

IN THE MATTER OF A FOOTBALL ASSOCIATION
INDEPENDENT REGULATORY COMMISSION

B E T W E E N :-

THE FOOTBALL ASSOCIATION

and

MR SCOTT KASHKET

DECISION AND WRITTEN REASONS
OF THE INDEPENDENT REGULATORY COMMISSION

Regulatory Commission:	Graeme McPherson QC (Chairperson) Alison Royston Stuart Ripley
Secretary to Appeal Board:	Paddy McCormack (Regulatory Commissions & Appeals Manager)
Date:	20 January 2020
Venue:	The Regulatory Commission met by Webex
Appearances:	None – paper hearing

(A) Introduction

- 1) We have been appointed to hear and determine a Charge brought against Scott Kashket (**‘SK’**) following his being charged with Misconduct under FA Rule E1(b) in respect of 183 bets placed on football matches between 3 September 2014 and 22 August 2016.
- 2) SK was born on 25 February 1996. In late 2013 – and so shortly before he turned 18 - he joined Leyton Orient Football Club (**‘LOFC’**) as a scholar. He was awarded a 2 year scholarship with a 6 month professional contract.
- 3) SK’s time at LOFC was not a success; we expand on that below. It was during his time at LOFC that SK placed the bets that now form the subject matter of the Charge.
- 4) After being released by LOFC SK joined Wycombe Wanderers Football Club (**‘WWFC’**) at the start of the 2016/17 season. His career has flourished at WWFC.
- 5) By letter dated 23 December 2019 the FA charged SK with Misconduct for a breach of FA Rule E1(b) (**‘the Charge’**) in the following terms

‘You are hereby charged with misconduct for a breach of FA Rule E1(b) in respect of 183 bets placed on football matches between 3 September 2014 and 22 August 2016. It is alleged that each bet is a separate breach of FA Rule E8 ...’.

- 6) The Charge set out (in summary in the body of the Charge and in detail in Schedules to the Charge) particulars of the 183 bets that SK was alleged to have placed on football matches during the 2014/15, 2015/16 and 2016/17 seasons. We return to such matters below.
- 7) With the Charge the FA served
 - a) A witness statement from Tom Astley, an Integrity and Intelligence Analyst employed by the FA, and
 - b) Eight exhibits to Mr Astley’s statement – in particular
 - i) **TA/1** – a schedule of all 183 bets on football matches said to have been placed by SK
 - ii) **TA/2, TA/3 and TA/4** – schedules of bets on football matches said to have been placed by SK
 - (1) in the 2014/15 season (167 bets)

- (2) in the 2015/16 season (15 bets)
 - (3) in the 2016/17 season (1 bet)
 - iii) **TA/5** – a schedule of 65 bets said to have been placed by SK during the 2014/15 season on football matches in competitions in which LOFC was participating/had participated during the relevant season
 - iv) **TA/6** – a schedule of 19 bets said to have been placed by SK during the 2014/15 season on LOFC in football matches
 - v) **TA/7** – a schedule of 10 bets (within the 19 bets listed in **TA/6**) said to have been placed by SK during the 2014/15 against LOFC in football matches
 - vi) **TA/8** – the transcript of an interview conducted by Mr Astley and Mr Matthews of the FA on 28 November 2019 with SK and his legal representative, Nick De Marco QC.
- 8) SK responded to the Charge by a ‘*Disciplinary Proceedings: Reply Form*’ dated 7 January 2020. SK
- a) Admitted the Charge in full, and
 - b) Did not ask for the opportunity to address the Regulatory Commission at a personal hearing, thus acknowledging that the Charge would be dealt with at a paper hearing.
- 9) Because SK admitted the Charge, the sole issue for us to determine is sanction.
- 10) With his Reply Form SK served
- a) A written ‘*Reply to Charge*’ drafted by Mr De Marco QC. In that Reply Mr De Marco QC set out submissions on sanction on behalf of SK
 - b) A witness statement from SK himself
 - c) Further witness statements from
 - i) Andy Hessenthaler (who had been employed by LOFC as Assistant Manager and then Manager while SK had been at LOFC)
 - ii) Errol McKellar (who had been employed by LOFC in various capacities while SK had been at LOFC)
 - iii) Gareth Ainsworth (who has been employed by WWFC as Manager since SK joined WWFC)
 - iv) Leon Braithwaite. Mr Braithwaite holds an MSc in applied sports psychology and has worked with SK for several years, before, during and after his time at LOFC.

- 11) On 15 January 2020 the FA served a document titled Submissions on Sanction.
- 12) We met by Webex on 20 January 2020 to reach our Decision on sanction. This document now contains that Decision and the Written Reasons for our Decision.
- 13) These Written Reasons are necessarily a summary of our views. However, we confirm that in reaching our Decision we considered all of the written material that was before us, including each of the witness statements. The fact that specific reference is not made herein to some part or aspect of the same does not mean that we did not consider it or give it due weight.

