played no part in the game and he backed his own team to win.
  - 55.3. Mr Mangan had been frank. The FA had sought three admissions. Two were made, the third was not and the Commission found there to be no evidence in relation to the third charge.
  - 55.4. The Chairman of the Regulatory Commission had made adverse remarks about the manner in which the Appellant had conducted his defence, which, in the circumstances were inappropriate.
  - 55.5. It was argued on Mr Mangan's behalf, in common with other appeals, that the Regulatory Commission appeared to have been influenced by some notion that match fixing had been involved. Mr Milliken-Smith founded very strongly on the contention that the Regulatory Commission had effectively sentenced Mr Mangan for match fixing by the back door.
  - 55.6. Mr Mangan is a 21 year old who is currently unemployed as a result of his ban from playing football. His first child was born on 4 September 2009. He no longer has an income. The ban from football runs until late December 2009 and it is inconceivable that he will be in a position to pay the whole fine a mere 6 weeks after he is eligible to start playing again, even assuming he can find a club to employ him as soon as the ban expires.
  - 55.7. The conditions imposed on Mr Mangan to pay the financial penalties were inconsistent with sentencing policy in any forum let alone the FA. A fine should be commensurate with means. In addition, a person who is no longer able to ply his trade should be allowed a reasonable time to obtain a new contract before making payment of what are substantial penalties.
  - 55.8. Mr Milliken-Smith said that the period of suspension and the fine were manifestly excessive.
  - 55.9. Mr Mangan's betting activity was a one-off matter. He had acted with no level of sophistication, placing the bet near his home address, with no

third parties involved, and made no attempt to “squirrel off” to a different city to place the bets.

- 55.10. It was submitted that Mr Mangan's level of culpability must be at the lower end of the scale for an offence contrary to Rule E8(a).
  - 55.11. Mr Mangan's fiancée is now on maternity leave. He has a mortgaged property. The impact of these matters on his career has been dramatic. This matter will leave a stain on him for the rest of his career.
  - 55.12. Being out of the game and footballing activities for 5 months does not mean that Mr Mangan will simply be away from the game for 5 months. It will take him a considerable period of time to regain match fitness. He joined Forest Green Rovers FC after leaving Accrington Stanley FC and performed extremely well, scoring some 30 goals in the 2008/2009 Season. Interest has been expressed in him by larger clubs. As a result of these proceedings, that interest has obviously dissipated.
  - 55.13. Mr Milliken-Smith submitted that Mr Mangan should not have been banned, alternatively that the Appeal Board should substitute an order to the effect that Mr Mangan should be suspended from footballing activities no longer.
  - 55.14. Reliance was placed on the case of Steve Claridge (see paragraph 48.9 above).
56. Mr Giovannelli replied in relation to Mr Mangan's appeal against sanction and costs as follows:
- 56.1. The Commission stated at paragraphs 22 to 24 of its reasons that Mr Mangan should find little solace in technical legal arguments put forward by his representatives concerning a rule about which he claimed to have no or little knowledge at the time he placed his bets. The Commission was entitled to comment on the conduct of Mr Mangan's defence and declined to give him any credit for the same on the grounds that he maintained a knowingly untruthful account of the matters surrounding the termination of his contract, thereby requiring witnesses from Bury FC to attend a hearing at which they were subjected to forthright cross-examination.
  - 56.2. Mr Mangan's admission regarding placing the stakes should be viewed in the context of the compelling photographic and other evidence which would unquestionably have demonstrated that he was present in Ladbrokes, Derby Lane, on 2 May 2008 placing bets together with David Mannix and James Harris.
  - 56.3. At paragraphs 25 to 27 of the reasons in Mr Mangan's case, the Commission made it clear that it was not sanctioning him in the light of “*unfounded suspicions*” of match fixing.

