

PERSONAL HEARING

THE FOOTBALL ASSOCIATION

and

Mr RICHARD DES VOEUX

(Registered Intermediary)

THE DECISION AND REASONS
OF THE FA REGULATORY COMMISSION

<u>Content</u>	<u>Page</u>	<u>Paragraphs</u>
Introduction	3	1 – 4
The Charge	3	5 – 12
The Reply	4	13 – 14
The Regulatory Commission	5	15
The Hearing & Evidence	5	16 – 35
Burden of Proof	10	36
Our Findings	10	37 – 46
Previous Disciplinary Record	12	47 – 48
The FA’s Representation on the Sanction	12	49 – 55
Mitigation	13	56
The Sanction	14	57 – 69

Introduction

1. On 08 February 2016, The Football Association (“The FA”) received an EMail from Reading FC (the “Club”), following a telephone conversation from the previous week, alleging that Mr Richard Des Voeux, a registered Intermediary, had made an approach to an under-13 Academy player of the Club, “██████████”
2. The Club submitted the screenshots of text messages alleged to have been between Mr Des Voeux and ██████████
3. The Club was prepared to accept that the approach from Mr Des Voeux was not motivated by any other incentives (e.g. safeguarding concerns) other than for financial gain (e.g. to enter into a Representation Contract with the Player).
4. The FA investigated the allegation, which included a formal interview with Mr Des Voeux on 03 March 2016 at Wembley Stadium.

The Charge

5. On 31 May 2016, The FA charged Mr Des Voeux with misconduct pursuant to FA Rule 1(b) (the “Charge”).
6. It was alleged that Mr Des Voeux had breached Regulation B8 of the FA Regulation on Working with Intermediaries (“the Regulations”) in relation to an approach involving ██████████ ██████████ (the “Player”) of Reading FC Academy on 24 January 2016 and on a further unspecified date thereafter.
7. It was alleged that Mr Des Voeux made a direct approach to enter into an agreement with the Player, then aged 13 years old, in relation to an Intermediary Activity.
8. Regulation B8 of the FA Regulation on Working with Intermediaries (p. 289 of the FA Handbook Season 2015-2016) states:

“An Intermediary must not, either directly or indirectly, make any approach to, or enter into any agreement with, a Player in relation to any Intermediary Activity before

the 1st day in January of the year of the Player's sixteenth birthday."

9. Regulation F1 of the FA Regulation on Working with Intermediaries (p. 294 of the FA Handbook Season 2015-2016) states:

"Any breach of these Regulations shall be Misconduct in accordance with Rule E1(b). Any charge of Misconduct shall be dealt with in accordance with the Rules of The Association and shall be determined by a Regulatory Commission of The Association."

10. Rule E1(b) of the Rules of The Association (p. 112 of the FA Handbook Season 2015-2016) states:

"1 The Association may act against a Participant in respect of any 'Misconduct', which is defined as being breach of the following:

...

(b) the Rules and regulations of The Association and in particular Rules E3 to E28 below..."

11. The FA included the following evidence it intended to rely on in support of the Charge:

11.1. Witness Statement of Mr Ian Ryder, the Integrity and Anti-Corruption Manager at The FA, dated 23 February 2016;

11.2. Record of Mr Des Voeux's Interview, dated 03 March 2016; and

11.3. EMail Correspondence and Screenshots of text messages (Exhibit IPR/1).

12. Mr Des Voeux was required to respond to the Charge by 08 June 2016 but an extension was granted.

The Reply

13. On 14 June 2016, Mr Des Voeux responded by denying the Charge and requested an opportunity to attend a Commission for a Personal Hearing (the "Reply").

14. In subsequent EMail correspondence with The FA on 22 June 2016, Mr Des Voeux made a submission, the summary of which was that:
 - 14.1. He completely denied that he was liable in any way;
 - 14.2. He had been unable to contact witnesses in the limited time provided; and
 - 14.3. He confirmed that there were no other documents, evidence or material that he intended to rely on.

