IN THE MATTER OF AN APPEAL FROM THE DECISION OF A REGULATORY COMMISSION

APPEAL BOARD: Sir Wyn Williams (Chair) Mr Nicholas Stewart QC and Mr William Norris QC

B E T W E E N:-

THE FOOTBALL ASSOCIATION

Appellant

-and-

DANIEL STURRIDGE

Respondent

DECISION OF APPEAL BOARD

Introduction

1. On 1 April 2019, a duly constituted Regulatory Commission ("the Commission") began hearing 11 allegations of misconduct ("charges") brought by the Football Association ("FA") against the Respondent. All charges alleged breaches of Rule E8 of the Rules of the Association. Following an oral hearing which took place over six days and consideration of detailed written submissions on behalf of the parties, the Commission found 2 of the 11 charges proved (charges 3 and 4); charges 1(a), 1(b), 2, 5, 6(a), 6(b), 7, 8 and 9 were dismissed. On 7 June 2019, the Commission provided written reasons for its decision.

2. There followed an exchange of further written submissions and an oral hearing relating to the appropriate sanctions to be imposed in respect of the charges which had been proved. By a written decision dated 15 July 2019, the Commission determined that the appropriate sanctions were a period of suspension and a fine of £75,000. The period of suspension was expressed thus:-

> "*Mr Sturridge is suspended from taking part in all domestic club football matches including friendlies for a period of six weeks from 17 July. Four weeks of this period are suspended until 31 August 2020 but will come into effect*

immediately if a charge or breach of Rule E8 (or its equivalent) committed on or before 31 August 2020 is brought by the FA against Mr Sturridge and subsequently admitted or proven. If that four-week period of suspension does not come into effect in that way, it will lapse. Accordingly, Mr Sturridge will serve an immediate suspension as described from 17 to 31 July 2019 (inclusive)."

3. The FA now appeals against all but one of the decisions made by the Commission. It appeals against the sanctions imposed upon the Respondent in respect of the 2 allegations it found proved. Additionally, however, it appeals against the dismissal of 8 of the other 9 charges which had been brought before the Commission. There is no appeal against the dismissal of charge 9.

4. The Respondent resists all aspects of the FA's appeal.

5. On 12, 13 and 14 November 2019, we heard oral submissions relating to the Commission's decision to dismiss 8 of the charges brought against the Respondent ("the liability appeal"). In advance of the hearing, we received very detailed written submissions. On 27 December 2019 we distributed to the parties' legal representatives our decision in draft on the liability appeal. We invited them to provide a list of proposed typographical corrections, any proposed corrections to any obvious errors in the substance of the decision and any proposed redactions.

6. On 7 February 2020 we heard oral submissions relating to an alleged obvious error in the substance of our decision together with submissions about what should be the consequence of such an error if established. We also heard oral submissions relating to the appeal brought by the FA against the sanctions imposed by the Commission in respect of charges 3 and 4 and in relation to further charges (5 and 7) which, as we shall explain, we found proved ("the sanctions appeal"). In advance of this hearing we received detailed written submissions relating to the alleged obvious error, the consequences should the error be established and the sanctions appeal.

7. We make it clear that we have taken account of all the written and oral submissions made on behalf of the parties both to us and to the Commission albeit that we mention in this decision only those which we regard as being of obvious importance in explaining our decision.

8. For the sake of clarity, we mention at this stage that in its decision of 15 July 2019 the Commission not only dealt with the sanctions to be imposed in respect of the allegations proved; it also set out, again, the reasons why it had dismissed 9 of the charges. In this decision, all references to the reasons provided by the Commission for dismissing charges and all references to the reasons provided in support of the sanctions imposed are references to the reasons contained within the decision of 15 July 2019.

A. THE LIABILITY APPEAL

The Charges

9. The charges considered by the Commission were set out in a letter from the FA to the Respondent, dated 20 March 2019. Charges 3 and 4 specified breaches of Rule E8(1)(a) of the FA Rules. Charges 1(a), 1(b), 2, 5, 6(a), 6(b), 7, 8 and 9 specified breaches of Rule E8(1)(b). The material parts of those rules are as follows:-

> "*(1) (a) A Participant shall not bet, either directly or indirectly, or instruct, permit, cause or enable any person to bet on –*
>
> *(i) ...*
>
> *(ii) any other matter concerning or related to football anywhere in the world, including, for example, and without limitation, the transfer of players, employment of managers, team selection or disciplinary matters.*
>
> *(b) where a Participant provides to any other person any information relating to football which the Participant has obtained by virtue of his or her position within the game and which is not publicly available at that time, the Participant shall be in breach of this rule where any of that information is used by that other person for, or in relation to, betting.*"

10. Rule E8(1)(c) provides a defence to a charge under Rule E8(1)(b) which was referred to before us (as it was before the Commission) as the *"regulatory defence"*. It reads as follows:-

> "*(c) it shall be a defence to a charge brought pursuant to sub-paragraph E8(1)(b) if a Participant can establish, on the balance of probability, that the Participant provided any such information in circumstances where he did not know, and could not reasonably have known, that the information provided would be used by the other person for or in relation to betting.*"

11. The detail of each of the charges faced by the Respondent is set out later in this decision. As we have said, the Commission found charges 3 and 4 i.e. the charges pursuant to Rule E8(1)(a) proved; all the charges pursuant to Rule E8(1)(b) were dismissed.

Undisputed Evidence before the Commission

12. The Respondent became a professional footballer in or about 2007. Between 2007 and January 2018 he played regularly in the Premier League and he represented England on a number of occasions. However, by January 2018 (which coincided with the transfer window in that month) his career was at something of a crossroads. In summary, the Respondent no longer commanded a regular first team place at Liverpool and, in consequence, he was anxious to explore his options for leaving the club, either on permanent transfer or loan, so as to maximise his chances of playing first team football and, again, representing his country.

13. For the whole of his career as a professional footballer up to and including January 2018 the Respondent was very close to his immediate family. His father, Michael, and his uncle, Dean, (Michael's brother) had been professional footballers. Both men had provided advice and support to the Respondent throughout his career. In 2016, Dean began a football agency business and became the Respondent's agent or registered intermediary (it matters not which it was for present purposes). Michael had also acted as an agent for the Respondent. As well as consulting his father and uncle, it was not uncommon for the Respondent to consult his mother and siblings. They were Grace (mother), Leon (brother) and a sister named Cherelle. The undisputed picture which emerges from the evidence is that the Respondent was in the habit of discussing all his important career decisions with all these members of his family before decisions were taken. There is no dispute that in January 2018, when the Respondent was considering a move away from Liverpool, he discussed his options with these family members from time to time.

14. The Respondent has a cousin named Anthon. Before the Commission it was accepted that in January 2018 Anthon was close to Michael, the Respondent's father, but that the contact between Anthon and the Respondent was infrequent.

15. One other undisputed part of the evidence which can be mentioned, conveniently, at this stage is that the Respondent's brother, Leon, had an interest in gambling. In 2016 he had suffered from an addiction to gambling for which he was treated with counselling. In 2018 he was part of a WhatsApp group which included two friends, Matthew Legge and Adam Grocott, who worked for a well-known betting company.

16. On 16 January 2018, Leon celebrated his birthday. During the evening, he went to his parents' home in Sandbach, Cheshire and was joined there by his sister and, late in the evening, by the Respondent. While the parents and siblings were together at the parents' home they discussed the Respondent remaining at Liverpool as well as transfer options which were emerging in that transfer window.

17. By 16 January, two European clubs, Inter Milan and Sevilla, had expressed an interest in acquiring the Respondent's services. In the week preceding 16 January, there had been an article in the Sun newspaper raising the possibility that the Respondent would join Inter Milan and there had been contact between representatives of both Inter Milan and Sevilla and Dean who was acting on behalf of the Respondent.

18. A timeline produced by the FA (Bundle E of the material before the Commission) demonstrates that in this same period i.e. the week leading to 16 January a substantial number of bets had been placed upon what would happen to the Respondent in the transfer window. Many bets had been placed upon the Respondent remaining at Liverpool. A significant number of bets had also been placed on his moving to another club. Of the bets on his moving, some were placed upon him joining other Premier League clubs and others were bets upon him moving to Inter Milan.

19. On 15 and 16 January, in particular, a substantial number of bets were placed upon the Respondent moving to Inter Milan. Even so, on those two days there were also a significant number of bets placed upon him remaining at Liverpool and there were a small number of bets (comparatively) placed upon him joining another Premier League club.

20. The timeline demonstrates that there were a number of telephone calls involving the Respondent and members of his family in the days prior to 16 January. There were also

a number of messages. However, there is no direct evidence that any of the bets placed between 9 January and midnight on 16 January were connected in any way to the Respondent or his family and no suggestion was made to the Commission or to us that such a connection existed.

21. During the early afternoon of 16 January, there was an exchange of messages between the Respondent and Dean in which they discussed whether or not Sevilla was genuinely interested in obtaining the Respondent's services. Those exchanges demonstrate that both the Respondent and Dean were sceptical about whether the interest of Sevilla was genuine and the exchanges ended with the suggestion from the Respondent to Dean that if Sevilla was not interested "*it's gonna have to be Inter innit*".

22. At 7:20pm on 16 January, Daniel Hemmings, a close friend of the Respondent who resided in the USA, sent a message to him saying *"What's up bro, u sent the money?"* The Respondent sent three messages in reply. There was a further exchange of messages between the two men beginning at 8:40pm.

23. After celebrating Leon's birthday at his parents' home the Respondent left either very late on 16 January or in the early hours of the morning of 17 January. At midnight, Anthon opened an account with Paddy Power. At 1:16am, Matthew Legge placed a bet of £50 on the Respondent moving to Inter Milan. Two other persons known to Leon placed bets on that outcome within minutes.

24. At 1:37am Anthon attempted to place a bet with Paddy Power in the sum of £13,830 on the Respondent moving to Inter Milan. That bet was rejected. At 1:43am, Leon telephoned the Respondent and they spoke on the phone for two minutes 38 seconds. At 2:04am, Anthon placed a bet in the sum of £10,000 with Paddy Power on the Respondent moving to Inter Milan. At 2:07am, Daniel Hemmings messaged the Respondent and an exchange of messages then took place. At 2:38am, the Respondent had a Facetime call with Mr Hemmings which lasted ten minutes and 41 seconds. There were further Facetime calls between the two men at 2:49am and 3:39am. The first of those calls lasted for 34 minutes 31 seconds; the second was much shorter, at 1 minute 27 seconds.

25. Throughout 17 January, many messages were exchanged variously between the Respondent, Dean and Michael about interest which was being expressed by Sevilla and Inter Milan in acquiring the Respondent's services. At 12:50pm, messaging between the Respondent and Dean began which continued over a period of about 30 minutes. Those messages included references to the odds being offered on the Respondent moving to Inter Milan. At 1:22pm, Dean sent the Respondent a screen shot from the organisation known as Oddschecker, showing odds of 4/6 on the Respondent moving to Inter Milan. Before the Commission, the FA accepted that these exchanges demonstrated that the Respondent and Dean were checking betting odds to see what light they shed on the likelihood of the Respondent moving to Inter Milan. It was never suggested by the FA that this exchange of messages demonstrated that the Respondent and/or Dean were contemplating betting on his moving to Inter Milan.

26. At 7:28pm, Dean had a telephone call with Michael which lasted 1 minute 16 seconds. There was a second call between the two men within seconds of that call ending, which lasted a further 34 seconds. Three minutes later, there was a brief exchange of messages between Dean and the Respondent in the following terms:-

Dean to Respondent	I AM AMAZED AT PEOPLE LIKE YOU ARE ABOUT GAMBLERS.
Dean to Respondent	Your dad just said what's happening!
Dean to Respondent	I have sent all three of them the same thing I sent you!!!
Respondent to Dean	LOL SMH.

27. On 18 January 2018, Dean, Michael and Clifford Bloxham (a senior official with the sports marketing agency known as Octagon) travelled to Milan to meet representatives of Inter Milan. In the morning, Dean sent the Respondent a message to inform him that he had arranged to meet a representative of Sevilla the following day.

28. At 1:49pm, the Respondent messaged his brother, Leon, asking "*What's the price on me going to Sevilla?*". Within seconds he had sent two more messages saying "*Cause I'm considering there more than inter if they put the money up"* and *"Spanish League better*

for me". Shortly afterwards, Leon sent two messages to the effect that he could find no odds. Within the following few minutes, Leon attempted to telephone Matthew Legge and there were 5 bets placed upon the Respondent moving to Sevilla. At 2:03pm, the Respondent messaged Leon "*ask a bookmaker or someone you know and find out*". More or less immediately, Leon called Matthew Legge twice but in all probability failed to reach him. Over the next 20 minutes or so there were 9 bets placed on the Respondent moving from Liverpool to Sevilla and 1 bet placed on him remaining at Liverpool. One of the bets placed on a move to Sevilla was a bet of £15 by Matthew Legge.

29. At 2:13pm, Leon telephoned the Respondent. The call lasted 1 minute 12 seconds. There was a further call between the two men, instigated by Leon, at 2:21pm.

30. Late in the evening of 18 January, Dean and Michael having returned from Milan, there were further messages between Dean, Michael and the Respondent. In one message, the Respondent asked Dean "*What's your overall thought process…*". Dean replied "*I think Sevilla always thought Spain.. so I hope he comes with goods tomorrow. Your dad thinks Inter will not follow through with deal… I think they will although they asked questions like they need convincing… so deffo 50/50…*".

31. During the morning of 19 January, there were a number of telephone calls between the Respondent and Dean. At approximately 12:20pm, Leon called the Respondent and the call lasted 3 minutes and 36 seconds. There is no dispute that the two men spoke about the Respondent's options for moving from Liverpool during the course of their conversation. Over the next two hours there were telephone calls between Michael and Leon, and messaging between Dean and the Respondent. At 2:32pm, Dean sent the Respondent a screen shot of a message from a journalist asking if it was right that the Respondent did not wish to move to Inter Milan. When Dean responded that this was not correct and asked the journalist for the source of his information, he was told that it had been written elsewhere "*that [the Respondent] wants Sevilla*". Dean added a comment to the Respondent suggesting that the source for this information may have been a person at Liverpool (thought to be the Sporting Director, Mr Michael Edwards).

32. At 2:37pm, the Respondent messaged Leon as follows:-

"*Put the grand on Sevilla I'll give it to you back if you lose*."

Seconds later, the Respondent messaged:

"*But wait until 6pm*".

After a few more seconds, the Respondent messaged his brother to say:

"*They're having their meeting at 3 so will know for sure my outcome after that*."

33. In fact, Leon did not place a bet of £1,000 upon a move by the Respondent to Sevilla. He did, however, telephone Adam Grocott at 3:54pm and the call lasted 45 seconds. Following the call there was an exchange of messages between the two about betting odds and the exchange included an expression of hope on the part of Mr Grocott that the Respondent would move to Sevilla.

