

BEFORE AN APPEAL BOARD OF THE FOOTBALL ASSOCIATION

BEFORE:

His Honour Phillip Sycamore CBE (Chairperson)	Independent Specialist Panel Member
Ken Brown	Independent Football Panel Member
Dominic Adamson KC	Independent Legal Panel Member
Paddy McCormack	Judicial Services Manager - Secretary

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

BETWEEN:

NIGEL HOWE

Appellant

-and-

THE FOOTBALL ASSOCIATION

Respondent

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**APPEAL BOARD DECISION AND REASONS**

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**INTRODUCTION**

1. This is the Decision and Written Reasons for the Decision made by an Appeal Board which convened at Wembley Stadium on 28 August 2024 to consider the appeal in this matter.
2. The appeal was brought pursuant to the FA Disciplinary Regulations, Section C: Appeals – Non-Fast Track (“the Regulations”) and was in relation to the element of sanction imposed upon the Appellant pursuant to paragraph

54(b) of a decision of the Football Association Regulatory Commission (“RC”) dated 5 April 2024 (“the Sanction Decision”).

3. The case was in relation to charges of:
  - a. misconduct contrary to FA Rule E9 and Regulation 5 of the Working with Intermediaries Regulations (“the WWI Regulations”) against Nigel Howe (“the Appellant”) and his employers Reading Football Club (“the Club”); two other employees of the Club, Sue Hewett (“SH”) and Michael Gilkes (“MG”), and Glen Tweneboah (“GT”), a Registered Intermediary (collectively “the Other Parties”); or in the alternative
  - b. misconduct contrary to FA Rule E3(1) arising of the same facts.  
The Appellant, the Club, SH and MG admitted the second charge but denied the first.
4. The RC had upheld the charges against the Appellant, the Club and the Other Parties in a Decision dated 13 December 2023 (“the Breach Decision”). Neither the Club nor any of the Other Parties is a party to this appeal.
5. On 10 May 2024 the RC, having re-convened on 29 February 2024 to consider sanction, imposed the following sanction on the Appellant:
  - a. *An immediate suspension of six months from involvement with player contract negotiations and transfer related activity (including dealings with Agents/Intermediaries) (‘the Initial Suspension’).*
  - b. *A further suspension of six months from all football-related activity. This period will commence immediately following expiry of the immediate sanction referred to above (‘the Further Suspension’); and*
  - c. *A fine of £5,000.00.*
6. The Appellant, by his Notice of Appeal dated 29 April 2024, appeals only the element of sanction underlined at 5.b. above. The Initial Suspension was effective from 5 April 2024.
7. The Appellant was represented by Sean Jones KC of counsel. The Football Association (“the Respondent”) was represented by Will Martin of counsel. We express our gratitude to both counsel for their assistance and presentation.

8. We have reminded ourselves that this is an appeal by way of review of the decision of the RC, not a rehearing. The burden lies with the Appellant to establish, following the test set out in *Wilfred Zaha v The FA 17 February 2019*, that the sanction “...was materially more than was necessary or proportionate in the circumstances of the case...”. In *Zaha* it was made clear that it is not a question as to whether the Appeal Board would itself have imposed a slightly lower sanction. The Appeal Board stated that it would be “...wrong for an Appeal Board to interfere with a sanction imposed by a Regulatory Commission simply because the Appeal Board would itself have imposed a slightly lower sanction...”.

## BACKGROUND

9. The charge of misconduct contrary to FA rule E3(1) which was admitted by the Appellant arose from events between March and July 2019 and was as follows:
- “Between 1 March 2019 and 16 July 2019 acted in a manner which was improper, namely purporting to agree with an Intermediary, namely Glen Tweneboah, that he have an interest in relation to a registration right or an economic right, namely to receive payments contingent on the future transfer of a Player, [REDACTED], namely 10% of any gross guaranteed transfer fee generated at the time of [REDACTED]’s future sale to another club.”*
10. The Appellant, together with the Club and SH and MG, admitted that charge, but only in so far as it alleged that they acted in a manner which was improper. This was accepted by the Respondent, which modified the charge against them by abandoning the allegation that the conduct brought the game into disrepute.
11. As summarised in the Breach Decision, the charges arose from negotiations during 2019 between GT and the Club in respect of the registration of a player, [REDACTED] [REDACTED]. [REDACTED] The Club had offered him a Professional Contract. The central allegation in the case before the RC was that the Club, through the

