

**BEFORE A REGULATORY
COMMISSION OF THE FOOTBALL
ASSOCIATION**

**THE FOOTBALL
ASSOCIATION**

-v-

READING FC (1)

GLEN TWENEBOAH (2)

NIGEL HOWE (3)

SUE HEWETT (4)

MICHAEL GILKES (5)

WRITTEN REASONS AND DECISION: SANCTION

Attendees at personal hearing of 29 February 2024

Regulatory Commission & Secretary

Tim Ward KC (Chair) – Independent Specialist Panel Member

Alison Royston – Independent Football Panel Member

Stuart Ripley – Independent Football Panel Member

Paddy McCormack – Judicial Services Manager – Secretary

Glen Tweneboah

Glen Tweneboah – Participant

Ifeanyi Odogwu – Counsel for Glen Tweneboah

The FA

Will Martin – Counsel for The FA

Oliver Beeley – Legal Counsel for The FA (observer)

Reading FC, Nigel Howe, Sue Hewett, Michael Gilkes

Andrew Smith, Counsel

Alice Skupski, Centrefield LLP

Stuart Baird, Centrefield LLP

Nigel Howe, Reading FC – Respondent

Sue Hewett, Reading FC – Respondent

Michael Gilkes, Reading FC - Respondent

Introduction

1. By a Decision and Written Reasons dated 13 December 2023, (“**the Breach Decision**”)¹ this Commission upheld charges of misconduct contrary to FA Rule E9 and Regulation E5 against all Participants. The Reading Participants admitted the alternative charge of improper conduct contrary to FA Rule E3.
2. The Commission held a further in-person hearing on 29 February 2024 to determine sanction. Detailed submissions were received in writing and orally, together with further witness statements from the Reading Participants. There was no further cross-examination. We took all of these matters into account although we do not set them out in full. We were greatly assisted by submissions from all Counsel.
3. At the hearing on 29 February 2024, we notified the parties of our decision to impose an agreed sanction upon Mr Gilkes and Ms Hewett of a reprimand and warning as to future conduct. We otherwise reserved our decision. All the parties were informed of our decisions in a confidential draft on 5 April 2024. There then followed further submissions on various matters including publication. This Decision and Written Reasons was then finalised on 10 May 2024 in light of those further submissions.
4. It was common ground that there are no standard sanctions applicable to this case. A sanction may be imposed which has the combined aims of punishing the offender, deterring that person and others from offending, and protecting the integrity of the sport. Any sanction must be proportionate; see e.g. *FA v Klopp* 13 November 2022, paras 39, 40 among many others.
5. The FA contended that this was a significant and serious breach. It contended for the following penalties:

Reading FC

- i. A substantial financial penalty of a least £400,000;
- ii. In the event the financial penalty is set lower than £400,000, a financial penalty plus a suspended suspension from the registration of players for a period

¹ We adopt the same definitions and abbreviations in these Written Reasons.

of two seasons (to be activated in the event of further similar misconduct).

Glen Tweneboah: Suspension from all football-related activities, including all Intermediary/ Football Agent Services for a period of no less than 6 months.

Nigel Howe: Suspension from all football-related activities for a period of no less than 6 months.

Sue Hewett: A reprimand and warning as to future conduct.

Michael Gilkes: A reprimand and warning as to future conduct.

6. The Reading Participants accepted the proposed sanctions for Ms Hewett and Mr Gilkes, and as indicated above, we have endorsed this.
7. As to Mr Howe and the Club, they argued for a reprimand and warning. If any sporting or financial sanction were to be imposed, it should be suspended.
8. Mr Tweneboah also contended for a reprimand and warning, or in the alternative a “*small financial penalty*”.

Aggravating factors

9. The FA relied on five aggravating factors which it contended applied to all Participants.
10. First, it argued that the Participants ought to have known that the FTFP amounted to a breach, even if they did not. We agree. It is a remarkable feature of this case that Mr Tweneboah claims not to have been aware that the FTFP was contrary to the WWI Regulations, and that (as set out in the Breach Decision) the Reading Participants professed differing degrees of uncertainty about this question, at different times and in different documents. As we have already observed however, the WWI Regulations are short. Rule E5 is a well-known provision of fundamental importance. If the Participants did not know such an FTFP was in breach of the rules, they should have. Given their respective roles, this was important.
11. Second, the FA points out that the FTFP related to [REDACTED] first professional contract. It argued that such players are vulnerable to unscrupulous intermediaries. Mr Martin made

clear however that this point was advanced as a matter of generalisation, rather than on the basis of any specific factors in this case. Whilst we accept the general point made, on the facts of this case, we place little weight on this.