34. At 3:48pm, Dean messaged the Respondent "*going very well playa*". It was common ground before the Commission that this was a reference to a meeting which was then taking place with a representative of Sevilla.

35. At 10:02pm, an exchange of messages began between Leon and the Respondent. They were as follows:-

Leon to Respondent	What's the latest bro?
Respondent to Leon	Still waiting gg
Leon to Respondent	Sevilla said anything?
Respondent to Leon	Looking more like Sevilla than Inter provided Sevilla pay the wages.
Leon to Respondent	It's now 4/1
Respondent to Leon	Which apparently they're going to do.
Respondent to Leon	It'll be higher elsewhere.
Respondent to Leon	Find it and put it on.
Respondent to Leon	I can't see me going anywhere else.
Leon to Respondent	OK Bro I'll do it in morning.
Respondent to Leon	Is the meal off? Chez said it was.

36. In the minutes that followed, Leon attempted to telephone both Andrew Grocott and Matthew Legge. At 10:06pm, Mr Legge telephoned Leon and they spoke for 28 seconds. At 10.16pm, Mr Grocott telephoned Leon and they spoke for 56 seconds.

37. At 10:29pm, Rebecca Grocott placed a bet of £60 upon the Respondent moving to Sevilla. Three other bets were placed upon the Respondent moving to Sevilla that evening by named individuals who were known to Adam Grocott.

38. On 20 January at 11:05am, Leon spoke to the Respondent by telephone for one minute and 51 seconds. At 1:00pm on 21 January 2018, the Respondent messaged Leon to ask him to "*check the price for me to Rome*" and, further, to tell him not to telephone while he, the Respondent, was "*in the car with Christian*". Leon sent a message in reply saying that there was "*no price*". Later that afternoon, there was a telephone call between Dean and Leon which lasted 44 seconds.

39. On Tuesday, 23 January 2018, West Bromwich Albion ("West Brom") made an offer to Liverpool to take the Respondent on loan. On 24 January, Mr Michael Edwards informed Dean that Liverpool had accepted the offer made by West Brom.

40. On 25 January, there was messaging between the Respondent and Anthon. The messaging took place in two phases; one in the morning, beginning at 10:56am; the other in the afternoon beginning at 3:27pm. The first series of messages were:-

Anthon to Respondent	Yo cuz u good
Respondent to Anthon	Here chilling fam
Respondent to Anthon	Wah gwan
Anthon to Respondent	Same uno g is it game over for that thing or still hope fam?

The second phase of messaging consisted of:

Anthon to Respondent	?
Respondent to Anthon	No news
Anthon to Respondent	OK ok

41. On 26 January 2018, a representative of Newcastle United contacted Dean about the Respondent moving to Newcastle on loan. Dean forwarded the message to the

Respondent at 6:00pm. At 9:03pm, Dean sent the Respondent a screenshot of Skybet odds on the Respondent transferring during the January window. The screenshot showed odds in relation to West Brom of 20/1 and Newcastle at 33/1. The attachment was accompanied by a message from Dean "*Big gamble on West Ham from 33/1*!". Approximately one minute later Dean messaged the Respondent "*Get on Newcastle now!*".

42. On 27 January, there were a number of messages between Dean and the Respondent and Leon and the Respondent. Further, there was messaging between the Respondent and a man to whom the Commission referred as "X". That messaging was the subject of Charge 9, with which we are not concerned.

43. During the morning of 28 January, the Respondent telephoned both Michael and Dean. At 11:04am, the Respondent and Dean had a telephone call which lasted 22 minutes 30 seconds. The Respondent and Michael, and the Respondent and Dean were in contact both by messaging and telephone calls during the course of the afternoon. At about 4:00pm, the Respondent travelled to his parents' home in Sandbach. Both his parents, his sister and his grandfather were also at the parents' home. At 4.14pm Dean messaged the Respondent with various items of transfer news and speculation.

44. At 6:21pm, the Respondent spoke to the Manager of Newcastle, Rafa Benitez. At 6:44pm, the Respondent's mother had a Facetime call with Leon which lasted six minutes 21 seconds. At 7:25pm, the Respondent and Alan Pardew, the Manager of West Brom, spoke on the phone for three minutes and 57 seconds.

45. At 7:44pm, there was a WhatsApp audio call between the Respondent and Dean. At 8:03pm, Leon telephoned his mother and the call lasted 2 minutes 31 seconds. Some minutes later, Leon telephoned an acquaintance of his called Naomi Thorpe – the call lasting 23 seconds.

46. At 8:11pm, Anthon attempted to place a bet with Paddy Power on the Respondent moving to West Brom. The proposed bet was the sum of £3,000 at odds of 66/1. Paddy Power rejected the bet. At 8:12pm, Naomi Thorpe attempted to place a bet with Paddy Power on the Respondent moving to West Brom. Her proposed bet of £1,000 at 66/1

was also rejected. It was accepted by Leon in his evidence that this attempt to bet by her was at his instigation. Some minutes later Naomi Thorpe bet the sum of £25 on the Respondent moving to West Brom (at Leon's instigation) and Leon himself bet £30 on the same move. Later that night Leon placed further bets on the Respondent moving to West Brom.

47. At 8:25pm, the Respondent sent messages to Daniel Hemmings which included a request that he "*check online what the price is for me to go to West Brom*". Approximately 40 minutes later, Mr Hemmings replied that he would. There then followed an exchange as follows:

Daniel H to Respondent	I don't even see odds for West Brom
Respondent to Daniel H	Look real quick playa
Daniel H to Respondent	*An attachment was sent showing odds in respect of various clubs, but not including West Brom*
Respondent to Daniel H	Ask for where West Brom at?
Daniel H to Respondent	*An attachment was sent showing the odds of a move to West Brom at 5/6*
Daniel H to Respondent	That shit changed fast
Daniel H to Respondent	*An attachment was sent showing the odds in respect of West Brom at 6/4*
Daniel H to Respondent	Went from 5/6 to 6/4
Respondent to Daniel H	6/4 is better odds than 5/6 btw
Daniel H to Respondent	Yea
Daniel H to Respondent	It is
Daniel H to Respondent	So what u wanna do
Respondent to Daniel H	Odds too short fam

48. At 9:21pm, Mr Hemmings sent the Respondent another screen shot showing odds at 4/1 against the Respondent moving to West Brom. The ensuing messages were as follows:

Respondent to Daniel H	Sky bet?
Respondent to Daniel H	It's worth a flutter e
Daniel H to Respondent	Yea
Daniel H to Respondent	It's better odds
Daniel H to Respondent	Probably got some better ones on other sites

49. From about 8:00pm on January 28, a significant number of bets were placed upon the Respondent moving to West Brom.

50. At 9:57pm, Michael Edwards messaged Dean as follows:-

> "*Evening. Newcastle have sent an office offer to match WBA so have permission to speak to you. Waiting on West Ham. Cheers.*"

51. Thereafter, there were telephone calls between the Respondent, Dean and Michael in which the relative merits of a move to West Brom or Newcastle were discussed but no decision was reached.

52. At 11:47am on 29 January, the Respondent messaged Alan Pardew to confirm that he agreed to a move to West Brom. The legal formalities were completed during the course of the afternoon.

53. At 1:49pm, Anthon made a telephone enquiry of Paddy Power as to the maximum available stake which could be placed upon the Respondent moving. At 2:00pm, Anthon placed a bet of £100 at odds of 3/1 on the Respondent moving to West Brom. During the course of that afternoon, there were a significant number of bets placed upon the Respondent moving to West Brom.

54. During the evening of 29 January the Respondent, Dean, Michael and Tyler Roberts, another professional footballer connected to Dean, went out together for dinner. At 9:59pm Anthon messaged the Respondent sending him a screenshot of an online news article about the Respondent's move to West Brom. Anthon added the comment "*Nooo LOL nah hope it goes well for ya cuz*".

55. At 11:33pm, Michael sent the Respondent a WhatsApp with a screenshot showing Anthon's £10,000 bet on the Respondent moving to Inter Milan. The Respondent did not send a message in reply.

56. We should also record that on 15 February 2018, Daniel messaged Michael informing him:

"*Some dude just told me the horse Square Parts is gonna win at 7:30 and he put 3K on it. Spare Parts is the name.*"

Michael replied:

"*What price is the horse?*"

The following day the Respondent replied to Michael's message of the previous day:

"*It was 2/1 I think. I didn't bet dunno if it won.*"

Michael replied:

"*I lost £1,000 on the horse. I take 5/2 price I watch race it led from front until inside final furlong another horse pass him and he came second.*"

The Respondent replied:

"*WTF*"

Michael then sent the Respondent a screenshot of his betting slip showing a £1,000 bet on Spare Parts at 5/2 with William Hill.

The hearing before the Commission

57. The FA called two witnesses in support of the charges which it had brought against the Respondent. They were Mr David Matthews, a Senior Integrity Investigations Manager, and Mr Stephen Emberson, who had been employed in a similar capacity during the course of the investigation of the Respondent. Mr Matthews and Mr Emberson had, together, conducted interviews with the Respondent on 14 March 2018 and 16 July 2018. They had also undertaken the necessary investigations which had resulted in the production of the timeline (Bundle E), which contained material that had been extracted from the Respondent's mobile phone and records held by a number of bookmakers.

58. In relation to Charges 3 and 4, the FA contended that specific messages sent by the Respondent to his brother Leon on 19 January 2018 (see paragraphs 32 and 35 above)

permitted of only one meaning and constituted a direct instruction by the Respondent to Leon to place bets upon him moving to Sevilla.

59. In respect of Charges 1(a), 2, 5, 6(a) and 8, the FA contended that the Respondent provided information relating to football which he had obtained by virtue of his position within the game and which was not publicly available (referred to by everyone as "*inside information*") to his brother Leon which Leon used, subsequently, for, or in relation to, betting. The FA made the same contention by Charges 1(b) and 6(b) in respect of information provided by the Respondent to his father, Michael. By charge 7 it contended that the Respondent had provided such information to his close friend, Daniel Hemmings, who thereafter used the information for, or in relation to, betting.

60. In relation to Charges 3 and 4, the Respondent did not accept that the messages relied upon, properly understood, constituted an instruction to Leon to bet. In respect of the other charges, he denied that he had provided any information which was properly to be characterised as *inside information* to Leon, Michael or Daniel Hemmings. Further, the Respondent denied that any of those persons had used any information provided by him for, or in relation to, betting. In support of his contentions, the Respondent gave evidence on his own behalf and he adduced oral evidence of fact from Dean, Leon, Clifford Bloxham, Daniel Hemmings, Derek Hemmings and Tyler Roberts.

61. As well as disputing that the ingredients of each offence had been made out, in relation to all charges, save for Charges 3 and 4 to which it did not apply, the Respondent relied upon the *regulatory defence* i.e. he sought to prove on balance of probability that any *inside information* which he provided, either to Leon, Michael or Daniel Hemmings, was provided in such circumstances that he did not know and could not reasonably have known that it would be used by those persons for or in relation to betting.

62. It is worth noting at this stage that an important feature of the case presented to the Commission on behalf of the FA was that it was appropriate for the Commission to take account of all the evidence supporting all the charges when reaching its decisions upon each individual charge. We agree.

63. It does not seem to us that the Respondent sought to resist the contention that the whole of the evidence should be considered when the Commission was reaching its conclusion about a particular charge. Whether that was the Respondent's position, however, matters not in view of the approach which the Commission says it adopted to the evidence as described in paragraph 7 of its decision (against which there is no appeal by the Respondent). That paragraph concludes:

> "*Second, whilst we consider each of the charges separately below, we have not examined any one charge in isolation from the others. Rather, when reaching our decision on any individual charge, we have taken account of the totality of our findings on the facts.*"

We discuss, below, whether the Commission was faithful to this approach when making its decisions on charges 1(a), 1(b), 2, 5, 6(a), 6(b), 7 and 8.

64. A particular feature of the way in which the FA presented its case before the Commission is that it set out to establish that in the period encompassed by the charges there was, in effect, an agreement between the Respondent, his immediate family and Anthon that the Respondent would provide to them information about whether he might move from Liverpool to another club and, if so, what other clubs were interested in him, and that this information would be used by those family members for or in relation to betting on such moves. In effect, the FA was seeking to establish something akin to a conspiracy between members of the Respondent's family with a view to making substantial sums of money from betting. The allegation was that the Respondent provided the relevant information, Leon sourced favourable odds for betting through his links with persons employed by bookmakers, and, thereafter family members and friends placed bets on the strength of the information provided by the Respondent. The central point stressed by the FA was that each of the Respondent and his immediate family knew exactly what the others were doing or were likely to do. In the remainder of this decision we will refer to this alleged agreement as "the family agreement".

65. The FA sought to prove this case on the basis, essentially, of the information to be gleaned from the timeline and, in particular, the inferences to be drawn from the undisputed facts which we have set out at paragraphs 10 to 54 above and from other more peripheral information contained with the timeline, from adverse inference to be drawn from the fact that a number of the members of the Respondent's immediate family did

not give evidence before the Commission and from adverse inferences which it sought to draw from Leon's unwillingness to submit his mobile phone for expert investigation on behalf of the FA. Additionally, however, it sought to demonstrate that the Respondent's evidence as well as that of his witnesses of fact was implausible and that it did not stand scrutiny in the light of the inferences properly to be drawn from the information contained within the timeline. The FA also stressed to the Commission the importance of considering the evidence as a whole when it was considering whether a family agreement, as alleged, had been established.

66. The Respondent and those witnesses called by him rejected any notion that there was a family agreement as alleged by the FA. The Respondent accepted that his father Michael must have provided Anthon with information about possible transfers and that some of that information, at least, had come from the Respondent originally but his evidence was that he was completely unaware of Anthon's betting activity until after it had occurred.

67. We say, now, that it does not appear to us from reading the written submissions, transcripts and the decision of the Commission that much attention was paid to the burden of proving the case presented by the FA that the Respondent and his family were acting pursuant to a family agreement. The reason for that may be the obvious one that both parties accepted that the burden was upon the FA to prove that part of its case. Certainly, it appears to us that the decision of the Commission reads as if it was accepted by all that the burden of proving the allegation of a family agreement rested with the FA. That said, whether or not a family agreement existed was also considered by the Commission in parts of its decision dealing with the *regulatory defence*, where the burden was on the Respondent.

68. An important aspect of the task facing the Commission was its assessment of the credibility of the witnesses called to give evidence. This part of its task was particularly important in relation to those who were witnesses of fact.

69. In relation to the Respondent himself, the Commission said:-

> "*On the whole, we found Daniel Sturridge to be an impressive and credible witness. He gave his evidence in a calm and clear manner, he was not evasive, he was visibly upset about difficulties within his family, and he attempted to*

explain his behaviour patiently and fully. We consider him to have given honest evidence, and accept the account given by him and Leon as to the reason for Leon's phone call in the early hours of 17 January."

