

The Football Association v James Harris

Reasons for Decision (Chester Charges)

1. These are the reasons for the decision of this Regulatory Commission¹ on charges brought by The Football Association (“the FA”) against Mr James Harris (“the Player”) for breaches of FA Rule E8(a) in connection with a Football League 2 Matches while a player registered with Chester City FC, a club in League 2).² We are unanimous on all matters.
2. The Regulatory Commission held a preliminary hearing and gave various directions on 19 June 2009 and the final hearing was on Monday 20 July 2009. Mr Dario Giovannelli appeared for the FA on both occasions. On the Disciplinary Proceedings Reply Form (A) returned by the Player to the FA, signed by him and dated 7 May 2009³, the Player indicated that he denied the charges but did not request an opportunity to attend a Regulatory Commission to make a personal plea; and that he understood that the charges would be dealt with on the content of the documents served upon him and documentation he supplied to the FA within 14 days of the charge letter. However, he also indicated that he wished to be represented and asked that his representative be allowed to attend. He nominated George Davies Solicitors LLP as his representatives. They did appear for him on 19 June 2009, when directions were issued including the fixing of a hearing of these charges (and other separate charges against the Player designated “the Bury Charges”) for 20 July 2009⁴. However, neither the Player nor his representative appeared on 20 July 2009. No oral evidence being given on these charges, the Regulatory Commission has accordingly decided the matter on the documentary material.

¹ Nicholas Stewart QC (Chairman), Mr Barry Bright, Mr Roy Carter and Mr Paul Elliott

² Reasons given under regulation 9 of the *Regulations for Football Association Disciplinary Action: The FA Handbook Season 2008-2009*, pages 298-307

³ It appears that the Player used a single Reply Form for two sets of charges (including charges designated the Bury Charges brought by an FA letter 6 April 2009 under FA ref: BT/08/1184)

⁴ Directions of Regulatory Commission, Friday 19 June 2009

3. The charges are for misconduct for 2 breaches of FA Rule E8(a) and are contained in a letter from the FA to the Player dated 6 April 2009 under FA ref BT/08/1203 (“the Charge Letter”). The FA alleged that, being a Player registered with Chester City FC, using his online betting account with William Hill, he placed a stake of £5 on a treble bet including:
 - (i) Chester City FC to win the match *AFC Bournemouth v Chester City FC*, thereby betting on the result and/or progress of a match in which he had an influence, and/or
 - (ii) *Bradford City FC v Dagenham & Redbridge FC* and/or *Macclesfield Town FC v Bury FC*, thereby betting on the result and/or progress and/or conduct of a Competition in which he was participating
4. FA Rule E8(a) states: “A Participant shall not, either directly or indirectly, bet or instruct, permit or enable any person for the Participant’s benefit to bet, on the result, progress or conduct of a Match or Competition in which the Participant is participating or in which the Participant has any influence, either direct or indirect.”⁵
5. The Player admitted placing in person the bets as alleged in the Charge Letter and has never suggested they were not for own benefit. He did not play in the Match *AFC Bournemouth v Chester City FC*, though he was a registered Chester City FC player at the time.
6. The bet was a simple treble: Chester City, Dagenham and Bury to win those games.
7. Though admitting the placing of the bet, the Player denies the charges. Through his solicitors the Player sent a written submission on 5 June 2009 setting out his arguments in defence of the charges and also his points in mitigation in case his arguments in defence were rejected by the Regulatory Commission.

⁵ FA Handbook Season 2008-2009, page 111.

8. The Regulatory Commission accepts the Player's submission that the match *AFC Bournemouth v Chester City FC* was not a match in which he had an influence for the purposes of rule E8(a). The Regulatory Commission considers that to establish "influence" on a match for the purposes of rule E8(a) the evidence must show at least some actual influence. Such influence might well be inferred from a person's position - the most obvious example being a team manager or coach. However, although the Player in this case was a Chester City player and was therefore actively and closely involved and in constant contact with other players in that club right up to the *AFC Bournemouth v Chester City FC* match itself, we cannot safely infer that he had any influence on the Match and there is no direct evidence that he had any such influence.
9. Accordingly, to the extent that a charge is based on the element of the bet that Chester City FC would win that match, it fails. However, that is not of any practical significance. The Regulatory Commission would not have regarded the facts alleged in the Charge Letter as constituting two separate breaches of rule E8(a) anyway. The placing of one bet could only have constituted one breach of rule E8(a), though with the breach being based on more than one element of the bet making it a breach of the rule. The result of our accepting this particular submission is that if the bet was in breach of rule E8(a) it could only be because of the allegation in (ii).
10. As to that allegation, the Player submits that a treble which bet on 3 teams to win was not a bet on "the result . . . of a Competition". We accept it was not a bet on the result of League 2. However, in our view it was a bet on both the "progress" and the "conduct" of League 2, which is enough to constitute the offence without any element of betting on the "result". We notice that the Players' written submission concentrated on the word "result" and did not attempt to deal with the words "progress or conduct".
11. The Player then claims to rely on the express exception in rule E8 for a bet which the Participant can prove was on authorised and registered football pools. No evidence has been produced to sustain that contention and it is obviously wrong anyway. In fact even the submission only says that the bet was "more akin to a registered football pool".