- 56.4. In respect of the financial penalty, means are not solely determinative of the appropriate level of punishment in any given case.
- 56.5. Mr Mangan had placed stakes totalling £1,500 with odds of 7/4 on Bury FC to win the match, entitling him to collect the sum of £4,125. He had been found guilty of a gravely serious offence. This had undermined public confidence in the game to bet on his own Club. He staked significant sums and did so in the presence of two players from the opposing Club, Accrington Stanley FC, namely Mr Harris and Mr Mannix.

### **James Harris - Appeal against Sanction and Costs Orders**

57. Mr Budworth made the following submissions by way of mitigation on behalf of Mr Harris<sup>5</sup>:
- 57.1. Mr Harris placed £2,000 on his own team to lose a game and he had played in the fixture in question. He received a £5,000 fine and a lengthy suspension of 12 months. He had attempted to save time and costs for the Commission and the FA by making his submissions in writing. He had fully complied with requests and deadlines imposed upon him. Accordingly, the costs awarded of £2,500 in respect of the Bury charges were completely disproportionate and excessive.
- 57.2. By imposing the sanctions of a lengthy ban and a hefty fine Mr Harris had been exposed to a double sanction. He has no future wages and the combined effect of no future wages and his current level of expenditure plus excessive fines and costs means that he may well be forced into bankruptcy.
- 57.3. Mr Harris had been remorseful and frank, admitting to the Football Regulation Department in interview that he had obviously breached the rules.
- 57.4. Mr Budworth again referred to the 30 investigations from 1991 to 2005, and the cases of Claridge and Skelly. He said that the cases of Long and Gleeson were relevant to the case of Mr Harris, as was the case of Montcourt.
- 57.5. The Appeal Board was provided with a statement of affairs on behalf of Mr Harris. He is 22 years of age, and owns a modest home to the value of about [REDACTED] upon which is owing just over [REDACTED]. As a result of no longer working in football he has lost a wage of in the region of [REDACTED] a week. He has no present income whatsoever. He has yet to discover whether he qualifies for Job Seekers Allowance. Since the events with which the Regulatory Commission and the Appeal Board were concerned he had moved to Chester City FC and was owed substantial

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<sup>5</sup> In relation to Mr Harris, the principal focus of the appeal was in relation to sanction and costs imposed in respect of the Bury Charges. The only appeal in relation to the Chester Charges was in relation to costs.

arrears of wages by that Club. He had had to borrow [REDACTED] from his parents. He had moved back to his mother's home. Bankruptcy was in his case a serious possibility.

58. Mr Giovannelli replied in relation to the appeal of Mr Harris against sanction and costs as follows:

58.1. The Commission gave detailed consideration to matters relevant to mitigation and sanction at paragraphs 18 to 35 of its reasons in relation to the Bury Charges. It took appropriate account of the fact that he offered a concocted story (see paragraphs 11 to 16 of its reasons in relation to the Bury Charges).

58.2. Insofar as Mr Harris relied upon the argument that the Commission did not take account of decisions of other sporting bodies when imposing sanction, Mr Harris did not himself provide any guidance in respect of the decisions of other sporting bodies, and in any event the decision of other bodies did not bind the Commission in the exercise of its discretion.

58.3. The Commission made it clear at paragraphs 17, 19, 26 and 28 to 30 of its reasons in relation to the Bury Charges that it had not sentenced Mr Harris for match fixing by the back door.

58.4. The Commission gave sufficient consideration to the extent of the Appellant's co-operation with the investigation and disclosure (see paragraph 23 of the reasons in relation to the Bury Charges). It dealt with the issue of the Appellant's remorse (see paragraph 25 of its reasons). It paid due regard to points of mitigation and issues regarding education in relation to gambling in football (see paragraphs 21, 22 and 24 to 26 of the reasons in relation to the Bury Charges).

58.5. Mr Harris did not provide the Commission with details of his expenditure, and the level of expenditure and future earnings were not determinative of the appropriate level of financial penalty to impose in any given case.

58.6. Mr Harris placed two stakes to a total value of £2,000 at odds of 7/4 on Bury FC to win the match, meaning that he would have collected a sum in the region of £5,500.