70. This passage is to be found at paragraph 144 of the Commission's decision. It appears in the context of the Commission's consideration of Charge 1(a). However, it is common ground that the views expressed by the Commission upon the credibility of the Respondent related to his evidence generally and were not confined or specific to his evidence upon charge 1(a).

71. The Commission made no general observations relating to the credibility of the other witnesses of fact who were called in support of the Respondent's case. However, it is implicit in the reasoning of the Commission that it accepted the truthfulness and accuracy of the important aspects of the evidence of those witnesses.

72. The Respondent was cross-examined extensively by leading counsel for the FA. While the witnesses of fact called on behalf of the Respondent were not cross-examined in as much detail as was the Respondent (which is hardly a surprise), nonetheless it is clear that their evidence was fully tested on all important aspects.

Grounds of Appeal

73. The Appeal Regulations permit the FA to appeal against the dismissal of charges on two discrete grounds, namely that (a) the Commission misinterpreted or failed to comply with the Rules of the Association; and (b) came to a decision to which no reasonable Commission could have come. In this case, the FA relies upon both grounds of appeal.

74. In the written material submitted to us prior to the hearing, there appeared to be significant disputes between the parties about the correct approach to these Grounds of Appeal. During the course of the oral argument, however, such differences became peripheral or even illusory rather than substantive. For the avoidance of any doubt, however, we should set out the approach we have adopted to the Grounds of Appeal set out in the Appeal Regulations.

75. The interpretation of the Rules of the Association must be judged against well-established criteria which govern the interpretation of contractual provisions which are to be applied in a regulatory context. Accordingly, the words of a particular provision within the Rules are to be given their ordinary and natural meaning, albeit that such a meaning is to be informed by what the words would mean to a reasonable person having all the relevant background information about the context in which the words are used. Further, the words of a particular provision must be read in the light of the document in which they appear; the document as a whole must be considered when the meaning to be attributed to individual parts thereof is being considered. We also accept that whilst the rules of the Association constitute a contract between the FA and "*Participants*", since the FA is also in the position of a regulator some principles of interpretation more usually to be applied in the context of statutory interpretation should be taken into account. In particular, the principle of legal certainty is, in our view, an important consideration when interpreting the Rules of the Association.

76. It is neither possible nor desirable, in a decision of this kind, to enter into a detailed examination of the principle of legal certainty. In their written submissions dated 16 September 2019, Ms Mulcahy QC and Ms Potts on behalf of the Respondent deal with the concept in some detail at paragraphs 17 to 20. In our view it is sufficient for our purposes if we adopt and apply what is said at Section 27.1 of the current edition of *Bennion on Statutory Interpretation*:

> *"It is a principle of legal policy that a person should not be penalised except under clear law… [the court] should therefore strive to avoid adopting a construction which penalises a person where the legislator's intention to do so is doubtful, or penalises him or her in a way which was not made clear …*
>
> *However it operates, the principle requires that a person should not be subjected by law to any sort of detriment unless this is imposed by clear words…*"

77. The interpretation of the Rules is an exercise in legal analysis; it is sometimes said that interpretation is a matter of law. Accordingly, if the interpretation of a provision of the Rules by a Regulatory Commission is properly characterised by an Appeal Board as a misinterpretation of that provision, the Board has no option but to correct the misinterpretation. It is not open to the Board to hold that the Commission's interpretation

of the provision was reasonably open to it notwithstanding that the Board disagrees with the conclusion reached by the Commission.

78. In this appeal there is a dispute between the parties about whether the Commission correctly interpreted the phrase *"used…for, or in relation to, betting*" which appears in Rule E8(1)(b). In accordance with the approach described immediately above our task is to determine whether the Commission's interpretation was correct and, if it was not, to provide the correct interpretation of that part of the rule.

79. We also received detailed submissions (both orally and in writing) as to the correct approach to be adopted when considering the second ground of appeal, namely that the Commission had reached a decision to which no reasonable Commission could have come. This ground of appeal was pursued in respect of every charge dismissed by the Commission (except charge 9 in respect of which there is no appeal).

80. It is common ground between the parties that the word "*decision*" in the Appeal Regulations means the ultimate finding of the Commission upon whether a charge is proved or not. An Appeal Board is empowered to overturn a decision of the Commission to dismiss a charge only if it considers that no reasonable Commission could have reached that conclusion.

81. The application of that test, however, is not entirely straightforward when, as in the instant case, the Commission makes findings of fact on disputed evidence which, inevitably, inform the decision about whether a charge is proved or should be dismissed.

82. There is no specific provision within the Appeal Regulations which permits an appeal against findings of fact made by a Commission. Yet the findings of fact made by a Commission may be (and, indeed, usually are) crucial to its decision about whether a charge is proved or should be dismissed.

83. It seems to us, therefore, that it must be open to an Appeal Board to consider the findings of fact made by a Commission and, in the circumstances we describe below, to reach different conclusions about the salient facts.

84. We do not understand Mr Coltart QC for the FA and Ms Mulcahy QC to take a different view. However, at least in their written submissions, they were not at one as to the circumstances in which it would be permissible for an Appeal Board to reach different findings of fact from those made by the Commission. That said, we do not propose to rehearse those arguments in this decision. There are two reasons; first, because in oral argument the differences between them were much narrower, if they existed at all, and second, we have reached the clear conclusion that the approach which we should adopt in determining whether or not we should depart from findings of fact made by the Commission is that which is adopted in appeals before the Courts when the appellate court is asked to depart from findings of fact made by judges sitting at first instance who have heard oral evidence from witnesses who give conflicting testimony upon important factual issues.

85. The circumstances in which an appellate court is justified in reviewing findings of fact made at first instance and departing from such findings has been the subject of detailed consideration in the Supreme Court in two recent cases, namely *Henderson v Foxworth Investments Ltd and anor* [2014] 1WLR 2600 and *Perry v Raleys Solicitors* [2019] 2 WLR 636. In our view, the circumstances in which departure is permissible are sufficiently described in the judgment of Lord Reed JSC in *Henderson*. The relevant paragraphs are as follows:-

> "*58. The principles governing the review of findings of fact by appellate courts were recently discussed by this Court in McGraddie v McGraddie [2013] 1 WLR 2477. There is no need to repeat what was said there. There may, however, be value in developing some of the points which were made in that judgment.*
>
> *59. In the present case, the Extra Division cited earlier authorities of the highest standing. Lady Paton referred in particular to the well-known dictum of Lord Thankerton in Thomas v Thomas [1947] AC 484, 488:*
>
> > *' The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court.'*
>
> *As I have explained, Lady Paton found the reasons given by the trial judge to be unsatisfactory; and I have also explained why I take a different view.*
>
> *60. Lady Paton also cited a dictum from the opinion of Lord Hamilton in Hamilton v Allied Domecq plc [2006] SC 221, para 85, concerned with a*

situation where "findings of fact are unsupported by the evidence and are critical to the decision in the case". She considered that that test also was met in the present case: para 89. As this Court explained in McGraddie…, however, that dictum was concerned with a situation where a critical finding has been made which is unsupported by any evidence, rather than the situation where the appellate court disagrees with the overall conclusion reached by the Lord Ordinary on the evidence. It was therefore not in point in the present case.

61. Lady Paton also cited the dictum of Lord Macmillan in Thomas v Thomas… where, after mentioning some specific errors which might justify the intervention of an appellate court, his Lordship added that the Trial Judge may be shown 'otherwise to have gone plainly wrong'. As Lady Paton noted, that dictum was cited by Lord Hope of Craighead in Thomson v Kvaerner Govan Limited [2004] SC (HL) 1, para 16, … that the duty of the appellate court was to ask itself whether it was in a position to come to a clear conclusion that the trial judge was 'plainly wrong'. …

62. Given that the Extra Division correctly identified that an appellate court can interfere where it is satisfied that the trial judge has gone 'plainly wrong' and considered that that criticism was met in the present case, there may be some value in considering the meaning of that phrase. There is a risk that it may be misunderstood. The adverb 'plainly' does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the Trial Judge. It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

63. In Thomas itself Lord Thankerton, with whose reasoning Lord Macmillan, Lord Simmonds and Lord Du Parcq agreed, said… that in the absence of a misdirection of himself by the trial judge, an appellate court which was so disposed to come to a different conclusion on the evidence should not do so 'unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion.

64. Lord Du Parcq's speech is to similar effect. Distinguishing the instant case from 'those very rare occasions' on which an appellate court would be justified in finding that the trial judge had formed a wrong opinion, he said, at p493:

> *'There are, no doubt, cases on which it is proper to say, after reading the printed record, that, after making allowance for possible exaggeration and giving full weight to the judge's estimate of the witnesses, no conclusion is possible except that his decision was wrong.'*

65. Viscount Simon, at p486, while disagreeing as to the result of the appeal, also emphasised the need for the appellate court to consider whether the trial judge's decision could reasonably be regarded as justified:

> *'If there is no evidence to support a particular conclusion (and this is really a question of law) the appellate court will not hesitate so to decide.*

> *But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight.*'
>
> *66. These dicta are couched in different language, but they are to the same general effect, and assist in understanding what Lord Macmillan is likely to have intended when he said that the trial judge might be shown 'otherwise to have gone plainly wrong'. Consistently with the approach adopted by Lord Thankerton in particular, the phrase can be understood as signifying that the decision of the trial judge cannot reasonably be explained or justified.*
>
> *67. It follows that, in the absence of some other identifiable error, such as, without attempting an exhaustive account, a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.* "

86. For the avoidance of any doubt we should record that, in our view, the approach encapsulated in paragraph 67 of the judgment of Lord Reed JSC is also the approach which, upon close analysis, is to be discerned from the judgment of Lord Briggs JSC in *Perry*.

87. We are completely satisfied that we should adopt the same approach when reviewing the findings of fact made by the Commission in this case. Accordingly, we propose to interfere with any finding of fact made by the Commission only when satisfied that such finding cannot reasonably be explained or justified.

88. We acknowledge that any court or tribunal charged with making findings of fact which is confronted with conflicting oral testimony from witnesses about important facts will be bound to make its own assessment of the credibility of the witnesses in question. Traditionally, what is called *the demeanour* of a witness has been taken into account in the assessment of that witness's credibility. It was not argued before us that the demeanour of a witness had no part to play in an assessment of the witness's credibility. Mr Coltart QC did argue, however, that a witness's demeanour was but one part of the relevant material which went towards making an overall assessment of credibility and that, normally, it should not be a significant guide to a witness's truthfulness or accuracy.

89. In making that submission, he relied heavily upon passages in the judgment of Leggatt LJ in SS (Sri Lanka) v SSHD [2018] EWCA Civ 1391. Under the heading ***Demeanour***, Leggatt LJ expressed himself as follows:-

> "*33. The term 'demeanour' is used as a legal shorthand to refer to the appearance and behaviour of a witness in giving oral evidence, as opposed to the content of the evidence…*
>
> *34. The opportunity of a trial judge or other finder of fact to observe the demeanour of witnesses when they testify and to take this into account in assessing the credibility of their testimony used to be regarded as a peculiar advantage over an appellate court which insulated findings of fact based on such observation from challenge on appeal…*
>
> *35. Nowadays, the reluctance of an appellate court to interfere with findings of fact made after a trial or similar hearing is generally justified on other grounds: in particular, the greater opportunity afforded to the first instance court or tribunal to absorb the detail and nuances of the evidence, considerations of cost and the efficient use of judicial resources and the expectation of the parties that, as Lewison LJ put it in Fage UK Ltd v Chobani UK Ltd [2004] EWCA Civ 5, para 114(ii):*
>
> *'The trial is not a dress rehearsal. It is the first and last night of the show.'*
>
> *36. Generally speaking, it is no longer considered that inability to assess the demeanour of witnesses puts the appellate judges 'in a permanent position of disadvantage as against the trial judge'. That is because it has increasingly been recognised that it is usually unreliable and often dangerous to draw a conclusion from a witness's demeanour as to the likelihood that the witness is telling the truth.*"

Later, in the same section of his judgment, Leggatt LJ explained:-

> "*41. No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgements which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgments based on the appearance of a witness or on their tone, manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts.*"

90. It is worth noting that these observations are to be found in an appeal in which it was being positively asserted on behalf of the appellant that the first instance tribunal had failed to have proper regard to his oral evidence and had impermissibly attached no or no appropriate weight to his demeanour when giving evidence. The observations of Leggatt LJ were made in the context of supporting the approach which had been taken by the first instance decision-maker which was, in effect, to have tested the veracity of the appellant's evidence by all the other relevant evidence adduced in the case. Nonetheless, we accept that the observations of Leggatt LJ represent the modern approach to the weight which is usually to be attached to the demeanour of a witness when assessing his or her credibility. In making our assessment of the facts found by the Commission, we have taken account of the view now prevalent that the demeanour of a witness should not attract significant weight when assessing the accuracy and truthfulness of that witness, particularly when, as here, a variety of other sources of evidence are available by which to judge truthfulness and accuracy.

91. Finally, in this section of our decision, we deal with two discrete points. The first relates to expert evidence. Before the Commission, evidence was adduced from Professor Steve Peters, a Consultant Psychiatrist who had worked with the Respondent during his playing career at Liverpool. The thrust of the evidence given by Professor Peters was that it was unlikely that the Respondent had engaged in betting or activity relating to betting and the Professor gave a number of reasons for reaching that conclusion. In effect, the evidence of the Professor amounted to evidence supportive of the Respondent's own evidence to the Commission which was to the effect that he did not participate in betting and he did not condone those who did.

92. At paragraph 60 of his Judgment in ***Perry***, Lord Briggs addressed the weight to be attached to expert testimony when adduced to support the credibility of another witness. We stress that the context of ***Perry*** was very different from the context in the instant case – ***Perry*** was a case involving alleged personal injuries and doctors were called with competing views as to the extent of injuries suffered by the Claimant. Nonetheless, we have found the passage quoted below of some assistance in determining how the evidence of Professor Peters should, properly, have been approached.

> "*60. The trial judge was not merely entitled but obliged to weigh in the evidential balance his perception that Mr Perry was lying about his ability to perform, unaided, the relevant tasks against the opinion, in particular of Mr Tennant, that he suffered from shortcomings in manual dexterity which made it likely that he suffered from such a disability. Corroborative expert evidence not infrequently transforms testimony which on its own appears most unlikely into something credible. The judge's conclusion that Mr Tennant's opinion did not prevail over Mr Perry's thoroughgoing lack of credibility cannot be described as either lacking in reasoning or trespassing beyond the range of reasonable conclusions available to a trial judge. While it might have been better if Mr Tennant had been called for cross-examination, the judge was not obliged to prefer the expert's opinion, based as it was to a significant extent upon what Mr Perry had told him, to that which the judge was entitled to form, on the basis of the evidence as a whole, about whether Mr Perry was telling the truth about his supposed disability. In the end, the Court of Appeal's criticism amounted to a supposed failure to give sufficient weight to the medical evidence: ... but questions as to the weight of competing evidence are pre-eminently a matter for the trial judge.*"

93. The second discrete point concerns the burden of proving the allegation made by the FA that the Respondent and his family were acting pursuant to an agreement. As we have said, it appears to us that it was accepted before the Commission that the burden of proving this allegation rested upon the FA. Strictly, of course, proving the allegation was not necessary to proving the charges brought against the Respondent. However, the FA having chosen to make the allegation, we are satisfied that the burden of proving it rested upon them. We do not consider that is a controversial determination as between the parties given the way the case was presented to the Commission and before us.

