

**IN THE MATTER OF A HEARING
BEFORE THE FOOTBALL ASSOCIATION
REGULATORY COMMISSION**

Venue: Elland Road Stadium, Leeds

Date: 28th October 2009

Participant: Curzon Ashton FC and Mr Harry Twamley

Match and Competition: N/A

Match Venue: N/A

Date of Match: N/A

Disciplinary Commission: B.W. Bright (Chairman)
B. Jones
P.J. Clayton
M. Kearns (Panel Member)

In Attendance: M. Dennis (Secretary to the Commission)
D. Giovannelli (Prosecuting on behalf of FA)
H. Twamley (Chief Executive, Curzon Ashton FC)

Charge

Curzon Ashton FC were charged by correspondence dated 29th September 2009, with twenty seven breaches of FA Rule E1(b). Mr Harry Twamley was charged by correspondence also dated 29th September 2009, with nine breaches of FA Rule E3.

Both Curzon Ashton FC and Mr Harry Twamley admitted the charges and requested the opportunity to attend a Commission to make a personal plea.

Evidence Considered

Curzon Ashton FC

- i) Interview transcript Harry Twamley 14 October 2008
- ii) FA letter of 9 June 2008
- iii) FA letter of 25 June 2008
- iv) Curzon Ashton letter of 28 June 2008
- v) Curzon Ashton schedule of payments to contract players for 2005/2006 to 2007/2008
- vi) Curzon Ashton P35 for 2007/2008
- vii) M Norton P60 for 2007/2008
- viii) D Carnell P60 for 2007/2008
- ix) A Mortimer P60 for 2007/2008

- x) A Jones P60 for 2007/2008
- xi) Curzon Ashton note re no P35 for 2006/2007
- xii) M Norton P60 for 2006/2007
- xiii) S Moore P60 for 2006/2007
- xiv) Curzon Ashton P35 for 2005/2006
- xv) M Norton P60 for 2005/2006
- xvi) D Fish P60 for 2005/2006
- xvii) FA letter of 10 July 2008
- xviii) Curzon Ashton letter of 18 July 2008
- xix) FA letter of 25 July 2008
- xx) Mr Kirk letter of 4 August 2008

Mr Harry Twamley

- i) Interview transcript Harry Twamley 14 October 2008
- ii) FA letter of 9 June 2008
- iii) FA letter of 25 June 2008
- iv) Curzon Ashton letter of 28 June 2008
- v) Curzon Ashton schedule of payments to contract players for 2005/2006 to 2007/2008
- vi) Curzon Ashton P35 for 2007/2008
- vii) M Norton P60 for 2007/2008
- viii) D Carnell P60 for 2007/2008
- ix) A Mortimer P60 for 2007/2008
- x) A Jones P60 for 2007/2008
- xi) Curzon Ashton note re no P35 for 2006/2007
- xii) M Norton P60 for 2006/2007
- xiii) S Moore P60 for 2006/2007
- xiv) Curzon Ashton P35 for 2005/2006
- xv) M Norton P60 for 2005/2006
- xvi) D Fish P60 for 2005/2006
- xvii) FA letter of 10 July 2008
- xviii) Curzon Ashton letter of 18 July 2008
- xix) FA letter of 25 July 2008
- xx) Mr Kirk letter of 4 August 2008

Decision

Curzon Ashton FC

Having admitted twenty seven breaches of FA Rule E1 (b), the Members of the Commission, having considered the mitigation presented, decided that Curzon Ashton FC's First Team be deducted ten points. The first five points of this sanction will be imposed with immediate effect and will be deducted from the Club's points total for the 2009/2010 season. The remaining five point deduction will be suspended until the end of the 2010/2011 season and will only be invoked in the event of another similar proven breach of FA Rules.

The Members also decided that Curzon Ashton FC be fined the sum of £2,700. However, £1,350 of this fine will be suspended for a period of five years and will only be invoked in the event of another similar proven breach of FA Rules.

The Members took into account the open and candid admission of Mr Twamley made on behalf of the Club.

The Personal Hearing Fee was retained and Curzon Ashton FC was ordered to pay the costs of the hearing.

Mr Harry Twamley

Having admitted nine breaches of FA Rule E3, the Members of the Commission, having considered the mitigation presented, decided that Mr Twamley be warned as to his future conduct and suspended from all football related activity for a period of twelve months. However, the suspension from all football related activity will be suspended for a period of five years and will only be invoked in the event of another similar proven breach of FA Rules in that period.