The Regulatory Commission

15. The following members were appointed by The FA to this Regulatory Commission (“the Commission”, “We/us”) to hear this case:
 - Mr Thura KT Win JP (Chairman);
 - Mr David Pleat; and
 - Mr Gareth Farrelly.Mr Paddy McCormack, The FA Judicial Services Manager, acted as Secretary to the Commission.

The Hearing & Evidence

16. We convened at 11am on 25 July 2016 at Wembley Stadium for this Personal Hearing (the “Hearing”).
17. We had received and read the bundle of documents from both parties prior to the Hearing.
18. At the Hearing, The FA was represented by Ms Amina Graham, Head of the FA Regulatory Advocates’ Department, and Mr Des Voeux represented himself.
19. Ms Graham opened the case summarising the relevant events of the case, the complaint from Reading FC, and alleged that the ultimate intention of Mr Des Voeux was to enter into a representation contract with ██████████ at a future date.
20. Ms Graham also drew our attention to various meanings: “approach” having its

normal and ordinary meaning; both “Intermediary Activity” and “Transaction” having the meanings as per the Definitions in the FA Regulations on Working with Intermediaries (pp. 295 – 296 of the FA Handbook Season 2015-2016).

21. Ms Graham emphasised that the principal issue was Mr Des Voeux making a direct contact with a 13-year-old player and highlighted the order of events as:

21.1. Mr Des Voeux made a call to a mobile phone, which was answered by

██████████

21.2. Mr Des Voeux sent text messages subsequently;

21.3. In the FA’s interview, Mr Des Voeux admitted to speaking with ██████████ but stated that the purpose was to speak with ██████████ parents; and

21.4. The Charge was issued and Mr Des Voeux denied the Charge.

22. In opening his case, Mr Des Voeux told us that:

22.1. He was not intending to contact a minor and regretted it immediately;

22.2. He has a spotless reputation with no previous charges of any kind and he was completely open in his interview;

22.3. He made a call on 24 January 2016 which ██████████ answered and ██████████ asked him to call back;

22.4. ██████████ mother wished to speak to him but he did not know why. However, generally, the parents desire to speak to the Agents;

22.5. He is in complete support of the Regulations;

22.6. Unfortunately, the mobile number he called was not ██████████ mother’s;

22.7. He followed the Regulations and did not discuss anything with ██████████

22.8. Responding to ██████████ text message was a genuine mistake but he did not believe it constituted a “contact”;

- 22.9. He made a single call of around 2 minutes speaking with [REDACTED] and there was no discussion on the Intermediary Activities;
- 22.10. If the offence is one of strict liability then it was a single mistake;
- 22.11. The second call was responding to [REDACTED] request;
- 22.12. The text messages on 26 January 2016 were follow up messages; and
- 22.13. His reputation is singularly the most important thing for him.
23. In cross-examination by Ms Graham, Mr Des Voeux told us:
- 23.1. He was a solicitor, which he no longer practiced, and became managing director of Sport 37 Limited in August 2011, which he owns 50% with a long standing partner;
- 23.2. The business looks after the long term management of players and generates its income through representing talented players and scouting;
- 23.3. The company has a number of players on its book and representation contracts are required to earn the income;
- 23.4. He had seen [REDACTED] play many times and had also heard from other people that [REDACTED] is a good, promising, outstanding player;
- 23.5. He initiated to contact [REDACTED] mother, and he had also heard that [REDACTED] mother wanted to speak with him;
- 23.6. He had never had contact with [REDACTED] mother previously and he wanted to advise her how the agency works;
- 23.7. He admitted he did not mention in his interview that [REDACTED] mother was wanting to contact him;
- 23.8. He did not know how he got the mobile number but, when he called, he spoke to [REDACTED] first. [REDACTED] then sent a text message and he replied to it, as he thought it was only courteous to respond;