Charge 1(a)

It is alleged that on or before 17 January 2018, you provided to Leon Sturridge information relating to football, namely information concerning a possible move by you from Liverpool FC to Inter Milan FC, which you obtained by virtue of your position within the game and which was not publicly available at that time. That information was subsequently used (in part or in whole) by Leon Sturridge for, or in relation to, betting.

94. During the course of oral argument it became clear that a significant number of the contentious issues between the parties were in play in relation to the Commission's decision to dismiss Charge 1(a). Accordingly, we will consider the rival contentions, in

detail, as they arise in respect of this charge with the consequence that having done so the same level of detail will not be necessary in order to express our views on the remaining charges.

95. At paragraph 139 the Commission found, as a matter of fact, that the Respondent probably told the members of his family who were present at his parents' home in the late evening of 16 January that it was becoming increasingly obvious to him that Inter Milan was the only real option available. The Commission held by a majority, with the Chair dissenting, that the FA had not proved that this information was not publicly available at the time the Respondent expressed that view to his family. The reasoning for that conclusion is to be found in paragraph 140 of the Decision in the following passage:-

> "*The majority of the Commission consider that the information was publicly available at that time. The Sun article on 10 January 2018 stated that Mr Sturridge had offered himself to Inter Milan who were considering him as an option. Accordingly, by 16 January, if Sevilla were not serious, the fact that it was going to have to be Inter and it was becoming increasingly obvious that Inter was the only real option, was information that the public could obtain from public sources. On this basis, the information was not 'inside information'*."

96. The minority view was expressed in the remainder of that paragraph:

> "*The Chair of the Commission, on the other hand, considered that the relevant information was that it was Mr Sturridge's view that if Sevilla were not serious, it was going to have to be Inter and it was becoming increasingly obvious that Inter was the only real option, and that his view was not publicly available at that time.*"

97. We are firmly of the view that the minority view was the correct analysis. The finding of fact made by the Commission was that the Respondent had told his family that it was <u>his</u> view (our emphasis) that it was becoming increasingly obvious that Inter Milan was the only real option. We simply cannot accept that the Respondent's personal opinion, expressed late in the evening of 16 January 2018 to a very limited number of people, was information which was publicly available. In our view, the conclusion that this information was publicly available was not open to the Commission on the evidence adduced before it. The sources of information which pre-dated 16 January and which were publicly available, could not, reasonably, be regarded as necessarily representing the Respondent's state of mind when speaking to his family. Further, the decision of the

majority asserts that the personal opinion of the Respondent was available from "*other public sources*" but those sources are not identified in the decision and we know of no such sources from the evidence which was before the Commission.

98. It follows that insofar as the Commission dismissed Charge 1(a) because the FA had failed to prove that the Respondent provided inside information to his family it fell into error. However, that does not mean that its decision to dismiss the charge was one to which no reasonable Commission could have come since the charge was also dismissed for other reasons. We turn to consider those other reasons.

99. The Commission also dismissed the charge on the basis that the FA had failed to prove that Leon had used the information imparted to him by the Respondent for, or in relation to, betting. There are a number of components of this conclusion which need to be considered.

100. It is as well to begin with the way that the FA advanced its case that Leon had used information provided by the Respondent for, or in relation to, betting. A summary of how the case was presented is to be found at paragraph 143 of the Commission's decision. The FA invited the Commission to conclude that, armed with the information which the Respondent had provided, Leon contacted Adam Grocott or other acquaintances who were employed by bookmakers in order to ascertain the best available odds on the Respondent moving to Inter Milan. That information was then to be shared with other members of the family who would, in consequence, be in as advantageous position as possible to decide about whether they should bet on the Respondent's moving to Inter Milan. As we have said, it was alleged that the Respondent was fully aware of what was occurring and party to a plan to bet on the most advantageous terms available.

101. There was no direct evidence to support this allegation. However, the FA relied upon (a) the fact that information had been imparted by the Respondent to Leon when they were together at their parents' home; (b) that shortly thereafter Adam Grocott and others connected with Leon, placed bets on the Respondent moving to Inter Milan – see paragraph 23 above – and (c) the evidence which we have summarised at paragraphs 12

to 56 above which was said to support the existence of the family agreement as well as supporting all the other charges. These points, made on behalf of the FA to support its contention that Leon had used the information as alleged, are expanded upon in the decision of the Commission between paragraphs 144 and 155.

102. The Commission rejected the FA's case that Leon had used information imparted to him by the Respondent for, or in relation to, betting on two alternative bases. The first basis is to be found at paragraphs 155 and 156, which read:

> "*155. The FA relied on these matters, as developed in detail in its written and oral submissions, to support the inference that Leon used information provided by Daniel about a possible move to Inter Milan, for the purposes of investigating the odds which were available, such that a decision could collectively be made by the family (including Daniel) as to whether or not a bet should be placed. Looked at as a whole, we do not consider that the evidence supports that inference and we decline to draw it.*
>
> *156. Mr Sturridge was in the habit of discussing his career, and any possible transfer moves, with members of his family. Dean and Michael were closely involved in these matters Daniel's uncle and agent, father and former agent respectively. Leon, his brother, and Grace, his mother, were also naturally parties to those discussions. On 16 January, Dean kept both Daniel and Michael updated during the day. In the evening, when the family (without Dean) gathered to celebrate Leon's birthday, Daniel's transfer options were naturally part of the conversation, though unlikely to have been the only topic of conversation. Following that discussion, Leon informed his friends that a visit to Milan by Sturridge family members was likely to take place later that week. We accept Leon's evidence that he mentioned this in a WhatsApp group, of which he and members of the so-called 'Y' group were members (WhatsApp messages for this period could not be recovered from Leon's phone). We reject the suggestion that Leon did this to investigate the odds so that a decision could be collectively made by the Sturridge family (including Daniel) as to whether or not a bet should be placed. Our conclusion, therefore, is that Leon did not use inside information concerning a possible move to Inter Milan for, or in relation to betting, in the way alleged by the FA.*"

103. Paragraph 156 set out immediately above constitutes the considered view of the Commission upon the existence or otherwise of a family agreement. It is a finding of fact based upon the Commission's appreciation of the whole of the evidence. In terms, it amounts to a rejection of the FA's case that there was a family agreement, as described above, and it is an acceptance of the evidence which Leon, in particular, gave as to the

use to which he put the information given to him by the Respondent during their time together at their parents' home.

104. We are prepared to accept that the FA had assembled what can properly be described as a powerful circumstantial case to seek to prove the family agreement for which it was contending. On any view, there was scope for a great deal of suspicion surrounding the timing of various calls and messages between members of the Sturridge family and close acquaintances which were also close in time to bets on the Respondent moving by some of those people. This pattern existed not just on 16 and 17 January, but throughout the period which was under investigation. We accept that events of the early hours of the morning of 17 January 2018 (see paragraphs 23 and 24 above) looked at in isolation and cumulatively with the events that unfolded in the days that followed threw considerable suspicion on the activities of the Respondent and his family. We are certainly not surprised that the FA suspected that the sequence of events which unfolded was part of an agreement involving a number of people who were closely connected with each other. However, in seeking to prove the family agreement and the involvement of a number of people within it, the FA set itself a very high bar over which to jump. While the contents of the time line, without doubt, were capable of raising significant suspicion, this was always a case in which the oral evidence of witnesses was likely to be very significant. The strengths or weaknesses of a case based upon circumstantial evidence are, invariably, tested and resolved by reference to the explanations which are given for the circumstances said to be indicative of guilt.

105. In this case, the Commission heard oral evidence from the Respondent, Dean and Leon. No evidence was heard from Michael, Grace, Cherelle or Anthon. In some circumstances, the absence of oral evidence from those four people would be significant, but the family relationships were under strain, as accepted by the Commission, and the Commission was not prepared to draw adverse inferences from the failure to call all the members of the Sturridge family who could have provided relevant direct evidence as to the events which occurred from mid-January onwards as they unfolded.

106. Inevitably, the Respondent relied in large part on his own evidence and the oral evidence of Dean and Leon to rebut the FA's case that there was a family agreement. Nothing in the evidence in chief given by the three supported the case for the FA on this issue.

Further, there were no answers in cross-examination which undermined the evidence given by the witnesses. Essentially, the Commission was confronted with a situation in which it had to evaluate the contents of the timeline, the inferences to be drawn therefrom and other potential adverse inferences from the evidence (or absence of evidence) against the plausibility of the oral evidence given by the witnesses.

107. Having reviewed the parties' submissions and the transcripts of the evidence, we are satisfied that the Commission was not "*plainly wrong*" (as that phrase is to be understood in the light of the speech of Lord Reed JSC in ***Henderson***) in its conclusion that no family agreement had been proved. We reach that conclusion notwithstanding our reservations about the Commission's approach to the credibility of the Respondent himself. We have already set out the observations which the Commission made about its assessment of the credibility of the Respondent at paragraph 69 above. We find those observations surprising. In respect of Charges 3 and 4, the Commission rejected the Respondent's explanation for the messages which he sent to Leon. We would have expected that, in the absence of clear reasons to take a contrary view, those adverse findings would have impacted not just upon the credibility of the Respondent's evidence in respect of Charges 3 and 4, but also more generally. That said, the Commission did explain why it was that it took a generally favourable view of the Respondent's evidence.

108. The reason why the Commission was prepared to accept the generality of the Respondent's evidence about the charges against him was because of his demeanour in giving his evidence. It is, perhaps, unfortunate that the Commission thought it appropriate to attach such significant weight to the Respondent's demeanour when assessing the credibility of his evidence. However, there is no suggestion that submissions were made to the Commission to the effect that they should pay no, or very little, regard to the demeanour of the witnesses giving evidence before them when assessing their credibility. The decision in ***SS Sri Lanka*** was not cited to the Commission, so far as we are aware. It seems to us that the suggestion that the Respondent's credibility (or for that matter the credibility of any of the witnesses) should be assessed by reference to factors other than his demeanour in giving evidence has assumed a far greater importance in this appeal than the importance which was attached to it before the Commission. However, whether that is right or wrong, the Commission has explained its decision to accept the bulk of what the Respondent had to say in evidence (after he

was subjected to searching cross-examination) and, even allowing for the observations made by Leggatt LJ in *SS Sri Lanka* we are not persuaded that the force of the circumstantial case against him on the issue of the family agreement was such that the Commission must be wrong.

109. Ultimately, the Commission was in a better position than this Appeal Board to assess whether the oral explanations given by the Respondent and his witnesses in order to rebut the allegation of a family agreement were credible or not. We cannot conclude that the Commission's willingness to accept the oral evidence of the Respondent, supported as it was by the evidence of Dean and Leon and to an extent by the evidence of Professor Peters, cannot reasonably be explained or justified as we would be required to find, in line with paragraph 67 of the speech of Lord Reed JSC in *Henderson,* if we were of a mind to conclude that the relevant findings of fact made by the Commission were wrong.

110. In reaching this conclusion we are conscious that we have not spelled out every submission made to us by Mr Coltart QC in support of his circumstantial case and we have not singled out for scrutiny whether findings by the Commission as to whether certain messaging that passed between the Sturridge family and/or between family members and friends meant what the words used would normally be taken to mean or constituted *"banter"* as the Commission found. We refrain from such a minute analysis of the evidence because, in truth we simply cannot ignore the advantage enjoyed by the Commission in dealing with such close scrutiny of the written evidence set in the context of the oral evidence.

111. We have reached the conclusion that it is not open to us to interfere with the finding of the Commission that there was no family agreement, as alleged by the FA, and we also conclude that it was open to the Commission to accept the evidence of Leon as to the use he made of the information provided to him by the Respondent, as set out in paragraph 156 of the Commission's Decision (paragraph 102 above).

112. It follows that we are unable to accept the case for the FA that the Commission's conclusion that Leon did not use information imparted to him by the Respondent for, or in relation to, betting as a matter of fact was wrong and, accordingly, we cannot conclude that the decision to dismiss Charge 1(a) on this basis was one to which no Commission

could reasonably have come. That is sufficient to dispose of the appeal on charge 1(a) and, accordingly this part of the FA'S appeal is dismissed.

113. There was, however, another basis upon which the Commission dismissed Charge 1(a), which has a bearing upon its approach to other charges and which figures prominently in the FA's appeal on such charges. Accordingly, we turn to deal with this alternative basis for dismissing the charge. The Commission found that even if Leon had investigated the best available odds with a view to members of the Sturridge family deciding whether or not to place bets upon the Respondents' transfer to Inter Milan, he would not have used the information provided to him by the Respondent for, or in relation to, betting. The conclusion of the Commission was that using such information "*to investigate the odds which were available, without more, which Mr Sturridge would be entitled to do himself*" did not amount to use for or in relation to betting – see paragraph 157 of the decision.

114. That conclusion was the consequence of the meaning which the Commission attributed to the phrase "*used by that other person for, or in relation to, betting*". At paragraph 110 of the decision, the Commission expressed itself thus:-

> "*Rule E8(1)(b) refers to the use of inside information by a recipient "for, or in relation to", betting. It seems to us that that words "in relation to" betting refer back to the words in Rule E8(1)(a), namely, "Instruct, permit, cause or enable any person to bet". Therefore, a Participant is only in breach of Rule E8(1)(b) where he provides inside information to another person where any of that information is used by that other person "for betting" or "in relation to betting", i.e. to instruct, permit, cause or enable any person to bet."*

The primary reason why the Commission reached that conclusion is to be found in paragraph 111, which reads:-

> "*This meaning has the effect that the proscribed use is the same for the Participant and for the recipient of inside information. This accords with common sense. Rule E8(1)(a) and E8(1)(b) have a consistent and coherent meaning when read in this way. It avoids the surprising results which we consider would follow from the FA's interpretation. We also think it is likely that a reasonable player would appreciate that he cannot bet or do any of the things listed in Rule E8(1)(a) and neither can he provide inside information to another who uses it to do any of the same things.*"

115. The submission made by the FA as to the meaning of the phrase "*used .... for, or in relation to, betting*" and the surprising results said to follow therefrom are summarised in the decision of the Commission at paragraph 97. That reads:-

> "*Mr Coltart accepted that a Participant may lawfully investigate the odds on his own possible transfer for the purpose of ascertaining the likelihood of that move coming to fruition. He further accepted that a Participant is not in breach of the rules if he provides inside information to another person who uses it to investigate odds for the same purpose. The investigation of the odds in that situation has not been 'for or in relation to betting'. Rather, it has been used for the purpose of assessing whether or not the move in question is likely to materialise. If, however, the investigation of the odds is instead undertaken with a view to evaluating those odds for the purpose of betting, different considerations arise. In that scenario, the FA accepts that the player will continue to commit no offence if he undertakes that evaluation himself, but does not, in due course, place a bet. If, however, he imparts inside information to another person, and that person uses it for the same purpose, (i.e. evaluating the odds with a view to laying a bet) then the player <u>will</u>, subject to the regulatory defence, have breached Rule E8(1)(b).*"

116. Before us, Ms Mulcahy QC submits that the Commission's interpretation of the phrase "*used…for, or in relation to, betting*" is correct for the reasons relied upon by the Commission. That is not surprising, since the interpretation adopted by the Commission was that which had been pressed upon it by Ms Mulcahy QC.

