

Football Association Regulatory Commission

In the Matter of

The Football Association

-v-

Havant & Waterlooville FC

James Fallon

Sean New

&

Tom Davis

**Reasons for Regulatory Commission Decision
Tuesday 30th April 2013**

PARTIES

The Regulatory Commission members were Mr. B. M. Jones, Mr. R. Howlett and Mr. S. Ripley.

Havant & Waterlooville FC (“the Club”) and Mr. James Fallon were both represented by Mr. G. Bean of Football Factors. Mr. T. Brock, the Secretary of the club, was also present as an observer.

Mr. Sean New appeared in person and was not represented.

Mr. Tom Davis was represented by Mr. N. Cusack of the Professional Footballers Association.

Miss A. Graham represented the Football Association.

Mr. R. Marsh, the Football Association’s Senior Discipline Assistant acted as Secretary to the Commission.

Mr. M. Ives the Football Associations Discipline Manager was present as an observer.

INTRODUCTION

1. These are the written reasons for an FA Regulatory Commission hearing at Wembley Stadium on Monday the 29th April and Tuesday the 30th April 2013.
2. On the 22nd January 2013 the Club and Mr. Fallon, the then Vice Chairman of the Club, had been charged with a breach of FA Rule E9 for attempting to act in breach of Rules C1(b)(v) and/or Rule C1(b)(vi).
3. On the same date the same charge was made against Mr. Sean New, the then Assistant Manager of the club.
4. On the same date Mr. Tom Davis, (a player for Carshalton at the time) was charged with a breach of FA Rule E14.
5. Both Mr. New and Mr. Davis accepted the charges against them.
6. The Club and Mr. Fallon denied all charges made against them.
7. For the avoidance of doubt, the relevant FA Rules are as follows:

C.1(b)(v) All payments made to Players must be made by the Club and fully recorded in the accounting records of the Club.

C.1(b)(vi) All salaried payments must be subject to PAYE and National Insurance.

E9 An attempt by a Participant or any agreement with any other person (whether or not a Participant) to act in breach of any provision contained in these Rules shall be treated for the purposes of these Rules as if a breach of the relevant provisions had been committed.

E14 A Participant shall immediately report to The Association any incident, facts or matters which may constitute Misconduct. This shall include any approach made to a Participant by an person, whether or not that person is a Participant, in relation to betting on football contrary to FA Rules. For the purposes of this rule, a report to an Affiliated Association shall constitute a report to The Association.

8. In March 2013 the Statement of Facts were amended in respect of the Club and Mr. Fallon and at the beginning of the hearing a similar application was made relating to Mr. New. There was no objection by Mr. New to such amendment and the same was granted.
9. A specific and formal application was made by Mr. Bean on behalf of his clients for “new evidence” to be admitted. That “new evidence” being the Minutes of a Board meeting of the Club held on the 15th May 2012. There was no objection from the FA and the same was granted.
10. Miss Graham in opening the case on behalf of the FA confirmed that the FA would not be calling any live evidence and would rely on the documentation in the bundle and before the Commission, but that witnesses had been made available for cross examination as necessary.
11. The Commission noted at the outset of the hearing that both Mr. Fallon and the Club were represented by the same person, and there was a possibility that this could lead to a conflict of interest given the underlying issues in this case. Both parties, however, confirmed that they were content with their representation and accordingly wished the hearing to proceed.

EVIDENCE

Mr. Bean called Mr. Lee Champion, the Financial Regulations Officer of the FA, he having been the person who carried out the various interviews.

12. Mr. Champion was challenged by Mr. Bean as to the way he conducted the various interviews, and in particular why he had spoken to certain people before turning on the tape recorder. In the Commission’s experience it is not unusual, when carrying out any interview of this nature, for the reason for the interview to be carefully explained to the person being interviewed and before the formal interview commences.