- 23.9. There are unscrupulous Agents out there and he wanted to let them know that he wants to deal with things in a correct way and that he is a “very correct person”;
 - 23.10. He did not want to speak to the Club as he did not want to be associated as an intermediary connected to the Club;
 - 23.11. He did explain to ██████ that he is an Agent and admitted that the messages were directed to ██████
 - 23.12. The purpose of the initial telephone call was to make contact with one of ██████ parents to allow a sensible long term contact with the parents;
 - 23.13. He denied having a commercial interest;
 - 23.14. He had seen ██████ who is an outstanding player, and he had made the contact to speak to ██████ parents;
 - 23.15. He admitted initiating the first telephone call and the last text message but his other text messages were responding to ██████ and
 - 23.16. He admitted that it would be positive to establish contact with the parents early and form a relationship with the parents for the future. They [the company] do not traditionally / normally do this but, on this occasion, they did – mistakenly.
24. In answers to our questions, Mr Des Voeux told us:
 - 24.1. The parents did not contact him;
 - 24.2. He did not tell ██████ or his parents to speak to the Head of Academy at the Club; and
 - 24.3. The agency currently represents 12 to 13 players with 5 players who are under-18 and the remainder are 20 to 22 year olds.
 25. We also received Mr Des Voeux’s interview on 03 March 2016 and screenshots of text messages as evidence (as in paras 11.2 and 11.3).

26. In closing, Ms Graham summarised that there were three issues:
- 26.1. Firstly, was there a direct approach..?
 - 26.2. Secondly, was that approach in relation to Intermediary Activity..?
 - 26.3. Thirdly, was the approach before 1st of January in the year of the Player's 16th birthday..?
27. On the first issue, the 'approach' is having the normal and ordinary meaning. The telephone call and text message were a direct approach to ██████████ This was not disputed by Mr Des Voeux – albeit the intention was disputed – that he spoke to ██████████ and all text messages sent were to ██████████ and the last text message started with "██████████
28. On the second issue, it was The FA's case that the intention was to enter into a representation agreement for commercial gain. Mr Des Voeux had seen ██████████ an outstanding player, and wanted to build a relationship with his parents. Mr Des Voeux said in his interview:
- 28.1. *"it is very, very important to establish some form of contact with young player's parents. Yes, twelve or thirteen is arguably an age, but obviously a player can sign in certain situations from 1st January in the year they turn fifteen. So they could pretty much be a young fifteen when they sign, even though those situations are fairly rare. My experience has been that if you leave it until a player is in a position to sign, nine times out of ten they have signed and usually with some bad agent who you don't admire very much. Our way of working is to try and make some form of contact with that player's parents...";*
and
 - 28.2. *"if you see a really super-talented young player just establish some form of relationship with their parents. That they realise you're good people doing a good job. They can take time to take references in you. That process will go on for a couple of years, or whatever, when you're not acting as the agent of the young player in any way. You're not breaking any regulations, you just have*

established some form of contact with the parents.”

29. Therefore, the purpose of the contact was to establish contact with the parents for ██████ to sign a representation contract in the future – this was the ultimate objective.
30. On the third issue, ██████ is 13 years old and Mr Des Voeux had seen ██████ playing in the Club’s Academy under-13s team. Therefore, it was not in the year of ██████ 16th birthday.
31. Ms Graham also drew our attention to Mr Des Voeux’s credibility as there were some differences between Mr Des Voeux’s live evidence and his comments in the formal interview.
32. In closing, Mr Des Voeux agreed with the three issues as stated by Ms Graham.
33. Mr Des Voeux accepted the first issue that he made the direct approach – albeit, it was never his intention – and he was also only responding to ██████ text message. He also accepted the third issue in that ██████ is only 13 years old.
34. However, on the second issue of the contact being in relation to Intermediary Activity, he said a future contract with ██████ was far from his mind and that he was being candid in his interview. He stated that trying to establish a close relationship with parents was not pursuing for Intermediary Activity.
35. Mr Des Voeux confirmed that all the evidence had been heard and that he had a fair hearing. That being the case, we thanked the parties for their contributions.

