

In the matter of a Regulatory Commission of The Football Association

Regulatory Commission: Nicholas Stewart QC (Chairman). Gareth Farrelly, Ifeanyi Odogwu

28 September 2018

Between:

The Football Association

and

David Manasseh

Decision and reasons of Regulatory Commission on Charge and Penalties

Introduction and background

1. Mr David Manasseh is a football agent who is registered as an Intermediary in accordance with the FA Regulations on Working with Intermediaries 2017-2018 (“the Intermediaries Regulations”). By a charge letter from the Football Regulation and Administration Division of the Football Association dated 18 May 2018, Mr Manasseh was charged by The Football Association with misconduct in breach of FA Rule E1(b). The relevant events were all in 2017.

2. The Particulars of Misconduct in the charge letter were:

It is alleged that you entered into a Representation Contract with [a named player] before the 1st day in January of the year of that Player's sixteenth birthday contrary to Regulation B8 of the FA Regulations on Working with Intermediaries Regulations 2017-2018.

3. Regulation B8 of those Regulations ("the Intermediaries Regulations") states:

An Intermediary must not, either directly or indirectly, make any approach to, or enter into any agreement with, a Player in relation to any Intermediary Activity before the 1st day in January of the year of the Player's sixteenth birthday.

4. "Representation Contract" is defined in the Intermediaries Regulations as:

"any agreement between an Intermediary (on the one hand) and a Player and/or Club (on the other), the purpose or effect of which is to cover the provision of Intermediary Activity"

and "Intermediary Activity" is defined as:

"acting in any way and at any time, either directly or indirectly, for or on behalf of a Player or a Club in relation to any matter relating to a Transaction"

and "Transaction" is defined as:

"any negotiation or other related activity, including any communication relating to or preparatory to the same, the intention or effect of which is to create, terminate or vary the terms of a player's contract of employment with a Club, to facilitate or effect the registration of a player with a Club, or the transfer or registration of a player from a club to a Club.

5. By his response dated 4 June 2018 Mr Manasseh denied the charge and requested a personal hearing. He has been represented by counsel Mr Nick De Marco QC and solicitors Bryan Cave Leighton Paisner.
6. The Regulatory Commission appointed for this case is chaired by Nicholas Stewart QC and the other two members are Mr Gareth Farrelly and Mr Ifeanyi Odogwu.

Agreed or clearly established facts

7. The following matters are either expressly agreed between the FA and Mr Manasseh or are not seriously in dispute:
- (1) Mr Manasseh is one of the founders of a successful sports agency The Stellar Group Limited (“Stellar”) and is the Managing Director of Stellar and its wholly owned subsidiary Stellar Football Limited. He is a registered intermediary under the Intermediaries Regulations and is also authorised by the FA to represent minors (persons under 18).
 - (2) On 11 October 2017 Mr Manasseh met the mother and a cousin of the Player at his office. The Player was not present.
 - (3) The Player had only recently turned 15 at that time, before the meeting but in the second half of 2017. He was a promising player, already with a club which had been playing for many years in either the Premier League or the Championship.
 - (4) There is a document in standard form of a representation contract, dated 11 October 2017 and expressed as made between Mr Manasseh and the Player. It is signed by Mr Manasseh personally, by the Player and by his mother stated to have signed as the Player’s legal guardian with parental responsibility. Below or alongside each signature is the handwritten date 11/10/17.
 - (5) On the following page to those signatures there is a typewritten statement, separately signed by the Player and his mother: “I, [the Player], confirm that I have been advised by David Manasseh to consider taking independent legal advice in relation to the terms of this Representation Contract, and that I have been given a reasonable opportunity to take such independent legal advice, but that I have decided I did not need to do so.”
 - (6) Apart from the signatures and accompanying dates 11/10/17, the whole of the document is typewritten except for the handwritten addition of the Player’s 2002 date of birth on the front page.
 - (7) On 16 October 2017 that document was uploaded by Stellar to the FA’s online Whole Game system. That system is part of the FA’s regulatory and monitoring arrangements and intermediaries are required to lodge all Representation Contracts on to Whole Game.
 - (8) On 17 October 2017 Ms Rachel Connor, Stellar’s Group Operations Manager, emailed to the FA: “There has been an admin error on a contract uploaded

yesterday, the date of birth was added after the contract had been produced etc. We thought the players year of birth was 2001 initially and when the date was then written in as 2002 and we realised the mistake it was immediately cancelled our end as its not company policy. Unfortunately the paperwork had already been passed to admin and got uploaded! Please can you terminate this and withdraw from the system with immediate effect and I will speak to the admin dept to explain.”