12. Thirdly, the FA argued that the FTFP was instrumental as a pre-requisite in ██████ signing with the Club, and that as a result it obtained a sporting advantage, and then in due course profited very substantially from his sale. We consider that the evidence establishes that Mr Tweneboah made considerable efforts to secure the FTFP before agreeing to obtain the signature of ██████ or his parents on the proposed contract with the Club. The Club's anxiety to secure that signature no doubt increased Mr Tweneboah's bargaining power in this regard. As the evidence set out in paragraphs 28 – 31 of the Breach Decision shows, the matters were closely linked. Thus, the FTFP was part of the negotiations that helped secure an important young prospect with a potentially significant future transfer value.
13. Nevertheless, it does not follow that if the Club had refused to pay the FTFP, ██████ would not have signed for the Club. ██████ had been with the Club since he was ██████. If the Club had behaved responsibly and explained that the FTFP was impermissible it seems to us entirely plausible that a different set of arrangements might well have been entered into that was mutually advantageous to the parties. That is of course a matter of speculation, but we are not prepared to assume that absent the FTFP, ██████ would have walked away from Reading and signed for another football club. Thus we find that it is not clearly demonstrated that a sporting advantage flowed purely because of the FTFP, as any benefit gained by the Club may well have occurred even without the FTFP.
14. The FA relied upon the following further individual aggravating factors.
15. In respect of Mr Tweneboah, the FA relies upon the fact that he initially proposed the FTFP. We agree, and reject the argument for Mr Tweneboah that there is mitigation in the fact that the Reading Participants reduced the proposal to writing for the first time. Having said that, it is clear that the Club led Mr Tweneboah to believe that such an FTFP would be paid, or as Mr Howe put it "string the guy along".

16. As we noted in the Breach Decision, however, there were significant inconsistencies in the position of the Reading Participants about exactly what was understood about the Regulations.
17. In respect of Mr Howe, the FA points to the fact he decided and sanctioned the approach to be taken by the Club and those working under him, namely Mr Gilkes and Ms Hewett. We agree that this is a significant aggravating factor. It bears re-stating that Mr Howe was at that time the CEO of the Club. His own account of his approach to the negotiation with Mr Tweneboah, and indeed such negotiations in general, is nothing short of astonishing. The facts of this case make clear that he was closely involved on a personal level with the negotiations with Mr Tweneboah. He not only approved everything Mr Gilkes and Ms Hewett did but drove the negotiation strategy forward. It was therefore incumbent upon him to fully understand the WWI Regulations, or at the very least to take advice upon them. The explanation he gave of his approach was, however, very different. It is summarised at paragraphs 42-44 of the Breach Decision. He apparently pursued a negotiation strategy that exploited his own claimed uncertainty, willingly pursuing arrangements irrespective of whether they were within the Regulations. It was said that the strategy was to check with the FA later, when the agent's bargaining position had been undermined.
18. We proceed on the basis that this is the only case in which there is a proven breach of the Regulations for which Mr Howe is responsible, and we sanction Mr Howe solely in respect of his conduct in this particular case. Mr Howe's self-confessed approach in this case is not only improper, as he admitted, but appears to be premised on (at best) a reckless disregard for those rules during the course of negotiation itself.
19. As to Ms Hewett, the FA points to the fact that as Club Secretary, one of her roles and responsibilities was ensuring compliance with governing body rules and regulations. We again agree, but recognise that she was operating under the direction of Mr Howe.
20. The FA confirmed it did not rely on any disciplinary history in respect of any Participant by way of aggravation.

Mitigation

21. Turning to mitigation, we consider that all the Participants are entitled to significant mitigation arising out of the time taken by the FA's investigation. The facts we are concerned with occurred nearly five years ago. The FA investigation began in ~~July 2021~~. The charges were laid two years later.
22. We accept that the protracted nature of these proceedings has placed a very considerable burden upon all the Participants. It is also significant that none has faced any further disciplinary action arising from FA Charges in the current season and the preceding five full seasons, save in the case of the Club in respect of various On-Field-related matters of a different nature. The Reading Participants emphasised the "*unblemished*" nature of their disciplinary record.
23. As to early admission, the Reading Participants admitted the charge of improper conduct at the earliest opportunity. They contested the charge of breach of Rule E9 and Regulation E5, however. Mr Tweneboah contested this sole charge against him.
24. The charges relating to Rule E9 and Regulation E5 gave rise to issues with a significant legal element. We consider it was not unreasonable for the Participants to test those issues before this Commission, even though we decided those issues against them.
25. As to cooperation, Mr Tweneboah notified the FA of the existence of the FTFP, but apparently did not appreciate that the conduct that he had notified was in fact against the WWI Regulations. As we have noted, shortly afterwards, he invoiced the Club for the FTFP. It remains unclear to us exactly why he acted as he did. We therefore consider he is entitled to some, but limited, credit for this.
26. We accept more generally that all Participants cooperated with the investigation. There is no suggestion they are at fault for the delay to it. Moreover, the FA has not sought to suggest any wrongdoing by any of the Reading Participants arising out of any disclosure issues.
27. All the Reading Participants have expressed strongly worded statements of contrition and assurances that the behaviour in question will not reoccur. We were told that Mr Tweneboah has "*undoubtedly learned his lesson*" and has "*instructed specialist legal counsel to advise him on the regulatory impact of all his commercial decisions as a football intermediary so*