58.7. As to the question of double sanction the Commission gave due consideration to this issue (see paragraphs 31 to 35 of its reasons). The offences were very serious, undermining confidence in the match and in the game of football in England in general. Mr Harris bet on his own Club to lose a match in which he was playing. He staked significant sums. He placed his bets in the company and presence of a team mate and a member of the opposing team, namely Mr Mannix and Mr Mangan respectively.

## **Robert Williams - Appeal against Sanction and Costs Orders**

59. Mr Budworth submitted as follows on behalf of Mr Williams:

59.1. The Regulatory Commission had been wrong to regard as “*a hopeless submission in the circumstances of this case*”, the contention that there was a complete lack of education in football regarding the rules relating to players betting on the outcome of football matches and competitions. Mr Budworth argued that this was not a fair conclusion. Mr Williams had maintained from the outset that he was unaware or at least unsure of the FA's betting rules. In his interview with the Regulation Department he had stated that his understanding was that if he was not involved in the game he could have a bet on it. He also told the Regulation Department that the PFA had visited the Club to discuss gambling issues but that this occurred after the Accrington v Bury match. It was submitted on Mr Williams' behalf that clearly the PFA believed it was necessary to visit Accrington Stanley FC to advise players on the FA rules due to a lack of education.

59.2. Mr Williams had always been a part-time player prior to Accrington Stanley gaining full league status. He had been full and frank and had been forthcoming with documents. He was remorseful, yet all of this mitigation had been given short shrift by the Regulatory Commission.

59.3. There were similarities with the cases of Brebner and Dempsey in the case of Mr Williams. This was a one-off matter. Mr Williams had not acted in concert with others. He was not able to nor did he seek to exert any influence on the result of the relevant match.

59.4. The Appeal Board was provided with a statement of affairs on behalf of Mr Williams. He is 30 years of age and has an 18 month old son. He has a property which was purchased for [REDACTED] with [REDACTED] presently being owing on the mortgage. He has minimal savings and investments. His expenditure far exceeds his income and he will not be able to maintain this state of affairs for much longer in the light of his suspension. He is under enormous pressure in his personal life. He and his partner have considered moving home as their monthly income only just exceeds their monthly mortgage repayments [REDACTED]. His concern is that in the current market he may not be able to sell the house, or that he will end up selling it for far less than the price it was purchased for. He has had to resort to savings. He is worried that he may be made bankrupt. He has a monthly income with his partner of approximately [REDACTED] with expenditure per month in the region of [REDACTED].

60. Mr Giovannelli replied in relation to the appeal of Mr Williams against sanction and costs as follows:

60.1. The penalties imposed were not excessive in light of the seriousness of the offences and the circumstances in which they were committed.

- 60.2. The sanctions fell within the reasonable range of sanctions available to the Commission.
- 60.3. The Commission gave detailed consideration to matters relevant to mitigation and sanction (see paragraphs 13 to 28 of its reasons).
- 60.4. The Commission took appropriate account of the fact that Mr Williams did not play in the match and had been injured for a significant period prior to the match (see reasons paragraphs 5, and 8 to 9).
- 60.5. The Commission was entitled (see reasons paragraph 16) to comment on the conduct of Mr Williams' defence and to decline to give him credit for his admission of placing the stakes on the basis that it should be viewed in the context of the photographic and other evidence which would unquestionably have demonstrated that he placed a bet on the Accrington v Bury match at Ladbrokes, Mill Lane, on 2 May 2008.
- 60.6. The Commission was entitled to take account of Mr Williams' acknowledgment that at the time he placed the bets he was aware of the unusually heavy betting on the match, which the Commission considered added to the level of his irresponsibility in proceeding to bet on the match himself (see reasons paragraph 23).
- 60.7. In placing a total of £1,000 at odds in the region of 7/4 on Bury FC to win the match the Mr Williams stood to collect a sum in the region of £2,750.
- 60.8. Paragraphs 12, 19 and 21 to 24 of the reasons in the case of Mr Williams attest to the fact that the Commission did not sentence him for match fixing by the back door.
- 60.9. The Commission took due account (see paragraph 16 of the reasons in Mr Williams' case) of his co-operation with the investigation and disclosure.
- 60.10. Insofar as Mr Williams relied upon the decisions of other sporting bodies, he did not provide the Regulatory Commission with any information concerning the same, and in any event the decisions of other bodies do not bind the Commission in the exercise of its discretion.
- 60.11. The Commission took appropriate account of the points of mitigation in Mr Williams' case, including the issue of education on the subject of gambling in football (see paragraphs 14 to 15 and 18 and 20 of its reasons).
- 60.12. Mr Williams committed a gravely serious offence, undermining public confidence in the match in question and football generally. He bet on his own Club to lose. He was aware of unusually heavy betting on the match prior to placing the stakes. He staked significant sums and he did so in