Preliminary issues

8. On behalf of Mr Manasseh, there was an application for recusal of one member of the Regulatory Commission. The Regulatory Commission dismissed that application for reasons given to the parties in writing on 9 July 2018.
9. Mr Manasseh’s lawyers raised two further preliminary issues, (A) and (B), on which the Regulatory Commission held a hearing at Wembley Stadium on 10 July 2018.
10. Preliminary Issue (A) concerned the question whether the alleged offence by Mr Manasseh was one of strict liability. Mr De Marco submitted that although Regulation B8 was one of strict liability on the question of the player’s age, it did not follow that a breach of Regulation B8 would always be Misconduct under FA Rule E1. Alternatively, if that was wrong, his secondary submission was that Regulation B8 did not impose strict liability.
11. The Regulatory Commission rejected both those submissions, for reasons given to the parties in writing on 24 August 2018. Our order on Preliminary Issue (A) was:

“(A) To prove the charge against Mr David Manasseh under FA Rule E1, it is not necessary for the FA to prove that Mr Manasseh knew (or was reckless as to) the Players’ age or knew that (or was reckless as to whether) his 16th birthday would not be until 2018.”
12. Preliminary Issue (B) was reformulated in the course of the hearing as a submission by Mr De Marco that: “A breach of Regulation B8 can only be proven if it is established that Mr Manasseh intended to enter into an agreement with the Player.”

13. At the conclusion of the hearing on 10 July 2018 it was agreed that the parties could make further written submissions on Preliminary Issue (B). After considering those further submissions, the Regulatory Commission made no decision or order on Preliminary Issue (B). As notified to the parties together with our decision and reasons on Preliminary Issue (A) on 24 August 2018, we considered that there was no need to make pronouncements on basic principles of law, which was what issue (B) amounted to in its current formulation; and that to add qualifications or explanations to that formulation was best avoided before we had heard witnesses and submissions at the main hearing.

Amendment of the charge letter

14. In our 24 August 2018 decision and reasons the Regulatory Commission noted that the FA's case, as stated in paragraph 9 of its Further Submissions dated 28 June 2018, was that a breach of Regulation B8 could be proven by either an indirect approach to, or entering into an agreement with, the Player. We also noted that the charge letter made no reference to an approach.

15. At that point the main hearing had been fixed for 12 and 13 September 2018. Then on 7 September 2018 the FA made an application to amend the charge letter by adding the words we show here in bold, so that that the Particulars of Misconduct would read:

It is alleged that you **indirectly made an approach to and/or** entered into a Representation Contract with [named player], before the 1st day in January of the year of that Player's sixteenth birthday contrary to Regulation B8 of the FA Regulations on Working with Intermediaries 2017-2018 (p.294 FA Handbook).

16. Mr Manasseh's lawyers opposed the application on the grounds that it was very late, that there was no explanation for the lateness and that it would prejudice their client. They made a point that the FA had served no evidence in support of the new element of the charge and that service of additional evidence by the FA would need to be considered and answered by Mr Manasseh, for which there was insufficient time before the hearing. The Regulatory Commission saw no force in that point. There was no suggestion that the FA was intending to adduce additional evidence and if it was correct that there was no evidence in support of the new element then we could not see how there could be any prejudice to Mr Manasseh as he could therefore presumably

defeat that element of the charge as unproven. As the FA observed in reply, it had actually made written submissions on the question of approach and in more than one written submission Mr Manasseh's lawyers had dealt with the point in a way which showed that they clearly understood it as part of the case against Mr Manasseh. The FA asserted that the omission of those words from the original Particulars of Misconduct had been an administrative oversight.

17. Whether or not the word "administrative" was apt, there had clearly been an oversight in the drafting of the charge letter. The FA certainly ought to have moved more quickly once they had received the Regulatory Commission's decision and reasons on 24 August 2018. Nevertheless, Mr Manasseh and his advisers could not have been seriously taken by surprise by the application or found themselves prejudiced by the oversight only being corrected even as shortly before the hearing as it was. We therefore allowed the amendment so that the real substance of the charge could be fairly considered.

