

August 2009

The Football Association v Peter Cavanagh

Reasons for Decision

1. These are the reasons for the decision of this Regulatory Commission¹ on charges brought by The Football Association (“the FA”) against an Accrington Stanley FC player Mr Peter Cavanagh (“the Player”) for breaches of FA Rule E8(a) in connection with two Football League 2 matches played by his own club *Accrington Stanley FC* (“the Club”)v *Dagenham & Redbridge FC* (“the Daggers Match”) played on 4 April 2008 and *Accrington Stanley FC v Bury FC* played on 3 May 2008 (“the Bury Match”), as well as other matches 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 Friday 7 August 2009. On both occasions Mr Dario Giovanelli appeared for the FA and the Player was represented by Mr Martin Budworth of counsel, instructed by solicitors Hillyer McKeown.
3. The charges are contained in a letter from the FA to the Player dated 6 April 2009 (“the Charge Letter”). The Player is charged with misconduct for 6 breaches of FA Rule E8(a). The alleged breaches are:
 - (1) On 4 April 2008, being a player registered with the Club, using his telephone betting account (no. c30945) with Gala Coral, he placed a stake of £40 on a double bet including the Club to win the Daggers Match, thereby betting on the result and/or progress of a match in which he was participating.
[1 breach]
 - (2) On 1 May 2008, being a player registered with the Club, using his online betting account (no. 1734589) with Gala Coral, he placed a stake of £5

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

on a multiple bet including (i) Bury FC to win the Bury Match, thereby betting on the result and/or progress of a match in which he was participating; (ii) *Lincoln City FC v Wrexham FC*, thereby betting on the result and/or progress and/or conduct of a competition in which he was participating. [2 breaches³]

(3) Being a player registered with the Club, and using his online betting account (no. 1734589) with Gala Coral, he placed a stake or stakes on a match or matches between clubs involved in the League 2 competition, namely: (i) on 25 April 2008, a stake of £10 on a multiple bet including *Notts County FC v Wycombe Wanderers FC*; and/or (ii) on 25 April 2008, a stake of £10 on a multiple bet including *Bradford City FC v MK Dons FC* and *Grimsby Town FC v Peterborough United FC*; and/or (iii) on 2 May 2008, a stake of £20 on a multiple bet including *Lincoln City FC v Wrexham FC*, in all three cases thereby betting on the result and/or progress and/or conduct of a Competition in which he was participating. [3 breaches]

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.”⁴
5. The Player has admitted that all the bets were placed as alleged, including the use of his accounts. It should be noted that the Player did play in both the Daggers Match and the Bury Match and was the Accrington Stanley captain on both occasions. It should also be noted that the multiple bet placed on 1 May 2008 included betting on Bury FC to beat the Player’s own club Accrington. He was a registered Accrington Stanley player at all times relevant to these charges.
6. Though admitting the bets, the Player denies the charges. His defence is that the telephone bet was placed by his brother Michael Cavanagh, for his brother’s own benefit, and the online bets were all placed by Mr Martin McGee, to whose sister the Player is now married, for Mr McGee’s own benefit. The Player says that in all those cases he allowed his brother and Mr McGee to use his accounts on the footing that if

³ But see footnote 11 below

⁴ FA Handbook Season 2008-2009, page 111. The rule was in force in exactly the same terms in May 2008.

the bets were lost (as they all were) they would reimburse him for the stake and if the bets had been won then all winnings would have gone to them and not the Player.