The Members also decided that Mr Twamley be fined the sum of £270.

The Members took into account his open and candid admission of the charges.

The Personal Hearing Fee was retained but there was no order made as to costs.

Reasons

The Members of the Commission were of the opinion that the matters before them were of a very serious nature. They carefully considered the plea in mitigation presented by Mr Harry Twamley (Chief Executive, Curzon Ashton FC) on behalf of himself and Curzon Ashton FC and were grateful for the open and candid manner of his mitigation. However, the Members were greatly concerned by what they considered to be an overly relaxed attitude to numerous breaches of FA Rules and the fact that false information had been provided by the Club to HMRC.

The Members of the Commission were concerned that Mr Twamley was the only Director of Curzon Ashton FC present to answer the charges on behalf of the club. He was reminded of the fiduciary duties and responsibilities in law of appointed Directors. Mr Twamley stated that all Directors were fully aware of all matters relating to the charges and that he had suggested to his Chairman and fellow Directors that he would attend alone to answer the charges and plead mitigation to which they had agreed.

The Members carefully considered all the evidence before them. They noted that a number of payments made by Curzon Ashton FC to their contracted players were not fully recorded in the accounting records of the Club nor were they subject to PAYE and National Insurance. It appeared that the Club were paying part of the contracted player's wages with a benefactor, Mr Stuart Kirk (a former player), contributing the rest to make up the contracted weekly salary. However, the amount paid by Mr Kirk to Curzon Ashton FC was not recorded in the accounting records of the Club – "...he didn't want a receipt so we didn't record it" - (transcript of interview Page 7). Likewise such sums were then allocated and paid to certain contracted players and were not subject to either PAYE or National Insurance. The Club would pay the players in cash on a weekly basis after training on a Thursday night. It was stated that the players were not aware of the financial arrangement between Mr Kirk and Curzon Ashton FC, an arrangement that had taken place since the beginning of the 2005/2006 season.

The Members further noted that Mr Twamley had completed a number of P35 and P60 declarations on behalf of Curzon Ashton FC, knowing that some of the details stated on the forms were false, a fact that he openly admitted.

The Commission likewise noted (with a concern that Mr Twamley did not appear to share) that in the transcript of interview of the 14th October - Page 15 Mr. Twamley had said "And really to be quite honest, all we have done and we are guilty of doing it is like any small business they have a cash fund which they don't declare and that is what we have done."

The Members considered the plea in mitigation presented by Mr Twamley. They accepted that Mr Twamley and the Board of Curzon Ashton FC may not have been aware of the FA Rules relating to these matters but were of the opinion that ignorance did not excuse the manner of the

breaches. They were surprised to learn that Mr Twamley was an accountant in his full time role albeit that he was not a chartered or a fully qualified accountant. The Members were of the opinion that despite not being fully qualified Mr Twamley must have known that what he and the Club were practising was unlawful and that the Club could be subject to substantial penalties should the HMRC become aware.

The Members noted that Mr Twamley had stated that the Club had been subject to three visits from the local revenue over the past eighteen years and on each occasion the Club had satisfied the local revenue's requests. They further learned that such visits occurred every six years. The Members did not find this point of mitigation particularly relevant. It was accepted that on the last two occasions Curzon Ashton FC had satisfied the demands of the local revenue however the last visit had occurred before Mr Kirk's contribution and the Club had not been subject to a visit since. The Members were further surprised and disappointed to learn that despite the findings of The Football Association's review and subsequent charges, Mr Twamley and Curzon Ashton FC had not contacted the HMRC as a matter of urgency to disclose and discuss the situation.

The Members were also concerned that it was clear Mr Twamley had knowingly lied when completing a P35 declaration that had been submitted to the HMRC. The document asked the following question;

"So far as you know, did anyone else pay expense, or in any way provide vouchers or benefits to any of your employees whilst they were employed by you during the year?"

Mr Twamley stated "No" on the declaration despite being fully aware of Mr Kirk's contribution. He also stated in an interview that formed part of The Football Association's enquiry that "I knew I was putting the wrong answer in."

The Members considered the matter of sanction. As stated earlier they were of the opinion that the breaches were of a very serious nature. They noted the fact that both Curzon Ashton FC and Mr Twamley had admitted the charges immediately and that they had cooperated fully with The Football Association's enquiries and made no attempt to conceal any of the payments made. The Members awarded both Curzon Ashton FC and Mr Twamley the appropriate credit for their open and candid approach. The Members further noted that Curzon Ashton FC and Mr Twamley had taken steps to rectify the situation going forward and that all payments were now recorded and subject to PAYE and National Insurance. Mr. Twamley made openly available to the Commission the current financial bookwork of the club.