Hearing on 12 and 13 September 2018

18. A full hearing took place at Wembley Stadium on 12 and 13 September 2018. The FA was represented by counsel Mr Will Martin and Mr Manasseh by Mr Nick De Marco QC. Mr Paddy McCormack, FA Judicial Services Manager, acted as secretary to the Regulatory Commission. Our task has been helped by the skilful and thorough presentation of the case for both parties.
19. On the first day we heard evidence from one witness for the FA, Mr Michael Tavarone, who is employed by the FA as a Clearing House Officer in the Player Status Team. We then heard evidence from Mr Manasseh and four other witnesses called on his behalf: Ms Gina Mazzarelli, who was Mr Manasseh's personal assistant at Stellar, their Group Operations Manager Ms Rachel Connor and the Player's mother and cousin. All witnesses had made signed written statements well in advance of the hearing, as had Ms Hannah Cranny, Office Supervisor at Stellar's Liverpool Office, and Mr John Ward-Prowse, but their evidence for Mr Manasseh was not challenged so they were not asked to attend.

20. At the end of the first day's hearing the Regulatory Commission informed the parties that the charge was proven. The second day's hearing was for submissions on penalty. That hearing took place in the afternoon. In the course of the morning the Regulatory Commission provided the parties with a note of ten points summarising some key aspects of our findings, so that counsel had some indication in advance of making submissions on penalty. Those points will be reflected in these reasons.
21. A transcript was made, which runs to nearly 300 pages for the evidence heard on the first day.

Regulatory Commission's findings on the evidence

22. It is not necessary for us to set out an elaborate analysis of the hundreds of pages of witness statements and transcript, or to go through the evidence witness by witness. Although it was certainly necessary to explore the events in some depth with the various witnesses, in the end there are few factual points in serious contention. We have made clear where we reject Mr Manasseh's version of events but even on his own account of the events Mr Manasseh was in breach of Regulation B8 and the charge of misconduct is therefore proven under FA Rule E1(b). After liability had been determined Mr McCormack confirmed that Mr Manasseh had no previous misconduct offence on his disciplinary record.
23. The key event is the meeting at Stellar's London office on 11 October 2017 mentioned in paragraph 7(2) above ("the October meeting"). It was not Mr Manasseh or anyone else at Stellar who made the first approach leading to that meeting. The Player's cousin had rung Stellar by telephone and as a result a meeting was fixed for 18:00 between Mr Manasseh and the Player's mother and cousin. Ms Mazzealli claimed no detailed recollection but she had entered the meeting in Mr Manasseh's diary and was asked by Mr Manasseh to stay and welcome them to the office and help serve drinks at the meeting.
24. In his witness statement Mr Manasseh said that he had only vague memories of the period leading up to the October meeting. He did recall being told that the Player's mother had felt harassed by other agents who were trying to sign her son. He assumed

that what had encouraged him to hold the meeting was to provide the Player's mother with tips about how to deal with harassment from intermediaries and general advice about the game. While he was aware that plenty of intermediaries made attempts at unwanted approaches to players, it was unusual for him to be asked directly to advise on how to deal with these situations. He thought either he was interested in the circumstances or the fact that the Player was at the club in question or he had taken pity on the Player's mother to an extent at that point. We find that a little disingenuous and are quite sure that Mr Manasseh also saw an opportunity for Stellar, which was at least a significant motive in holding the meeting.

25. Before the meeting Mr Manasseh went on to Google and found a website www.football-wonderkids.co.uk which he had seen before. It had an entry for the Player giving his date of birth as 1 January 2001, which would have meant he was already 16 and there would have been no difficulty about Regulation B8.
26. In his oral evidence Mr Manasseh was at pains to explain that at the meeting he had given the Player's mother (and cousin) only a general picture of the services which Stellar offered and nothing directly in relation to her son. He had explained that Stellar offered legal, accountancy and management services, and actually talked more about the legal and accountancy side. He was not trying to sign the Player. It was Mr Manasseh's firm practice that he needed to meet a player before signing him up with Stellar and at no stage of the meeting did he talk to them about how he would manage the Player.
27. Mr Manasseh did not take the opportunity of asking the Player's mother how old he was. His witness statement said he had assumed both from his internet search and from the fact that the Player had been approached by other intermediaries that there was no question that he must have been already old enough to have his family be in contact with intermediaries. We find that point about other intermediaries unconvincing, as Mr Manasseh must know that approaches in breach of Regulation B8 are far from unusual. While we do accept that Mr Manasseh believed the Player was already 16, we find it extraordinarily slack of him not to have taken the obvious, simple step of asking the Player's mother to confirm his age.