7. No other defence was argued for the Player and we see none. Accordingly, the matter turns on whether we accept or reject the Player's contentions that it was his brother Michael and Mr McGee who between them did place all the bets.⁵
8. The Player's counsel Mr Budworth prepared written submissions dated 31 July 2009 setting out his arguments in defence of the charges and also points in mitigation in case his arguments in defence were rejected by the Regulatory Commission. Mr Budworth also made oral submissions at the hearing on 7 August 2009, when the Player, Mr Michael Cavanagh and Mr McGee all gave oral evidence and were cross-examined by Mr Giovanelli.
9. Mr Budworth made submissions on the standard of proof to be applied in deciding whether these charges were proven or not proven on the evidence. We dealt with that question at the beginning of the hearing on 7 August 2009, before hearing the oral evidence. Regulation 9 of the *Regulations for Football Association Disciplinary Action*⁶ states: "The applicable standard of proof shall be the flexible civil standard of the balance of probability. The more serious the allegation, taking into account the nature of the Misconduct alleged and the context of the case, the greater the burden of evidence required to prove the matter". We understand that provision to reflect, with no inconsistency, the explanation and guidance contained in the House of Lords case *In re D (Secretary of State for Northern Ireland intervening)* [2008] 1 WLR 1499; 4 All ER 992, which we accept and apply. We were also referred to the case of *R (on the application of Doshi) v Southend-on-Sea PCT* [2007] EWHC 1361 (Admin), but that was a case where the applicable legislation and rules contained no express provision on the standard of proof. It is correct that the judge in that case, drawing on judicial statements of high authority, concluded that the practical application of the flexible civil standard and the criminal standard of beyond reasonable doubt meant that they were likely "in certain contexts" to produce the same or similar results. But

⁵ It is arguable that the Player would have been in breach of ruleE8(a) by allowing bets in his name using his accounts, even if they had actually been placed by others for their benefit. However, we did not invite submissions on that point and have not found it necessary to decide it.

⁶ The FA Handbook Season 2008-2009, page 302

they are different tests and we made it clear before the start of the oral evidence that we should apply the test directed by Regulation 9.

10. The Player, accompanied by his solicitor, was interviewed by Ms Jenni Fitzgerald for the FA on 30 October 2008. We have a transcript. Ms Fitzgerald stated that it was a formal interview and that the FA had the right to rely on the transcript should any disciplinary proceedings arise in relation to the inquiry, which related particularly to unusual betting patterns surrounding the Bury Match on 3 May 2008.

11. The Bury Match had been no part of the telephone bet placed on 4 April 2008 or the three multiples of £10, £10 and £20 placed on 25 April and 2 May 2008, though it had been an element of the online £5 multiple placed on 1 May 2008. Although the initial focus of the interview had been stated to be the Bury Match, it was rather wider-ranging in its discussion of the Player's betting: see for example page 21 of the transcript, where the Player was told that the FA would check whether he had bet on other League 2 games and was also told that betting companies, if they noticed, had to report people who broke the rules. The Player's online account was mentioned at pages 20 and page 21 and his telephone account at page 10. If the Player's story about Mr McGee's use of his betting accounts had been true, we do think it likely that he would have made at least some mention of that as the interview developed. Mr McGee's use of the Player's telephone and online accounts was claimed by both the Player and Mr McGee to have been frequent, even routine, so there was an obvious possibility that the potential checks indicated by Ms Fitzgerald would throw up bets by Mr McGee which would have been a breach of the rules if placed by the Player himself. We do not find paragraph 18 of the Player's first witness statement⁷ a convincing explanation.

12. There was no mention of Mr Cavanagh's brother Michael during the interview. That is not so surprising, as the Player does not even now claim that his brother's use of the Player's telephone account was at all usual: see paragraph 6 of the Player's second witness statement⁸. This does invite a degree of scepticism that with the apparent rarity of Mr Michael Cavanagh's use of the Player's telephone account (on the

⁷ 6 May 2009

⁸ 26 June 2009

Player's own case), this particular incriminating bet had turned out to be placed by him.