The Burden of Proof

36. In this case, the burden is on The FA to prove the Charge on the civil standard of the balance of probability.

Our Findings

37. We noted that Mr Des Voeux had accepted both the first (in para 26.1) and third

- issues (in para 26.3) in that he had made a direct approach to ██████ who he had seen play in the Club’s Academy under-13s team (in para 33).
38. We were, however, concerned that Mr Des Voeux continued to communicate with ██████ including initiating the last text message, after he had discovered initially that it was ██████ mobile number that he was contacting.
39. On the disputed second issue of the contact being in relation to Intermediary Activity (in para 26.2), it was not disputed that Mr Des Voeux wanted to make contact with ██████ parents (in para 23.12 and in his interview). It was disputed, however, the reasons for this contact.
40. We also noted some discrepancies between Mr Des Voeux’s live evidence and his comments in the interview, including his failure to mention in the interview that ██████ mother wanted to contact him, which he said in his live evidence (in para 23.7).
41. Mr Des Voeux had admitted in live evidence that “it would be positive to establish contact with the parents early and form a relationship with the parents for the future. They [the company] do not traditionally / normally do this but, on this occasion, they did – mistakenly” (in para 23.16).
42. And, he stated in his “candid” (in para 34) interview, that (in paras 28.1 and 28.2):
- 42.1. *“it is very, very important to establish some form of contact with young player’s parents. Yes, twelve or thirteen is arguably an age, but obviously a player can sign in certain situations from 1st January in the year they turn fifteen. So they could pretty much be a young fifteen when they sign, even though those situations are fairly rare. My experience has been that if you leave it until a player is in a position to sign, nine times out of ten they have signed and usually with some bad agent who you don’t admire very much. Our way of working is to try and make some form of contact with that player’s parents...”;*
and

- 42.2. *“if you see a really super-talented young player just establish some form of relationship with their parents. That they realise you’re good people doing a good job. They can take time to take references in you. That process will go on for a couple of years, or whatever, when you’re not acting as the agent of the young player in any way. You’re not breaking any regulations, you just have established some form of contact with the parents.”*
43. We also noted that his business “looks after the long term management of players and generate its income through representing talented players and scouting” (in para 23.2) and that fundamentally “representation contracts are required to earn the income” (in para 23.3).
44. We were not persuaded by Mr Des Voeux’s assertion that “a future contract with ██████ was far from his mind” (in para 34).
45. Instead, we were persuaded that it was more likely than not, as contended by Ms Graham, that “the purpose of the contact was to establish contact with the parents for ██████ to sign a representation contract in the future – this was the ultimate objective” (in para 29).
46. Based on all above, we found that the Charge proved.

Previous Disciplinary Record

47. As we found the Charge proved, we sought Mr Des Voeux’s previous relevant disciplinary record.
48. Mr McCormack advised us that Mr Des Voeux has no previous record of any kind. We accepted that this was a good previous record.

The FA’s Representation on the Sanction

49. Ms Graham told us that this was the first case of this type and there are no previous sanctions or guidelines to assist us.

50. Ms Graham stated the aggravating factor as being the direct contact with a young child on more than one occasion and there is a need to protect minors from any form of commercial activities.
51. As mitigating factors: there were no negotiations and it was nothing more than preparatory work with the ultimate goal to sign a contract in the future.
52. As Mr Des Voeux denied the Charge and it was subsequently found proven, any credit for a guilty plea would not apply.
53. Ms Graham also provided us with the values of four recent transactions of representation contracts conducted by Mr Des Voeux's company in 2015 and 2016.
54. Ms Graham proposed a suspended sporting sanction, a warning as to future conduct and a financial penalty - all commensurate with the offence as we deemed appropriate.
55. Ms Graham added that according to the Regulation 8.3(d) on the Suspended Penalty, only three-quarters of the penalty could be suspended but, on the facts of this case, The FA would deem it to be at the lowest end of the breach.

