

**In the matter of a Regulatory Commission of The Football  
Association**

**Mr Nicholas Stewart QC (chairman), Mr Ken Brown and Mr  
Keith Allen**

**Between:**

**The Football Association**

**and**

**Chesterfield Football Club**

**Reasons for Regulatory Commission decision made on 18  
July 2018**

**Introduction: The charge and admission**

1. Chesterfield Football Club is a professional football club which is currently playing in the National League. The club was relegated from the English Football League at the

end of last season 2017-18 after many years at different levels of the Football League. The club is currently owned and run by Club 2000 Limited. References to “the Club” in these reasons denote that company and/or the football club as the context requires.

2. By a letter from The Football Association dated 9 May 2018 the Club was charged with misconduct (under FA rule E1) for a breach of FA rule C1(b)(v). The breach alleged was that the Club had allowed a third party company CFC Football Development School Limited (“Development School”) to pay the wages of two Chesterfield FC players, Jake Orrell between 1 July 2015 and 6 July 2016 and Myles Wright between 1 July 2015 and 10 November 2015, while not recording the payments in the Club’s accounting records .
3. FA rule C1 is under the headings RULES RELATING TO PLAYERS and PLAYERS WITH WRITTEN CONTRACTS. Rule C1(b)(v), under the further heading *Financial Arrangements – Registration*, states<sup>1</sup>:

(v) All payments made to Players must be must be made by the Club and fully recorded in the accounting records of the Club.
4. By its reply to the FA’s charge letter, the Club formally admitted the charges. It also stated that it did not require a personal hearing but it subsequently did request a hearing. Accordingly the Regulatory Commission held a hearing at Wembley Stadium on Wednesday 18 July 2018.
5. The Regulatory Commission members are Nicholas Stewart QC (chairman), Mr Ken Brown and Mr Keith Allen.
6. Given the Club’s admission of the charges, the task of this Regulatory Commission was to decide the appropriate penalty and order. We are unanimous on the penalty and the order we made on 18 July 2018 and on all our reasons.

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<sup>1</sup> FA Handbook 2017-2018 pp.105-6

## **The essential facts**

7. The essential facts were set out in a statement dated 6 April 2018 of Mr David Matthews, FA Senior Integrity Investigations Manager.
8. In September 2017 the FA received information that three players at the Club had apparently been paid by Development School and not by the Club. The FA wrote to the Club on 23 October 2017 for its observations.
9. It became clear that one of the three players had never signed a professional contract with the Club, so he dropped out of the picture. The other two players were Mr Jake Orrell, who was signed on 1 July 2015 and stayed until 6 July 2016, and Mr Myles Wright, who signed with the Club on 1 July 2015 and left on 10 November 2015 when his contract ended.
10. Both those players were paid £175 a week during their time with the Club. Those wages were paid by Development School, which owned and ran a football development school very near the Club's premises. There was never any formal association between the Club and Development School, although for a period Mr Chris Turner was at the same time the Chief Executive Officer of the Club (though never a director) and a director of Development School. In practical terms there were very close links between the Development School and the Club, including the Development School feeding young players into the Club.
11. The founder, CEO and principal owner of Development School at all material times was Mr Liam Sutcliffe. According to Ms Sally Swain, who was the Club Secretary throughout the relevant events, there was an agreement with Mr Sutcliffe that he would invoice the Club for wages paid by Development School to the two players. That is also what Mr Sutcliffe says. However, no such invoices were entered in the Club's books or paid by the Club.
12. The company CFC Football Development School Limited has gone into liquidation and Mr Phil Booth, a licensed insolvency practitioner, was appointed liquidator on 1 March 2017. On 14 November 2017 he wrote to the Club alleging, among other matters, that Development School had paid £7,321.98 to Jake Orrell between

September 2015 and August 2016 and £2,975.86 to Myles Wright between August and November 2015. The letter, which expressly referred to FA rule C1(b)(v), asked for reimbursement of those payments from the Club (as they had been in payment of wages contractually due from the Club) .