13. There is a telephone recording of the telephone conversation when the £40 double was placed on 4 April 2008. We have a transcript, which is accepted on all sides as accurate. As the caller identifies himself simply as "Cavanagh", that gives us no clue at all whether it was the player or his brother Michael, and the members of the Regulatory Commission could not possibly have told from the recording. What is accepted on all sides is that the caller was either the Player or his brother Michael. The Player says it was Michael, the FA say it was the Player. No one now suggests it could have been anyone else.
14. Mr Giovanelli sought to have a voice expert examine the tape of the 4 April 2008 conversation against verified recordings of the voices of the Player and his brother Michael. Accordingly, the Regulatory Commission itself obtained (through the FA Disciplinary Manager and his staff) a report from Ms Elizabeth McClelland MA, MSc, an expert in the Forensic Analysis of Language Samples ("the Expert Report"). Neither party challenged Ms McClelland's expertise or asked for her to be examined or cross-examined beyond her written report. We accept it as expert evidence.
15. We do not set out in detail what can be read in the Expert Report. Her Summary of Results is at page 8 of the Expert Report. She concluded that the voice of Michael Cavanagh was not consistent with identity between his voice and the voice in the 4 April 2008 recording and that it was unlikely that the disputed caller was Michael Cavanagh. As to the Player Peter Cavanagh, she concluded that his voice and the caller's voice in the 4 April 2008 recording were consistent with their being from the same speaker, though she did say that her conclusions as to the distinctiveness of the consistency noted were at low levels. At page 10, the Expert Report sets out a scale. Her view that it is unlikely that the caller was Michael Cavanagh is -1 on that scale. Her view that the consistency of the voices in the case of Peter Cavanagh was moderately distinctive is +1 on that scale.
16. Mr Budworth urged that these were the lowest rankings either side of 0, where the consistency is "not distinctive", and drew our attention to the expert's own warnings

on the limitations of forensic voice analysis: see section 10 at page 9 of the Expert Report. However, two points should be noted: (1) We are applying the standard of proof of balance of probability; (2) Point (ii) in section 10 of the Expert Report⁹ has no application here, as the two Cavanagh brothers are accepted as the only possibilities.

17. In the light of those two points, in the absence of any clear and convincing contrary evidence we should have felt able to conclude on the basis of the Expert Report alone that according to the standard of proof directed by Regulation 9 the caller on 4 April 2008 had been the Player Peter Cavanagh. It is clear from the Expert Report that on balance of probability he was the caller.

18. However, the Expert Report is not unsupported by other matters. Our scepticism expressed in paragraph 12 of these reasons is reinforced by the fact that it was only after receiving further evidence from the FA and listening to the recording that the Player claims he discussed the specific details of the FA charges with his brother Michael. It was then that his brother recalled he had placed the bet - something which supposedly had not previously occurred to the Player and had not been discussed sufficiently with Michael Cavanagh to have jogged his memory before.

19. It is all too good to be true, and it is not true. We are confident that it is at the very least probable that it was the Player himself who rang Coral Gala and placed the bet on 4 April 2008. If his version had been true, we find it improbable that it would have been only after the receipt of the further evidence from the FA that the Player would have discussed the matter with his brother sufficiently to have jogged his brother's memory of placing the bet.

20. Mr Budworth accepted that a finding against the Player on either his Michael Cavanagh story or the McGee story could properly be taken into account in our appraisal of the other story. In reaching our conclusion on the McGee story in relation to the online bets, we are entitled to have regard to our confident view that the Player

⁹ "In the current state of knowledge in Forensic Phonetic Science, it is not possible categorically to exclude the possibility that there may be other speakers in the wider population who may share the features noted in the samples examined."

has told us a deliberately untrue story in denying that he placed the 4 April 2008 telephone bet himself.

21. Mr McGee does not actually recall making the offending online bets. He specifically told us that he had no recollection and that it was possible he placed those bets but he did not know for sure. Mr Giovanelli noted that the two bets on 25 April 2008 were had been placed at 00:12 and 00:17, which he suggested had been rather late for Mr McGee to have been still at the Player's house, but we do not find that particular point at all telling. We accept that Mr McGee would have been a regular visitor to the house shared by his sister and the Player and there would be nothing surprising about his still being there after midnight. Nevertheless, on the overall evidence we do not accept that it was Mr McGee who placed the online bets which are the subject of these charges.

