

FOOTBALL ASSOCIATION APPEAL BOARD

In the matter of disciplinary proceedings brought pursuant to the Football Association's Disciplinary Procedures 2016-2017

PAOLO VERNAZZA

- and -

THE FOOTBALL ASSOCIATION

WRITTEN REASONS OF THE APPEAL BOARD

Appeal Board: Christopher Quinlan QC (Chairman)
Roger Pawley
Keith Allen

Date: 29 December 2016

Venue: Wembley Stadium, London

Appearances: Paolo Vernazza, the Appellant
Fintan Drury, Chief Executive, Platinum One Sports Group Management Ltd and Appellant's representative¹
Andrew Douglas, General Manager, Platinum One Sports Group Management Ltd
Yousif Elagab, FA Advocate
Paddy McCormack, Judicial Services Manager, Football Association

A. INTRODUCTION

1. The Appeal Board ('the Board') was appointed under the Football Association's ('FA') 'Disciplinary Procedures – Appeals 2016/17 Regulations for Football Appeals' ('RFA') to determine Paolo Vernazza's

¹ Attending by video conference call. His flight from Dublin on the morning of the hearing was cancelled and the Appellant was content for the appeal to proceed, Mr Drury attending by that method

(‘the Appellant’) appeal brought by way of a letter dated 13 December 2016 (‘the Appeal Notice’).

2. He appealed against a sanction imposed by an FA Regulatory Commission (‘the Commission’) announced on 4 December and promulgated in writing in its written reasons dated 7 December 2016 (‘the Decision’). The Commission imposed upon the Appellant the following:
 - a. An immediate suspension from all Intermediary Activity for a period of six (6) months, up to and including 1st June 2017 and
 - b. A fine in the sum of £2,500.
3. He was also warned as to his future conduct and ordered to pay the costs of the Commission of £1,000.
4. The Appellant appealed against sanction upon the basis that it was excessive (Regulation 1.6(4) RFA). The FA opposed the appeal.
5. The appeal was heard at Wembley Stadium on 29 December 2016. At the conclusion of the hearing, after proper consideration of all of the relevant evidence, material and submissions, the Board dismissed the appeal. This document constitutes the written statement of that decision and the reasons for it (Regulation 3.7 RFA).

B. BACKGROUND

6. The essential facts were not in dispute. Fintan Drury, is the Chief Executive of Platinum One Sports Group Management Ltd (‘Platinum One’) a business engaged in Sports Management. The Appellant is employed by Platinum One as its Head of Football and is a Registered Intermediary (‘RM’) within the meaning of the FA Regulations on Working with Intermediaries (RWI). Pursuant to Appendix 1 to the FA RWI

- a. An Intermediary is *“any person who carries out or seeks to carry out Intermediary Activity and has registered with [the FA]...”*
- b. Intermediary Activity is means *“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. This includes, but is not limited to, entering into a Representation Contract with a Player or a Club”.*
- c. “Registration” means *“completion of the process defined from time to time by the [FA] whereby a natural or legal person registers with The Association as an Intermediary”.*
- d. A Representation Contract means, *“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. A Representation Contract must comply with the Obligatory Terms of the Standard Representation Contract”.*
- e. A Transaction means, *“any negotiation or other related activity, including any communication relating 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 of the registration of a player from a club to a Club (whether on a temporary or permanent basis). A completed Transaction is one that has so achieved the creation, termination or variation of the terms of the player’s contract of employment with a Club, the registration of the player with a Club or the transfer of the registration from a club to a Club.”*

7. By letter dated 10 November 2016 the FA charged the Appellant with Misconduct by two separate breaches of FA Rule E.1(b). The Misconduct arose out of conduct during the course of his employment which was in breach of the FA RWI. By Regulation F.1 RWI, a breach of the FA RWI shall

be Misconduct in accordance with Rule E.1(b). More particularly the breaches were as follows:

- a. Charge 1 – he sought to enter into a Representation Contract with Ellis Hudson (a minor) without the additional authorisation to deal with minors required by paragraph 3.1 of Appendix II- Registration of Intermediaries- to the FA RWI.
- b. Charge 2 - he sought to enter into a Representation Contract with Yonis Farah (a minor) without the additional authorisation to deal with minors required by paragraph 3.1 of Appendix II- Registration of Intermediaries- to the FA RWI.