13. Mr. Bean was critical of Mr. Champion and alleged that Mr. Champion had not told Mr. New, that as he was no longer a “participant”, he did not have to assist the FA with their enquiries.
14. At the time the “offence” was committed Mr. New was clearly a “participant” and thus came under the jurisdiction of the FA Rules. It was also the case, according to later evidence, that Mr. New had no objection and “wanted to assist” the enquiry.
15. Mr. Bean raised the issue of why various computers had not been examined. Mr. Bean was reminded that on the 6th March 2013 there had been a Pre Hearing Directions Application and where, inter alia, that aspect had been discussed at length and after listening to the various arguments his application had been refused.
16. Mr. Champion gave his evidence in a fair and helpful manner and with no bias whatsoever.

Mr. Tom Davis, the player, was then called to give evidence by Mr. Bean.

17. He confirmed that the 15th May 2012 was the first time that he had met Jim Fallon.
18. He stated, for the first time in the proceedings, that he believed that it was Jim Fallon who got him the sack from his full time employment but there is no firm evidence before the Commission to confirm that was the case.
19. He also stated, again for the first time, that there was a person called Trevor Brock who follows him on Twitter. A Mr. Trevor Brock is the club secretary. The Commission did not hear any evidence from Trevor Brock and therefore do not make any finding on that aspect.
20. It is admitted by all parties that a meeting took place at the Woodlands Hotel

in Surrey on the 15th May 2012 and that attending that meeting was the player Tom Davis, the Club assistant manager Sean New and the Club Vice Chairman Jim Fallon.

21. At the material time Mr. New was “acting” as team manager due to the fact that Mr. Ritchie, the team manager, had a close and serious family illness to deal with.
22. There can be no doubt that the meeting was to discuss the possibility of Mr. Davis joining the club as a player and quite clearly financial matters were discussed in some detail.
23. Mr. Bean went to some length to point out that it was Mr. Davis who dictated terms to Mr. Fallon. That would not be unusual when negotiations are taking place and no doubt the two men had various discussions before reaching any agreement.
24. What is not in dispute is that on the following day, the 16th May 2012 Mr. Fallon sent a letter to Mr. Davis (the “first letter”) and which is to be found at page 71 of the bundle.
25. That letter was sent by an email from james@beaumont-heaters.co.uk at 13:47:31 and “signed” James Fallon. That email is to be found at page 70 of the bundle.
26. That email is short and simply states “Please find attached our financial offer as agreed yesterday.”
27. That email is in plain and simple language and can leave no doubt as to what is meant.
28. The “attached” was the letter of the 16th May 2012.
29. Mr. Bean seemed to be suggesting that it was Mr. Davis who requested the

letter. That would seem to the Commission to be quite normal and a sensible thing to request.

30. Apparently Mr. Davis had negotiated with the Club a couple of years before and for whatever reason the matter was not progressed. Maybe he was therefore a little cautious. He stated that he had no bad feelings for the Club following that occurrence and that if he had he would not have considered speaking to them again in May 2012.
31. Mr. Fallon accepted full responsibility for that letter and email.
32. Mr. Fallon obviously considered the letter to be important because not only did he send it attached to an email but he also sent the hard (signed) copy, not through the ordinary post but by Recorded Delivery.
33. In evidence Mr. Davis stated that he understood that the letter was making him an offer to be paid monies by Beaumont Water Heaters Limited (one of Mr. Fallon's six limited companies) and also to be paid separately by Havant & Waterlooville FC.
34. The first paragraph of the letter refers to the fact that the meeting "yesterday" was to "agree a private legal company sponsorship contract" and to sign contract terms "for and on behalf of Havant & Waterlooville Football Club". That letter was on the official notepaper for Beaumont Water Heaters Limited and was signed by James Fallon Managing Director "For and on behalf of Beaumont Water Heaters Limited".
35. The final paragraph of the letter refers to the "contents herein are as agreed with you yesterday morning".
36. It seems clear that the "private legal company sponsorship contract" was with Mr. Fallon's company, Beaumont Water Heaters Limited as the letter was on their note paper and that the company was to be responsible for the signing on

fee, the annual family holiday and payments for 52 weeks at £200.00 per week.