the company and presence of a team mate, Mr Harris (who played in the match) and Mr Mangan from the opposing Club.

61. Mr Giovannelli submitted as follows on the issue of the relevance of the decisions of other sporting bodies:
  - 61.1. English football is entitled to sanction its Participants in the manner it considers appropriate in the light of the seriousness of the offences committed and the impact such offending has on public confidence on the game in this country. Cases involving players from other sports and other jurisdictions are therefore of limited value.
  - 61.2. The Appeal Board does not (and nor did the Regulatory Commission) have access to the full factual details of all the cases referred to and relied upon. For example, it was not possible to ascertain (a) the precise seriousness of the offences committed, (b) the manner in which the parties co-operated or otherwise with the relevant investigation, (c) the manner in which the parties conducted their defence, or (d) any aggravating or mitigating factors taken into account.
  - 61.3. Insofar as the Appellants relied upon any cases concerning anti-doping provisions, the case of Paddy Kenny, decided by a Regulatory Commission of the FA on 7 September 2009<sup>6</sup>, concerned a goalkeeper registered with Sheffield United FC, who received a 9 month suspension in respect of a positive finding of Ephedrine in an in-competition test. The Commission in that case concluded that whilst there was no intention to enhance sporting performance by the use of an over the counter cold medicine, Mr Kenny exhibited significant fault in his failure to check the contents of the medicine or seek medical advice from his Club doctor.
  - 61.4. In relation to the case of Botito Starache (who Mr Giovannelli contended was fined \$40,000, rather than the sum of \$30,000 asserted on behalf of Mr Cavanagh) the Appeal Board was not referred to the two related tennis cases in the same inquiry which resulted in Alessio Di Mauro and Daniele Bracciali being sanctioned to 9 and 3 months suspensions respectively. Di Mauro had been found to bet on numerous tennis matches between November 2006 and June 2007 but had not bet on any match in which he was involved, nor had he attempted to influence any game on which he had bet. He was suspended for 9 months and fined \$60,000. Bracciali was found to have made around 50 bets of 5 Euros on matches with which he had no involvement. He was suspended for 3 months and fined \$30,000.
  - 61.5. In relation to the RFL cases of Gleeson and Long, both players pleaded guilty to the charges and received reductions accordingly.

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<sup>6</sup> An appeal in the case of Paddy Kenny is due to be heard imminently.

- 61.6. Mr Giovannelli referred to the comment made by Mr Richard Lewis, Executive Chairman of the Rugby Football League, in oral evidence before the All Party Parliamentary Betting and Gaming Group Enquiry into the Effects of Betting on Sport on 9 December 2004 by Lord Lipsey, to the effect that the sanctions imposed in the cases of Gleeson and Long amounted to “*an extraordinarily weak penalty for an offence of that magnitude*” and “*a very minor punishment*”.