8. By virtue of Appendix 1 to RWI, a minor is a player who has not attained the age of eighteen years. Paragraph 3.1 of Appendix II- Registration of Intermediaries- to the FA RWI states:

“Prior to entering into a Representation Contract with a Minor or with a Club in respect of a Minor, an Intermediary must obtain from The [FA] additional authorisation to deal with Minors. This authorisation can be applied for by an Intermediary when registering with The [FA] in accordance with Appendix II or at any point after his Registration. This authorisation shall be valid for 3 years, subject to the Intermediary remaining registered in accordance with paragraph 1.1.”

9. The expression *“additional authorisation”* is not defined in the Regulations nor is it specified. However the application form states that applicants wishing to work with minors must (1) submit (*“upload”*) an Enhanced Certificate from the Disclosure and Barring Service (‘DBS’) and (2) consent to the FA holding and processing a criminal records check.
10. Charge 1 related to and reflected his role in a Representation Contract entered into between Platinum One and a player named Ellis Hudson (‘EH’), born on 4 February 1999. The said contract was signed by EH on 4

February 2016, namely his seventeenth birthday. It was not countersigned by his parent/guardian as required by of Regulation B.9 RWI. That omission aggravated Charge 1.

11. Charge 2 related to and reflected his role in a Representation Contract entered into between Platinum One and a player named Yonis Farah ('FH'), born on 4 September 1999. The said contract was signed by YF on 4 February 2016, when he was sixteen years of age. It was countersigned as required by Regulation B.9 RWI.
12. The Appellant first applied to be registered by the FA as an Intermediary in October 2015. He did not submit the additional material; and did not seek authorisation to work with minors. As at the 4 February 2016 the Appellant did not have the "*additional authorisation*" to deal with minors required by paragraph 3.1 of Appendix II to the FA RWI.
13. He submitted an application for a renewal of his registration on 21 June 2016. Once more he specifically indicated on the form that he did not wish to work with minors. That was so notwithstanding that he had done so and twice in February and March.
14. The FA informed him of its investigation into the matters by way of a letter dated 23 August 2016. He replied, by letter dated 26 August acknowledging what he called the "*error*". The Board was told that subsequently he applied for and received the additional authorisation.
15. In his response to the formal FA charge letter (dated 10 November 2106), on 17 November 2016 he admitted both charges.

C. THE APPEAL

(1) Appellant's case

16. In his Appeal Notice the Appellant submitted:

"The sanction imposed is unreasonable and completely disproportionate to the offence, particularly as it is the only occasion there has ever been any issue involving me, Paolo Vernazza. It represents an interference with my ability to earn a living which is neither grounded in the declared standards of the Association nor, in our view, legally sound. It represents, further, an undermining of the trust our company would have in the FA's capacity to implement its own regulations fairly. Finally, a sanction of this nature sends completely the wrong message to an agent/intermediary and an agency determined to pursue high standards in a sector where they are in short supply."

17. In support of those submissions he asserted that the "errors" (as he characterised them) were "administrative"; that neither he nor Platinum One profited from them; the FA subsequently sanctioned him as fit to represent minors; and he immediately acknowledged fault. He asserted that the breaches were caused, in part, by the company policy of having at least two individuals manage the interests of each of its players. He also stated that he had the support of the boys' parents.

18. During the hearing before the Appeal Board both Mr Drury and Mr Douglas made further oral submissions in support of the Appeal Notice. Those included assertions of fact, many in keeping with the Appellant's case before the Commission. It is not necessary to add to the length of this decision by repeating them here. The Board had regard to them, as it did all the relevant material provided to it.

19. One particular factual matter – which does not appear in the Decision – is that Mr Douglas (who is and was at the relevant time an Intermediary registered by the FA to deal with minors) was present with both minors when the contract were signed. Therefore had Mr Douglas signed them, as he might have done, there would have been no issue and no breach. The FA did not challenge this.

(2) FA's case

20. The FA opposed the appeal. The Board considered its written reply and the oral submissions made during the appeal hearing. In summary it made the following points.