28. We also find the supposed distinction between general advice and specific advice about the Player to be artificial. The practical reality is that Mr Manasseh had two members of the Player's family in his office and the whole tenor of the meeting clearly enabled him to do a preliminary selling job to the Player's family. For example, they were shown photographs on the wall of well-known footballer clients of Stellar – an obviously effective tool.
29. The October meeting lasted around half to three quarters of an hour. Towards the end of the meeting Mr Manasseh went out of the room to fetch a draft representation contract which had been prepared and sent to him by email the previous day by Ms Connor. The draft included the Player's and Mr Manasseh's names, including the Player's name on the front page and in the declaration about legal advice, and the Player's club address. However, nothing had been written on the front page against the typed letters D.O.B. in brackets, even though Mr Manasseh had apparently checked and believed the date 1 January 2001 on that website. It was otherwise a full standard form representation contract for a two year term.
30. Mr Manasseh did not recall giving Ms Connor specific instructions to prepare that document and said that he had done so in order to explain the nature of intermediary arrangements to the Player's mother and so that she could see what a representation contract would look like in close to final form. He told us he actually handed it to the Player's cousin since it contained Stellar's standard terms and would give the Player's mother a good insight into the things to look out for in a representation agreement.
31. The Regulatory Commission finds that these facts alone amounted to an approach for the purposes of Regulation B8. It should be borne in mind that as Mr Manasseh believed the Player was already 16 years old there was nothing in his mind to inhibit him from making such an approach. The fact that the initial contact and approach had been in the opposite direction, when the Player's cousin contacted Stellar, did not prevent those subsequent actions of Mr Manasseh also being an approach or approaches towards the Player – in the particular circumstances an indirect approach because the Player himself was not there.
32. The description of that document as a draft contract is entirely apt as matters stood at the end of the meeting. However, there is a further twist which significantly affects

what happened next. The document handed to the Player's cousin had already been signed and dated (11 October 2017) by Mr Manasseh. His evidence was that this had been unintentional on his part. He had no recollection of signing the document. The only explanation he could offer was that as he had signed another player representation contract that day, the document relating to this Player must have been given to him at the same time and signed by him inadvertently, thinking it was part of the documentation relating to that other player.

33. We reject that explanation, which Mr Manasseh acknowledges is based on assumption and not recollection. Given his belief that the Player was already 16, and that Mr Manasseh was authorised to deal with minors, there was no obvious problem in his signing the document. It had been prepared as a bespoke document with the Player's name inserted. Moreover, although Ms Mazzealli entered the meeting in Mr Manasseh's diary as "[Player's] mum/[cousin's first name & mobile number]", Mr Manasseh has not ever said he knew that the Player was not coming as well. In cross-examination he said that the document had been prepared "for a meeting that I didn't know what the meeting would be fully about" and it is likely that at the least he did not know for certain that the Player was *not* coming. We note that Ms Connor had not sent Mr Manasseh a Player Details sheet for this Player but that was not an essential document at that point. We accept that, even though he had signed the document before the October meeting, he did not intend to finalise acceptance of the Player by Stellar without meeting him and without documentary verification of his age. Accordingly, the Player Details sheet could easily have waited until then.
34. The email sent by Ms Connor to the FA on 17 October 2017 at 12:42, mentioned in paragraph 7(8) above, referred to the error about the Player's birth date but said nothing about there having been an error in Mr Manasseh's signing the contract in the first place. We recognise that the email was sent urgently to deal with a potentially serious situation. Nevertheless, if Mr Manasseh had signed inadvertently just a few days earlier, he must have made that clear to Ms Connor and it is likely that she would then have mentioned the point straight away to the FA.
35. That being our conclusion on this point, we add that it would have made no difference to our conclusion on the charge, or on the penalty, if we had accepted Mr Manasseh's explanation that he had signed the draft representation contract for this Player

inadvertently, whether or not in exactly the way he suggested it had happened. Very busy man though he undoubtedly is, and whether or not the slip was down to a member of his staff or him personally (or both), such carelessness would not be acceptable, especially when dealing with such young players. However he had come to sign the document, the essential criticism of his actions is the same: he made a clear approach to the Player, in breach of Regulation B8, without taking anywhere near enough care to ensure that the Player was old enough for that to be permissible under the rules. We do not see either our conclusion or Mr Manasseh's rejected explanation as better or worse in judging the appropriate penalty.