However, the Members were of the opinion that the key factor when considering sanction was the level of sporting benefit that was gained as a result of the wrongdoing. The Members disagreed with Mr Twamley who stated that there was no sporting benefit gained because the Club were still one of the lowest payers in the League and also attracted a much smaller gate compared to other Clubs in the League.

The Members were of the opinion that the level of pay other Clubs were able to offer and the gate that they attract were of limited relevance when considering the level of sporting benefit Curzon Ashton FC had themselves received. The Members considered that the Club had received a substantial benefit as the unrecorded payments meant that they were able to offer contracts for amounts that they would normally not be able to afford. Mr Twamley made this abundantly clear when, after being asked about the arrangement with Mr Kirk, he stated the following in his interview (Page 6);

"He will just say-, well before the season starts he will for example, Norton he is our top scorer who has been pursued by other clubs, we couldn't afford to pay him anymore and he said, 'Well, I will make it up. See what you can get him for and I will make up the difference for you'.

It was clear that Curzon Ashton FC were able to hold on to their key players as a result of the illicit payments of Mr Kirk and also to attract other players on contracts that the Club alone would not have been able to afford. The scheme created a competitive advantage for the Club.

The Members considered carefully the sanction to be imposed on the Club. For the reasons outlined above they felt that a sporting penalty was in the circumstances appropriate. The Members also felt that as the breaches were serious in nature the sanction should reflect this accordingly and act as a deterrent to any future breaches of a similar nature. Therefore, the Members decided that Curzon Ashton FC's First Team be deducted the amount of ten points. Due to the full and frank admission by the Club and their previous unblemished record the Members decided that five points of this sanction will be suspended until the end of the 2010/2011 season and only be invoked in the event of a similar breach of FA Rules.

The Members also decided that a financial penalty was appropriate. The Members were of the opinion that each breach should be sanctioned with a fine for the amount of £100 and therefore as there were twenty seven breaches the Club would be fined a total amount of £2,700. The Members again felt it was appropriate to recognise the openness with which the Club had handled The Football Association's enquiries and therefore decided that half of the amount of the fine, £1,350, be suspended for a period of five years and will only be invoked in the event of a similar breach of FA Rules.

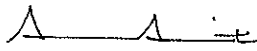
The Members then considered the sanction to be imposed on Mr Twamley. The Members again were of the opinion that the breaches were of a very serious nature and were of the opinion that Mr Twamley's conduct, in particularly knowingly supplying the HMRC with false information, was totally unacceptable. The Members were also of the opinion that ignorance of the FA Rules was no excuse and the only credit that could be awarded to Mr Twamley was for his open and candid response to The Football Association's enquiries, the level of service he had provided the Club for over fifty years coupled to the fact he stated he was giving over 40 hours per week on a voluntary basis to Curzon Ashton FC and that he had a previously unblemished record during this service.

The Members felt that a suspension from all football related activity for a period of twelve months would accurately reflect the level of seriousness of the breaches. However, they felt it was also appropriate to recognise Mr Twamley's immediate admission of the charges and contribution to Curzon Ashton FC when deciding whether the suspension should be effective immediately. Therefore, after detailed consideration, the Members decided that such suspension would be suspended for a period of five years and will only be invoked in the event of a similar proven breach of FA Rules.

The Members again felt that an additional financial penalty was appropriate. The Members felt that each of the breaches warranted a fine of £30 and as Mr Twamley had admitted nine breaches of FA Rule E3 they decided that he would be fined the total of £270.

The Members also felt it was appropriate to recommend that The Football Association contact the HMRC and make them aware of the investigation; the situation regarding Curzon Ashton FC's payments to some players since the beginning of the 2005/2006 season and the Regulatory Commission's findings in the matter.

In concluding the matter the Members of the Commission felt it was important to state how important it is for Clubs to ensure that they are run in accordance with FA Rules and HMRC regulations and that such payments are transparent and declared fully. Total transparency is especially important in maintaining the integrity of Clubs and the Competitions they compete in and any wrongdoing that contributes to a sporting and/or competitive benefit will be sanctioned appropriately.



.....(Chairman]

Dated: 9th November 2009

B.W. Bright