117. Mr Coltart QC submits that the interpretation of the phrase adopted by the Commission is unduly restrictive and confines the natural meaning of the words of the Regulation. He submits, further, that the phrase *in relation to betting* is intended to cover a wide range of activities and there is no indication within the wording of the rule itself or, when that rule is read in the wider context of all the other rules, that the phrase is intended to be restricted in scope by reference to Rule E8(1)(a). It seems to us that Mr Coltart QC makes a very powerful point when he submits that a Participant is held to be in breach of Rule E8(1)(b) only if (a) the FA proves all the elements or ingredients of the rule and (b) the Participant fails to prove that he provided the inside information in circumstances where he did not know and could not reasonably have known that the information provided would be used for, or in relation to, betting.

118. In the instant case, if the Respondent had provided information to Leon about his preference for a move to Inter Milan and asked Leon to check the betting odds as a means of ascertaining the likelihood of such a move, the Respondent would not have committed a breach of Regulation E8(1)(b). If, contrary to the Respondent's expectation, Leon placed a bet upon the move on the strength of the information provided by the Respondent or checked the odds with a view to making a bet on the strength of the information he had received, the Respondent would still not be in breach of Regulation E8(1)(b) if he was able to prove on balance of probability that he neither knew nor could he have reasonably have known that the information would be used in that way. It does not seem to us to be incongruous that if he cannot prove these matters he should be held to have breached the rule. We accept that one of the principal objectives of Rule E8(1)(b) is to deter Participants from providing inside information in circumstances in which the Participant cannot control its use.

119. We see no difficulty in the words *"used….for, or in relation to, betting*" being given their ordinary and natural meaning. In our view, such a meaning encompasses a person who receives inside information and then, on the strength of it, assesses the betting odds upon whether the subject matter of the information may come about with a view to placing a bet either directly or indirectly. In our view he *uses* that information *in relation to* betting. In our view, too, that is how the reasonable observer in possession of all the relevant background facts underpinning the rule would interpret it. The reasonable observer would understand the pressing need to prevent inside information from being used for betting purposes and, accordingly, he/she would understand the need for a measure which prohibits behaviour which is related to betting. The words "*in relation to*" are very commonly used to encompass a connection between two activities. In our view, the phrase "*in relation to betting*" is apt to cover the activity of making an assessment of available odds in order to decide whether to place a bet.

120. During the course of her oral submissions, Ms Mulcahy QC urged us to read material which is to be found in Bundle D which was produced by the FA some years ago to provide guidance upon emerging rules concerning betting. We have considered this material for ourselves. We do not consider that it throws any light upon the proper

interpretation of the current rule. The guidance provided by the material is very broad in its content and no part of it focuses upon the meaning to be attributed to the phrase *"used ….for, or in relation to, betting"*.

121. It follows that we do not accept that the Commission's interpretation of the phrase *"used …for, or in relation to, betting*" is correct. In our view, had the FA proved that Leon had used the information imparted to him by the Respondent during the evening of 16 January 2018 in order to assess whether or not to place a bet upon the Respondent moving to Inter Milan, the Respondent would have been in breach of Rule E8(1)(b) unless he was able to rely upon the *regulatory defence*.

Charge 1(b)

It is alleged that on or before 17 January 2018, you provided to Michael Sturridge information relating to football, namely information concerning a possible move by you from Liverpool FC to Inter Milan FC, which you obtained by virtue of your position within the game and which was not publicly available at that time. That inside information was subsequently used (in part or in whole) by Michael Sturridge for, or in relation to, betting.

122. By a majority, the Commission found that the Respondent had not provided inside information to Michael during the course of the late evening of 16 January 2018, when the Respondent and his immediate family were assembled at the Respondent's parents' home. On that basis, it dismissed Charge 1(b). In our view, this was a conclusion to which no reasonable Commission could have come. Our reasons for that decision are identical to those which we provide above (paragraph 97) on the identical point which arose in respect of Charge 1(a).

123. That does not mean, of course, that the appeal must be allowed on this charge. The Commission went on to consider whether the charge was proved upon the assumption that Michael had used inside information for, or in relation to, betting and whether, if so, the Respondent could avail himself of the *regulatory defence*.

124. The Commission held that Michael did use the information provided by the Respondent for, or in relation to, betting. The reasoning supporting that conclusion is set out at paragraph 166 in the following terms:-

> "*On balance, we consider it likely that Michael did use information provided by Daniel Sturridge in telling Anthon about the possible move to Inter Milan and did so for the purpose of Anthon placing a bet on such a move. £10,000 is a large amount to bet on a possible transfer and there is no evidence to suggest that this amount was other than a significant sum for Anthon. This supports the inference that Michael encouraged Anthon to place the bet. In addition, Anthon sent a screen shot of the betting slip to Michael, which was what Michael produced at the dinner on 29 January. On 12 February 2018, Michael withdrew £10,000 from Daniel's business account from which Daniel had agreed that Michael could draw a significant amount. Although £10,000 was not the largest withdrawal made by Michael from the account around this time, it seems reasonably likely that this withdrawal was made with a view to reimbursing Anthon for losing the bet. For these reasons, we find that Michael used the information provided by Daniel for, or in relation to, betting.*"

125. The Respondent does not appeal against this finding by the Commission. It follows that the Respondent was in breach of Rule E8(1)(b) unless he was able to rely upon the *regulatory defence*.

126. Before turning to the Commission's finding in relation to the regulatory defence, it is worth mentioning that Mr Coltart QC placed some emphasis upon the Commission's finding in the paragraph quoted above that Michael had "*encouraged*" Anthon to place the bet of £10,000. He queried whether such a finding, by itself, could find the charge proven since it would not be consistent with the way in which the Commission had interpreted the phrase *"used…for, or in relation to, betting*". The word "*encourage*" does not appear in Rule E8(1)(a) and, submits Mr Coltart QC, this is, in effect, a tacit recognition by the Commission that the phrase should be understood to have a wider meaning than the one which the Commission adopted.

127. Given our views upon the proper interpretation of Regulation E8(1)(b), it probably matters not that this apparent inconsistency arises in the decision of the Commission. It does, however, demonstrate the difficulties in seeking to link the phrase "*in relation to betting*" to the prohibitions which are contained in E8(1)(a) since, in our view the Commission was undoubtedly correct to find that Michael had used the information provided to him by the Respondent in relation to betting.

128. The Commission found that the Respondent was able to rely upon the *regulatory defence.* It considered the Defence in two parts. First, it considered whether a family agreement had been established and, as we have said, concluded that no such agreement had been established. It then went on to consider, expressly, the application of Rule E8(1)(c). The relevant paragraph in its decision is 169, which reads:

> "*On the evening of 16 January, Mr Sturridge discussed a possible transfer to Inter Milan with his father and other members of his family as was typical for the Sturridge family. Michael had not only guided Daniel throughout his career, as a father might typically do, but had been Daniel's agent. He had a continuing interest in the agency business through which Dean operated as a registered intermediary for Daniel and others. Daniel looked at his father for advice and guidance on his possible transfer. In these circumstances, and having rejected the FA's case as to the alleged family affair, we find that Daniel did not know, and could not reasonably have known, that Michael would use information that Daniel had provided as part of the family discussions to encourage Anthon to bet on Daniel's possible move to Inter Milan.*"

129. We are satisfied that it was open to the Commission to reach that conclusion. Absent the family agreement upon which the FA placed such store, the conclusion reached by the Commission as to the Respondent's state of knowledge in relation to what his father would do with any inside information was, we consider, well within the range of findings reasonably open to the Commission.

130. In the light of the foregoing, we dismiss the FA's appeal in respect of Charge 1(b).

Charge 2

It is alleged that on 18 January, you provided to Leon Sturridge information relating to football, namely information concerning a possible move by you from Liverpool FC to Sevilla FC, which you obtained by virtue of your position within the game and which was not publicly available at that time. That information was subsequently used (in part or in whole) by Leon Sturridge for, or in relation, to betting.

131. The FA relied upon the messages sent by the Respondent to Leon at 1:49pm as constituting the provision of inside information. The relevant messages are set out at the beginning of paragraph 28 above, but for ease of reference we repeat them here:

> "*What's the price on me going to Sevilla?*

Cause I'm considering there more than Inter if they put the money up.

Spanish league better for me."

132. The Commission found that the information provided by the Respondent to Leon constituted inside information. Thereafter, the Commission considered the question "*Did Leon Sturridge use the inside information for, or in relation to, betting?*" It answered that question as follows:

> "*175. The FA's case is that Leon used the information for the purpose of investigating and evaluating the available odds on such a move with a view to bets being laid.*
>
> *176. Initially, Leon reported to Daniel that he could not find odds on a move to Sevilla, and attempted to put in a call to his friend, Matthew Legge… Daniel then suggested that Leon asked a bookmaker or someone he knew and find out. Leon and Daniel then spoke by phone. Shortly after, Matthew Legge placed a £15 bet on Daniel moving to Sevilla.*
>
> *177. Insofar as the FA's case is that Leon used the information for the purposes of investigating and evaluating the available odds on such a move with a view to bets being laid by the Sturridge family, we have already rejected the notion of such a family affair.*
>
> *178. Further, we have also concluded that using inside information to investigate the odds* without more *does not involve a use for, or in relation to, betting within the meaning of rule E8(1)(b). Given that this is the use alleged by the FA, the charge must be dismissed.*"

133. In summary, it seems clear to us from these passages that the Commission dismissed the charge because (a) it rejected the existence of the family agreement and (b) it took the view that investigating odds with a view to informing a decision about whether to bet did not constitute using the inside information in relating to betting. It did not, however, consider whether the Respondent could avail himself of the *regulatory defence* upon the assumption that Leon had, contrary to its view, used inside information in relation to betting but outside the context of the alleged family agreement. In light of the Commission's other conclusions that is perfectly understandable. However, given our view that the Commission was wrong in its interpretation of the phrase *"used ….in relation to betting"* it seems to us that we must decide for ourselves whether Leon used the information imparted to him by the Respondent in relation to betting and, if he did, whether the Respondent was able to rely upon the *regulatory defence*.

134. As recorded by the Commission, the case for the FA in respect of this charge was that Leon had used the confidential information imparted to him as to the Respondent's preference for a move to Sevilla for the purpose of investigating and evaluating the available odds on such a move with a view to bets being laid – see paragraph 175 of the decision. The case was not confined to bets being laid by members of the Sturridge family. There is no suggestion in this appeal that the Commission mischaracterised the nature of the FA's case on this charge.

135. It follows from what we have said already in relation to charge 1(a), that the Commission was entitled to reject the FA's case that Leon used the information for the purpose of investigating and evaluating the available odds with a view to bets being laid by the family pursuant to a family agreement. However, the Commission made no finding of fact as to whether or not Leon had evaluated the odds on the Respondent moving to Sevilla with a view to making a bet himself or with a view to others betting. It simply decided that investigating the odds without more did not constitute using the inside information in relation to betting. It follows from our reasoning above that the Commission was wrong to conclude that there had been no use of the confidential material if all that had occurred was that Leon, himself, had investigated and evaluated the odds with a view to making a decision about whether he should bet or with of view to assisting others to decide whether to bet.

136. In his evidence in chief, Leon dealt in some detail with the events which occurred following his receipt of the Respondent's messages at 1:49pm – see paragraphs 26 to 28 of Leon's first witness statement. Essentially, his evidence was that all his activity following that message was directed at finding out what the betting market revealed about the prospects of the Respondent moving to Sevilla. He denied using the information to determine whether he should bet and he denied using it to assist anyone else make such a decision. There is nothing in Leon's witness statement which is, necessarily, inconsistent with the sequence of events which unfolded as evidenced by the timeline. When Leon was cross-examined, he said nothing which, from a reading of the transcripts, undermines what he had said in his witness statement.

137. We have already observed that the Commission made no express findings about Leon's credibility but, implicitly, the Commission accepted all Leon's oral evidence. There is

nothing in its decision which suggests that the Commission did not believe the evidence which Leon gave about the use he made of the information given to him by the Respondent in the messaging which founds this charge. That being so, it does not seem to us (in the absence of a finding supporting the family agreement) that we can take a different view from the Commission about the reliability of Leon's evidence on this charge. It follows that Leon did not use inside information in relation to betting. In those circumstances, the appeal in respect of this charge must be dismissed.

Charge 5

It is alleged that on 19 January 2018, at 23.03, you provided to Leon Sturridge information relating to football, namely information concerning a possible move by you from Liverpool FC to Sevilla FC, which you obtained by virtue of your position within the game and which was not publicly available at that time. That inside information was subsequently used (in part or in whole) by Leon Sturridge for, or in relation to, betting.

138. Charge 4 (which was proved) and Charge 5 were very closely connected. They both related to the messages which began at 10.02 between Leon and the Respondent, which are set out at paragraph 35 above. Charge 4 was based upon the specific instruction "*Find it and put it on"*. Charge 5 related to the other messages which, the FA contended, constituted inside information – hence the charge pursuant to Rule E8(1)(b).

139. The Commission found that the information imparted by the Respondent to Leon in this messaging exchange constituted inside information. It recorded that the FA's case as to the use made by Leon of the information was that Leon used the information to research the odds by contacting his associates in the WhatsApp group.

140. There was no dispute that this is what Leon did. At paragraph 32 of his Witness Statement, he says:

> "*Immediately after these messages, I spoke to both Matthew Legge and Adam Grocott… I asked them to find out what the best odds were on Daniel to move to Sevilla, as it looked as though he would be moving there. I am told that Matthew Legge and Joshua Burrows both placed bets on Daniel Sturridge shortly after. I did not contact Joshua Burrows (as I do not know him), but I believe that Adam Grocott or Matthew Legge passed this information onto him,*

which would have led him to place the bet. Given that it was late, I thought I would put the bet on the next day."

141. The reference by Leon to putting the bet on the next day is, clearly, a reference to his willingness, at that time, to carry out the Respondent's instruction and place a bet upon the move to Sevilla.

142. In the light of our interpretation of the phrase *"used…for, or in relation to, betting"* we have no doubt that Leon's activity immediately after his contact with the Respondent constituted using the inside information provided to him in relation to betting. Insofar as the Commission decided otherwise, in accordance with its interpretation of that phrase, it was wrong. Since all the ingredients of this charge, were, in our view, proved, it was necessary for the Commission to consider whether the Respondent had proved the *regulatory defence*.