(B) The relevant Rules and Sanctions Guidelines

- 14) Throughout the time with which we are concerned SK was a professional footballer and was bound by the FA Rules; SK was a Participant for the purpose of the FA Rules. Part E of the FA Rules is titled ‘*Conduct*’. By FA Rule 1 the FA may act against a Participant in respect of any ‘*Misconduct*’, which includes a breach of *inter alia* FA Rule E8.
- 15) FA Rule E8 is concerned with betting. In very general terms it prohibits Participants
- a) From betting on football matches, and
 - b) From various other activities.
- In this Decision and Written Reasons we refer to FA Rule 8 as ‘*the FA Betting Rules*’.
- 16) The FA publishes Sanction Guidelines which identify for various categories of betting Misconduct
- a) An indicative Financial Entry Point for any fine to be imposed for a breach of FA Rule E8
 - b) An indicative Sports Sanction range to be imposed for a breach of FA Rule E8
 - c) Factors to be considered in relation to any increase/decrease from entry point.
- We append those Sanction Guidelines as Appendix 1 to these Written Reasons.
- 17) However, the Explanatory Notes to the Sanction Guidelines state

‘The guidelines are not intended to override the discretion of Regulatory Commissions to impose such sanctions as they consider appropriate having regard to the particular

facts and circumstances of a case. However, in the interests of consistency it is anticipated that the guidelines will be applied unless the applicable case has some particular characteristic(s) which justifies a greater or lesser sanction outside the guidelines.

The assessment of the seriousness of the offence will need to take account of the factors set out above [in the table of Sanction Guidelines]. A key aspect is whether the offence creates the perception that the result or any other element of the match may have been affected by the bet, for example because the Participant has bet against himself or his club or on the contrivance of a particular occurrence within the match. Such conduct will be a serious aggravating factor in all cases. A further serious aggravating factor will be where the Participant played or was involved in the match on which the bet was made.

Betting offences are separate and distinct from charges under FA Rule E5 which concerns match fixing. It should be noted that save in exceptional circumstances a Participant found to have engaged in fixing the outcome or conduct of a match would be subject to a lifetime ban from the game. Where it can be proved that a bet has actually affected a result or occurrence within the match then such conduct will be specifically charged rather than treating the incident as a betting offence.”

(C) Approach to sanction and factors relevant to sanction in this case

i) The starting point

18) While we acknowledge that we retain a discretion to impose such sanctions as we consider appropriate having regard to the particular facts and circumstances of this case, the appropriate starting point is nonetheless the Sanctions Guidelines themselves. We therefore begin by considering the particular factors identified in the Sanctions Guidelines.

ii) The nature, number and size of the bets

19) The bets placed by SK break down as follows:

2014/15 season

- a) SK placed 170 bets in total on football matches:
 - i) He staked £14,456.85
 - ii) His return was £13,389.10
 - iii) SK therefore lost £1,067.75
- b) Of those 170 bets
 - i) 75 bets were on games in competitions in which LOFC participated:

- (1) 32 of those bets were single bets, 43 were multiple bets
 - (2) The competitions involved EFL League One matches, FA Cup matches and 1 EFL Cup match
 - (3) He staked £2,773.55 on competitions in which LOFC participated
 - (4) His return from bets on such competitions was £4,311.44
 - (5) SK therefore won £1,537.89 betting on competitions in which LOFC participated
- ii) 19 bets were on LOFC:
- (1) 10 of those 19 bets were against LOFC
 - (2) 9 of those 19 bets were single bets, 10 were multiple bets
 - (3) One of those bets was a spot bet on a particular LOFC player to be the first goal scorer in a match
 - (4) He staked £922.37 on LOFC
 - (5) His return from bets on LOFC was £1,868.50
 - (6) SK therefore won £946.13 betting on LOFC (including betting against LOFC)

2015/16 season

- c) SK placed 12 bets in total on football matches. No bets were on competitions in which LOFC participated. No bets were on LOFC:
- i) He staked £310.00
 - ii) His return was £250.00
 - iii) SK therefore lost £60.00

2016/17 season

- d) SK placed 1 bet on football matches. That bet was not on a competition in which LOFC participated and was not on LOFC
- i) He staked £40.00
 - ii) His return was £0.00
 - iii) SK therefore lost £40.00

Total

- e) SK placed 183 bets on football matches:
- i) SK staked a total of £14,086.85
 - ii) SK's total return was £13,639.10

iii) SK therefore lost a total of £1,167.75.

20) The bets placed by SK therefore fell within a number of the categories defined in the Sanctions Guidelines, namely

- a) Approximately 50% of the bets placed by SK were placed on football matches not involving SK's Club competitions
- b) A significant number of bets were placed on competitions in which LOFC participated, but not on matches involving LOFC
- c) A number of bets were placed on LOFC – SK's own team - to win
- d) A number of bets were placed on LOFC – SK's own team - to lose
- e) 1 bet was placed on a particular occurrence(s) (first goal scorer), although not involving SK.