Appellant who was its Chief Executive Officer, agreed to pay GT 10% of any future transfer fee received by the Club for the onward sale of [REDACTED]

12. The RC held that such payments were prohibited by Regulation 5 of the WWI Regulations and that, although in the event, no future transfer fee payment materialised, there was an agreement for such a payment to be made. There was, therefore, an agreement to breach Regulation E5, contrary to Rule 9 of the FA Rules.

13. Regulation 5 provides:

*“An Intermediary must not have, either directly or indirectly, any interest of any nature whatsoever in relation to a registration right or an economic right. This includes, but is not limited to, owning any interest in any transfer compensation or future transfer value of a Player [or payments contingent on the future transfer of a Player]. This does not prevent an Intermediary acting solely for a Club in relation to a Transaction to transfer a Player’s registration being remunerated by reference to the total amount of transfer compensation generated by solely that Transaction.”* Rule 9 provides:

*“An attempt by a Participant or any agreement with any other person (whether or not a Participant) to act in breach of any provision contained in these Rules shall be treated for the purposes of these Rules as if a breach of the relevant provisions had been committed.”*

14. That decision is not challenged. The RC was provided with extensive documentation for both the Breach Hearing on 13 December 2023 and the Sanction Hearing on 29 February 2024. We have had access to that documentation and have read the very detailed reasons given by the RC in both the Breach and Sanction Decisions.

15. For the avoidance of doubt, the Appellant does not suggest that anything turns on the fact that he was found to be in breach in respect of both charges despite the fact that they were brought in the alternative. He accepts that, because the conduct under scrutiny was the same in respect of both charges.

## **GROUND OF APPEAL**

16. The Appellant brings the appeal on the following grounds:

*“The Appellant relies upon Regulation 2.4 of the Appeal Regulations and submits that the suspension of six months from all football-related activity as set out in paragraph 54(b) of the Decision on Sanction (the “**Further Suspension**”), is excessive. For the avoidance of doubt, Mr Howe is not appealing the immediate six-month suspension from involvement with player contract negotiations and transfer related activity, as per paragraph 54(a) of the Decision on Sanction (the “**Initial Suspension**”), or the fine of £5,000.00, as per paragraph 57(a) of the same...*

*... The Appellant submits that the imposition of the Further Suspension was excessive:*

- a. on the basis that it is disproportionate to the nature of the offence;*
- b. on the basis that it fails to attach proper weight to the applicable mitigation;*
- c. in comparison with the sanction imposed on Mr Tweneboah; and*
- d. in comparison with the sanction imposed on Mr Paul Winstanley in The FA v Brighton and Hove Albion (16 September 2022)”*

## **THE SANCTION DECISION**

17. We do not rehearse the whole background, which is fully set out in the Sanction Decision, but we do highlight the following (references in brackets are to paragraph numbers of the Sanction Decision):

- (i) The aim of the Regulation is to prevent a conflict of interest from arising between a player and an intermediary in circumstances in which an intermediary might prioritise their own economic interests over what might be in the best interests of the player.
- (ii) The circumstances leading to the charges arose from negotiations some five years ago.
- (iii) At the relevant time the Appellant was the Chief Executive of the Club. He is no longer in that role, which he relinquished in 2020. He

has worked in football for over 25 years and has never before faced any disciplinary charges. His present role with the Club is as Property Projects Manager and he is working to drive the process of the sale of the Club forward. He had submitted to the RC that a suspension from all footballing activity might have very serious implications for the Club (paragraph 44).