13. Representatives of the FA Integrity Unit interviewed Mr Chris Turner on 13 December 2017 and Mr Liam Sutcliffe on 17 January 2018. It is not necessary to go into the content of those interviews here. Ms Swain has not been interviewed but had made strong and direct allegations against Mr Turner in her letter dated 31 October 2017 to the Integrity Unit. There is a sharp conflict between Ms Swain and Mr Turner (and Mr Sutcliffe) about the reasons why no invoices for the wages paid by the Club Company ever went through the Club's books. The differences between Ms Swain and Mr Turner, neither of whom is still with the Club, are not realistically attributable simply to failures of memory. However, this Regulatory Commission does not find it necessary to decide which of the people who are not parties to these proceedings, and were not witnesses at the hearing, has been telling the truth. It makes no material difference to the responsibility of the Club for its admitted breach of FA rule C1.
14. Neither of the two players whose wages involved the breach of rule C1 has been charged with any breach of FA rules. They were young players. There is no suggestion that they played any part in agreeing the arrangements for payment of their wages by the Development School or had any appreciation that there was a breach of the FA rules in the way they were paid.

### **The hearing on 18 July 2018**

15. At the hearing the FA's case was presented by Ms Yousif Elagab, FA Regulatory Advocate. The Club's case was presented by Mr Ashley Carson, a director and the company secretary of CFC 2000 Limited, who was accompanied by Mr Nigel Smith, the Club's Football Administration Manager. The Regulatory Commission's work has been helped by the way the case was presented by both parties.
16. Mr Paddy McCormack, FA Judicial Services Manager, has acted as secretary to the Regulatory Commission and was present throughout the hearing.

17. Given that the charges were admitted by the Club, Mr Elagab for the FA made suitably concise submissions, correctly observing that FA rule C1(b)(v) was a clear and simple rule which was easy to follow. It was an important rule, because it put all clubs in an accountable position. He commented that the arrangement between the Club and the Development School was an odd one to have made and that it would have been surprising if neither the CEO and the Club Secretary was not aware that wages were not going through the Club's books (as each of them had claimed for him/herself). However, Mr Elagab sensibly did not attempt a detailed explanation when there was very little reliable evidence of what had gone on and the motives of those involved.
18. Mr Carson, who presented CFC's case at the hearing, had been a director at the Club throughout the relevant events. The Regulatory Commission therefore bore in mind 3.3 of the FA *General Provisions Relating to Inquiries, Commissions of Inquiry, Regulatory Commissions etc*: "An individual acting as representative for a Participant Charged shall not be allowed to give evidence". Mr Carson accepted and confirmed that he would not do so, though inevitably he found that difficult in practice. The Regulatory Commission listened carefully to everything Mr Carson said but has not treated it as evidence, except on a number of straightforward factual points where there was helpfully no objection by Mr Elagab (for example, the dates when Mr Turner and Ms Swain left the Club's employment) .

## **Mitigation**

19. As a director and the company secretary of the Club, Mr Carson had written to the FA on 23 May 2018, expressly confirming the Club's plea of guilty to the charge of breach of FA Rule C1 and setting out points it wished to be given consideration on the question of sanctions.
20. That letter expresses support for Ms Swain's allegation that Mr Turner had instructed her to hide invoices coming from Development School and not give them to the Club's accounts department to be processed; and that Ms Swain had followed that instruction and had never brought the matter to the board's or Mr Carson's attention (until May 2017 when the local press ran a story).

21. We know that Mr Turner and Mr Sutcliffe dispute that version. The Club says they have colluded on their stories and points out that their interviews by the FA Integrity Unit were a month apart so gave them plenty of opportunity to coordinate their versions of events.
22. As we have already indicated in paragraph 13 above, we do not find it necessary to resolve those factual disputes. Either way, we do not see any mitigation for the Club on this point. Even if he did not direct the suppression of invoices as Ms Swain alleges, at the very least Mr Turner must have agreed an arrangement with Mr Sutcliffe for the two players' wages to be paid by Development School and failed to take any steps to ensure that those payments were reimbursed by the Club and properly recorded in the Club's books. The best that can be said for Ms Swain, if her version is true, is that she must have been very incompetent not to have spotted the irregular method of wages payment; and then on her own version (whether or not true) she accepted Mr Turner's instructions in June 2016 and as club secretary implemented a cover-up until May 2017, when the Derbyshire Times ran a story which publicly exposed these very breaches of FA Rule C1.
23. The Club bears the responsibility for the actions of its CEO and its Club Secretary, without its being necessary to attempt any refined apportionment of blame between those two club officials who were each in positions of responsibility. The fact that the rest of the board may not have known what was going on is itself a weak point, offering no mitigation. The efficient running of the club in compliance with the FA rules was the board's responsibility and the Regulatory Commission has seen and heard nothing to show that they took that responsibility sufficiently seriously. For example, we see nothing to show the board, including Mr Carson, took any external or internal action after the Derbyshire Times article on 2 May 2017 until the Club received a letter dated 22 May 2017 from the English Football League asking for observations on the newspaper article bearing in mind FA Rule C1(b)(v).
24. Mr Turner left the Club in March 2017 and Ms Swain was dismissed in February 2018. The Club says that more robust procedures have been put in place so that this sort of breach can never happen again. We are prepared to assume that improvements have been made but that also does not mitigate the penalty. While it is a welcome and