22. Paragraph 13 of Mr McGee's written statement¹⁰ starts with a point which is really as much argument as evidence, where he says "as only Peter [Cavanagh] and I have access to his telephone betting account and his online betting account and Peter would not bet on Accrington Stanley then I can only presume that it must have been multiple bets that were placed by me". We note that the assertion here on 6 May 2009 that no one else had access to those accounts (which must have been approved or confirmed by the Player, as otherwise Mr McGee could not have made that statement) was subsequently contradicted by the later claim that Mr Michael Cavanagh had also used the telephone account. But in specific relation to the McGee story, we have already concluded that it is not true that the Player would not bet on Accrington Stanley, as that is precisely what he did do by placing the telephone bet on 4 April 2008. Accordingly, that demolishes the premise on which Mr McGee bases his "presumption" that the online bets had been placed by him Mr McGee.

23. It is clear to us what happened: The Player had personally placed all the bets which are the subject of these charges. When charged by the FA, he concocted a false story that it was Mr McGee who placed all the bets and the Player's first statement and Mr McGee's statement were stitched together to support that story and get the Player off

¹⁰ 6 May 2009

the hook on these charges¹¹. The Player subsequently realised, on hearing the tape of the 4 April 2008 telephone conversation with Coral Gala, that the McGee story would not wash as far as that bet was concerned. In an attempt to retrieve the situation and get himself off the hook for the 4 April 2008 telephone bet, he therefore concocted the Michael Cavanagh story - because he felt able plausibly to claim that the caller was his brother whereas it would have been too obvious that it was not Mr McGee.

24. Our confident rejection of both the Michael Cavanagh story and the McGee story are common sense conclusions on the evidence.
25. At the conclusion of the hearing on 7 August 2009, after a short retirement to consider our decision, we informed the Player and his representatives that the charges had been proved in relation to all the breaches alleged in the Charge Letter. Mr Budworth was then given the opportunity of submissions in mitigation, though the key points were already helpfully set out in his written submission.
26. We do take into account the Player's previously exemplary disciplinary record, his commitment to youth coaching and his otherwise positive contribution to the game of football. We are not willing to give him the claimed credit for "full cooperation with the FA". We acknowledge that his voluntary disclosure of his betting accounts and his banks and telephone records were initially helpful but he can hardly expect credit for cooperation when to the bitter end he has run what are akin to two false alibi defences. He has come up with a disgracefully concocted story to try to explain away all these bets. We impose penalties only for the offences and are not punishing him for the way he has conducted his defence, but credit for cooperation is out of the question.
27. Mr Budworth also asks us to take into account that all the bets were losing bets. It is hard to take this point seriously, as he would have wanted them to be winning bets.
28. We do take account of the relatively modest size of the bets and we accept that there is no indication whatever that the Player was involved in any way in any match-fixing. In this context, however, as we are sure that the Player and his representatives had in

¹¹ Leaving aside the point in footnote 4 to these reasons, which could not have affected the Player's actions.

mind other recent cases against players brought by the FA and involving betting on the Bury Match¹², we should make it clear that in none of those other cases was there any charge or finding of a player's involvement in match-fixing and no part of any penalty was based on any such suspicion. The same applies here to Mr Cavanagh.