### **The Appeal Board’s Conclusions**

62. The Appeal Board reached the following conclusions:

- 62.1. All of the Appellants were found guilty of extremely serious offences.
- 62.2. Each of the cases under consideration involved a combination of features tending to place each case either further up or further down the scale of seriousness. For example, the stakes placed by Mr Cavanagh were very low, yet on the other hand he played in two of the games which were the subject of the bets he placed, captaining his team on each occasion. Mr Mannix, on the other hand, staked a total sum of £4,000 on the Accrington v Bury match, yet did not play in the match and was not involved in the preparations for it.
- 62.3. The Appeal Board took due account of all of the points made very skilfully by Counsel in mitigation. Those points are not rehearsed again here in what is already a lengthy Statement of Reasons.
- 62.4. On the issue of the relevance of the decisions of other sporting bodies, the Appeal Board agreed with the submission of Mr Giovannelli that English football is entitled to sanction its Participants in the manner it considers appropriate in the light of the seriousness of the offences committed and the impact such offending has on public confidence on the game in this country, and that cases involving players from other sports and other jurisdictions are therefore of limited value.
- 62.5. It would be fair to say that the regulation of professional sport has in any event tightened up in recent years. This is not a scientific assessment, merely an observation. Insofar as any other cases (including cases involving the FA) may be relied upon as some sort of “precedent”, cases of greater antiquity are of less relevance. It may be that some of the individuals who were the subject of the decisions cited to the Appeal Board had the benefit of very lenient sentences, but that should not detract from the need to assess each case on its own merits. There is no question of the Regulatory Commission having been obliged to adopt some sort of sentencing tariff. The Bednar case was exceptional. The FA would have had no evidence but for the information volunteered and admitted by the player. The case of Richard Hughes is of no value on the simple footing that the player in question was cleared of the relevant accusation. The Appeal Board placed little weight on the other cases

cited to it in relation to the transgressions of those involved in professional sport.

- 62.6. In the case of Mr Cavanagh, the Commission took appropriate account of the modest size of the bets in his case, the fact that there was no indication of his being involved in match fixing despite betting against his own team, and the fact that the payment of any fine or costs ordered would be very difficult. Set against those factors, Mr Cavanagh bet on his own Club on two separate occasions, and on one of those occasions he bet on his own Club to lose. He then bet on matches in League 2 on numerous further occasions. It was, in the judgment of the Appeal Board, correct to have regard to the fact that Mr Cavanagh was Club captain as being an aggravating feature. His factual account had been found to have been concocted. The timing of his hearing before the Regulatory Commission had been unfortunate, but this was a consequence of the non-availability of his representative.
- 62.7. In the case of Mr Mannix, the Commission took due account of the fact that he did not play in the Accrington v Bury match and had been informed prior to placing the bets that he would be released by his Club. Whilst he had admitted placing the bets, the evidence with which he had been presented overwhelmingly demonstrated that he had. He knew enough about the betting patterns on the game to have real suspicions about the straightness of the match. The Commission openly acknowledged that Mr Mannix was not being punished for match fixing. He stood to profit to the tune of £7,000 from his unauthorised bets.
- 62.8. In the case of Mr Mangan, he had also admitted placing the relevant bets, but had also been presented with overwhelming evidence that he had done so. The Commission made it clear that it was not punishing him for match fixing. He also stood to make a significant return on his bets.
- 62.9. Mr Harris offered a fabricated factual account in his original defence of the Bury charges. The Commission made it clear that it was not punishing him for match fixing. He stood to make a substantial profit from his unauthorised bets, gambling on his own team to lose a match in which he was playing.
- 62.10. In the case of Mr Williams, the Commission took account of the fact that he did not play in the Accrington v Bury match and had been injured for a significant period beforehand. However, he had been aware of the unusually heavy betting on the match. He also stood to profit substantially from his bets. The Commission openly declared that it was not punishing him for match fixing, and took due account of his co-operation with the investigation and in providing disclosure.
- 62.11. The Appeal Board could detect no sense in which it could be said that the Regulatory Commission was not alive to the various factual differences concerning each of the cases, or that it did not reflect those differences in the sanctions it imposed.

