

IN THE MATTER OF A FOOTBALL ASSOCIATION
INDEPENDENT REGULATORY COMMISSION

BETWEEN:

THE FOOTBALL ASSOCIATION

The Association

- and -

(1) ZEPHANIAH THOMAS
(2) TYLER WEIR
(3) SCOTT SPENCER

Participants

WRITTEN REASONS OF
THE INDEPENDENT REGULATORY COMMISSION
FOLLOWING THE SANCTIONS HEARING
ON 28TH JANUARY 2016

1. Background

- 1.1 Delroy Facey (DF) is a former professional footballer. On 15th May 2015, together with others, he was convicted at Birmingham Crown Court of conspiracy to commit bribery, relating to match-fixing. Both were given substantial custodial sentences. The criminal proceedings arose out of a major police investigation that took place in 2013 (Operation Vectorial), and which was targeted at a determined plan to fix the outcome of football matches.
- 1.2 DF played an integral role in the conspiracy. He acted as a middle-man for a Far-Eastern betting syndicate and sourced players who he thought might be willing to take bribes for fixing matches. DF and an ex-semi professional player, Moses Swaibu (MS), were instrumental in sourcing players to ensure that a particular result was achieved (although at the criminal trial the latter was found to have played a more subordinate role in the conspiracy).

- 1.3 In her sentencing remarks, HHJ Stacey said that the corruption was of a pernicious type which struck *“at the very heart of football”*, our national sport. Families follow teams, they buy kit, they watch their team and want it to win. They hope and trust that the players share that aim. DF and MS have betrayed all that trust and confidence. They had been shameless and open in their willingness to use a network of contacts to encourage others to get involved in match fixing. A number of players had been approached with offers, but many had declined.
- 1.4 Amongst others, DF approached Tyler Weir (TW), Zephaniah Thomas (ZT), and Scott Spencer (SS) (referred to collectively as “the Participants”). All three were offered financial inducements by DF with a view to involving them in a network of match-fixing. In doing so, the Participants each received information that was clearly relevant and of interest to both the Police and to the Football Association (“The FA”) as the governing body responsible for regulating the game.
- 1.5 The FA does not allege or imply any criminal wrongdoing on the part of any of the three Participants, or that any of them agreed to join the conspiracy to fix matches. Further, it is not The FA’s case that any of the three Participants ever received any monies relating to the proposals that DF respectively put to them, or that they took any steps to implement them. On behalf of The FA, its Counsel, Mr. Ware was at pains to make those points. Instead, The FA’s case against them is that they each failed to report to The FA the approaches that DF had made to them.

2. Relevant Rules and Regulations

- 2.1 FA Rule E5(a) states as follows:

“A Participant shall not, directly or indirectly, offer, agree to give, give, solicit, agree to accept or accept any bribe, gift or reward or consideration of any nature which is, or could appear to be related in any way to seeking to influence the outcome or conduct of a match or competition.”

2.2 Rule E5(b) states as follows:

“A Participant shall immediately report to The Association any offer made to him or any Participant of any bribe, gift or reward or consideration of any nature, or any other incident, fact or matter, which is related in any to seeking to influence the outcome or conduct of a match or competition contrary to paragraph (a) above.” [emphasis added]

The reason why the requirement under Rule E5(b) is to report an approach “*immediately*” is obvious, namely in order to protect the integrity of football, and to retain trust and confidence in the sport.

2.3 The attention of the Regulatory Commission was also drawn to Rule 6.9 of the Regulations for Football Association Disciplinary Action, 2015/16, which creates a presumption of correctness relating to findings in earlier criminal or civil proceedings as follows:

“Where the subject-matter of a complaint or matter before a Regulatory Commission has been the subject of previous civil or criminal proceedings, the result of such proceedings and the findings upon which such result is based shall be presumed to be correct and true unless it is shown, by clear and convincing evidence, that that is not the case ...”