29. The fact that Mr Cavanagh bet on Bury to beat his own club Accrington, which was a part of the multiple bet placed on 1 May 2008, would dismay the ordinary football fan, even though we do accept that the level of the bet could not realistically have been an incentive to him affecting his play in the Bury Match.
30. Rule E8 is an important rule which is intended to sustain public confidence in the straightness of football and help allay just the sort of concerns which have arisen about the Bury Match. The evidence before us, including reports from leading bookmakers, shows that there was highly suspicious betting activity in relation to the Bury Match and gives cause for serious concern that the Match may have been fixed.
31. We stress again that no one has been charged with any actions involving fixing of the Match and it is not part of the case against Mr Cavanagh. We mention it here so that it can be seen that we have not ignored such a striking and serious concern relating to this Match but also to make it clear that we are punishing Mr Cavanagh only for the offences of which he has been found guilty. There is no charge and no evidence that he was involved in any fixing of the Match. We also do not make any finding that the Match was fixed, as that is not an issue before us for determination. The concerns about this Match do nevertheless serve to illustrate the importance of rule E8.
32. What we find particularly troubling about these offences by Mr Cavanagh is that they were repeated and in two instances clearly deliberate breaches of the FA rules. In his interview with Ms Fitzgerald (see page 19) the Player was adamant that he would not bet on games in which he was playing and appeared to be well aware that it was against the FA rules to do so. However, two of the five offending bets involved exactly that. He also said he would not bet on his own team even if he was not playing (page 20). He was apparently not aware that the rules also prohibited betting

¹² At the preliminary hearing stage on 19 June 2009 several other cases were dealt with together with this one, though we directed separate hearings from then on.

on other games in the same competition (in this case League 2): see page 20. Nevertheless he acknowledged receiving the *Guidance to Players in the Premier League, The Football League and The Football Conference (National Division) on Disciplinary Matters*, which is published each season by the FA and sent to all clubs to be given to players. Ms Fitzgerald was not quite right in describing it (at page 19 of the interview transcript) as a two-page document. The 2007-8 version is actually seven pages. However, the section headed “E8 – Betting” makes it very clear that a player cannot bet on any game in the same league as the one in which his club plays. If Mr Cavanagh, who was then a frequent better, did not even trouble to read that section, which in clear terms specifically covered one of his own regular activities, then he was taking an irresponsible risk.

33. Mr Cavanagh was the Accrington Stanley captain when he placed these bets. That does not justify a large addition to the penalty but it is a point which counts against him, as he would be expected to set an example.
34. Breaches of rule E8 are serious, as expressly asserted as part of the Player’s own case in paragraph 3 of his counsel’s written submission. Mr Cavanagh placed 5 bets in breach of rule E8(a) in the space of a month.
35. For practical purposes of deciding the appropriate penalty, we impose a single penalty to cover all the breaches together.¹³
36. A fine would nowhere near mark the gravity of the offences. Mr Cavanagh will be suspended from all footballing activity for 8 months, with immediate effect. He will also be fined £3500.
37. The penalty does not contain an express element of deterrence. We have not included any uplift for deterrence. The seriousness of the offence merits the penalty imposed. We trust it will act as a deterrent without any need to add anything for that purpose.

¹³ The Bury Charge (number (2) in paragraph of these reasons) is clearly a single breach, so the number of separate bets placed in breach of rule E8(a) was 5.

38. We also order the Player to pay £5000 costs of this Regulatory Commission. In addition, under the same power to order costs¹⁴ we order him to pay the costs incurred by the Regulatory Commission in obtaining the Expert Report, which amount to £4626.45 (inc VAT).
39. It was obvious at the hearing on 7 August 2009 that payment of these sums was likely to be very difficult for the Player, particularly in the light of the 8 month suspension. We invited the Player's representatives to send us a written submission of any further matters relating to the Player's financial circumstances which they wished us to take into account in deciding the timing and terms of payment. We have duly received and considered that further submission.
40. We order that half of the fine and half of the costs of £5000 must be paid by 31 October 2009 and the whole then outstanding balance by 31 January 2010.
41. As to the costs of the Expert Report, we take into account that the Player has to find that sum on top of the £3500 fine and the other £5000 costs. We therefore order payment of that sum of £4626.45 by 10 instalments of £462.64¹⁵ by Bankers Order starting on 28 February 2010 and then on 28th of each month until the final instalment on 28 November 2010.

Nicholas Stewart QC
Chairman

20 August 2009

¹⁴ 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.

¹⁵ We ignore the residual 5p