- 62.12. It is not the function of an Appeal Board to make its own assessment of sanction and to substitute that in place of the determination of a Regulatory Commission. The test is whether “*the penalty, award, order or sanction imposed is excessive*”, or whether the Commission “*came to a decision to which no reasonable body could have come*”<sup>7</sup>.
- 62.13. In summary, the Appeal Board concluded that in none of the cases before it had the Regulatory Commission imposed sanctions that were excessive, and it certainly could not be said that the Commission came to a decision to which no reasonable body could have come.
- 62.14. Whilst the Appeal Board did not consider that the sanctions imposed on any of the Appellants were excessive, the Appeal Board nevertheless acknowledged that the combined effect of the punishments imposed and the costs orders was such that each Appellant was faced with a substantial financial burden. There were three elements to that burden in each case. The suspension orders deprived the Appellants of income, and in addition they were ordered to pay substantial sums by way of fines and costs.
- 62.15. Matters of costs are always discretionary. In seeking to arrive at a just conclusion in these cases, and as an act of leniency to the Appellants purely in the light of the financial impact of the orders made by the Regulatory Commission, the Appeal Board concluded that whereas the sanctions imposed by the Regulatory Commission could not be faulted, it would nevertheless be appropriate to reduce the costs orders made in each case.
- 62.16. For the avoidance of doubt, whilst Mr Harris may question why he has again been made the subject of effectively the same costs orders as the other Appellants, in circumstances whereby he did not require a personal hearing, the effect of the Appeal Board’s determination in relation to costs is that all five Appellants have had the benefit of substantial leniency in relation to the issue of costs.
- 62.17. The Appeal Board determined that the appeals of all five Appellants in relation to the sanctions imposed by the Regulatory Commission should be dismissed, but in each case allowed the appeal in relation to costs<sup>8</sup>.

### **Summary**

63. The unanimous decision of the Football Association Appeal Board in relation to the five appeals is as follows:

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<sup>7</sup> Regulations 1.5(1) and (2) of the Regulations for FA Appeals - see paragraph 13 above.

<sup>8</sup> The Appeal Board also varied the orders of the Regulatory Commission as to terms of payment in relation to fines and costs.

- 63.1. The appeals of Mr Cavanagh, Mr Mannix, Mr Mangan and Mr Williams in relation to the Regulatory Commission's findings of guilt of various offences contrary to FA Rule E8(a), and the appeals of all five Appellants against the sanctions imposed in respect of those offences, are dismissed.
- 63.2. Save in the case of Peter Cavanagh, each Appellant was ordered by the Regulatory Commission to pay the sum of £5,000 by way of costs. In the case of each Appellant except Peter Cavanagh, the costs order imposed by the Regulatory Commission shall be substituted with an order for the payment of the sum of £1,000. In the case of Peter Cavanagh, the costs order imposed by the Regulatory Commission in the sum of £9,626.45 shall be substituted with an order for the payment of the sum of £2,000.
- 63.3. In the case of Peter Cavanagh, half of the fine of £3,500, and half of the costs of £2,000 shall be paid by 30 November 2009, with the whole then outstanding balance to be paid by 28 February 2010.
- 63.4. In the case of David Mannix, half of the fine of £4,000, and half of the costs of £1,000 shall be paid by 30 November 2009, with the whole then outstanding balance to be paid by 28 February 2010.
- 63.5. In the case of Andrew Mangan, half of the fine of £2,000, and half of the costs of £1,000 shall be paid by 30 November 2009, with the whole then outstanding balance to be paid by 28 February 2010.
- 63.6. In the case of James Harris, half of the overall fine of £5,500, and half of the costs of £1,000 shall be paid by 30 November 2009, with the whole then outstanding balance to be paid by 28 February 2010.
- 63.7. In the case of Robert Williams, half of the overall fine of £3,500, and half of the costs of £1,000 shall be paid by 30 November 2009, with the whole then outstanding balance to be paid by 28 February 2010.
- 63.8. Save as stated above, the Regulatory Commission's findings and orders remain undisturbed.

**Costs**

- 64. There shall be no order as to costs in relation to these appeals save that the appeal fee of £100 paid by each Appellant shall be reimbursed in each case.

Signed .....

**Paul Gilroy QC  
(Chairman of the Appeal Board)**

this 23<sup>rd</sup> day of October 2009