- (iv) The RC found that it ought to be possible for the Club to find other suitably experienced professionals to manage the sale of the Club, if need be (paragraph 47) , but then directed that the further suspension from all football-related activity was not to commence until the expiry of the initial suspension, to provide ample time for the sale of the Club to be concluded or for the Club to bring in additional assistance ( paragraph 55.b). No details were provided as to the Club sale or progress beyond an indication that it was “...*a more difficult process than anticipated.*” (paragraphs 42 and 43). The explanation provided to us on 28 August 2024 was much the same. There was no application before us to adduce any new evidence.
- (v) The RC identified a number of aggravating features (paragraphs 9 to 20) and mitigation (paragraphs 21 to 48), including the early admission by the Appellant and the time taken by the Respondent to investigate the matter and to bring charges. Whilst the Appellant, the Club and SH and MG admitted the charges at the earliest opportunity, GT contested the charge against him.
- (vi) The RC (paragraph 17) was especially critical of the Appellant’s conduct in deciding and sanctioning the approach to be taken by the Club and SH and MG, both of whom worked under him. They found this to be a significant aggravating feature, describing his approach to the negotiation with GT as “*nothing short of astonishing.*”
- (vii) The Respondent had suggested a sanction for the Appellant of “*a suspension from all football- related activities for a period of no less than 6 months.*” (paragraph 5 ii).

- (viii) The Appellant proposed, on an alternative basis and to be suspended, a suspension from involvement with player contract negotiations and transfer related activities. In imposing that sanction for 6 months the RC recognised that, as the Appellant was not currently involved in that activity, it would not “*bite*” on him immediately but would serve to ensure that he did not become involved for that period. (paragraph 55 a.).
- (ix) In imposing the further suspension to commence on the expiry of the initial suspension, the RC recognised that this would bar him from involvement in the process of the sale of the Club but considered that the timing provided the Club with ample time to conclude the sale process or bring in extra assistance. (paragraph 55).
- (x) In respect of GT, the RC also imposed a suspension from all football-related activity for 6 months to commence 6 months from the date of the Sanction Decision. The RC explained that they had done this in recognition of the fact that “*the timing of these proceedings has seemingly come at a critical juncture in [REDACTED]’s career.*” (paragraph 57).
- (xi) A fine of £5,000.00 was imposed on the Appellant “*to take into account the seriousness of his conduct and the level of his football income.*” (paragraph 58 a.)

## **DISCUSSION**

18. We gave careful consideration to both the written and oral submissions of both parties and address below the four grounds of appeal.

### **DISPROPORTIONATE TO THE NATURE OF THE OFFENCE**

19. We consider that the RC was entitled to reach the conclusion that it did to the effect that the breaches by the Appellant were serious, particularly given his senior position and his willingness to conduct the negotiations in the manner he did in the light of his own claimed uncertainty irrespective of whether the arrangements were within the Regulations and requiring SH and MG to act under his direction in the same way, identified by the RC as “*a significantly aggravating factor*” ( paragraph 17). Accordingly, we reject

the submission made by the Appellant that, objectively, it is difficult to imagine a less serious offence. The level of culpability was high. The approach to sanction was not disproportionate.

#### **FAILURE TO ATTACH PROPER WEIGHT TO THE APPLICABLE MITIGATION**

20. Having read and analysed the reasons given by the RC in the Sanction Decision it is clear that the RC properly considered the mitigation advanced on the Appellant's behalf. We are satisfied that the RC properly considered and addressed all of the matters referred to in paragraph 17 of the Appellant's Grounds of Appeal:-

- (i) the protracted nature of the investigation was considered at paragraph 21 and 22 of the Sanction Decision;
- (ii) Mr Howe's unblemished record was addressed at paragraph 22;
- (iii) The co-operation of all participants including Mr Howe was recognised in paragraph 26;
- (iv) the RC noted Mr Howe's admission of improper conduct contrary to FA Rule E3(1) (see paragraph 23) and went on to state that it was 'not unreasonable for all Participants to test the issue of whether there was a breach of FA Rule E9 and E5 (see paragraph 24) – we return to this topic below;
- (v) The RC noted Mr Howe's contrition (paragraph 27); and
- (vi) They plainly considered the character references provided by Mr Howe (paragraph 27).