3. The charges

- 3.1 All three Participants face a single charge relating to the 2013/14 season, namely of misconduct pursuant to Rule E5(b). TW alone faces a second charge pursuant to Rule E5(b) relating to the 2012/13 season (when there was no material difference in the applicable Rule).
- 3.2 The three Participants all admitted the charges against them, as they were quite properly advised to do. The offence in question is one of strict liability and the requirement to report an approach "*immediately*" could not be satisfied by any of them. They each provided brief statements and requested a personal hearing to show the seriousness with which they took matters.

4. Evidence

- 4.1 The FA's case draws heavily from the papers and evidence in the criminal proceedings, together with the convictions of DF and MS. From an evidential standpoint, central to both the criminal charges and these disciplinary proceedings are WhatsApp messages that passed between DF and each of the three Participants on an individual basis. The FA conducted separate interviews with each of them following the conclusion of the criminal trial. In addition, a witness statement was prepared by The FA's Integrity and Anti-Corruption Manager, Ian Ryder, dated 2nd December 2015.
- 4.2 At the hearing before the Regulatory Commission, Mr. Ware amplified his Opening Note, before Mr. Barker mitigated on behalf of the Participants. None of them gave oral evidence, there being no requirement to do so. Save for any previous encounters on a football pitch, the three had not met previously.

5. Zephaniah Thomas

- 5.1 ZT first met DF when there were both playing for Rotherham United FC. ZT was an apprentice and DF's 'boot boy'. DF was a senior professional.

5.2 In August 2013, ZT was playing trial matches for Tranmere Rovers FC. He was also playing for Sheffield FC in the Northern Premier League. During that month, messages were exchanged on social media between ZT and DF unrelated to match fixing.

5.3 Then, on 24th November 2013, DF made the following offer to ZT:

“Do summat for me tonight, speak to him n see if them man would throw a game, 4/5 players 2K each for Tuesdays game, don’t say ive been askin, if them man r up to it il give you 500quid on wed.”

5.4 The clear and unambiguous nature of the offer could have left ZT in no doubt as to what DF was proposing. ZT responded seven second seconds after he had received DF’s message in the following way:

“If I can get his number I will let I kno”

5.5 The exchange related to a forthcoming match between Guiseley FC and Worcester FC on 26th November 2013. There is no evidence that the player who was the subject-matter of the exchange was ever approached, or that he is implicated in any criminal activity.

5.6 The WhatsApp conversation between DF and ZT on 24th November 2013 then turned to another Club, Harrogate Town FC, who were in the same division as Guiseley. DF said this to ZT:

“Make a couple of calls to me now fam, get the ball rolling; and Come into business with me.”

ZT replied: *“Let me see what I can do”*

5.7 During his police interview, ZT said that he answered in the way he did because he did not wish to appear weak and scared by saying “no” to DF. ZT also told the Police that he did nothing about the offer. He did not contact any players, despite indicating that he would.

5.8 The mitigation advanced on behalf of ZT followed these two themes. It was supplemented by a number of points that Mr. Barker made, and which were common to all three Participants:

- (i) Although they had pleaded guilty to the charges, none of them had believed that they had done anything wrong. They had admitted the charges on the narrow ground of their failure to “immediately” report to The FA the approaches they had each received.
- (ii) They were all cynically targeted by DF who knew them as young players who had played under him, two of whom had cleaned his boots as apprentices. Further, all three were playing non-league football and earning very modest sums, making the prospect of earning money for fixing matches more attractive than players in the upper levels of the football pyramid. DF must have known that they would be more vulnerable to the approaches that he made.
- (iii) They were all unaware that they had a positive duty to report such an approach under The FA’s Disciplinary Rules and Regulations. Although The FA may send out materials to Clubs, the reality is that players are not properly educated as to what is required of them, particularly at semi-professional level. Mr. Barker pointed to the *Guidance to Clubs* and said that the requirement to report an approach relating to match-fixing is “tucked away” in the text, with no reference to The FA’s Integrity Hotline, or any number to telephone in the event of an approach.