37. The club was to pay £225.00 per week for 52 weeks.
38. Later the same day at 14.40 Mr. Davis sent Mr. Fallon an email seeking certain clarification on what he believed had been offered.
39. On the following day (17th May 2012) at 07.35 Mr. Davis sent another email to Mr. Fallon referring to “changes” and set them out in the email.
40. On the 18th May 2012 Mr. New then sent an email to Mr. Davis with a copy to Mr. Fallon attached to which was the so called “second letter”, but also dated the 16th May 2012. That letter is also on Beaumont Water Heaters Limited paper.
41. That “second letter” is different to the first in that the signing on fee is reduced from £5,000.00 to £3,000.00 and there is now the mention of a transfer fee to Carshalton FC.
42. Reference to a family holiday worth £3,000.00 is still made but with conditions attached.
43. Paragraph 4 of the “second letter” reduces the number of weeks to be paid from 52 to 50 but still at the rate of £200.00 per week.
44. In this letter the “weekly” payment arrangements have been split in to two separate paragraphs, whereas in the first letter, they were both contained in paragraph no 3.
45. Havant & Waterlooville are first mentioned in paragraph 5 and it is clear that the club is responsible for paying the sum of £225.00 per week to Mr. Davis.
46. Mr. Davis was of the opinion that was an offer and accepted the explanation

from Mr. New and was prepared to accept such an offer, notwithstanding that it was lower than the offer in the “first letter”.

47. On the 21st May 2012, Mr. Davis wrote on the “second letter”, “I fully agree to the below contents, and look forward to working for the next 2 years, Regards, Tom Davis” and returned the same to Mr. New by email timed at 18:00:07.
48. That email was sent by Mr. New to Mr. Fallon by email of the 22nd May 2012 at 07:53.
49. Mr. Davis believed that he had an agreement, although he knew that he had not yet signed the blue contract and which he knew he had signed at previous clubs.
50. It has to be remembered that he had held discussions with not only the acting team manager but also a person who was no less than the Vice Chairman of the Club namely Mr. Fallon.
51. On the 25th May 2012 Mr. Davis received a text message from Mr. Fallon stating that the club board was not prepared to finalise the transfer.
52. That was no doubt like a bolt from the blue and a huge disappointment to Mr. Davis.
53. His evidence was that he tried in vain to contact Mr. Fallon, either by email and/or telephone.
54. He therefore, after discussion with his father, wrote to both the Club and Mr. Fallon expressing his disappointment with the situation and indicated that if the matter could not be resolved he would be obliged to bring the matter to the attention of both the FA and Conference authorities.
55. The matter was not resolved and rather than contact the FA or the Conference

he went to a National newspaper, mainly he said, to try and protect other players who may be contemplating signing for the Club.

56. It was only when he had reported the matter to the newspaper that he was told by them that not only had the Club, Mr. Fallon and Mr. New broken FA Regulations but so had he.
57. He said he was not aware of that before reporting the matter to the newspaper.
58. He confirmed that he had spoken to Mr. Fallon by telephone and told Mr. Fallon that the newspaper had got hold of the story. At the time he did not tell Mr. Fallon how the newspaper had been informed.
59. Mr. Bean suggested that Mr. Davis had conspired with Mr. New to write the "second letter". The Commission heard no evidence whatsoever to confirm that suggestion and it was denied by Mr. Davis.
60. To have done so would have meant Mr. Davis was reducing the money that he was to receive.
61. Mr. Davis is a young man with a wife and young family. He was clearly aggrieved by what had happened and especially as shortly thereafter he lost his full time employment.

Mr. Bean then called Mr. Sean New to give evidence.

62. In answer to Mr. Bean he confirmed that no matter what he had been told by Mr. Champion as to whether he did or did not have to help the FA in their enquiry, he would have done so in any event, stating that he was 100% certain of that.
63. He confirmed, quite openly and willingly, that he had a criminal record and volunteered the information that at the material time he was on probation.

