

IN THE MATTER OF DISCIPLINARY PROCEEDINGS

BETWEEN

THE FOOTBALL ASSOCIATION

and

PAUL SCHOLES

WRITTEN REASONS OF THE REGULATORY COMMISSION DECISION

HEARING: 13 JUNE 2019

Overview

1. By letter dated 16 April 2019, Paul Scholes (“PS”) was charged with misconduct pursuant to FA Rule E1(b) in respect of 140 bets placed on football matches between 17 August 2015 and 12 January 2019. It was alleged that he had breached FA Rule E8(1)(a)(i) because each bet was on the result and/or progress and/or conduct and/or any other aspect of football matches at a time when PS was a director of Salford City FC and, as such, a participant within the meaning of the Rules.
2. By Reply dated 3 May 2019 PS admitted the charge and requested an opportunity to attend a Commission for a personal hearing.
3. This hearing took place at the offices of Sport Resolutions Ltd on 12 June 2019. The Commission comprised of Aisling Byrnes (Independent Legal Panel member, Chair), Gareth Farrelly (Independent Football Panel member) and Tony Agana (Independent Football Panel member). Benjamin Stingmore acted as secretary to the Commission. Yousif Elagab represented the FA and Nick de Marco QC represented PS.

4. Having heard oral submissions from both advocates and some evidence from PS, the Commission issued the following sanction:
 - a. £8000 fine
 - b. £1800 contribution to the costs of the hearing
 - c. Warning to PS.

The Regulations and Guidelines

5. Rule E8(1)(a) provides:

A Participant shall not bet, either directly or indirectly, . . on . . the result, progress, conduct or any other aspect of, or occurrence in or connection with, a football match or competition.

6. The Sanction Guidelines which are relevant to this case are:
 - a. Column 1 - “Bet placed on any aspect of any football match anywhere in the world but not involving Participant’s Club competitions”. Available sanction: warning/fine.
 - b. Column 2 “Bet placed on Participant’s competition but not involving his Club”. Available sanction: fine (unless participant has a connection with club bet on – not applicable here).

The FA’s Case

The Breaches

7. In January 2019, betting company Paddy Power Betfair (“PPBF) indicated that PS had potentially breached the FA’s betting rules and shared his account activity with the FA. PS was confirmed as a participant and the FA then contacted all UK based betting

companies asking them to share any accounts in the name of PS which showed breaches of the FA betting rules. Another company, Bet 365, also provided details.

8. In total, the accounts showed 140 bets having been placed by PS between 17 August 2015 and 12 January 2019, all when he was a director of Salford City FC.
9. None of the bets concerned matches involving Salford City FC, but
 - a. 8 bets involved Manchester United FC, where PS had been a player until the 2012-13 season. He remains acquainted with Ryan Giggs and Nicky Butt, who were working at Manchester United FC at the time of the bets;
 - b. 1 bet was on Valencia beating Barcelona, at a time when PS's Salford associates and friends Gary and Philip Neville were working at Valencia;
 - c. 8 bets involved FA Cup matches. The bets were made after Salford City had been knocked out of the Cup.
10. In the event, the FA took no point on a. or b. above, conceding that there was no evidence that PS had any "connection" to the clubs in question such as to aggravate the position here.
11. On 9 November 2019 PPBF emailed PS to notify him that his betting activity was potentially in breach of the FA Rules and effectively closed his account. PS made a number of attempts after that date to make bets via that account which were unsuccessful. There was however no evidence to suggest that those attempts were to bet on football matches as opposed to any other subject.
12. PS's total stakes over the period amounted to £26,159, with a net profit made of £5,831.

13. In January 2019, PS opened a new betting account with Bet 365 and made 2 bets on matches involving Oldham FC. Some time after that PS was in discussions with that club in relation to taking up a role there. Once again, however, the FA did not suggest that there was any evidence that PS had a “connection” with Oldham so as to aggravate matters.

14. PS was interviewed by the FA on 20 February 2019. During the course of the interview

- a. he admitted responsibility for the bets which are the subject of the charge and apologised for his actions, explaining that he had not known that it was against the rules for him, as a participant, to bet on football. His view was, that he was merely precluded from betting on matches involving Salford City;
- b. he indicated that he simply was unaware of the extent of the Rules on betting, even as a director of Salford City FC;
- c. he placed the bets in order to provide some further interest in the matches as he watched them;
- d. he had had no special knowledge of any of the clubs which featured in his bets;
- e. he had not really thought about why it was that PPBF closed his account and his further login attempts may have been football related or may have been in order to bet on golf or horse-racing;
- f. he opened the Bet 365 account in order to be able to watch the Oldham matches which were not to be televised.

15. Although in opening the case Mr Elagab for the FA expressed “concern” about the fact (a) that PS had apparently signed a declaration in the FA Owners and Directors’

Test that made express reference to Rule E8 (although not to its content) and (b) that PS had not sought clarification from PPBF as to why his account had been closed, there was no challenge to the basis of PS's admission to these breaches and indeed PS was not cross examined about it.

Sanction

16. The FA did not contend that this was a case which gave rise to the possibility of a sporting sanction. Mr Elagab did, however invite the Commission to conclude that this was a case which involved bets placed on the participant's competition but not involving his own club (a "Column 2" case). This was because it involved 8 bets placed on the FA Cup, in which Salford had been competing, albeit that they had been knocked out when the bets were placed. However, as Mr Elagab conceded, these bets were a small proportion of the overall activity.

PS's Case

The Breaches

17. PS's case, set out in a written witness statement, was in accordance with his interview. He expressed considerable remorse for his actions.