- (iv) The Participants were not worldly-wise and, in the absence of any education or guidance, Mr. Barker asked rhetorically: how do you handle a situation like the one they found themselves in? He argued that it may seem an easy question to answer after you have found out about a criminal conspiracy with Southern Asia connections. It is a different proposition when young players are having a conversation with a senior former professional player to whom they are subordinate, and suddenly the latter drops into the exchange the offer of a bribe.
- (v) All three Participants, in their own way, had attempted to distance themselves from DF's advances, in a situation when they feared saying an outright 'no'.

6. Taylor Weir

- 6.1 TW and DF were both players at Hereford United FC in 2011.
- 6.2 In November 2013, TW was playing for Worcester City FC, whom he had recently joined from Gloucester City FC. During that month, he communicated with DF via WhatsApp. Those exchanges led to him attending voluntarily to be interviewed by the police.
- 6.3 In his first police interview, TW was asked about matters relating to the exchanges between him and DF in 2013. TW volunteered that DF had made an offer to him of "5K" and that "*That's what he offered me first time.*" It transpired that this was a reference to a match between Guiseley and Worcester in November 2012 which had ended in a 3-3 draw. There was no social media evidence to substantiate the precise nature of the exchange that took place relating to this earlier offer, which TW did not report to anyone, but which he says he rejected and did not act upon.

6.4 In their WhatsApp exchanges in August 2013, there is reference to a sum of £200 which DF owed TW. In his police interview, TW said that the message related to a loan that he had made to DF. It is not suggested by The FA that the £200 is related in any way to match fixing. Despite DF making promises that he would repay the loan, he failed to do so. This informed TW's response when DF made a further approach to involve him in match-fixing in November 2013, and which related to the self-same fixture between Guiseley and Worcester as the one that had ended in a high-scoring draw a year earlier.

6.5 On 24th November 2013, two days before the match between Guiseley and Worcester, DF made concerted attempts to recruit TW, which included the following offer:

"will 3 of ur boys b up for making money, 2k each."

DF's cynicism extended to him referring to players who *"... will wanna make money, Xmas is coming up."*

6.6 TW's initial response was to say that he did not know if he was playing and that he was carrying an injury. DF persisted and TW provided him with the names of several players. Again, there is no evidence or suggestion that any of the players in question were ever approached, or that they participated in any criminal activity. TW claims that he was simply trying to get DF to turn his attention to other people and to leave him alone. His concerns over the loan monies that DF owed him appear a little later during the exchange: *"When will u have that money?"*. None of it has been returned to him.

6.7 The match between Guiseley and Worcester on 26th November 2013 ended in a 0-0 draw. DF was arrested by police the following day.

6.8 On 28th November 2013, the day after DF was arrested, TW attended at his Club's ground where he spoke to both his Manager and Sports Therapist (the latter also being a police officer). That led to a statement being made and TW's voluntary attendance at a police station to be interviewed.

6.9 In his FA interview on 27th August 2015, TW accepted that he did not report the first approach that DF made to him in November 2012. He stated that he did not want to get involved in what DF was suggesting. The following excerpt was specifically drawn to his attention:

"I knew what I had to do. Didn't do it, simple as that. As in telling someone. Obviously, I didn't think anything of it. Just thought 'Let them do it'. Well not let them do it but like, I'm not getting caught for that, simple as that."

6.10 TW said later on in the interview that he was shocked and "gobsmacked" that DF was involved in match-fixing. He was asked about the second approach:

"Okay. When he approached you on the Sunday, did you think about telling anyone at the club or anything like that?"

TW replied: *"Well, no, because I wasn't going to do it."*

6.11 That response supports Mr. Ware's argument that if DF had not been arrested, TW would not even have told his Club, let alone the police or The FA, about either of the approaches that had been made to him. The fact that he eventually did so was prompted by his fear that he might become involved in the investigation, and implicated in match-fixing. It was self-serving and not motivated by a desire to protect the integrity of the game. If there was any doubt about this, the colourful reference in the contemporaneous evidence to the need to "cover arses" dispels it completely.

7. Scott Spencer

7.1 SS first came into contact with DF when the former was a scholar at Oldham Athletic FC. At the time, DF was in the first team and Spencer was his 'boot boy'. In 2011, they both played for Lincoln City FC. By November 2013, SS was playing semi-professional football for Hyde FC.