64. He explained that he had had a certain amount of contact with people at the FA relating to interview and attending the hearing.
65. He confirmed that he did not know Sam Elliot of the newspaper in question and that he had refused to make any comment until after the hearing and only then if allowed to do so.
66. He confirmed that he attended the meeting on the 15th May and that he had driven Mr. Fallon to the meeting and back afterwards.
67. It should be noted that Mr. Fallon and Mr. New had a business arrangement out of football.
68. Further that Mr. New had been the assistant to Mr. Ritchie at AFC Totton and where Mr. Fallon was the main sponsor of that club.
69. Shortly after Mr. Fallon joined Havant & Waterlooville they needed a new management team and Mr. Ritchie and Mr. New were duly recruited and appointed.
70. He denied that he had ever been told by the Chairman Mr. Pope that the Club would not sign Mr. Davis.
71. He knew of Mr. Davis as a player who he thought would be of benefit to the Club and he was able to set up the meeting on the 15th May 2012.
72. He was adamant that during the meeting he took a call from Mr. Pope, but that was later denied by Mr. Pope.
73. He did not hear all the conversation between Mr. Davis and Mr. Fallon because he was a little distance away taking the phone call at the time.
74. It was his job to see if Mr. Davis was interested in the Club and try and sell the club to him.

75. Mr. Fallon was the Vice Chairman and the financial arrangements were up to him.
76. He confirmed that how he managed to get Mr. Davis to play for them he was not bothered about because he wanted Davis at the club.
77. He knew that the “first letter” had been sent and that it was typed on a laptop and he knew the letter had been sent by email and also by post.
78. He knew that Mr. Davis had said that he needed to have £425.00 per week clear and that it was left to Jim Fallon to deal with the financial aspects.
79. He confirmed that other aspects were discussed at the meeting and mentioned health care and a fuel card.
80. He stated that the “second letter” was typed by Mr. Fallon on his laptop and then transferred/saved on to a memory stick and handed to himself.
81. He openly admitted that he then “edited” the letter to take into account Mr. Fallon’s suggestion that the signing on fee should be reduced and to change the payments from 52 to 50 weeks as Mr. Fallon did not see why they should pay for Mr. Davis being away on 2 weeks holiday each year.
82. He confirmed that both Mr. Fallon and himself understood that they were lowering the offer to Mr. Davis.
83. He was adamant that the “second letter” was 90% Mr. Fallon’s and that he could not explain the differences in the layout of the letter. Later it was pointed out that there were differences in layout of an email found at pages 70 and 72 from Mr. Fallon and Mr. Fallon could not explain those differences.
84. Mr. New confirmed and admitted that he used his own computer to edit the “second letter” but had nothing at all to do with the “first letter”.

85. He confirmed that during the evening of the 15th May 2012 he had attended the club's Board meeting and that reference had been made to Mr. Davis thereat.

Mr. Bean then called Mr. Jim Fallon who gave detailed evidence.

86. He confirmed that he had only been at the club for 7-8 weeks when he had to deal with this matter and that prior to joining this club he had no football administrative experience, only sponsorship.

87. He did not know of the FA Handbook and had only referred to the Conference handbook. The first time he knew of the FA Handbook was when he was interviewed by Mr. Champion on the 4th July 2012.

88. He openly and frankly accepted full responsibility for the "first letter" but denied that it indicated that Tax and National Insurance was not to be taken into account in the payments..

89. He stated that he was in Ireland when the "second letter" was sent but unfortunately could not tell the Commission when he actually travelled to Ireland.

90. He maintained that he did not receive the copy of the "second letter" until the 24th May indicating that he did not have internet access whilst away.

91. It has to be remembered that Mr. Fallon is clearly a successful business man who currently owns 6 limited companies and has a workforce of just under 300 people and employs his own Personal Assistant.

92. It is clear from the Board Minutes of the 15th May 2012 that he is also a wealthy man and was clearly prepared to sponsor the club with substantial financial help.