18. Asked by the Commission about what he thought was the reason for PPBF closing his account, he said he simply did not know, but remained of the view that he was prohibited from betting on Salford matches or on competitions in which Salford remained.

19. PS was also asked by the Commission whether he had read the declaration he signed, which referred to Rule E8. He said he had not, and was unaware of the content of Rule E8 until he received notification of these proceedings.

20. On his behalf, Mr De Marco QC invited the Commission, amongst other things,

- a. To place PS's activity at the lower end of the scale of seriousness of this type of breach because it did not involve betting on his own club or with the benefit of any special knowledge. As such, the key mischief at which the Rules were aimed, namely whether the offence had created the perception that the result or any other element of the match may have been affected by the bet, did not arise;
- b. To acknowledge that the number and size of bets was modest;
- c. To acknowledge PS's previous exemplary record;
- d. To accept PS's explanation as to the state of his knowledge of the rules and the reasons he placed the bets in question;
- e. To recall the fact that when PS was a player, the rules were in fact as he had, wrongly, believed them to be when placing these bets;
- f. To give PS credit for his early acceptance of the breach and his co-operation with the proceedings.

Sanction

21. Mr De Marco submitted that this matter should fall within Column 1 of the Sanction Guidelines ("Bet placed on any aspect of any football match anywhere in the world but not involving Participant's Club competitions"). It did not, he submitted, fall within Column 2 ("Bet placed on Participant's competition but not involving his Club").
22. This was because, although PS did place 8 bets on FA Cup matches when Salford City had been in that competition, the bets were placed after Salford had been knocked

out. The FA Cup was not therefore, at the time the bets were placed, one of Salford's competitions.

23. This was the correct interpretation of the Regulation Guidelines because

- a. It reflected the state of affairs at the time the bet was placed;
- b. The requirement to consider contemporaneous circumstances is illustrated by the fact that an explanatory note, dealing with whether a participant has a "connection" to a club bet on, gives as an example where a participant has a "recent" connection. This, said Mr De Marco, showed that the overall focus of the Guideline was on the current state of affairs;
- c. The question of the contemporaneous circumstances reflects the purpose of the Rules and Guidelines, namely the integrity or perceived integrity of football; and
- d. Any ambiguity gives rise to the *contra proferentem* rule.

24. Accordingly, the Commission was invited to consider issuing PS with a warning by way of sanction here. If a fine had to be imposed, Mr De Marco urged an entry point equal to the level of PS's winnings, which could then be reduced to take account of the mitigation set out above.

The Commission's Findings

25. PS having admitted the charge at the earliest opportunity, the Commission was convened to consider the appropriate sanction.

26. There being nothing about the case to justify a departure from the Guidelines, we first considered whether this was a Column 1 or a Column 2 case. We unanimously

decided it was a Column 2 case because, by betting on the FA Cup, PS had bet on one of Salford's competitions for that season.

27. The fact that Salford had been knocked out was immaterial. We are fortified in this conclusion by giving a purposive interpretation to the Guideline. The clear mischief aimed at by treating betting in own competitions more severely is the potential for enhanced information which that brings. The fact that a club will have no more matches in a competition does not remove the possibility or perception that some advantage may have been gained by its presence within it, such that betting on it can be more serious than betting on other matches.

28. With respect to Mr De Marco's submissions, this interpretation absolutely requires an assessment of the facts at the time of the breach. As it happens in this case, we do not discern that PS had any particular advantage when he bet on the FA Cup and recognise that the bets in question amounted to a small proportion of the overall activity, but this may not always be so in other cases. The Commission's interpretation is entirely consistent with the purpose of the Rules and Guidelines and it permits an assessment of the facts which may or may not aggravate the case. There is no ambiguity which gives rise to the *contra proferentem* rule.

29. In any event in this case, the FA Cup bets notwithstanding, the Commission was of the unanimous view that a fine was the just and proportionate sanction here and so our categorisation of the case had no effect on the outcome.

30. As to the quantum of the fine, the Commission considered all of the factors set out in the Guidelines and the submissions made on PS's behalf. We found as follows:

- a. The Commission accepted the undisputed evidence of PS that he had placed the bets in circumstances where he was unaware of the Rules. He did so to enhance his enjoyment and interest in the matches and did not deploy any special knowledge. There could be no perception that the result or any other aspect of the matches could have been affected by the bets;

- b. The Commission did however consider that as an experienced former professional player and then director of a football club, PS ought to have acquainted himself with the Rules and then adhered to them;
- c. The Commission also considered that 140 bets was not insignificant, nor was the stake of £26,159, regardless of the period over which the bets were placed.
- d. On the other hand, the Commission gave PS considerable credit for his admission to the breach, his co-operation with these proceedings and his exemplary record.

Orders

Fine

- 31. In all of the circumstances, the Commission was of the unanimous view that a fine of £8000 was proportionate.

Costs

- 32. PS requested a personal hearing, which was his right, but the fact remains that it was his misconduct which necessitated it. The Commission considered it fair that he pay a contribution towards the costs of the hearing of £1800.

Warning

- 33. It was apparent to the Commission that PS had not acquainted himself with the Rules despite his role in football and despite having effectively been notified by PPBF that he was potentially in breach of them. We therefore considered it appropriate to warn him in relation to his future conduct.

Appeal

34. The findings of the Commission are subject to appeal in accordance with the Regulations.

14 June 2019

AISLING BYRNES (Chair)

TONY AGANA

GARETH FARRELLY