7.2 On 21st November 2013, the pair were in contact on WhatsApp. DF said this to SS:

"u lot should make some money out of this lad. Easy money."

Later on in the same day, DF said this to SS:

"Check this out, 4 goals in a game, 2 either half n u guys can get 2k each, win, lose or draw";

"Friend of mine does betting, fuckin hell u guys can't win for shit so u may as well make some p's"; and

"Av a word with the lads u trust tho pal let me know. If like 4/5 of u agree we can try for Saturdays game".

SS replied *"Sweet"*, which clearly implies that he knew precisely what was being suggested. However, he shortly followed this by saying:

"Mate u asked at the wrong time. We just had a meeting getting us all together. Going for the win ..."

Although that statement is capable of being interpreted to suggest that his response might not have been the same if the request had been timed differently, SS's case is that he was simply trying to fend DF away, without saying 'no' in terms.

- 7.3 Following DF's arrest on 27th November 2013, SS exchanged messages about them with the Hyde first team Manager. As with TW, we are satisfied that the timing of SS's actions was motivated by self-interest, not by any genuine concern about protecting the integrity of the game.
- 7.4 In his FA interview on 13th August 2015, SS stated that he did not believe that DF's offer was serious, and instead regarded it as a joke. The exchanges between them on WhatsApp undermine that claim and show that SS knew exactly what DF was proposing, and that he was being serious. There is nothing in SS's replies to suggest that he was treating DF's overtures as some kind of joke. On the contrary, the fact that he made an excuse not to accept the offer shows that he treated it seriously.

8. Sanctions

- 8.1 At the time when these offences were committed, there was no FA guidance as to the sanctions to be imposed for a failure to report an approach to fix a match. Such guidance was introduced at the start of the 2014/15 season.
- 8.2 Mr. Barker said that the relevant *Sanction Guidelines* had not been agreed by all stakeholders, including the PFA, and that they were the subject of ongoing discussion. In particular, the recommended range of sporting sanctions in the *Guidelines* for a failure to report an offence under E14 is from 6 months to 5 years. Mr. Barker contends that the lower end of the range should be zero, to enable discretion to be fully exercised by a Regulatory Commission in the circumstances of a particular case. Ultimately, the guidance is just that; guidance, and it not binding on a Regulatory Commission. The fact that it was not in place at the time when the offences in question were committed means that the range of sanctions at the disposal of this Commission are those generally set out in section 8 of the Disciplinary Procedures. Nevertheless, the *Guidelines* did provide some useful assistance to us, as will be shown.

- 8.3 When determining the sanctions to be imposed in this case, our starting point is the paramount requirement to preserve the integrity of football as the national game. There are so many who have an interest in the sport, including those who rely upon it for a living, including players, clubs and their employees, commercial organisations, together with the millions who simply play or watch the game for enjoyment, at every level. A collective sense of trust and confidence in the knowledge that the outcome of a match was a fair one and untainted in any way by bribery or corruption is absolutely essential to the credibility of the sport.
- 8.4 The three Participants in this case were undoubtedly placed in a very difficult position by an unscrupulous, exploitative and persistent individual. Mr. Barker likened it to grooming. In our judgment, it did not go quite that far, but there seems little doubt that the Participants were all carefully targeted. In the circumstances, their unwillingness to 'grass' on DF may seem understandable to some. To then find themselves not only the subject of disciplinary action, but on the receiving end of sporting sanctions, may seem even more unjustifiable.
- 8.5 That view, though, fails to have regard to the consequences of passively standing by and doing nothing to prevent corrupt practices from taking place. Doubt and suspicion over the result of a match are the first signs of an illness, which will quickly become a cancer unless it is radically treated. Far too much depends, and far too many rely, on the maintenance of the good reputation of football to permit that to happen. Everyone involved in the sport therefore has a positive duty to immediately report an offer of bribery to fix a match to The FA as the governing body. That should be the intuitive response of everyone who is interested in preserving the integrity of the game. It is that objective which underpins Rule E5(b). The inevitable consequence is that a failure to comply with the strict requirement that it imposes will lead to disciplinary proceedings, as has happened here.