21. First, the FA did not accept that the breaches were “*merely administrative*”. It pointed to

- a. The Appellant's letter dated 26 August 2016 which makes it clear that a positive decision was taken not to apply for the appropriate clearances for reasons of expediency. The derivation of that submission is this paragraph from that letter (in which he readily admitted his fault):

The reason I did not apply to represent Minors when my Intermediary application was lodged was that I needed to get the primary registration lodged and getting clearance to work with Minors takes longer but we erred in not then prioritising this and I accept fully that this represents an error on our part. I should have pursued the matter since. Unlike many agencies we have an approach where no one player - irrespective of their age - is represented by one agent or intermediary so, in every case, players represented by Platinum One have more than one person on their management team.

- b. The Commission's finding that at all material times the Appellant knew that additional authorisation to work with minors was required, yet continued to act without it².

22. Second, he should not have been involved with any or either minor without the necessary authorisation. The fact Mr Douglas was present – which the FA did not dispute - was nothing to that particular point.

² See §18-20, Decision

23. Third, the FA pointed to the chronology. The first application was made in October 2015. The Intermediary Activity with minors took place in February and March 2016. Notwithstanding that, he made a further registration application in June 2016 in which he again did not seek authorisation to deal with minors. Mr Elagab submitted this represented a serious and continuing element of the breaches.

24. Additionally, the FA relied upon the Commission's finding that the absence of a parent/guardian countersignature on one of the contracts was an aggravating feature.

D. DECISION

(1) Merits

25. So far as is relevant, Regulation 1.6 RFA provides:

"The grounds of appeal available to Participants shall be that the body whose decision is appealed against:

[...]

(4) imposed a penalty, award, order or sanction that was excessive

26. The Commission's powers on sanction were as provided by 'Disciplinary Procedures - Regulations 2016-2017, Regulations for Football Association Disciplinary Action. Pursuant to Regulation 8.1 thereof the Commission had a wide range of penalties open to it:

"The Regulatory Commission shall have the power to impose any one or more of the following penalties on the Participant Charged:

(a) a reprimand and/or warning as to future conduct;

(b) a fine;

(c) suspension from all or any specified football activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of matches;

[...]

(i) such further or other penalty or order as it considers appropriate.”

27. The Board's powers on appeal are as provided by Regulation 3.3 RFA namely:

“The Appeal Board shall have power to:

(1) allow or dismiss the appeal;

(2) exercise any power which the body against whose decision the appeal was made could have exercised, whether the effect is to increase or decrease any penalty, award, order or sanction originally imposed;

(3) remit the matter for re-hearing;

(4) order that any deposit be forfeited or returned as it considers appropriate;

(5) make such further or other order as it considers appropriate, generally or for the purpose of giving effect to its decision.

(6) order that any costs, or part thereof, incurred by the Appeal Board be paid by either party or be shared by both parties in a manner determined by the Appeal Board.”

28. There is no guidance or guidelines for sanctioning Misconduct of this kind. Mr Elagab believed this to be the first case of its kind. The issue for the Board is to determine is simply stated: was the sanction excessive? In the context of there being no guidance or guidelines it approached that question by reference to general principles and more particularly the following: (1) purpose of the regulatory provisions and (2) what factors are relevant in assessing the seriousness of breaches thereof.

29. First, the purpose of paragraph 3.1 of Appendix II to the FA RWI. It is an important part of the FA's safeguarding regime. It is one of number of the FA's regulatory provisions designed to protect minors. The purpose of the provision is to ensure that only those who have satisfied the FA that they are suitable and appropriate persons to work with minors are authorised, and thereby permitted, to be involved in Intermediary Activity with them. It is important. There are good safeguarding reasons as well as those of general policy (Regulations should be complied with) to ensure compliance. It should go without saying that it is the responsibility of Intermediaries to comply with them.

30. Second, in assessing the seriousness of the breaches the Board considered the follow factors (which are not intended to be exhaustive) to be relevant:

- a. Knowledge – while ignorance of the regulatory provision is no defence, did the breach involve a deliberate decision not to apply for the necessary authorisation knowing it was required?
- b. Nature of the Intermediary Activity undertaken in breach of the provision.
- c. The extent of or the period of time covered by the Intermediary Activity carried out in breach of paragraph 3.1.
- d. Number of the breaches.
- e. Number of minors with whom the intermediary was involved.
- f. Nature of or motivation for the breach – for example a decision not to apply for the necessary authorisation taken to conceal a matter which (if revealed or discovered) would result in the application being declined is likely to be considered more serious than a decision taken for reasons of expedition. Put another way, a case involving a person dealing with minors who would never be in a position to do so 'lawfully' is more serious than a person not in that category.