12. Treating the placing of the bet as a single breach, as we do, there is no other possible answer to the charge. We see no possible procedural or other unfairness to the Player in treating it as one charge despite the terms of the Charge Letter and making our findings on that footing.
13. The charge is therefore proved on the basis that in breach of FA Rule E8(a) the Player bet on the progress and the conduct of a Competition in which he was participating.
14. We announced our decision that the charge had been proved on 20 July 2009. Mr Giovannelli was present for the FA but in the absence of the Player or his representative we received no oral submissions in mitigation. We do nevertheless have the written submissions already mentioned.
15. It is submitted on behalf of the Player that there is “a complete lack of education in football regarding the rules relating to players”. That is expanded in the written submission. The difficulty for this Player on this charge is that on 29 October 2008, i.e. 5 weeks before this bet on 6 December 2008, he had been interviewed by Jennifer Fitzgerald for the FA in connection with the Bury Charges and in the course of that interview he had been expressly told that he could not bet on any League 2 games (see page 24 of the transcript). Having been told that, and also having clearly learned that the FA rules on betting were more extensive than he had known or claimed to have known before then, he cannot reasonably appeal to lack of education to avoid or mitigate his responsibility for this breach.
16. We do recognise that rule E8(a) itself is not easy reading and we have to be realistic in also recognising that the FA’s published *Guidance to Players in The Premier League, The Football League and The Football Conference (National Division) on Disciplinary Matters Season 2007/08* (issued July 2007) may not reliably find its way to every player and may well then not be read with any great care. But given our views expressed in the previous paragraph, that does not help this Player.
17. It is also claimed that the Player has fully complied with the FA’s investigation. That contention is true if limited to this particular charge though there was not a lot of investigation to be done and only minimal cooperation needed. It is not a point of any

weight here. Moreover, in his written submission on the Chester Charges the Player relies himself on the transcript of the interview with Jennifer Fitzgerald on 29 October 2008 and his story about Carl Duffy in that transcript (on the Bury Charges) was untrue. We do not adjust the penalty on this ground, either for or against the Player.

18. The Player seeks credit for not having requesting a personal plea in these proceedings as he did not wish to waste the time of the Regulatory Commission and did not wish for costs to become excessive for the FA on this matter. We are not impressed, as the Player's admission of the bet has been accompanied by a persistent denial of the charges and a full mitigation, which have together included a whole batch of dud points which it is clear we have had to spend time considering and rejecting. We are not punishing the Player for that persistence, however unhelpful it was, but we are certainly not going to give him credit.
19. No credit will be given for remorse. We do not see any. He says he is "deeply remorseful that these charges have been brought". That is an odd way of putting it. He did not bring the charges. The FA did. In breach of the rules he placed the bets which led to the charges. Remorse for what he had done rather than regret at being caught and charged might have stood some chance of credit.
20. It is also said by the Player that he could not have influenced the result either directly or indirectly. We have eliminated and therefore disregard the point in (1) of the Charge Letter about influence. However, this charge as found proved does not rest on any suggestion of match-fixing. It was a small bet but in clear breach of the rules.
21. A point the Player raises in mitigation is that he took a genuine risk in placing the bet on the Matches. Leaving aside the point already covered in paragraph 20 above, we do not find that his risking £5 merits credit.
22. We naturally accept that the penalty must not be disproportionate to the offence but that does not mean that it has to be closely tied in any obvious way to the modest size of this £5 bet. There is a principle in issue here and Regulatory Commissions cannot be expected to engage in some sort of fine tuning by amounts of bets (or potential winnings).

23. The Player's written submission mention wider issues of concern about gambling in football. There clearly are reasons for concern in a number of areas but they have no material bearing on this Player's responsibility for his own actions in breach of the FA Rules.
24. The penalties do not contain an express element of deterrence. We have not included any uplift for deterrence. The seriousness of the offence merits the penalties we have imposed. We trust the penalties will act as a deterrent without any need to add anything to them for that purpose.
25. We warn Mr Harris as to his future conduct (bearing in mind that he committed this offence after he had already been interviewed in connection with the Bury Charges). We also impose a £500 fine, which in our view is a suitable punishment for what we find was a deliberate breach of FA Rule E8(a).
26. We also order the Player to pay £2500 costs of this Regulatory Commission.⁶ That may appear to him disproportionate to his bet of £5 but it reflects actual reasonably apportioned costs of this Regulatory Commission.
27. Recognising that immediate payment of the fine and costs may well be difficult for Mr Harris, especially in the light of his 1 year suspension and £5000 fine on the Bury Charges, we order that half of the fine and half of those costs must be paid by 31 October 2009 and the whole then outstanding balance by 31 January 2010.

Nicholas Stewart QC
Chairman

23 July 2009

⁶ Under regulation 8.8(b) of the *Regulations for Football Association Disciplinary Action: The FA Handbook Season 2008-2009*, pages 298-307. Rule 8.8 (b) is at page 304.