- 8.6 We therefore concluded that a simple warning, by itself, was an inadequate sanction in the case of any of the Participants, notwithstanding the mitigating features. Instead, a sporting sanction is indicated in every case of this kind, both punitively and to act as a deterrent. It does not follow that the Participants are being made scapegoats, a concern which Mr. Barker expressed. Compliance with the requirements of Rule E5(b) will, we suspect, require a cultural shift on the part of many who are unwilling to expose the criminality of others, for whatever reason. Strong deterrent sanctions are likely to be necessary to achieve such a change in attitudes, however onerous the prospect of it may be.
- 8.7 The other key factor, and one which should at least reduce the need for disciplinary action to be taken, is for players to receive adequate instruction and guidance as to what they are, and are not allowed, to do. In particular, the circumstances in which they have a positive duty to act upon an approach of information that they may receive. To that end, The FA clearly has a responsibility, as do other stakeholders including the PFA. Players themselves, at all levels, must take personal responsibility for acquainting themselves with their obligations in relation to integrity matters. The potential weak link in the chain of information is reliance upon clubs to ensure that the key requirements of any guidance are passed on to players. At a semi-professional level, where clubs have less well developed infrastructure, we suspect that there is some force in Mr. Barker's point that education does not happen, or is imperfect.
- 8.8 Nevertheless, even if the three Participants in this case may not have been aware that Disciplinary Rules and Regulations imposed a positive duty on them to report DF's approaches to The FA, the extremely serious nature of what he was proposing ought to have left them in no doubt that they should at least report matters to their Club at the earliest opportunity. None of them did so until they were confronted with the prospect of personal difficulties.

8.9 We have taken into account all of the collective and individual submissions made on behalf of the Participants. In the absence of any previously decided cases, or other comparables, we found the factors which the Sanction Guidelines set out to be a useful (non-exhaustive) checklist and make the following observations:

- (i) As has been accepted by The FA, none of the Participants were involved in any actual, or potentially corrupt, activity relating to the offences committed by DF and MS. They were, though, the recipients of offers and information which would have led a reasonable and conscientious person to conclude that corrupt activity was being contemplated;
- (ii) The approaches that DF made to the three Participants were credible (as they all understood them to be);
- (iii) No threats were made to the personal safety of any of the Participants and none of them have ever claimed, or suggested, that their safety might have been at risk if they had reported the approaches;
- (iv) The personal circumstances of the Participants were very similar; they all earned very modest incomes and either lived at home with their parents or with the parents of a girlfriend; they each paid contributions for 'keep' and/or domestic bills. There were other monthly outgoings such as mobile phone, car and gym expenses;
- (v) We were told that the Participants all had 'clean' disciplinary records (at least insofar as corruption and integrity matters are concerned);
- (vi) All three Participants were in their early 20's at time of the approaches;
- (vii) All three have assisted the police and The FA in their investigations;
- (viii) All three made timely and appropriate admissions to the charges (albeit on advice from their PFA representative); and
- (ix) The overall impact of the offences which the Participants have admitted on the reputation and integrity of the game is relatively small, and at the opposite end of the spectrum to those who sought to recruit them.

- 8.10 Having concluded that, in principle, a sporting sanction was indicated in all three cases, the question that we had to decide was the duration of the sanction, the extent to which it should be activated or suspended and, if the latter, the length of the period of suspension.
- 8.11 The fact that they none of the Participants was ever the subject of express or implied threats by DF if they refused to accept his offers, or informed anyone in authority about them, is a significant consideration in our declining to find that there were exceptional circumstances which justified suspending the sporting sanction in its entirety. They each received credible offers of bribes, which they took seriously, but chose to ignore. By implication, they were saying that it was someone else's problem. In doing so, they abrogated any personal responsibility for upholding the integrity of the sport which provides them with both employment and enjoyment. Corruption is everyone's problem.
- 8.11 We did, however, make substantial allowance for the mitigating factors and conclude that in all three cases the activated element of the sporting sanction should be significantly less than the suspended element. In each case, the overall period of suspension reflects the seriousness of the offence(s) and is intended to focus the mind of each Participant on their responsibilities over an extended period of time, and not just the comparatively brief period of actual suspension.
- 8.12 Further, having regard to their very modest incomes, and the fact that they will each suffer a financial loss in not being able to play football for a period of time, the Commission took the view that the imposition of a separate financial penalty was not justified against any of the Participants. Likewise, the costs of the Regulatory Commission.