36. At the end of the meeting the Player's family took the document away. The Player and his mother both signed and dated it that same day and the Player's cousin delivered the fully signed document to Stellar's office on Sunday 15 October. The only piece still missing was that the Player's date of birth had not been added.
37. The Regulatory Commission finds that there was a legally binding representation contract at the latest when the document was delivered back to Stellar's office. In terms of content, it was a clear document with no flaw or gap preventing it from having full contractual effect. It had been signed and dated by both persons named as the parties to the contract. On normal contractual principles, viewing the parties' actions and the resulting document objectively, there simply was a contract.
38. We accept that, at that stage, in his own mind Mr Manasseh did not intend the document to be capable of signing and acceptance by the Player so as to constitute a contract. If he had made that clear to the Player's family at the October meeting, the subsequent signing by the Player and his mother would not have made it a contract. But he did not. We find nothing in the evidence sufficient to counteract our view that when the Player and his mother signed the document, which they must have seen was already signed by Mr Manasseh, they believed they were committing to an agreement. It is clear that they were keen for the Player to be taken on by Stellar. While Mr Manasseh may well have told them that he wanted to meet the Player himself, we are not satisfied that this was said in such a way that they understood that there could be no contract until that had happened.

39. It is not clear exactly where the Player and his mother thought they stood after the signed document had been delivered back to Stellar's offices. We have no evidence from the Player but for these purposes we can safely take his mother's thoughts as matching his own. The thrust of his mother's evidence was that she thought signing the document showed that they were interested in his being signed to Stellar and that he might still be turned down or accepted by Stellar. That strikes us as a realistic view. If, for example, when Mr Manasseh met the Player he decided not to represent him, it is hard to see how the Player and his mother could have had any choice but to accept that decision, whatever had been already signed. In our view the Player's mother had a realistic appreciation that on that point Mr Manasseh held the cards and that the document being signed by all of them still did not guarantee that Mr Manasseh and Stellar would take on her son.
40. The Player's mother would have been thinking more in practical terms than in strictly contractual terms. That may also explain why there is also a difference of view on the current position. The Player's mother believes that her son is now signed up with Stellar whereas that is not Mr Manasseh's belief or understanding. That is not a question we have to resolve. It merely serves to show that there is room for differences in the various parties' understandings of their arrangements.
41. The Regulatory Commission's conclusion is that whatever private understanding the Player and his mother might have had about the effect of their signing the document and having it delivered back to Stellar, we should judge their intentions objectively based on what they did. At the point where the Player's cousin delivered the document back to Stellar on 15 October 2017, it was a document in full contractual terms, signed by both named parties (and the Player's mother). There was nothing on the document itself to negate or qualify its apparent contractual effect. If we accept what we have heard about the parties' subjective thoughts and intentions, that still leaves that document as a concluded binding contract.
42. At this point it is useful to record the ten points notified to the parties on the morning of the second day's hearing:
- (1) There were two breaches of Regulation B8:
 - Mr Manasseh (DM) made an indirect approach to the Player at the meeting on 11 October 2017

- DM entered into a representation contract with the Player in October 2017
- (2) The Commission accepts that after googling and going to a website showing the Player's date of birth as 1 January 2001, DM believed when the meeting was set up that the Player was already 16 years old.
 - (3) It was careless of DM not to take the simple step of confirming his age with his mother at the meeting.
 - (4) The scope, purpose and tenor of the October meeting were not as narrowly confined as DM described. One of DM's aims at that meeting was to do an initial selling job of Stellar, even though at that stage DM had no firm intention of taking the player as a client and concluding a representation contract. That selling job included the Player's family seeing photographs of famous Stellar footballer clients as well as the handing over of the draft contract. The Commission sees those actions, together and separately, and the conduct of the meeting generally, as approach(es) under B8.
 - (5) DM's own account of the meeting in paragraph 32 of his witness statement amounted to an approach under B8.
 - (6) The Commission accepts that DM did not deliberately enter into a representation contract with the player knowing or believing that he was under-age for Regulation B8.
 - (7) DM, as MD of Stellar and the intermediary involved, is responsible for the administrative arrangements in his office and his support staff. His own and his staff's account of how he came to sign the representation contract and how it came to be lodged with the FA amounts to a distinct degree of negligence for which he would be held responsible. [That remains correct but, as these reasons make clear, we do not accept his account of his signing.]
 - (8) The Commission broadly accepts DM's account of his working arrangements involving heavy use of his mobile phone but reliance at the time on his iPad for emails on the road.
 - (9) The representation contract was a valid contract at the latest when it was hand delivered at Stellar's office signed and dated by the player (and his mother).
 - (10) DM and his staff acted quickly to unscramble the arrangements when they realised that the player was under-age for B8.