Mitigation

56. Mr Des Voeux told us that:
 - 56.1. He would be happy for what he said to ████████ to be said to his own son of 8 years old and no harm had been done to ████████
 - 56.2. He is of good character and has never been in any situation of this kind;
 - 56.3. It was a genuine mistake;
 - 56.4. Having a disciplinary record would be more than punishment enough;
 - 56.5. His company was only set up four years ago and only made a profit for the first time in the last tax year;

- 56.6. A fine would not be equitable, fair or have an impact on the wider game;
- 56.7. He should not be suspended;
- 56.8. It was extremely regrettable; and
- 56.9. He believed he had been held to a different standard than other Agents by the Club.

The Sanction

57. As this was the first case of this type, and there are no sanction guidelines, we needed to consider the nature and seriousness of this type of breach in general and appropriate sanction that would be applicable first, before dealing with this case based on the facts of the case.
58. We deemed this type of breach to be a serious offence and there is a need, and a duty, to protect young children from contact by those who would want to make preparatory work to pursue an Intermediary Activity in the future.
59. We did not feel that a financial penalty alone would be a sufficient deterrent as the financial rewards can be high for representation contracts with young players, which may tempt some Intermediaries to take a chance if the sanction is insufficient.
60. We, therefore, unanimously agreed that a sporting sanction is essential for such a breach. In considering the appropriate length of the sporting sanction, we deemed that an entry level of 112 (one hundred and twelve) days suspension would be appropriate, with the aggravating and mitigating factors of a particular case being reflected in the sanction to be imposed by a Regulatory Commission.
61. In this particular case, Mr Des Voeux denied the Charge, which had been found proven subsequently and, therefore, any credit for an early guilty plea would not be available.

62. We accepted the submissions made by Ms Graham on the aggravating and mitigating factors (in paras 50 and 51). We also took note that Mr Des Voeux has no previous record (in para 48) and his good character (in para 56.2) as mitigation.
63. We were not persuaded though that it was a genuine mistake (in para 56.3) or extremely regrettable (in para 56.8) as Mr Des Voeux had told us, as he did not stop after his initial telephone call but continued to communicate with [REDACTED] via text messages, including initiating the last unsolicited text message.
64. We noted the Regulation 8.3(d) on the Suspended Penalty that Ms Graham referred to (p. 327 of the FA Handbook Season 2015-2016) which states:
- “If the penalty to be imposed is a suspension, no more than three-quarters of any such suspension may be suspended. If the period of such a suspension is a lifetime, the non-suspended period must be no less than eight years.”*
65. Based on the facts in this case and taking into consideration the aggravating and mitigating factors present, we agreed to suspend the maximum three-quarters, as permitted by Regulation 8.3(d) above, of the 112 days suspension that we deemed to be the entry level for this type of breach (in para 60).
66. We took into consideration that Mr Des Voeux is in 50/50 partnership with a long standing partner in his company (in para 23.1) and, therefore, the company could still be trading during Mr Des Voeux’s period of suspension.
67. We also noted Mr Des Voeux’s total football weekly income declared in considering an appropriate and proportionate financial penalty.
68. After considering all the above, we ordered that Mr Des Voeux is:
- 68.1. to serve a suspension of 112 (one hundred and twelve) days from 02 August 2016, 84 (eighty-four) days of which is suspended until 01 September 2017 and to be invoked for a proven or an admitted similar breach during this period;

- 68.2. fined the sum of £1,250 (one thousand, two hundred and fifty pounds);
 - 68.3. contribution to the cost of the hearing of £250 (two hundred and fifty pounds); and
 - 68.4. Warned as to his future conduct.
69. The decision is subject to the right of appeal under the relevant FA Rules and Regulations.

Signed...

Thura KT Win JP (Chairman)

David Pleat

Gareth Farrelly

08 August 2016