31. The Board did not consider characterising the omission as an “administrative error” to be especially useful. The meaning of such labels can be opaque or obscure the true nature and gravamen of the fault. The Board considered it to be of more use to assess the gravity of what the Appellant’s fault by reference to the factors identified in the preceding paragraph. Since this is an appeal it is appropriate to do that by reference to the Commission’s factual findings, if sustainable on the available evidence.

32. In its Decision, the Commission found:

- a. The Appellant knew that additional authorisation was required before dealing with a minor³. That is clear from his letter of the 26 August. In any event, the application form specially asks that question, which must be answered in the affirmative or negative.
- b. As to why he did not apply for the additional authorisation, the letter of 26 August makes clear it was for reasons of expedition: *“the reason I did not apply to represent Minors when my Intermediary application was lodged was that I needed to get the primary registration lodged and getting clearance to work with Minors takes longer...”*⁴
- c. He dealt with two minors.
- d. The nature of the Intermediary Activity included securing their signatures on representation contracts.
- e. On one occasion parent/guardian did not countersign the contract. The Board considered this an important safeguard: it demonstrates knowledge of and suggests (at least) some parental/guardian involvement in the contractual process. That omission was an aggravating factor.

³ §18, Decision

⁴ See also §17, Decision

- f. The Appellant occupied “*a position of influence and trust*” vis-à-vis the minors⁵. The Board accepts he was in a position of influence but the element of trust is not spelt out and is more arguable.
- g. The Commission also noted that the Appellant subsequently obtained the additional authorisation. Therefore this was not a case of a person dealing with minors who would never have been granted the necessary authorisation.

33. As is clear from the comment above, subject to the issue of trust (in paragraph 32f) the Board can find no fault with those findings. The Commission was entitled (acting reasonably) to reach those factual conclusions on the evidence before it.

34. Further, the Board also note that the Commission reduced by one third what would (in its view) have been the otherwise appropriate sanction of nine months (and the fine) to reflect the Appellant’s:

- a. Hitherto good character⁶.
- b. “*...for admittance to the charge and the mitigation*”⁷

35. That was to the Appellant’s credit and the Board finds no fault in that approach.

36. The Commission also found that those the Appellant “*was engaging with would have been led to believe that he had the required authorization*”⁸. When asked about it, Mr Elagab described it as a “*common sense conclusion*”. There was no direct evidence to that effect. The Board is not satisfied that such an inference justified on the evidence *in this case*. It presupposes knowledge of the relevant Regulations and that those dealing with the Appellant gave the matter thought. Of that there was no

⁵ §22, Decision

⁶ §23, Decision

⁷ §26, Decision

⁸ §20, Decision

evidence at all. The Board is not satisfied that that conclusion is justified on the evidence before the Commission. However, the Board is also satisfied that that finding (and the issue of trust as addressed in paragraphs 32f and 33 hereof) had no material effect on the sanction. Put another way, standing back and ignoring those findings, the Board is not satisfied that the sanction or any part of it was excessive.

37. Approached in the way set out, the Board was not satisfied (on the balance of probabilities) that the sanction or any part of it was excessive. Accordingly, it dismissed the appeal.

(2) Costs

38. The Appellant brought the appeal and was unsuccessful. Pursuant to Regulation 3.3(6) the Board having concluded as the Board did, for the reasons set out, it could see no good reason why the Appellant should not pay the full costs of the Appeal Board. That is the order was made.

39. The FA will notify the Appellant of the sum in due course and it must be paid within twenty-eight days of the date upon which he was notified. In default of payment, the Appellant will be suspended from all football and football related activity until such time as the payment has been made to and received by the FA.

E. SUMMARY

40. For the reasons set out hereinbefore,

- a.* The appeal is dismissed; and
- b.* The Appellant must pay the full costs of the Appeal Board.



Christopher Quinlan QC

Chairman

30 December 2016

Signed by the Chairman on behalf of the Appeal Board