Point (8) was included in the note given to the parties on 13 September 2018 but it is not a significant issue. It concerns communications between Mr Manasseh and his office when it was first realised at Stellar that the Player would not be 16 until the following year so there was an obvious problem under Regulation B8. But by that time the breaches of Regulation B8 had already happened. Mr Manasseh travelled to Madrid on 16 October 2017 and was there throughout 17 October. We do not find that questions about his communications with his office during that trip cast any useful light either on the charge or on the question of penalty.

43. We have carefully reviewed all the evidence, even though we have found it necessary to refer specifically only to the evidence of Mr Manasseh, Ms Mazzarelli and the

Player's mother in these reasons. There is ample support for our conclusions set out above.

44. In the light of those conclusions, it is not necessary for us to decide whether, and if so how far, the term "agreement" in Regulation B8 extends beyond a legally binding contract. In any case, although the question whether there had been a binding contract featured prominently in the parties' submissions, we do not see it as significant in the overall context of this case. Whether or not Mr Manasseh had the Player signed up to a binding contract on 16 October, his actions up to that point had already amounted to a clear breach of Regulation B8. With or without a binding contract, he had achieved exactly what Regulation B8 is designed to prevent. He had approached an under-age player in the way we have found and as a result had achieved a strong interest and clear degree of commitment from the Player and his family. It was going to be difficult for other intermediaries to prise the Player away from Stellar if Mr Manasseh wanted to keep him and enter into a representation contract when he was old enough. Mr Manasseh had got in first when others who were scrupulously careful to follow the rules would have been unable to get a look-in.

Penalty for misconduct by breach of Regulation B8

45. As we have found that there were breaches of Regulation B8 we next have to decide on the appropriate penalty.
46. We confirm what we told the parties at the hearing on 13 September 2018, that although we have held that there were breaches of Regulation B8 both by indirect approach and by entering into the representation contract, we treat those as two elements of a single composite breach for the purposes of penalty. We take account of all circumstances in deciding the penalty.
47. Despite the attention quite properly given to the question of the representation contract, in the light of what we have said in paragraph 44 above, in deciding the penalty we regard that as adding nothing to the breach by way of an approach at the meeting on 11 October 2017. The nub of the problem was that it was irresponsible of Mr Manasseh to have had that meeting at all without taking more careful steps to ensure that he was

not dealing with a player below the permitted age for Regulation B8. Once he had held that meeting, then on the footing that he believed the Player was already 16 years old, there would have been nothing wrong with proceeding straight away to a full representation contract.

48. In practice it is likely to be a rare case where a breach of Regulation B8 by entering into an agreement is not preceded by a breach by making an approach. After all, an agreement is not likely to spring out of nothing and no earlier contact.

49. Mr De Marco was quite right in drawing the distinction between two different types of case:

(a) breaches by entering into a representation contract with a minor without the additional authorisation required by paragraph 3.1 of Appendix II to the Intermediaries Regulations; and

(b) breaches of Regulation B8 by someone who (like Mr Manasseh) has obtained that additional authorisation.

50. A breach of type (a) flouts the underlying policy of child safeguarding, i.e. relating to the personal safety of a child rather than his or her financial and economic interests or vulnerability. A breach of type (b), as the present case, has no such implications for the personal safety of the child. Accordingly, previous cases of penalties for breaches of type (a) need to be scrutinised particularly carefully before they can be treated as any sort of guideline on a type (b) offence.

51. On the other hand, Regulation B8 has its own underlying policy considerations which do not apply to type (a) breaches. Breaches of type (a) concern players under the age of 18. The lower age limit in Regulation B8 reflects the extra vulnerability of those younger players and the need to protect them completely from all approaches by intermediaries/agents until they are at least 15 years old and are already in the year of their 16th birthday.

52. Moreover, an intermediary in breach of Regulation B8 is unfairly stealing a march on competitors who do keep to the rules. It may well be that if Mr Manasseh had made

no approach to this Player until 1 January 2018 he might still have ended up as a Stellar client (which in practical terms it seems he now is, or is at least very likely to become). We do not know. What we do know is that following the improper approach made at the meeting on 11 October, the Player and his family have ever since remained keen that he should be a Stellar client.

53. In considering the penalty for Mr Manasseh, we take into account his clean disciplinary record over a career of more than 20 years. We also have well in mind point (6) of our ten points in paragraph 42 above, that Mr Manasseh did not deliberately enter into a representation contract with the player knowing or believing that he was under-age for Regulation B8 (and did not make an approach with such knowledge or belief either).

54. Mr Manasseh has pleaded not guilty and has fought this charge to the end. That is his entitlement. It is not to be held against him and does not increase the penalty, though obviously he has forgone any potential credit for admitting the breach.