#### **SANCTION EXCESSIVE IN COMPARISON TO THE SANCTION IMPOSED ON GT**

21. Both the Appellant and GT were suspended from all football-related activity for a period of six months, with activation postponed for six months and were fined. In addition, the Appellant was made the subject of the immediate Initial Suspension. Although the RC record in the Sanction Decision the fact that the charge was proved against GT following his denial and a contested hearing and that the Appellant was given credit in mitigation for his early admission, the RC did not give any indication in the reasons as to the starting point for the length of the Further Suspension,



nor did it identify the discount which it had applied to the Appellant in recognition of the early admission. We find the approach of the RC in determining that the same outcome in terms of the Further Suspension was appropriate for both the Appellant and GT surprising, given the early admission by the Appellant and the denial by GT. Although the RC thought the decision to 'test' the issue of the Rule E9 and Regulation E5 charge was not unreasonable, the Appellant did so having admitted improper conduct pursuant to E3. In our view there was a material distinction between the position of the Appellant and GT.

#### **COMPARISON WITH FA V BRIGHTON AND HOVE ALBION FC AND PW ("PW")**

22. The RC indicated that they found PW to be "*sufficiently different that we found it to be of limited assistance*" (paragraph 47). A number of differences were identified, including the finding that PW's culpability was found to be at the lower end of the scale in circumstances in which he was acting upon the actions and advice of the former Club Secretary, whereas the Appellant was, as Chief Executive Officer, directing the negotiations. We consider that the RC were entitled to find PW to be of limited assistance. The Respondent referred us to the decision in *The FA and Hartlepool United FC and others 21 September 2018* as having greater relevance to the Appellant's case. Whilst we have given consideration to these submissions, we find them to be of little assistance as we consider that a Commission or Appeal Board should not slavishly seek to follow previous cases and should recognise that each case ultimately turns on its own facts.

#### **CONCLUSION AND SANCTION**

23. We consider that the RC should have distinguished between the Appellant and GT in terms of the length of the Further Suspension to reflect the Appellant's early admission as compared with the continued denial by GT.

24. In imposing the Initial Suspension, the RC indicated that it would not "*bite*" on him. Nevertheless, it was a sanction and, by definition, carries a stigma. In considering the combined effect of the Initial Suspension and the Further Suspension we consider that the RC should have had regard to the principle

of totality. The reasons do not indicate that this was taken into account by the RC.

25. As we have already indicated, like the RC, we have no details of the position with regard to the proposed sale of the Club and the progress, if any, made since the Decision on Sanction. There was no application to adduce further evidence about this; the extent of the Club and the Owner's reliance on the Appellant or steps taken to enlist further assistance in taking the sale forward. Like the RC we are unable to attach weight to this aspect.

26. We have determined that the appeal should be allowed in part and the six-month suspension from all football-related activity, effective 5 October 2024, is reduced to a period of three months. This is to reflect the need to distinguish between the Appellant and GT, as explained above, and to recognise the need to have regard to totality. The suspension shall run to 4 January 2025.

#### **DECISION**

27. The appeal against sanction is allowed in part.

28. The six (6) month suspension from all football and football-related activity, effective 5 October 2024, is reduced to three (3) months from all football and football-related activity. The suspension shall run up to and including 4 January 2025.

29. The remainder of the Penalties & Orders in the RC's decision of 5 April 2024 remain as ordered.

30. Any costs incurred in bringing, or responding to, this appeal shall be borne by the party incurring the costs. The FA shall pay the costs of the Appeal Board.

31. The appeal fee shall be returned to the Appellant.

32. This decision is final and binding pursuant to Regulation 22 of the Appeal Regulations.

His Honour Phillip Sycamore CBE  
Chairperson

London

04 September 2024