93. He confirmed that he did not have the club's authority to make any offer to Mr. Davis but notwithstanding that he accepted full responsibility for the "first letter" of the 16th May 2012.
94. He joined the club and went straight on to the Board as Vice Chairman.
95. He stated that he has been in business as a Director and Sole Trader for 34 years and has never been investigated by any authority whatsoever.
96. He categorically denied any involvement whatsoever with the preparation of the "second letter".
97. He confirmed to Miss Graham that he had been involved in sponsoring football clubs for 25 years.
98. He now accepted that he had made a real error in the "first letter" and that on reflection it contravened the FA Rules.
99. He realised that it was an offer to Mr. Davis.
100. He confirmed that the Board Minutes produced for the first time at the hearing on his and the clubs behalf showed that Mr. Brock was present at the meeting when in his interview with Mr. Champion he had stated that Mr. Brock was on holiday. He then indicated that Mr. Brock was not at work on the 15th May as he was on holiday but did not actually go away until the following day.
101. He stated that the Club did not know that he was going to speak to Mr. Davis, and went on to say that he thought there was an error in the Minutes of the Board meeting.
102. He stated that Mr. Pope (the Chairman of the Club) did not tell him that he would not sanction the signing of Mr. Davis.

103. He accepted that the “first letter” could have been drafted better but later accepted that he was used to writing clear and concise letters as indicated by his letter to Mr. New of the 25th January 2013 (pages 119/120 in the bundle).
104. He denied any knowledge of the “second letter” and stated that he only found a copy of it in Mr. New’s desk when they were clearing the same on the 21st June 2012.
105. At this juncture it has to be noted that there is a clear and ongoing dispute between Mr. Fallon and Mr. New relating to a joint business venture that they had entered in to as evidenced by the letter from Mr. Fallon to Mr. New referred to in paragraph 103 above.
106. In answer to Mr. Cusack on behalf of Mr. Davis Mr. Fallon confirmed that he had a close relationship with Mrs. Goddard and that they now live together.
107. In answer to the Commission he confirmed that Mrs. Goddard had been a “Special” Police Constable and not a “Police Constable” as stated in her statement.
108. Due to a medical condition and a medical appointment Mrs. Goddard was unable to attend the hearing to give evidence.
109. Her statement was duly read and considered by the Commission and given such weight as they considered appropriate without her personal appearance.

Mr. Derek Pope was then called by Mr. Bean to give evidence on behalf of the club and confirmed his signed statement of the 15th April 2013.

110. He has been involved with the Club for some 30 years and has been the Chairman on and off during the last 10/15 years.

111. He stated quite categorically that he was not aware of the meeting between Mr. Fallon, Mr. New and Mr. Davis was to take place nor was he aware that the letters had been sent to Mr. Davis.
112. The first he knew of any letter to Mr. Davis was on the Sunday and shortly after the newspaper article had appeared.
113. He confirmed that all transfers have to be passed by Trevor Brock the Club Secretary and himself.
114. He confirmed that Mr. Fallon joined the club in March 2012 and left the club in October 2012 due to financial disagreements.
115. He noted that it had been mentioned on a number of occasions in the bundle that he had been ill. He did not know where that had come from because he has not been ill although he had a heart problem 7 years ago.
116. He did not think the Board Minutes of the 15th May 2012 were an accurate record, notwithstanding that they had been produced by Mr. Bean acting for the club and Mr. Fallon and entered in evidence.
117. He pointed out that they were not signed and that they would have been amended (if necessary) and signed at the next Board meeting on the 27th June 2012. He had not been asked to produce the Minutes of the 27th June 2012.
118. He confirmed that a couple of years ago the Club had been interested in signing Mr. Davis but they could not reach an agreement. As a result of that he formed an opinion of Mr. Davis and had said that he did not want him at the Club.
119. The signing of Mr. Davis and his “terms” were not discussed with the club’s accountants.