55. Mr De Marco argued that Mr Manasseh's self-reporting to the FA should be a mitigating factor. We do not see it that way. Once it was appreciated at Stellar that the Player was under age for Regulation B8, it was obvious self-protection to contact the FA and unscramble the arrangements as quickly as possible. Failure to do so would have presented a distinct risk of more serious punishment when the matter came to light, as it almost certainly would have done sooner or later. This was not true self-reporting of a type which amounts to mitigation.

56. Other points made by Mr De Marco, with our brief comments added, were:

- (1) The breach was entirely innocent and accidental. – *We do not see it quite that way. It was careless and irresponsible, as we have explained.*
- (2) The lodging of the contract was accidental, and not done on Mr Manasseh's instructions. – *The lodging of the contract is not important and is not counted against Mr Manasseh. The breaches had already been committed.*
- (3) As soon as Mr Manasseh discovered the error he instructed Stellar to report it to the FA and confirm the contract was cancelled. This was done within 24 hours of the contract being lodged. – *We have covered this in paragraph 55 above.*

- (4) Self-reporting – *Already covered in paragraph 55 above.*
- (5) No intermediary activity was conducted by Mr Manasseh for, or on behalf of or in relation to the Player. – *We have accepted that until 17 October 2017 Mr Manasseh did not know that the Player was under-age and that he did not act in deliberate breach of Regulation B8. We accept that he never intended to act in knowing breach of Regulation B8 and did not do so. Once the arrangements were unscrambled on 17 October 2017, there was obviously no question of intermediary activity until the Player was old enough for Regulation B8 no longer to be a problem.*
- (6) Mr Manasseh did not earn any money as a result of the error – *This is correct in the sense that Mr Manasseh **has** not earned money from this Player so far. But he does appear to have this Player practically secure as a Stellar client: see paragraphs 40 and 52 above. He may well earn money through this Player in future, after the initial approach in October 2017 in breach of Regulation B8.*
- (7) It was not Mr Manasseh who made the first approach to the Player, but the other way round – *If Mr Manasseh had made the first approach, that would have been an aggravating factor. It is neutral that it was the other way round, rather than mitigation.*

57. The point mentioned in paragraphs 52 and 56(6) is significant. By his irresponsible breach of Regulation B8, Mr Manasseh got in with the Player's family nearly three months ahead of any intermediaries who did or would follow the rule. For all practical purposes, the clear result of the meeting on 11 October 2017 is that he has sewn up Stellar's representation of the Player. We therefore take into account that Mr Manasseh's breach has placed him and Stellar nicely in relation to this Player's future. It is fair to take that into account without requiring proof (a practical impossibility anyway) that Stellar would not have got the Player as a client if it had not been for Mr Manasseh's misconduct. Nor do we need evidence of the degree of probability that Stellar will make money out of this Player, or how much that might be. The misconduct has put Mr Manasseh and Stellar in an advantageous position.

58. We note that Mr Manasseh has implemented some positive changes at Stellar to avoid a repetition of the sort of error seen in this case. We are pleased to know this though we do not see it as affecting the penalty. It should also be borne in mind that the root

cause of the breaches in this case was not so much administrative error as a simple failure by Mr Manasseh himself to take elementary steps at the outset to find out the Player's true age – the most obvious being simply to ask his mother. That failure was all the more surprising in the light of paragraph 7 of Mr Manasseh's observations (undated but in response to a 12 April 2018 letter from an FA Integrity Investigator). Mr Manasseh said there that the reason the draft agreement had not contained the Player's date of birth was that he was not definitively aware of it at that point. Even though documentary verification would have been required by Stellar before finally taking on the Player, a player's own mother could fairly be regarded as sufficiently reliable source for practical reassurance that all was above board for the purposes of Regulation B8.

59. At the hearing on 13 September 2018 the Regulatory Commission was referred to a number of previous decisions of FA Regulatory Commissions and Appeal Boards. The parties both accept that such decisions are not binding and that in the end each case turns on its own facts. This Regulatory Commission recognises for our part that penalties in individual cases should be broadly within any established range for offences of similar type and gravity.
60. We eliminate far more serious cases as well as a couple of cases where the period of suspension appears to us unduly, even inexplicably, lenient. Neither category provides helpful guidance. Overall, there does appear to be a not very firmly established range of suspensions up to three months for broadly comparable offences.
61. Mr Manasseh is a very experienced agent/intermediary with the resources of a large and successful agency. It is already clear that we consider him to have been highly irresponsible and careless right at the outset in failing to establish the Player's age straight away at the meeting on 11 October 2017. Regulation B8 is important for the protection of still very young players. Care in relation to that rule is owed to players and their families, to other intermediaries who stick to the rules and to the wider football community.
62. We suspend Mr David Manasseh from all Intermediary Activity for three months from 1 October 2018. Although at that point we had not decided the period of suspension, on 17 September 2018 we notified his lawyers through the FA that there would be an

effective suspension from 1 October 2018 so that he had an opportunity of making arrangements to minimise disruption to others, especially clients.