143. However, the Commission did not consider, expressly, the availability of the *regulatory defence* in the context of this charge. We can reasonably infer that it rejected the FA's suggestion that the provision and use of the inside information was part and parcel of the family agreement. However, that is not the end of the story in relation to this charge. The provision of inside information to Leon by the Respondent took place during the same sequence of messages which contained a direct instruction by the Respondent to place a bet (the subject of charge 4) and after an earlier instruction to bet which founded charge 3. Given that context, it seems to us to be impossible to conclude that the Respondent could prove, on balance of probability, that he could not reasonably have known that Leon would use the inside information in relation to betting. In our view that is so notwithstanding the favourable impression which the Respondent made upon the Commission in terms of the credibility of his evidence, generally. We are prepared to acknowledge the possibility that the Commission would have been persuaded that the Respondent did not know that Leon would use the information in relation to betting. However, in our view, the Respondent would not have been able to discharge the burden of proving that he could not reasonably have known that this is how Leon would behave. He had instructed Leon to bet on two occasions; he knew that Leon had suffered an addiction to betting in the past.

144. As we have said, the Commission made no finding as to whether or not the Respondent was able to rely upon the *regulatory defence* in response to this charge. It is clear to us that he could not and, accordingly, we allow the appeal of the FA in respect of this charge and substitute a finding that the charge is proved.

Charge 6(a)

It is alleged that on or before 28 January 2018 you provided to Leon Sturridge information relating to football, namely information concerning a possible move by you from Liverpool FC to West Bromwich Albion FC, which you obtained by virtue of your position within the game and which was not publicly available at that time. That inside information was subsequently used (in part or in whole) by Leon Sturridge for, or in relation to, betting.

145. We can deal with this charge quite shortly. At paragraphs 209 to 211 of its decision the Commission sets out, in summary, the case for the FA as to when the Respondent supplied inside information to Leon and the nature of the information allegedly provided. Essentially, the allegation was that the information was provided during the course of the day and the evening of 28 January. A feature of the FA's case on this charge is that the Commission was asked to infer that the information specified as being inside information was provided by the Respondent to Leon. The Commission stated at paragraph 214 of its decision that there was no direct evidence to prove the provision of inside information. That said, the Commission accepted in the same paragraph that the FA had assembled a formidable circumstantial case to establish its case on this issue.

146. We should record at this point that our draft decision on liability distributed on 27 December 2019 accepted and repeated the Commission's view that there was no direct evidence to prove the provision of inside information by the Respondent to Leon. The FA then made written representations to us that we were wrong to accept that view and that this error constituted "an obvious error in the substance of our decision". Despite that, however, the FA did not ask us to re-visit our decision on this charge. It did, however, ask us to revisit our conclusion on charge 8 which was very closely connected with charge 6(a). Accordingly, we will return to the issue of whether there was "an

obvious error in the substance of our decision" and the consequences, if any, which should flow from such an error, if established, when we consider that charge.

147. Notwithstanding the strength of the circumstantial case assembled by the FA to prove that the Respondent had provided inside information to Leon the Commission rejected it. Its reasons are to be found at paragraphs 215 to 217 which read:-

> **"***215. It should be remembered that Dean was Daniel's agent and it was Dean who had the primary role of communicating with Liverpool, West Brom and Newcastle about a potential move for Daniel. We accept Dean's evidence that he kept Michael up to date with developments regarding Daniel's transfer situation, with the result that Michael is likely to have known what [the Respondent] knew on the matter. Michael is also likely to have spoken to other family members (including Leon) about Daniel's situation when the family gathered on 28 January, and also at other times.*
>
> *216. Leon was not present at his parents' home on 28 January. He was, however, in telephone contact. He took part in a Facetime call at 6:44pm which lasted over six minutes. This took place before Daniel spoke to Alan Pardew (which he did at 7:25pm). On the Facetime call, other family members chipped in with their views as to what Daniel should do. Daniel was undecided and said little if anything on that call. It will be recalled that when X asked Daniel the following morning what Dean had said on the Sunday evening, Daniel replied 'Everyone said WBA/Dad, leon, grandad, dean and mom /Only person now was Cherelle'. Leon's evidence was that he spoke to his father by phone after Daniel had spoken to Alan Pardew, that Michael had said that they sounded confident, and that that led Leon to think Daniel might be going to West Brom.*
>
> *217. The betting by family members and friends that followed was predominantly on Daniel moving to West Brom, although we note that in addition to Gemma Podmore's bet on West Ham, X placed two bets on Daniel moving to Newcastle. Whilst it is likely that the bets resulted from Leon and Michael talking to others about the possibility of Daniel moving to West Brom, we are not persuaded that this supports the inference that Daniel provided Leon with inside information. On the contrary, it is likely that Leon drew his own conclusions about Daniel's likely destination after other family members (but not Daniel) expressed their views on the Facetime call, and after Michael told Leon about Daniel's call with Alan Pardew.*"

148. The reasoning of the Commission is underpinned by its acceptance that Dean kept Michael informed about developments relating to the Respondent's potential moves

during the course of 28 January 2018. It is also, of course, reliant to an extent upon the evidence of the Respondent and Leon.

149. In our view it is not open to us to conclude that the findings of fact which underpin the dismissal of this charge, as set out above, were wrong in the sense that that they were not explained or justified by the Commission. We have found in relation to other charges that the Commission was entitled to reject the FA's case that there was a family agreement; we have also found that the Commission was entitled to accept the evidence of the Respondent and Leon. We see no basis for us to take a different view in respect of Dean's evidence. Accordingly, the Commission was entitled to find that it was Michael who provided information to Leon about the move to West Brom and given that conclusion it was inevitable that charge 6(a) would be dismissed.

150. Accordingly the appeal in respect of charge 6(a) is dismissed.

Charge 6(b)

It is alleged that on or before 28 January 2018, you provided to Michael Sturridge information relating to football, namely information concerning a possible move by you from Liverpool FC to West Bromwich Albion FC, which you obtained by virtue of your position within the game and which was not publicly available at the time. That inside information was subsequently used (in part or in whole) by Michael Sturridge for, or in relation to, betting.

151. The Commission found that the Respondent had provided inside information to Michael about his potential move to West Brom. The inside information revealed, according to the Commission, was the gist of the telephone call which had taken place between the Respondent and Alan Pardew at 7.25pm on 28 January. The Commission also found that Michael used the information for, or in relation to, betting. We are satisfied that it was correct to do so although it is worth noting the basis upon which it did so which is to be found within paragraph 226 of the decision. The Commission found that Michael had revealed to Anthon what had transpired in the telephone call between the Respondent and Alan Pardew so as to encourage Anthon to bet on the Respondent moving to West

Brom. In our view such a finding of fact justified the Commission's view that Michael had used the information in relation to betting although, again, in reaching that conclusion the Commission seems to have strayed from its own interpretation of the phrase *"used….. for, or in relation to, betting."* However, that matters not given our view as to the proper interpretation of the phrase.

152. The Commission dismissed the charge because it concluded that the Respondent did not know and he could not reasonably have known that Michael would use the information in this way. It explained that decision at paragraphs 227 and 228 of the decision:-

> "*227. As before, the FA's case is that Daniel not only knew about the bet to be laid by Anthon but that he actively participated in that plan. We have already rejected the FA's case of a family affair.*
>
> *228. We further find that Daniel did not know, nor could he reasonably have known, that his father would use inside information provided as part of the family discussion about his future to encourage Anthon to bet on that future. On 28 January, Daniel did not know that Anthon had bet on a move to Inter Milan on 17 January. So far as Daniel was concerned, the conversations about his possible transfer which he had with his father on and in the run-up to 28 January, were the type of conversations that he had had before when he looked to his father for advice and guidance on his next career move. He did not know, and could not reasonably have known, that his father would use this information for, or in relation to, betting. The regulatory defence is made out.*"

153. In our view, the Commission explained and justified its factual conclusion as to what the Respondent knew or ought reasonably to have known. No doubt, some Commissions are likely to have reached a different conclusion on this issue. There are a number of factors which might have tilted the balance against the Respondent. First, the adverse credibility findings against the Respondent on charges 3 and 4 might well have impacted adversely upon the Respondent's credibility on other charges. Second, it was beyond dispute that Michael provided inside information to Anthon on two separate occasions 11 days apart and that shortly after the inside information was provided Anthon attempted to bet large sums on the basis of the information. Third, on 17 January Anthon succeeded in placing a bet of £10,000 on the Respondent moving to Inter Milan for which, on one view of the facts, he subsequently (i.e. on 29 January 2018) sought re-imbursement, at least indirectly, from the Respondent. We have pondered long and hard about whether the findings of fact, even though explained and justified, were ones to which no reasonable

Commission could have come but ultimately we are of the view that they do not fall within that category.

154. With some hesitation we dismiss the appeal of the FA on this charge.

Charge 7

It is alleged that on 28 January 2018 at 20.25 you provided to Daniel Hemmings information relating to football, namely information concerning a possible move by you from Liverpool FC to West Bromwich Albion FC, which you obtained by virtue of your position within the game and which was not publicly available at that time. That information was subsequently used (in part or in whole) by Daniel Hemmings for, or in relation to, betting.

155. There had been contact between the Respondent and Daniel Hemmings in the evening of 16 January and in the early hours of the morning of 17 January. The Commission concluded, contrary to the case for the FA, that these contacts had not been about betting upon the Respondent's moving to Inter Milan but rather about betting upon games of American Football. That conclusion was supported by the terms of a message sent by Mr Hemmings to the Respondent on 22 January.

156. There was further contact between the two men on 28 January when, as the Commission found, the Respondent provided to Mr Hemmings inside information about his possible move to West Brom (see paragraphs 231 and 232 of the decision). The case for the FA was that the Respondent provided this information to Mr Hemmings so that *"a joint evaluation of the available odds could be undertaken in the light of that information, and that this is what took place"* (see paragraph 233).

157. The Commission's findings about what occurred and about whether Mr Hemmings used the information in relation to betting is to be found at paragraphs 235 to 240 of the decision and are worth quoting in full:

> "*235. Daniel contacted Mr Hemmings at 8:24pm and asked him to check the price for him to go to West Brom. This was approximately 15 minutes after Leon contacted Naomi Thorpe, who then tried to place a bet on*

Daniel moving to West Brom, as did Anthon. However, it was also about an hour after Daniel had spoken to Alan Pardew. At this time Daniel was undecided between West Brom and Newcastle, and it is unsurprising that he wanted to discuss his situation with his friend in New York, especially at a time when his relationship with his father was strained.

236. Mr Hemmings did not respond until about 40 minutes later when he said that he didn't even see odds for West Brom. Mr Sturridge said to him 'look real quick playa'. Mr Sturridge's evidence is that this simply meant 'have a look' and that the term 'real quick' did not convey urgency. The FA did not accept Mr Sturridge's evidence on the point. However, even if the message did convey urgency, that would not necessarily mean that Mr Sturridge was keen to know the odds for the purpose of betting. It could equally mean that he wanted more information on how the market viewed the likelihood of him moving to West Brom. Mr Sturridge was keen to find this out given that he had been told that West Brom had bid for Troy Deeney and it was unlikely that they would sign both strikers.

237. When Mr Hemmings later found odds, he asked Mr Sturridge what he wanted to do. Mr Sturridge said 'odds too short fam' and later, when longer odds were found, he said 'it's worth a flutter'. These comments might suggest that Mr Sturridge was investigating odds with a view to betting. However, we accept Mr Sturridge's evidence that were throw away remarks. It is plausible that they were made to save Mr Sturridge having to explain to Mr Hemmings that he had asked him to look up the odds to assess the likelihood of the move taking place.

238. We accept the evidence of Mr Sturridge and Daniel and Derek Hemmings that a Facetime call took place shortly after Mr Sturridge called Mr Hemmings to discuss his options. In the course of the call, Mr Hemmings mentioned the odds and Mr Sturridge told him he should forget about it and shouldn't bet. Mr Hemmings said he hadn't been planning to.

239. Mr Hemmings undoubtedly looked up the odds on Mr Sturridge moving to West Brom. However, he did no more than look them up and report them to Mr Sturridge which did not amount to a use for, or in relation to, betting.

240. In the circumstances, charge 7 is dismissed."

158. In our view, the words used by the Respondent in his messages to Daniel Hemmings in the messaging at 8.25pm on 28 January very strongly suggest that he was asking Mr Hemmings to check the odds upon his moving to West Brom for the purpose suggested by the FA i.e. for the purpose of evaluating the odds with a view to betting by Mr Hemmings and/or others. The relevant messages are set out at paragraph 47 above. It must be borne very much in mind that by this time West Brom had made an offer to Liverpool for the Respondent's services and that the offer had been accepted. Further,

the Respondent had spoken on the phone to West Brom's manager who had made it clear to the Respondent that he wanted the Respondent to move to West Brom. In cross-examination the Respondent's evidence was that Mr Pardew had *"obviously wanted me to sign for them"*. In our view, by 8.25pm on 28 January there was no impediment to the Respondent moving to West Brom if that is what he chose to do.

159. Set against this background and in the absence of very compelling evidence to the contrary, the messages highlighted by the Commission in paragraphs 236 and 237 of its decision such as *"look real quick playa"*, *"odds too short fam"* and *"it's worth a flutter"* are, in our view, capable of only one interpretation, namely the interpretation advanced by the FA. In our view, it was not a plausible explanation of the Respondent's use of the phrase *"look real quick playa"* that it was related to his desire for information on how the market viewed the likelihood of him moving to West Brom, even allowing for the fact that Troy Deeney was or may have been a potential rival for West Brom's interest – see paragraph 236 of the Commission's decision. The Respondent did not claim in cross-examination that this was his purpose. He explained his interest in the odds as being that he was *"intrigued"* by what the market may have thought. Similarly, we find it impossible to accept that the other phrases used in the Respondent's messages *"odds too short fam"* and "*it's worth a flutter"* were *"throwaway remarks"* or that such remarks were made *"to save [the Respondent] having to explain to Mr Hemmings that he had asked him to look up the odds to assess the likelihood of the move taking place"* – see paragraph 237 of the Commission's decision.

160. We are reinforced in that view by the fact that the Commission expressly accepted that in the Facetime call between the Respondent and Mr Hemmings which took place later the Respondent told Mr Hemmings not to bet and that Mr Hemmings replied that he hadn't planned to. In our view, such an exchange is explicable only if the messaging which preceded the call meant what it said.

161. We have, of course, reminded ourselves that we can interfere with factual conclusions reached by the Commission only if they cannot reasonably be explained or justified. We remind ourselves, too, that the Commission heard (as opposed to read) all the evidence and was thereby better placed to evaluate it. However, when all allowances are made for the advantages enjoyed by the Commission we are satisfied that the factual conclusions

set out in paragraphs 236 and 237 of the decision are neither reasonably explained nor justified.