positive step, the bare minimum expected of a club in this situation is to tighten up procedures.

25. The Club also asks the Regulatory Commission to take into account what it describes as the shambolic way in which the Development School was run. We do not see how that amounts to any mitigation. Moreover, the fact that the Club has now severed all ties with Development School also strikes us as the bare minimum to have been expected in the circumstances. It is not a mitigating factor.

26. We do give some credit for the early admission of the charge, even if in practical terms the Club had no prospect of a successful defence. We also note that whatever lay behind these unusual arrangements, there is no evidence of tax fraud or that Mr Turner, Ms Swain, Mr Sutcliffe or any other individual gained financially. As matters stand, the Club has saved the gross amount of wages (including PAYE and NIC) which were paid by Development School but ought to have been paid by the Club. However, the Development School liquidator is claiming reimbursement of the whole amount of £14,703.86 and has not offered the same 50/50 compromise as with other employees who were not players.

27. Rule C1(b)(v) is an important rule in the regulation of English football clubs by The FA. It is designed to help ensure transparent and honest conduct of clubs' financial affairs. Moreover, at the time of the breaches the Club was in the English Football League, whose member clubs are bound by a Salary Cost Management Protocol limiting spending on player wages as a percentage of turnover. Breaches of rule C1(b)(v) were clearly capable of hindering monitoring and enforcement of that protocol and increasing the risk of clubs getting an unfair advantage by sidestepping the protocol when other clubs were sticking to it.

28. Mr Elagab submitted that the penalty should include a deterrent element. We agree.

## **Penalties and Regulatory Commission order**

29. Taking into account all the circumstances of the case, including the matters expressly mentioned in these reasons, the Regulatory Commissions imposes a fine of £12,500 on the Club for its admitted breach of rule C1(b)(v).

30. We were told by Mr Carson that the Club made a loss of about £1,000,000 in its financial year to 30 June 2018 and has a forecast loss of £1.4m for the year ending 30 June 2019. Its player wages bill is around £1,040,000 and total wages bill around £2m. Those figures cut both ways. On the one hand, a club in such strained financial circumstances will be hurt by any significant extra outgoing. On other hand, a fine at this level almost pales into insignificance against those numbers. Overall, they do not give us significant help in deciding the fair level of fine.
31. The Regulatory Commission has approached the fine in the knowledge that although there are no formal guidelines for this type of offence, fines imposed by FA Regulatory Commissions for a whole range of breaches of FA rules by clubs at the level of this Club do not often go above £20,000, even for very serious breaches, and are generally well below that level.

### **Costs and personal hearing fee**

32. There is power under 8.8(b) of the FA *Disciplinary Regulations 2017-2018*<sup>2</sup> to order a party to pay any costs incurred in relation to the holding of a Regulatory Commission considered by the Chairman to be appropriate. The Club is ordered to pay £2,000 towards those costs.
33. The Club must also forfeit its personal hearing fee of £100.

### **Regulatory Commission order**

34. The Regulatory Commission's full order made on 18 July 2018 is that Chesterfield Football Club:
- (1) is fined £12,500;
- (2) must pay £2,000 towards the costs incurred in relation to the holding of this Regulatory Commission; and

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<sup>2</sup> FA Handbook 2017-2018 p.333



(3) forfeits its personal hearing fee of £100.

## **Right of appeal**

35. Chesterfield has the right of appeal to an FA Appeal Board in accordance with the FA *Appeal Regulations* 2017-2018<sup>3</sup>.

Nicholas Stewart QC  
Chairman

Ken Brown

Keith Allen

7 August 2018

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<sup>3</sup> FA Handbook 2017-2018 p.352