63. As it happens, the three months suspension will expire immediately before the opening of the January 2019 transfer window. We accept Mr De Marco's submission that the nature and pattern of Mr Manasseh's (and Stellar's) work means that the transfer window is less significant for Mr Manasseh than for many other football intermediaries/agents but it still likely to be helpful to him that his suspension will escape that transfer window. It is also realistic to suppose that within a large agency like Stellar, which Ms Mazzearelli told us had probably 30 or so intermediaries, Mr Manasseh will be able significantly to mitigate the financial effects of the suspension.
64. We also fine Mr Manasseh. The suspension and fine must be viewed together so as to ensure that the overall penalty is fair. Together with the three months suspension, a fine of £50,000 is no more than fair. In simple money terms this is a much larger fine than seen in the cases cited to us but it is still is fair. Mr De Marco accepted that the level of a fine can properly take account of the financial position of the party. Mr Manasseh owns a substantial shareholding in The Stellar Group Limited and the fine is only around 7% of his average annual post-tax earnings from Stellar over the past six years.
65. Mr De Marco accepted that Mr Manasseh should also pay the costs of this Regulatory Commission and it is fair to make that order under 8.8 of the FA Disciplinary Regulations 2017-2018.

Equality of arms: Access to previous FA Regulatory Commission and Appeal Board decisions

66. It is fundamental that in disciplinary proceedings brought by the FA there should be equality of arms so that neither party is placed at an unfair disadvantage in their ability to present their case to the tribunal.
67. An issue arose in the present case which fortunately caused no unfairness in the end but which does raise a point for consideration in the future. Mr De Marco has asked this

Regulatory Commission to note the issue in our decision and Mr Martin had no objection.

68. It concerned the access of both parties to previous decisions of FA Regulatory Commissions and Appeal Boards. In the present case Mr Manasseh's lawyers asked the FA for copies of a named earlier FA case decision but were refused. Slightly ridiculously, it was not realised for some time that the very decision was already in the case papers in a redacted, anonymised form. That was all put right in good time for this case.
69. However, that does raise a wider question. The FA Regulatory Legal Department is responsible for the bringing and prosecution of all disciplinary proceedings against Participants subject to the jurisdiction of the FA. It therefore has access to all previous decisions. Although the FA's practice is now to publish all disciplinary decisions on its website unless it considers there is good reason not to, there are quite a lot of decisions which are not publicly available and remain confidential. They are therefore not available to Participants charged with disciplinary offences and they and their advisers will only occasionally be aware of those unpublished decisions.
70. This does raise questions about the rules and policies of the FA concerning publication of decisions, questions of confidentiality and how best to ensure that the parties to every case have equal access to relevant decisions. It is not our function to propose solutions here but we do wish to draw attention to the problem and the need to find a way to ensure equality of arms in all cases.

Regulatory Commission's order

71. The Regulatory Commission's order is:

- (1) The charge of misconduct under FA Rule E1(b) against Mr David Manasseh is proven.
- (2) Mr Manasseh is suspended from all Intermediary Activity for three months with effect from 1 October 2018 running up to and including 31 December 2018.

- (3) He is fined £50,000. The fine must be paid to the Football Association within fourteen (14) days of the date of these written reasons. Failure to do so will result in an automatic increase of 25% of the amount due; failure to then pay within a further fourteen (14) days shall give immediate effect to a suspension, which shall run concurrently to his existing suspension, from all football and all football related activity until such time as the fine and penalty have been paid in full.
- (4) He must pay to the Football Association all the costs incurred in relation to the holding of this Regulatory Commission under 8.8. of the FA *Disciplinary Regulations 2017-2018*. The total costs shall be advised by the Football Association in due course.
- (5) His personal hearing fee is forfeit.

72. Mr Manasseh has the right of appeal in accordance with the relevant appeal regulations.



Nicholas Stewart QC
Chairman

Gareth Farrelly

Ifeanyi Odogwu

28 September 2018