that he is never in the same position again". Character references were provided for Mr Howe and Ms Hewett.

28. All Participants relied on the fact that no FTFP was ever paid and there is no evidence of any disadvantage to [REDACTED]. The FA made clear it did not seek to rely on any form of financial gain by Mr Tweneboah in support of its submissions on sanction. We accept this but give it limited weight as a matter of mitigation. We regard this as a significant breach of an important rule even if it never came to fruition. As already observed, Mr Tweneboah issued an invoice after the FA had begun to investigate, and in those circumstances it is unsurprising it was never paid.
29. Mr Tweneboah raised a number of further points, all of which we considered.
30. First, it was said that this was a strict liability offence, and Mr Tweneboah had not been found to have engaged in improper conduct. Mr Odogwu rightly accepted, however, that Mr Tweneboah's conduct was blameworthy.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. We were provided with very little information about this factor. That affects the weight that we attach to it. Nevertheless, we accept that given the time this case has taken to progress, in practice this decision comes at [REDACTED] [REDACTED] [REDACTED]
- [REDACTED]

34. Mr Tweneboah also relied on the fact he could have chosen to negotiate a form of payment within the rules. Whether or not that is the case, he did not do so.
35. Mr Tweneboah also relied upon the lack of any repeated incidents following this one and that he has now instructed specialist legal counsel to advise him “*on the regulatory impact of all his commercial decisions as a football intermediary*”.
36. All Participants stressed their determination not to breach these rules again.
37. In the case of Mr Gilkes and Ms Hewett we consider there is very substantial mitigation arising out of the fact they were under the direction of Mr Howe.
38. The Club and Mr Howe raised further matters by way of mitigation, but in each case, the weight we attached to them was affected by the lack of specificity in the information they advanced.
39. The Club relied upon its financial difficulties, in order to seek to resist the financial penalty sought by the FA. It contended that this would have “*potentially disastrous effects for the Club*” materially increasing the threat of relegation. Mr Odell, the Chief Financial Officer of the Club gave high level evidence about its financial difficulties, relying on the difficulties in obtaining funding from its owner Mr Dai.
40. Mr Odell stated that “*if the Club was ordered to pay a £400,000 immediately*”, it would (amongst other things) put player and staff salaries “*in jeopardy*”, “*cast doubt*” on its ability to pay its obligation to HMRC and mean it was “*unable*” to make payments to other creditors. That raised the risk of further sanctions from the EFL and would “*materially affect the sale process*”.
41. The Commission took this evidence into account, but would have attached more weight to it if further details had been provided about the ability of the Club to obtain funding from its owner Mr Dai or otherwise, and in particular about the timescales for raising the funds to pay the penalty sought by the FA.

42. Mr Howe also explained that Mr Dai “*remained committed to selling the Club but this has proved to be a more difficult process than anticipated*”. He also alluded to a number of “*interested parties*” and a preferred bidder, but beyond that, no details were given as to the nature of the bidding process or any indication of timeline. All of these matters could have been dealt with in confidence if need be.
43. Once again, the decision to give no further detail about this matter reduces the amount of weight that we attach to it.
44. Mr Howe relied upon his own role in facilitating the sale. He explained that whilst his “*day job*” was Property Projects Manager, he was also working to drive the sale process forward. He told us (albeit without providing any detail) that the preferred bidder and a number of others have “*indicated they would like me to assist in the event that they ultimately take ownership of the Club and this could include acting as interim CEO/Chairman during any transitional period*”. If he were suspended from all footballing activity this “*might have very serious implications for the viability of the Club*” .
45. Once again, no details were provided of these matters.
46. Mr Howe’s position was, however, supported by Mr Trevor Birch, Chief Executive of the EFL. In addition to providing an impressive character reference for Mr Howe, he explained that he considered Mr Howe “*important to the sale process as there are no UK based directors with whom the EFL can liaise*”, and as a result a suspension that took him out of that role would be “*overwhelmingly detrimental to the ongoing efforts to rescue the Club*”.
47. Whilst none of this evidence was challenged, it seems to us that (with respect to Mr Howe) it ought to be possible for the Club to find other suitably experienced professionals to manage the sale of the Club, if need be.
48. We would further note that the Participants relied on a number of decisions of different regulatory commissions which we took into account. In particular, the Reading Participants relied on *FA v Brighton and Hove Albion* 16 September 2022. We consider the circumstances of that case to be sufficiently different that we found it to be of limited assistance.