162. The ultimate factual conclusion reached by the Commission is that which is set out at paragraph 239, namely that although Mr Hemmings looked up odds on the Respondent moving to West Brom *"he did no more than look them up and report them to [the Respondent]"*. However, this conclusion is based upon a chain of factual conclusions which, as we have explained, cannot reasonably be explained or justified. It follows that this ultimate conclusion is also neither reasonably explained nor justified.

163. We have already found that if a person assesses the odds on the Respondent moving to a particular Club (having been provided with inside information about the move by the Respondent) for the purpose of deciding whether to bet that would constitute using the information in relation to betting. We have reached the conclusion that the FA has proved that Mr Hemmings used the inside information imparted to him by the Respondent for the purpose suggested by the FA and that, accordingly, each element of this charge is proved.

164. The Commission did not expressly consider the *regulatory defence* in relation to this charge which was not surprising in the light of its other conclusions. We have no doubt, however, that the defence could not be made out given our factual conclusions. The plain fact is that we are satisfied that the Respondent knew exactly what Mr Hemmings was doing when he researched the odds and, just as importantly, why he was doing it. No other conclusion would be possible given the views we have expressed at paragraphs 158 to 162 above. Accordingly, we allow the appeal of the FA on this charge.

Charge 8

It is alleged that on or before 28 January 2018, you provided to Leon Sturridge information relating to football, namely information concerning a possible move by you from Liverpool FC to West Bromwich Albion FC, which you obtained by virtue of your position within the game and which was not publicly available at that time. That inside information was subsequently used (in whole or in part) by Leon Sturridge for, or in relation to, betting.

165. This charge was founded on the bets which Leon placed on 28 January (or caused to be placed) on the Respondent moving to West Brom. The Commission dismissed this charge because it concluded that the FA had not proved on balance of probability that the Respondent provided any inside information to Leon prior to his placing the bets. To reach that conclusion it relied entirely upon its reasoning in relation to charge 6(a).

166. Like the Commission, we accept that charges 6(a) and 8 are inextricably connected. We cannot conclude that the Commission was entitled to find that it had not been proved that the Respondent provided inside information to Leon in respect of charge 6(a) yet hold that such a conclusion was wrong in respect of Charge 8. The reasoning which we have expressed above as to why we dismissed the appeal in respect of Charge 6(a) applies with equal force in respect of this charge.

167. As we have said, following the distribution of the draft decision on liability the FA submitted to us that there was an obvious error in the substance of our decision because we had accepted that there was no direct evidence to prove that the Respondent had provided inside information to Leon prior to the bets which he (Leon) placed on the Respondent moving to West Brom. Mr Coltart QC pointed out that we had apparently overlooked an exchange between Leon and the Respondent via Whatsapp on 27 January in which the Respondent had provided inside information to Leon and a telephone call in the late afternoon of 28 January between the two men in which information was provided.

168. It follows that both the Commission's decision and the Appeal Board's 27 December 2019 draft were wrong to say that there was no direct evidence to prove that inside information had been passed by the Respondent to Leon prior to his betting on the move to West Brom during the evening of 28 January. We accept without reservation, however, the submission by Ms Mulcahy QC that the fact that a certain amount of inside information was imparted by the Respondent to Leon in these two contacts was entirely peripheral to the case which was being made against the Respondent. Ms Mulcahy QC submits that these two contacts were never part of the "pleaded case" against the Respondent. That submission has considerable force notwithstanding that the evidence of the contacts was before the Commission. More importantly, however, the whole thrust of the case ***as presented to the Commission*** (our emphasis) was that it was being asked to infer that the Respondent had provided the inside information which he used thereafter

for betting. In the circumstances we do not consider that this justified correction of our draft affects the substance of our decision.

169. Even if that were wrong, however, we cannot see how that avails the FA. The Commission found expressly, at paragraph 243 of its decision, that Leon placed bets upon the Respondent moving to West Brom "based upon his own assessment of the likelihood of Daniel moving to West Brom, uninfluenced by any inside information provided by Daniel." That was an assessment which the Commission was entitled to make. Essentially it was an acceptance of Leon's evidence. As we have said previously, we are not in a position to say that the Commission's willingness to accept the evidence of Leon was plainly wrong in the sense that it cannot reasonably be explained.

170. Accordingly, we dismiss the appeal in respect of charge 8.

Conclusion on the liability appeal

171. The appeal of the FA in respect of charges 5 and 7 are allowed and we find that these charges against the Respondent are proved.

172. We are conscious that our adverse findings in respect of charges 5 and 7 taken in conjunction with the Commission's findings on charges 3 and 4 might have led us to a complete re-think of the Commission's factual conclusions on the other charges. We are satisfied, however, that such an approach would not be justified given the conclusions we have expressed in respect of the individual charges. In all respects save those we have identified in respect of charges 5 and 7 the Commission reasonably explained and justified its factual conclusions and, that being so, they must be respected by an Appeal Board. Accordingly, we dismiss the appeals of the FA in respect of charges 1(a), 1(b), 2, 6(a), 6(b) and 8.

B. THE SANCTIONS APPEAL

173. As we have said, the FA appeals against the sanction which was imposed by the Commission in respect of Charges 3 and 4. The ground of appeal available to the FA under the Appeal Rules is that the sanction was so unduly lenient as to be unreasonable.

174. In summary, the FA contends that the suspension imposed upon Mr Sturridge, described in paragraph 2 above, and a fine of £75,000 was so unduly lenient as to be unreasonable. Reduced to its essentials, the FA's argument is that the suspension should have been measured in months not weeks and that no part of the suspension should have been suspended. The FA characterise the fine as being, approximately, the equivalent of the Respondent's net wages for one week (at the time the sanction was imposed). Such a fine, submits Mr Coltart QC, is derisory.

175. The Respondent's stance is that the combination of sanctions imposed by the Commission is proportionate and reasonable. On behalf of the Respondent, Ms Mulcahy QC submits that the overarching principle is that any sanction or combination of sanctions imposed must be proportionate to the individual's conduct, taking account of mitigating and aggregating features. In her submission the Commission correctly assessed those features accurately and arrived at a conclusion on sanctions which was well within the permissible range.

176. It is common ground that in assessing whether the sanctions imposed by the Commission upon the Respondent in respect of Charges 3 and 4 are so unduly lenient as to be unreasonable, we must take into account that we have found charges 5 and 7 are proved. Mr Coltart QC submits that the appropriate sanctions should reflect the fact that the Respondent committed four breaches of the Rules as opposed to two and that in consequence the sanctions properly to be imposed in respect of the four charges must, inevitably, be greater than those which would be appropriate for charges 3 and 4 standing alone. He argues that both the period of suspension and the fine must be increased substantially. Ms Mulcahy QC argues that notwithstanding that four breaches of the Rules have now been proved there should be no increase in the term of suspension. She acknowledges, however, that a fine which is greater than £75,000 must be now be imposed. We express our conclusion about these competing views at paragraph 204 below. On any view, however, the starting point for our analysis of the extent to which the sanctions upon the Respondent should be increased must be our view as to whether the sanctions imposed by the Commission in respect of charges 3 and 4 were so unduly lenient so as to be unreasonable.

177. The core of the Commission's reasoning in support of its decision on sanctions is to be found at paragraphs 269 to 272 of the decision. For convenience, we set out those paragraphs in full.

> "*269. A penalty can serve a number of purposes. These include, in this case, an element to punish the player for breaking the rules, an element to deter him from repeating the offence, and an element to deter others from doing the same thing. Having had regard to these purposes, and to the totality of the evidence, including any mitigating and aggravating factors, the penalty should be proportionate.*
>
> *270. The FA has published sanction guidelines for betting cases. However, none of the guidelines deals with the offence of instructing a person to bet. In the circumstances, we do not consider that we are assisted by reference to the sanction guidelines.*
>
> *271. We have taken the following mitigating factors, in particular, into account:*
>
> *(a) Mr Sturridge has no previous disciplinary record with the FA.*
>
> *(b) The suggestion that Leon would put a grand on Daniel moving to Sevilla was first made by Leon on 18 January 2018. Daniel told Leon not to be so stupid.*
>
> *(c) On 20 January 2018, Daniel told Leon that he should not gamble and so Leon decided not to place a bet.*
>
> *(d) These comments by Daniel reflected his overall approach to betting on football in general, and by Leon in particular, which was to discourage it. In addition, Daniel had helped his brother financially in getting help for his gambling addiction.*
>
> *(e) Mr Sturridge was facing a number of significant challenges, both personally and professionally, during January 2018 and was under considerable strain as a result. The instructions which he gave to his brother, which form the basis of Charges 3 and 4, were out of character.*
>
> *(f) Mr Sturridge has expressed remorse for his actions in instructing Leon to bet on 19 January 2018. He expressed remorse in writing in his Third Witness Statement and also orally to us at the sanction hearing. We accept that Mr Sturridge is genuinely remorseful in relation to his conduct on 19 January, although we note that these expressions of remorse were made only* **after** *we had found Charges 3 and 4 to be proved.*
>
> *(g) These proceedings have now lasted for more than 15 months. Whilst we have upheld two of the charges, they have been prolonged by the FA bringing the charges that we have dismissed. This experience*

has been stressful for Mr Sturridge and has placed a number of his relationships under strain.

(h) Mr Sturridge has demonstrated his commitment to the wider football community through his establishment of The Sturridge Foundation and The Sturridge Football Academy.

272. We have taken the following aggravating factors, in particular, into account:

(a) It is a serious matter for a senior, experienced professional footballer to instruct another person to bet on his potential transfer.

(b) Mr Sturridge gave two instructions to his brother to place a bet on 19 January 2018. Whilst the instructions related to the same potential transfer to Sevilla, and could be seen as part of one extended conversation, they were separated by a number of hours and properly formed the subject of two charges.

(c) The instructions were given in the context, and on the basis, of inside information known to Mr Sturridge, namely that he was considering Sevilla more than Inter, that he considered the Spanish League better for him, that his family were meeting with a representative of Sevilla at 3:00pm and that after 6:00pm Mr Sturridge expected to know the outcome of the meeting.

(d) Mr Sturridge gave the instructions to his brother, who is at particular risk of complying with these instructions because of his history of gambling."

178. We consider, first, paragraph 269 which, in our view, raises an issue of some importance for disciplinary bodies. The Commission determined that a penalty or sanction can serve a number of purposes which can include an element to punish the offender for breaking the rules, an element to deter him from repeating his offence and an element to deter others from doing the same thing. However, it also determined that the sanction imposed must be proportionate having regard to these purposes and the totality of the evidence including any mitigating and aggravating factors. What is the word "proportionate" intended to convey?

179. As far as we are aware, the suggestion that the sanction imposed upon the Respondent should be proportionate was first raised expressly in written submissions dated 26 June 2019 made by Ms Mulcahy QC and Ms Potts on behalf of the Respondent. At paragraph 3, they wrote:

> "*A sanction must be proportionate (Bradley v The Jockey Club [2004] EWHC 2164, [2005] EWCA Civ 1056). As the Commission will be well aware, proportionality requires that the sanction take into account the Participant's conduct and any mitigating and aggregating factors; in this case it is DS's position that there are no aggravating factors.*"

In a footnote to that paragraph, Ms Mulcahy QC and Ms Potts set out the test for proportionality as being that which the Appeal Board in ***Bradley*** derived from the decision of the Privy Council in *DeFreitas v Permanent Secretary for Minister of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69 at page 8. A sanction would be proportionate if three criteria were satisfied: (i) the objective of the disciplinary procedure is sufficiently important to justify limiting a fundamental right (ii) the measures designed to meet to objective of the disciplinary procedure are rationally connected with it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective. The "fundamental right" here under consideration was the right to work in one's chosen field.

180. In his Written Reply on behalf of the FA, dated 2 July 2019, Mr Coltart QC raised no objection to the contentions made on behalf of the Respondent about proportionality. In his Written Submissions in support of the appeal, Mr Coltart QC did not suggest that the Commission was wrong to accept that the sanctions to be imposed upon the Respondent must be proportionate. On the face of it, therefore, there is no dispute between the parties before us about the need for any sanctions imposed upon the Respondent to be proportionate.

181. The difficulty is that they appear to have a different view about the meaning to be given to the word proportionate or, perhaps more accurately, they have a different view about the relationship between proportionality on the one hand and deterrence on the other. Ms Mulcahy QC and Ms Potts do not resile from their written submissions and, in particular, their contentions that *"in imposing a sanction under FA Rules it is not appropriate to increase a proportionate sanction in order to include a deterrent factor"* (Written Submissions dated 26 June 2019) and "*sanctions cannot simply be increased purely to deter others (which is precisely what the FA asks the Appeal Board to do): to do so would offend the primary principle that sanctions must be proportionate*" (Written Submissions dated 14 October 2019). It is obvious from the oral submissions of Mr Coltart QC that he does not agree with those propositions, at least in such a stark form.

182. In our view, the key to the correct approach is to be found in the decision of Richards J (as he then was) in ***Bradley***. The salient facts and background were as follows. Mr Bradley was charged with serious breaches of the Rules regulating horse racing. A disciplinary panel found a significant number of the charges brought against him proved and imposed a suspension of 8 years upon him. Under the *Jockey Club Rules* in force one of the grounds of appeal open to Mr Bradley was that the sanction imposed upon him was disproportionate and he appealed to an Appeal Board on that ground (amongst others). The appeal succeeded to an extent in that the Board reduced the suspension to 5 years. Still dissatisfied, Mr Bradley brought a claim against the Jockey Club in which he argued that the court had power to intervene and reduce the sanction yet further and that it should do so because the period of suspension of 5 years was disproportionate.

183. Much of the judgment of Richards J is concerned with the jurisdiction of the court to take any action in relation to the decision of the Appeal Board. However, having concluded that he was empowered to quash the decision of the Board in the circumstances which he described, Richards J considered the issue of proportionality in some detail. It suffices to quote from one passage from his judgment in order to discern his views.

> "*Proportionality: Examination of the Appeal Board's Decision.*
>
> *106. I turn to consider the lawfulness of the Appeal Board's decision on penalty, pulling together the various strands considered above.*
>
> *107. First, it is clear that the Appeal Board had careful regard to the principle of proportionality…*
>
> *108. It is not in dispute that the Board applied the correct legal test of proportionality. With the agreement of Counsel, it directed itself by reference to the test set out in DeFeitas v Permanent Secretary,* as modified in *Colgan*. …
>
> *109. As to the objectives in the disciplinary procedures and the importance of these objectives, the Board was clearly entitled to view the relevant Rules as being essential to the maintenance of the integrity of racing and to attach corresponding importance to the enforcement of those Rules. It had full regard to the range and nature of the penalties available for breach of the Rules. It was entitled to look to a penalty that reflected, as it said, the elements of punishment, deterrence and prevention. In relation to deterrence it bore properly in mind that the level of increase so as to deter others from like conduct must not be out of proportion to the size of penalty which would otherwise fall to be imposed, and it made the reasonable observation that the extent to which the passing of information*

had been revealed in the particular inquiry demonstrated the need for an element of deterrence. In relation to prevention it formed a reasonable view of, and took into account, the opportunities that the Claimant would continue to have to profit from the passing of confidential information in the absence of disqualification.