8.13 We regarded TW's offences to be the most serious of the three. He had two opportunities to report approaches that DF made to him to become involved in match-fixing, a year apart. If he had reported the first approach, if only to his Club, there is a possibility that the matter would have been brought to the attention of the police and/or The FA and that DF's activities would have been investigated and exposed sooner. If that had happened, the approaches which DF made to all three Participants in November 2013 may have been avoided. That possibility would have turned into a probability if TW had complied with the requirement under Rule E5(b) in November 2012 and reported to The FA the first approach that DF made to him.

8.14 A further aggravating feature of TW's case is that during the WhatsApp exchanges with DF on 24th November 2013, TW gave him the names of several players after the offer of bribe had been made to him. This rather detracts from his reasoning that he did not want to alienate DF because the latter owed him money for an unconnected loan. There were more neutral ways of keeping him at arms' length if that is what TW was attempting to do.

8.15 As has already been noted, TW admitted in interview that he knew that he should have reported DF's first approach - and, by implication, the second - to his Club. The only reason that he gave was that whatever DF was trying to do did not involve him. In other words, indifference.

8.16 We considered ZT's single offence to be less serious than those of TW, but more serious than that of SS. The aggravating features of ZT's response was the fact that he offered hope to DF that he might become involved and, more particularly, that he also provided names to DF of players who he thought might be interested. As before, there is no suggestion that the players in question did become involved in any criminal activity.

8.17 The position of SS is the least serious, in our view. Although his response to DF's proposal was somewhat opaque, he managed to fend him off with the excuse that he gave. In his case, DF does appear to have accepted the implied 'no' for an answer.

8.18 Taking into account all of the above factors, and applying appropriate weight to them, we impose the following sanctions, to take effect on 28th January 2016:

Tyler Weir

There will be an immediate suspension from football and all football related activity for a period of 6 months of which 2 months will be applied immediately with the balance of the suspension itself being suspended until 1st July 2018.

Zephaniah Thomas

Subject to the qualification which follows, there will be an immediate suspension from football and all football related activity for a period of 4 months of which 6 weeks will be applied immediately with the balance of the suspension itself being suspended for 2 years. The said suspension shall not apply to ZT's part-time job working with schools, insofar as the same involves coaching football to school children.

Scott Spencer

There will be an immediate suspension from football and all football related activity for a period of 3 months of which 1 month will be applied immediately with the balance of the suspension itself being suspended until 1st October 2017.

Further, in the event that any of the Participants should commit a disciplinary offence relating to match-fixing, betting, or any other integrity matter at any time during their respective suspension periods, the suspended element of the sporting sanction in the case of that Participant is liable to be activated, in whole or in part, at the discretion of the Regulatory Commission which hears the later case, in addition to any sanction which it may impose for the subsequent offence. For the avoidance of doubt, that power shall exist irrespective of whether the Regulatory Commission is convened before or after the relevant period of suspension has expired.

8.19 The Commission further orders that all hearing fees shall be forfeited, but makes no order as to the costs of the Commission.

8.20 This decision may be appealed in accordance with the relevant regulations within the prevailing FA Handbook.

Dated this 1st day of February 2016

Craig Moore, Barrister, Chairman of the Independent Regulatory Commission

Shaun Turner, Football Association Council Member

Stuart Ripley, Independent Member of the Football Association Judicial Panel

Appearances

For The Football Association

Mr. Christopher Ware, Counsel

For the Participants

Mr. Simon Barker, Professional Footballers' Association

Observer

Mr. Alan Knight, Independent Member of The FA's Judicial Panel

Secretary to the Regulatory Commission

Mr. Paddy McCormack, FA Judicial Services Manager