Decision on sanctions

49. Having regard to all of the matters before us, we have reached the following decisions as to sanction in respect of the Club, Mr Howe and Mr Tweneboah
50. By way of high level observation, we consider the breaches in this case were serious, even if no doubt there could be other cases of a more serious nature. The approach taken by these Participants to the WWI Regulations in this case is both serious and concerning.
51. We consider it important to the objectives of the disciplinary regime to impose meaningful sanctions.
52. As to the Club, we impose a fine of £200,000. We understand that ordinarily such fines imposed in the latter half of a season are invoiced by the FA at the end of the season with a thirty five day period for payment. Accordingly on that timetable, there would remain several weeks before payment will be due. That would afford some weight to the limited information we have been provided with about its financial situation and provides a relatively generous window in which to raise the necessary funds. Following provision of our draft Written Reasons, the Club has proposed a timetable under which it will make a first instalment at that time, with three further instalments falling due in the subsequent months. The FA did not object to this and the Panel has agreed to it.
53. As to Mr Howe and Mr Tweneboah, we consider a period of suspension is appropriate. We note that pursuant to Disciplinary Regulation 41.3, the Commission may impose a *“suspension from all or any specified footballing activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of Matches”*.
54. We have not been informed as to why the bringing of the Charges by the FA against the Participants was delayed to the extent that it was. In the particular circumstances of this case the delay has created a risk that the imposition of immediate suspensions could have an impact, not just upon the Participants but also on third parties, that would be wholly disproportionate. As such, we have sought to take this into account in the way we have structured the periods and timings of the suspensions imposed.

55. In the case of Mr Howe we impose the following suspensions:

- a. An immediate suspension from involvement with player contract negotiations and transfer related activity (including dealings with Agents/Intermediaries) for six months. Such a suspension was proposed on behalf of Mr Howe, albeit as an alternative case and on a suspended basis. We understand that this will not affect his current function, as he is not currently involved in that activity. This sanction accordingly does not “bite” on Mr Howe immediately. It will however, serve to ensure he does not become involved for that period.
- 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 FA has accepted that this would enable him to retain his current “day job” but would bar him from involvement in the Club’s sale process. The timing of this sanction provides the Club ample time to either conclude the sale process or bring in additional assistance.

56. We take into account that these sanctions might affect Mr Howe’s role under new ownership, but that remains speculative given the information we have been provided with.

57. As to Mr Tweneboah, we impose a sanction of six months suspension from all football-related activity, to commence six months from the date of this Decision. This reflects our concern that the timing of these proceedings has seemingly come at a critical juncture ■■■■■
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58. In addition, we impose the following financial penalties by way of immediate sanction:

- a. A fine of £5,000 on Mr Howe, to take into account the seriousness of his conduct and the level of his football income;
- b. A fine of £15,000 on Mr Tweneboah, taking into account both the seriousness of his conduct and the very limited information we have about his financial circumstances.

We note (i) the very substantial sums he made from the earlier transfer of [REDACTED] (paid by [REDACTED] rather than in the form of the FTFP, [REDACTED] and (ii) [REDACTED]
[REDACTED]
[REDACTED]

59. We do not consider that there are sufficiently clear and compelling reasons to justify the suspension of any of these penalties.
60. As to costs, only Mr Tweneboah requested an oral hearing on breach, and only the Reading Participants requested an oral hearing on sanction. Mr Tweneboah indicated that if the Commission accepted the Reading Participants' request for an in-person hearing on sanction, he would wish to attend as he in fact did.
61. In the circumstances, we order that the five Participants each pay 20% of the Regulatory Commission's costs of these proceedings. Further details shall be provided to the Participants by Judicial Services in due course.

Tim Ward KC

Stuart Ripley

Alison Royston

Confidential draft provided on 5 April 2024

Final Decision 10 May 2024