

IN THE MATTER BEFORE AN APPEAL BOARD OF THE FOOTBALL
ASSOCIATION BETWEEN:

THE FOOTBALL ASSOCIATION

Appellant

-and-

CHRIS MAGUIRE

Respondent

WRITTEN DECISION OF THE APPEAL BOARD

Introduction

1. On Friday 6th January 2023, an Appeal Board of the Football Association heard an appeal brought by the FA against the sanction imposed by a Regulatory Commission of the FA on 22nd November 2022 in respect of ten breaches of FA Rule E8.1 in relation to bets placed by Chris Maguire [‘the Respondent’] between 2016 and 2022. The Respondent had originally faced charges in respect of 52 breaches, the remainder of which were withdrawn at or prior to the hearing.
2. The Regulatory Commission imposed a fine of £750 and warned the Respondent as to his future conduct; he was also advised that any future breach of betting rules and/or FA conduct rules more generally would be viewed very seriously.

3. At the conclusion of the hearing, in which we were assisted considerably by the written and oral submissions of Ms Turner and Mr Knowles on behalf of the FA and the respondent respectively, and following an opportunity to reflect on the competing arguments, we announced our unanimous decision that the appeal would be allowed and in addition to the sanctions imposed by the Regulatory Commission, which remained in force, the imposition of a 'sports sanction' of a 6 week suspension from all football and all football-related activity; this suspension was backdated to 22nd November 2022. We indicated that we would provide written reasons for our decision as soon as possible.
4. Before we set out the facts of the charges, we remind ourselves of the very limited circumstances in which we can entertain an appeal by the charging authority, in this case the FA, against the level or type of penalty or sanction imposed.
5. By Regulation C1.1 of the Disciplinary Regulations, the grounds of appeal available to the FA are that the Regulatory Commission
 - i. Misinterpreted or failed to comply with the Rules and/or regulations of the Association relevant to its decision; and
or
 - ii. Came to a decision which no reasonable such body could have come; and/or
 - iii. Imposed a penalty, award or sanction that was so unduly lenient as to be unreasonable.
6. This was therefore an appeal under subsections [ii] – the "Wednesbury unreasonable" provision and [iii] – the 'unduly lenient' provision.
7. We remind ourselves also that an appeal is by way of review on documents only and does not involve a rehearing of the

evidence considered by the Regulatory Commission, although both FA and respondent are entitled to, as they did, make oral submissions to the Appeal Board.

8. In short, the fact that the members of this Board might individually or collectively have imposed a more serious [ie sports] sanction if they had been in the shoes of the members of the Regulatory Commission does not entitle them to do so at this stage, unless they can show that the Commission's decision fell outside the wide band of reasonableness and was based on an assessment of culpability which no reasonable tribunal, properly directing itself to the facts, could have made.

The Facts

9. The Respondent is a professional footballer aged 33 years, the details of whose career are set out in full in his witness statement at pp155-157 of the Appeal Hearing Bundle, and in part at para 17 of the Commission's Decision.
10. The Respondent appeared before the Commission in respect of 10 breaches of FA Rule E8.1, the relevant part of which prohibits a 'participant at Step 4 and above' of whom the respondent is one, from betting on the result progress conduct or any other aspect of, or occurrence in a football match or competition.
11. The breaches which were either admitted or found proved against the respondent related to a total of 10 bets placed by him between 2016 and 2022 which came to light following a visit made by him to a City Centre betting office of a large national operator in Lincoln on 4th March 2022 and a report by the operator to the FA in accordance with its internal procedures. Although there is within the bundle a lot of documentation to explain how the case against the Respondent was investigated

and proved, it is not necessary for the purpose of this Appeal to refer to it.

12. The circumstances of and in which those bets were placed were as follows:

[i] Season 2016/7 – 3 bets including 2 bets on games in a competition in which the respondent's team [Oxford United] had been participating [charge 1]

[ii] Season 2020/1 – 1 bet placed on clubs unconnected to the Respondent [charge 3]

[iii] Season 2021/2 – 6 bets including 4 bets on games in a competition in which his team [Lincoln City] was participating, and one [accumulator] bet which included a bet on his own team [Lincoln City] to win [against Wycombe Wanderers], in which he played for the duration of the match [charge 4]

13. Of those charges, charge 1 and charge 3 were admitted in full.

14. Of the bets which made up charge 4, one was admitted [that placed on 25/1/22] and the remainder [placed on 12/2/22] were denied; they were found proved to the requisite standard by the Commission.