110…..

111…..

112…..

113 Having directed itself correctly and given proper consideration to all relevant matters the Board then carried out, as it was required to do, a careful balancing exercise, looking on the one hand at the important purpose served by the Rules and the seriousness of the breaches of those Rules, and, on the other hand, at the mitigation and at the impact of disqualification upon the claimant and his family"

184. For completeness we should record that Richard J dismissed Mr Bradley's claim and that Mr Bradley's appeal against that judgment to the Court of Appeal was considered "hopeless". Every aspect of the judgement of Richards J received a ringing endorsement.

185. We have no hesitation in following and applying the decision of Richards J in ***Bradley***. We consider that the Commission was entitled to impose sanctions upon the Respondent that reflected elements of punishment, deterrence and prevention and that it was entitled to increase the level of the sanctions imposed in order to deter (both the Respondent and others) provided that such an increase was not out of proportion to the size of penalty which would otherwise fall to be imposed.

186. There is nothing in paragraph 269 of the Commission's decision which suggests that it did not intend to follow the principles formulated by Richards J in ***Bradley***. Whether it achieved its stated purpose of including an element of deterrence in the sanctions which it imposed, however, is another matter which we consider below.

187. We turn to paragraph 270 of the decision. The Commission found that the FA had not issued any guideline as to the appropriate sanction to be imposed in respect of the offence of instructing a person to bet. That was, undoubtedly, correct. However, it also concluded that it was not "assisted" by the guideline which had been issued relating to other offences relating to prohibited betting. In reality, the stance of the Commission was that no part

of the guideline which had been published by the FA was relevant to determining the appropriate sanctions for the Respondent. Mr Coltart QC submits that the Commission was wrong to adopt that approach. Ms Mulcahy QC seeks to uphold the position adopted by the Commission.

188. We understand that the guideline issued by the FA in relation to betting offences dates from about 2014. The guidance as a whole runs to a number of pages. For ease of reference we have reproduced that part of the guideline which the FA argues is relevant in this case at Appendix 1. It can be seen that this part of the guideline relates to three types of offences namely, (i) providing inside information where a Participant should reasonably have known it was likely to be used for betting;(ii) providing inside information knowing it was likely to be used for betting; and (iii) using or providing inside information for the purpose of betting. The suggested sanctions for each of those offences, sequentially, are (i) fine and suspension between 0 and 3 months; (ii) fine and suspension between 3 months and life; and (iii) fine and suspension between 6 months and life.

189. Mr Coltart QC submits that there is very little to choose, in terms of culpability, between a Participant who instructs another to bet based upon his own appreciation of inside information of which he is appraised and a Participant who provides inside information to another knowing that he will use the information for the purpose of betting. It follows, he submits, that the sanction range which the FA has stipulated for the latter offence must be relevant to the former. We have considered this contention with care together with the strenuous efforts of Ms Mulcahy QC to argue to the contrary.

190. We find ourselves in agreement with the submission of Mr Coltart QC on this issue at least in general terms. We accept that the culpability of a Participant who instructs a third party to bet based upon inside information of which he has knowledge is likely, in a significant number of cases, to be very similar to the culpability of a Participant who provides such information to a third party knowing that it will be used by that person for the purpose of betting. In our view the sanction proposed in the guideline for the latter offence is at least very likely to be relevant when a Commission is considering the offence of instructing a person to bet.

191. However, whether or not the guideline is a relevant factor will ultimately depend upon the factual matrix in which the instruction to bet has been given in the particular case under consideration. Given the findings of fact made by the Commission in the instant case, there can be no dispute about the fact that the Respondent was in possession of inside information on each occasion that he instructed Leon to bet. The Respondent was very well placed to evaluate the information in question. Such information was one of the motivating factors behind the instructions. At the time when the instructions were given, the Respondent intended that the bet should be placed. Further, in our view, at that time the Respondent must have expected Leon would carry out his instruction.

192. Given those facts we can see no basis for concluding that the guideline issued by the FA for the offence of providing inside information to another knowing that it will be used for the purpose of betting should not be relevant in this case. In our view the Commission was wrong to regard the guideline as irrelevant.

193. We appreciate, of course, that the weight to be attached to the guideline in any given case will need to be assessed with considerable care. The Guidelines relating to sanctions issued by the FA are intended to promote consistency in decision making. In respect of a particular breach of the Rules to which a specific sanction guideline applies a sanction within the specified range will, no doubt, be imposed unless the case under consideration has particular characteristics which justifies a departure from the range. However, it is crucial that we remind ourselves that paragraph 42 of the *FA Disciplinary Regulations*, *A. General Provisions*, makes clear (as do all the guidelines themselves) that they are not intended to override the discretion of Regulatory Commissions to impose such sanctions as they consider appropriate having regard to the particular facts and circumstances of the case under consideration. Accordingly, it must follow that when, as in this case, there is a guideline which is relevant to the decision to be made on sanctions but which is not specific to a particular charge found proved by a Regulatory Commission, the Commission has even more flexibility in its approach to the guideline when assessing the appropriate sanctions.

194. We can deal with paragraphs 271 and 272 of the Commission's decision (which we have set out verbatim at paragraph 177 above) much more succinctly.

195. Paragraph 271 consists of the mitigating factors found by the Commission to be present in this case. We are prepared to accept that the Commission was entitled to find all those factors were properly to be taken into account given that it had acquitted the Respondent of all charges except 3 and 4. However, we say now that we cannot proceed in quite the same way. The Respondent's conduct in relation to charge 7 taken in conjunction with charges 3 and 4 makes it difficult to hold to the view that "the instructions which he gave his brother…… were out of character". We accept that the Respondent's behaviour in the relevant time period in January 2018 may have been out of kilter with the Respondent's behaviour generally but charges 3 and 4 were not "one-off" offences committed on one day only.

196. Paragraph 272 highlights 4 features of the facts which the Commission categorise as aggravating features. Ms Mulcahy QC seeks to argue that these are not aggravating features in the true sense of that phrase but rather features which were part and parcel of the offences. We do not consider any useful purpose is to be served by debating whether the features highlighted by the Commission at paragraph 272 are properly to be regarded as "aggravating features" for the simple reason that we are quite satisfied that the features identified are ones which elevate the seriousness of the Respondent's conduct. That is particularly so in relation to paragraph 272 (a) (c) and (d).

197. Mr Coltart QC argues that the Commission failed to have regard to a number of features of the case which were properly to be regarded as aggravating features. We do not propose to set out the full list of the features which Mr Coltart QC originally argued should have been taken into account since some were accepted by the Commission, one we deal with later in this paragraph and the others were, in the main, peripheral in nature. Two features originally highlighted on behalf of the FA, however, deserve specific mention. First, as at the time it launched its appeal against sanctions the FA argued that the Commission had found that in respect of charges 3 and 4 the Respondent had advanced a dishonest account to the Commission and, accordingly, the fact of his giving a dishonest account should be treated as an aggravating feature of the Respondent's offending. This argument is no longer pursued in this appeal, (although the FA reserve the right to raise such an argument in the future). Second, the FA maintain the argument that the Commission failed to have any regard to the impact which the Respondent's conduct could have on the public's perception of the integrity of the game. We see some

force in this argument. The Commission's decision does not deal with that point expressly yet it is commonly highlighted in cases of this type (i.e. in cases of betting which infringe the Rules). In our view, the submission on behalf of the Respondent to the effect that the nature and extent of his activities was such that right thinking members of the public would not be concerned about the integrity of the sport is not made out. Betting activities in breach of the Rules are matters of genuine and widespread concern to the sporting public.

198. We should mention, too, that Mr Coltart QC criticises the Commission for failing to attach appropriate weight to certain of the more serious features of the case. It does not seem to us to be necessary to spell out the particular features upon which Mr Coltart QC concentrated both in writing and orally because ultimately such points are all inextricably bound up with his central proposition that the sanctions imposed in this case in respect of charges 3 and 4 were clearly so unduly lenient so as to be unreasonable.

199. We have reached the conclusion that Mr Coltart QC is correct in advancing that central proposition. On two separate occasions on 19 January 2019 the Respondent issued unequivocal instructions to Leon to bet £1,000 on his moving to Sevilla. The fact that no bet was placed and the fact that on 20 January 2019 the Respondent directed Leon not to bet are obvious mitigating features. However, the plain fact is that it was a matter of chance so far as the Respondent was concerned that Leon did not bet as he was instructed to do. Such flagrant breaches of the Rules called for sanctions which combined punishment, deterrence and prevention. They also called for sanctions which made it clear to the public that the Regulatory Commission was intent upon protecting the integrity of the sport. Further, in our view, there needed to be some correlation between the sanctions imposed and the guideline for the offence of providing inside information for the purpose of betting. In our view a suspension of 6 weeks (with 4 of those weeks not to be served unless the Respondent re-offended) did not achieve those objectives and that is so even though such a sanction was additional to a financial penalty of £75,000. We appreciate that the list of genuine mitigating features was long in this case but, despite that, the length of the suspension should have been measured in months not weeks. Further, in our view, there was no basis for a direction that part of the suspension should not take effect unless the Respondent re-offended.

200. On the basis that in a case of this type the sporting sanction is likely to have far greater impact and significance than the financial sanction (unless that is very severe) and on the basis that the financial sanction in this case was to remain a fine of £75,000, the minimum period of suspension which was proportionate in all the circumstances for charges 3 and 4 was 3 months.

201. What combination of sanctions should now be imposed given that we have found charges 5 and 7 to be proved? We accept that submission on behalf of the Respondent that the finding that charge 5 is proved should not, of itself, cause there to be an increase in the appropriate period of suspension. Charge 5 is part and parcel of the conduct of the Respondent which founded charges 3 and 4. However, the same is not true of charge 7 and, in respect of this charge, Mr Coltart QC correctly submits that there is a specific sanction guideline to be considered namely a suspension in the range 6 months to life.

202. We have little difficulty in accepting the submission of Ms Mulcahy QC that if charge 7 stood alone the suspension which would be imposed would be nothing like as severe the guideline range given the mitigation available to the Respondent. The circumstances prevailing in this case are such that a very significant departure from the guideline would be justified.

203. Ultimately we have to determine the appropriate sanctions for 3 very closely connected offences charges (3, 4 and 5) and one offence which is similar in character but which was separated in time from the other offences by a number of days. We take account of all the features described as aggravating features by the Commission, the sanction guideline issued by the FA and the need (i) to punish the Respondent, (ii) to deter him and others from such offending and (iii) to protect the integrity of the sport. We also take account of the very considerable mitigation available to the Respondent which the Commission identified (save for the one reservation we have mentioned in paragraph 195) and we further attach significant weight to the fact that the Respondent has been in a state of considerable uncertainty with consequent considerable anxiety for a period which is now approximately two years while these proceedings have unfolded. We accept the genuineness of the remorse which the Respondent now feels and which he communicated to us himself during the hearing on 7 February 2020.

204. In the result we have decided that the appropriate period of suspension is four (4) months and the appropriate financial penalty is £150,000. The period of suspension already served will count towards the four months' suspension we have imposed. The suspension will begin from the date hereof. We understand that the financial penalty of £75,000 directed to be paid by the Commission has been paid. Accordingly, the balance of £75,000 shall be paid within 14 days of the date hereof.

205. The Appeal Board orders:

(1) The Football Association's appeal is upheld on charges 5 and 7, which are proven, but dismissed on charges 1(a), 1(b), 2, 6(a), 6(b) and 8.

(2) There having been no appeal by the Participant against the Regulatory Commission's finding that charges 3 and 4 were proven and no appeal by The Football Association against the Regulatory Commission's dismissal of charge 9, the charges proven against the Participant are charges 3, 4, 5 and 7.

(3) The Participant, Mr Daniel Sturridge, is suspended from all football and football-related activity for four (4) months from 2 March 2020 with credit given for the 2 weeks' suspension already served by him in accordance with the Regulatory Commission decision dated 15 July 2019. Therefore, this suspension shall subsist until midnight on 17 June 2020.

(4) Mr Sturridge is fined £150,000. The fine of £75,000 imposed by the Commission having been paid, the balance of £75,000 shall be paid within 14 days of the date hereof. Failure to pay the outstanding balance within the applicable time period will result in the Respondent's immediate suspension from all football and football related activity, which will run concurrently with any other suspension, until the outstanding financial penalty has been paid in full.

(5) Any application for costs in relation to the appeal and any application for a variation of the costs order made by the Commission shall be determined by the Appeal Board after consideration of any written representations filed in accordance with the following directions:

(i) The FA shall file and serve any written submissions which it wishes to make on the costs issues identified above within 5 working days of the date of this decision.

(ii) The Respondent shall file and serve any written submissions which it wishes to make in response to the FA's submissions within 5 days of the receipt thereof.

(iii) The FA shall reply to any such submissions which are filed and served by the Respondent within 2 days of the receipt thereof.

206. By paragraph 22 of the *FA Disciplinary Regulations, C. Appeals – Non-Fast Track*, this Appeal Board decision is final and binding and there shall be no further appeal or challenge (except under paragraph 22.2. in relation to the amount of costs).

Sir Wyn Williams

Nicholas Stewart QC

William Norris QC

27 February 2020

(Updated 2 March 2020)

Appendix 1

SANCTION GUIDELINES – INSIDE INFORMATION CHARGED UNDER FA RULE E8 (d) OR (e)

	Providing inside information where Participant could not reasonably have known it was likely to be used for betting.	**Providing inside information where Participant should reasonably have known it was likely to be used for betting.**	**Providing inside information knowing it was likely to be used for betting.**	**Using or providing inside information for the purpose of betting.**
Financial Entry Point – Any fine to include, as a minimum, any financial gain made from any bet(s)	NFA / Warning	Fine	Fine	Fine
Sport sanction range	Suspension n/a	0 – 3 months	3 months - life	6 months - life
Factors to be considered in relation to any increase/decrease from entry point	Factors to be considered when determining appropriate sanction will include the following: • Overall perception of conduct on fixture/game integrity; • Player played or did not play in fixture(s) concerned; • Number of Bets; • Size of Bets; • Fact and circumstances surrounding pattern of betting; • Actual stake and amount possible to win; • Personal Circumstances; • Previous record – (any previous breach of betting Rules will be considered as a highly aggravating factor); • Experience of the participant; • Assistance to the process and acceptance of the charge.			

The guidelines are not intended to override the discretion of Regulatory Commissions to impose such sanctions as they consider appropriate having regard to the particular facts and circumstances of a case. However, in the interests of consistency it is anticipated that the guidelines will be applied unless the applicable case has some particular characteristic(s) which justifies a greater or lesser sanction outside the guidelines.