120. In answer to members of the Commission he confirmed that the Club and player could not have a separate contract or a “side contract”.
121. He was aware that all contracts had to make provision for tax and National Insurance.
122. He was at a loss to understand why he had not been involved and confirmed that if he had been asked he could have attended the meeting with Mr. Davis on the 15th May 2012 although he was equally adamant that no agreement would have been reached with the player.
123. He could not deny that Mr. Fallon represented the Club at that meeting on the 15th May 2012 as Vice Chairman and that Mr. New represented the club as acting team manager.
124. He confirmed that in his opinion the offer made to Mr. Davis was a totally illegal one and was made without his knowledge and most certainly without his authority.

CONCLUSION

125. It has to be said that Messrs. Davis, New and Fallon were by no means convincing and reliable witnesses. Mr. Davis is aggrieved at the way he has been treated by Mr. Fallon and the Club. There is a clear problem between Mr. New and Mr. Fallon which is ongoing. All three seem to have their own agenda to which they are working.
126. That said, and on the contrary, Mr. Champion gave evidence which is reliable and confirmed by the documentation and accepted by the Commission.
127. Mr. Bean’s criticism of Mr. Champion’s endeavours to investigate this matter were not well founded at all and bluntly not accepted by the Commission. Mr.

Champion was, as stated above, a reliable and patently honest witness.

128. Mr. Pope was a perfectly honest and reliable witness. He accepted that Mr. Fallon and Mr. New were acting on behalf of the Club at the material time albeit without his knowledge and authority but the Club was vicariously liable for the actions of Messrs. Fallon and New. He was frank in his comment that the contract was “totally illegal”.
129. There is no doubt, and on his own admission, that Mr. Fallon was responsible for the “first letter”. The Commission found, on the balance of probability, that he was also involved in the “second letter” and there is no doubt, and again it was admitted, that Mr. New edited that “second letter”.
130. Having considered in detail all of the written and verbal evidence adduced the Commission unanimously agreed that each charge was proved.

MITIGATION

131. None of the persons charged, nor the Club, had any previous record of a similar nature.
132. Mitigation was presented by letter from Mr. New, by Mr. Cusack on behalf of Mr. Davis, and by Mr. Bean on behalf of the Club and Mr. Fallon. Mr. Fallon also presented further mitigation of his own.
133. In his address to the Commission Mr. Fallon stated that he is involved in assisting AFC Totton who, the Commission were told, are in serious financial difficulties and he was anxious that any sanction awarded against him would not prevent him assisting them financially and to the tune of some £68,000.00.

SANCTION

134. Having very carefully listened to the Mitigation presented on behalf of the parties the Commission made the following Orders:

- Mr. Davis be warned as to his future conduct and be fined the sum of £500.00. The personal hearing fee to be retained. The Commission gave credit for his previous record, his early admission and the fact that he had co-operated throughout with the FA.
- Mr. New be suspended from all football activity until the 1st July 2015 and be fined the sum of £1,000.00. The personal hearing fee be retained. The Commission considered a suspension from all football for a period of 3 years but gave credit for his early admission, his previous record and the fact that he had co-operated throughout with the FA investigation.
- Havant & Waterlooville FC be fined the sum of £2,000.00 with the sum of £1,500.00 suspended until the 1st July 2016 and to be activated if a similar offence is found proved in addition to any further punishment for the new offence. The hearing fee to be retained and they are ordered to pay the sum of £1,500.00 towards the cost of the hearing and preliminary hearings. The Commission accepted that the Chairman knew nothing about the arrangements and if he had known the offer would not have been made. This is reflected in the suspended element of the sanction.
- Mr. Fallon carries the greater culpability. He be fined the sum of £5,000.00, and suspended from all football activity until the 1st July 2016. The personal hearing fee be retained and he be ordered to pay the sum of £1,500.00 towards the costs of the hearing and preliminary

hearings.

- Each decision is subject to the appropriate Appeal Regulations.
- These sanctions would have been substantially higher if the Commission had been dealing with a contract that had been perfected/concluded as opposed to one that was only “intended”.

Brian M. Jones (Chairman)

Thursday 2nd May 2013