15. It is appropriate at this stage to set out by reference to the FA's Sanction Guidelines, the various types of bet which are prohibited in ascending order of seriousness, and the sanction guidelines themselves, which clearly envisage consideration where appropriate of a financial penalty as well as a 'sports sanction':

- i. Bet placed on any aspect of any football match, anywhere in the world, but not involving participant's club competitions
Sanction – warning/fine; suspension 'n/a'

- ii. Bet placed on participant's competition but not involving his club [including spot bet]
Sanction – fine; suspension n/a where participant has no connection with the club bet on.
 - iii. Bet placed on own team to win
Sanction – fine; suspension 0-6 months to be determined by factors below
 - iv. Bet placed on own team to lose
Sanction – fine; suspension 6 months – life to be determined by factors below*
16. The remaining types of bet, and the potential sanctions, involve 'particular occurrences' within a match and do not fall to be considered here.
17. The Guidelines continue : *The factors to be considered when determining appropriate sanctions will include the following:
- i. Overall perception of impact of bet[s] on fixture/game integrity;
 - ii. Player played or did not play;
 - iii. Number of bets;
 - iv. Size of bets;
 - v. Facts and circumstances surrounding pattern of betting;
 - vi. Actual stake and amount possible to win;
 - vii. Personal circumstances;
 - viii. Previous record [any previous breach of betting rules will be considered as a highly aggravating factor]
 - ix. Experience of the participant;
 - x. Assistance to the process and acceptance of the charge.
18. Whilst 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, the Guidelines state clearly that '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’.

19. They continue: ‘The assessment of the seriousness of the offence will need to take account of the factors set out above’. And, after addressing the serious aggravating feature of betting against one’s own club or on the ‘contrivance’ of a particular situation therein, the guidelines continue ‘a further serious aggravating feature will be where the participant played or was involved in the match on which the bet was made’.
20. Those, then, are the Guidelines which the Commission was bound to take into account in deciding upon the appropriate sanction and whether, within the confines of this case, that could or should not be confined to a fine. If the Commission was going to depart from the Guidelines, which in the exercise of its discretion it was perfectly entitled to do, it was, in our view, incumbent upon it to explain clearly how and why it reached that decision. A failure to provide such an explanation may give rise to an argument that its decision was unreasonable and susceptible to review.
21. Its first decision therefore was to decide what the guideline for this offending, taken in totality, was, as to both fine and, if appropriate, sports sanction.
22. Having identified the guideline, its next decision was to decide whether there were factors which merited an increase to or reduction from the ‘entry point’ [which we deem to include the ‘sanction range’].
23. Having identified those factors, the next step was to decide what impact if any those factors had on the entry point or imposition of a sports sanction.

24. When and only when that exercise had been completed, could consideration be given, if necessary, to departing from the sanction guidelines, and thereafter determining the appropriate penalty.
25. If, as a general rule, the 'sentencing exercise' is undertaken in this way, it is transparent, open to scrutiny, and unlikely to be capable of criticism or potential review as one which has led to the imposition of a penalty or sanction which is unduly lenient [or severe] within the meaning of the FA Regulations.
26. With that approach in mind, we now turn to consider the Commission's decision, the FA's argument, the Respondent's position and, finally, our conclusions.

The Regulatory Commission's Decision

27. We note at the outset, as was emphasised to us by Mr Knowles, that this was an experienced Commission well-versed in the FA's rules and practice. We have therefore reflected long and hard [as we would have done in any event] before concluding that its decision is unsustainable for the reasons set out below.
28. Having discussed the evidence, the Commission set out in para 20 its decision on the disputed charge and its reasons therefor. It also stated, rather confusingly, if not inaccurately, that 'the significance of the 12/2 bets was that there was one bet made against CM's own club [to win] Lincoln City FC'. This was in fact a repetition of the phrase used in para 16c. In fact, the bet in question was placed on his own club to win.
29. This confusion was compounded in para 21 where the Commission discussed the FA sanction guidelines for betting on a competition which involves the player's club and for placing a

bet against 'one's own club'. At no point did the Commission at this stage, or at all, address the sanction guidelines for the type of bet which the Respondent had in fact placed – namely one on his team to win. As set out above, the sanctions for the placing of such a bet in breach of Rule E8.1 are a fine and a suspension from 0-6 months.

30. We note for the sake of completeness that in para 27, the Commission took account of 'those bets placed in favour of his own club' [one] and its 'catch all' observations in paras 4 and 25.
31. We now turn to consider the way in which the factors to be considered in relation to any increase/decrease in the starting point were dealt with by the commission.
32. Having identified those factors in para 22, the Commission rightly referred to the Commission's retention of its discretion to impose such sanctions as it considers appropriate having regard to the particular facts and circumstances of the case. However, we note that it did not quote or refer to the sentence in the guidelines which follow: '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'.
33. We also note, and will return to:
 - i. the apparent absence of any specific consideration by the commission of the factors 'player played or did not play' and 'experience of the participant' and
 - ii. its specific finding of no 'aggravating features in [the respondent's] conduct more generally, in considering in paras 25 and 26 'all the factors that are set out in the guidelines in order to come to a fair and proportionate sanction.

The FA's Position

34. Ms Turner submitted that the Commission's decision was unreasonable for a number of reasons; notably, to find an absence of aggravating circumstances, given the guidelines, when the Respondent had bet on his team to win in a match in which he had played less than 3 hours later was perverse, and directly contrary to the guideline – even though it may be said that playing in a match in which one has bet on one's own team to win is clearly less serious than doing so in a match in which one has bet on one's own team to lose. To seek to assess his culpability without reference to his experience and knowledge that betting on football was forbidden and something that he would never do on purpose, coupled with his deliberate decision to place a bet in person, which would thereby minimise his risk of detection, was likewise a flawed decision which could not be categorised as the reasonable exercise of a judicial discretion. It is not accepted that, because of their great importance and relevance, we can assume that they are caught by the 'catch all' observations in paras 4 and 25 of the Commission's decision.
35. Because there is no reference in the Commission's decision to the FA's submissions as to the appropriate sanction for the type of bet which had been placed by the respondent, nor indeed to the sanction itself, Ms Turner is driven to conclude upon a consideration of the decision in its entirety that it was not considered at all. Not even the possibility of a suspended or backdated suspension was referred to by the Commission. If the Commission wished to exercise its discretion to depart from the Sanction Guidelines, it was incumbent upon it to spell out the process by which it reached its decision; its failure to do so means that, short of remitting the matter to a differently constituted Commission for a rehearing – a course of action which, whilst open to us, was one which we were urged by both

parties to avoid – we must grasp the nettle and perform the exercise which the Commission should have undertaken.

The Respondent's Position

36. Not surprisingly, the Respondent's position is different. Mr Knowles acknowledged that his task would have been easier if there had been a clear and accurate reference to the most serious type of bet for which the Respondent fell to be sanctioned, as well as articulated reasons for the Commission's decision to depart from the guidelines – if indeed they did, given that the entry point for a sporting sanction was 0-6 months; in our view that is an unfortunately phrased time frame, and we suggest that consideration be given to amending the entry point to 'up to 6 months'.

37. He submitted that it was clear from the catch all provisions in paras 4 and 25 and the use of the phrase 'the Commission did not consider there to be any aggravating features in CM's conduct "more generally"' made it clear that the commission had at the forefront of its mind all circumstances, both aggravating and mitigating, before reaching its justified and understandable conclusion that a sporting sanction was disproportionate and unfair. He also submitted that it was clear from the tenor of the decision, which placed great emphasis on the Respondent's personal mitigation and ongoing hardship, as well as the successful effort which he had put into reducing the number of charges which he faced, that had the Commission addressed specifically those matters said to amount to aggravating circumstances, the correct guidelines and the importance of consistency, it would nevertheless have reached the same conclusion. Accordingly, Mr Knowles invited us to conclude that the Commission's decision was neither "Wednesbury unreasonable" or unduly lenient.

Conclusion

38. In our judgment, whilst we are prepared to accept that the reference to betting ‘against’ Lincoln City FC was due to an unfortunate choice of words rather than a failure to appreciate the precise nature of the bet which gave rise to the breach, the failure of the Commission to identify the entry point for the type of bet placed by the Respondent is the key to the problems which thereafter exist with its ruling.
39. Had it done so, it would surely have gone on to consider whether a departure from that entry point was justified having regard to such aggravating and mitigating factors as it found to exist. It was wrong for the Commission to conclude that there were no aggravating features [whether or not ‘more generally’] having regard to a] the Respondent’s experience as a professional footballer, b] the deliberate steps which he took to avoid detection by placing bets in person and, above all, to c] the fact that the Respondent played in the match on which he bet, less than 3 hours later – we need make no finding on whether or not he knew at the time he placed the relevant bet that he was to be selected for the match, any more than the Commission felt it necessary to do so. To reach a decision on sanction by reference only to the mitigating factors and without reference to any factors which might warrant an increase in the entry point [apart possibly, from his denial of the most serious charge which in our judgment, was not, in any event, an aggravating feature – merely one which deprived him of the mitigation of an admission of and remorse for that offence] was unreasonable.
40. Had it concluded that there were indeed aggravating features, it would have been for the Commission to weigh them in the balance against the available mitigation and to decide whether the Guidelines should or not be applied, being mindful of the interest of consistency, as spelt out in the Guidelines.

41. Where there is a failure to spell out specific and important factors, whether aggravating or mitigating, said to have influenced the exercise of discretion, one way or the other, it should not be assumed that a party seeking to uphold the exercise of the Commission's discretion will be able to rely on the type of 'catch all' phrases which appear in paragraph 4 in order to do so. It will in such circumstances be necessary for an Appeal Board to look with care at the Commission's decision in order to decide whether it can infer with clarity what was or was not intended by the Commission. If a decision has been reached without reference to such specific and important factors, it may not be possible to draw such an inference.
42. In this case, far from being able to conclude that if the Commission had taken account of the matters to which we have referred, and approached the question of sanction and penalty generally with the step-by-step approach which we advocate, it would have nevertheless refrained from imposing a period of suspension, we are unanimously of the view that in accordance with the FA's Disciplinary Regulations 11.21.1 and Regulation 11.21.2a , we should, in addition to the fine and warning imposed by the Commission, impose a suspension from all football and football-related activities for a period of 6 weeks. To reflect the de facto suspension which the Respondent has effectively served since his suspension by Lincoln City FC in September 2022, we direct that the order for suspension be backdated to 22/11/22, being the date of the Commission's decision. There will be no order for costs.

HH Clement Goldstone QC
Appeal Board Chair

13 January 2023