21) In addition, analysis of the 183 bets shows

- a) The bets were placed over a long period of time (approximately 2 years), although most were placed in the second half of the 2014/15 season
- b) SK's stakes were generally small
- c) SK lost money overall, although he did profit from bets placed on LOFC
- d) There was nothing in fact suspicious about SK's actual betting or the returns from his betting. None of the bets placed by SK on LOFC related to matches in which SK himself played.

iii) Perception of impact of bets on game integrity

22) There is no suggestion in this case

- a) That SK was match fixing, or
- b) That SK was betting with the benefit of any particular inside information, or
- c) That there was any suspicious activity or betting patterns around SK's betting.

Indeed, as we describe further below, one of the factors that led SK to begin betting was the fact that he was prevented from playing in or training with the first team at LOFC, or having any interaction with the first team at LOFC.

23) However, one important factor to be considered is perception. As the Sanction Guidelines make clear

‘A key aspect is whether the offence creates the perception that the result or any other element of the match may have been affected by the bet, for example because the Participant has bet against himself or his club, or on the contrivance of a particular occurrence within the match. Such conduct will be a serious aggravating factor in all cases’.

24) The reason why they are aggravating factors is because of the perception such betting gives rise to:

- a) It creates a suspicion of wrongdoing, that something is not right with the match or aspects of it
- b) It creates a suspicion that the gambler has an unfair advantage over the public generally and the organisation taking the bet.

25) It is plainly a serious aggravating feature in this case

- a) That SK bet against LOFC on multiple occasions, and
- b) That SK ‘spot bet’ on 1 occasion on an occurrence within a match in which LOFC was involved.

While we acknowledge that there are factors which mitigate to a degree against the gravity of such matters in this case (see below), there is no getting away from the fact that betting against a Participant’s own club and/or on an occurrence within a match involving the Participant’s own club undoubtedly aggravates a breach of FA Rule E8. The fact that SK might in practice have had only limited contact with the first team during the period when the bets were placed only mollifies that perception to a very limited degree.

26) Before leaving this section, we do acknowledge

- a) That the majority of the bets which form the subject matter of the Charge do not fall into the above ‘aggravating’ categories, and
- b) That certain of the bets on LOFC were part of accumulators and other multiple bets (and so involved matches over whose outcome SK could not conceivably have had any influence).

We therefore acknowledge that different bets within the overall total of 183 bets placed by SK potentially give rise to different perceptions in this case.

iv) Facts and circumstances surrounding the pattern of betting AND personal circumstances

27) We deal with these together since it appears to us that they overlap to a considerable degree in this case.

28) We have been provided with a number of witness statements from which it is plain – and we accept – that SK underwent a torrid time while at LOFC. Having joined the club on the understanding that he could become a member of the first team squad, and having started well at the club, a few months after joining SK became effectively ostracised within LOFC:

- a) During the 2014/15 season the Club was bought by a new owner and a new manager was appointed. SK was soon told that he would never play for LOFC, was told that he could no longer train with the first team and that he should leave LOFC. For the remainder of that season SK trained with the youth team, not the first team; indeed, he was told that he could have no contact at all with the first team
- b) The following season (2015/16) SK remained with LOFC:
 - i) A new manager was appointed at the start of the season, who encouraged SK and indicated that SK could expect first team football that season
 - ii) During the season that manager left, a new manager was appointed and SK again found himself excluded from that manager's plans and from any involvement with the first team
 - iii) Towards the end of that season yet another manager was appointed. While that manager wished to include SK in the first team, he was told (according to the evidence in his witness statement, which we accept) by the owner and the owner's personal staff
 - (1) not to include SK in the team
 - (2) to have SK train with the youth team and not the first team (and indeed to ensure that SK did not even mix with the first team)
 - (3) to exclude SK from a pre-season tour
- c) It appears that the manner in which SK was treated at LOFC had nothing whatsoever to do with SK's footballing ability

- d) Such matters drove SK towards gambling and alcohol. His betting on LOFC to lose was in part motivated by hatred for LOFC and a desire to see LOFC ‘lose everything’¹
- e) At the start of the 2016/17 season SK was able to leave LOFC and join WWFC on a short-term contract at very low wages.

29) It is also plain from the witness statements that were before us that SK suffered greatly while at LOFC as a result of the way in which he was treated. We accept that his mental health suffered, that his character and personality changed, and that his betting – in particular against LOFC – was at least in part a consequence of such matters.

30) What we have set out in the previous paragraphs is a brief summary of the personal difficulties that SK faced at LOFC and the consequences of those difficulties that are described in the witness statements that were provided to us. We have deliberately ‘sanitised’ the evidence before us in that regard and not set it out in detail in this Decision and Written Reasons. That is for 2 principal reasons:

- a) First, we are conscious that the evidence contains material that is sensitive and personal to SK. There is nothing to be gained from publicising that material in detail, particularly when it appears that SK has done an admirable job of moving on from his time at LOFC. We confirm however that we have read that evidence with care and taken it fully into account when determining sanction
- b) Secondly, the evidence contains allegations – including certain serious allegations – about the manner in which certain third parties treated SK at LOFC and the alleged motivation for that treatment. That evidence and those allegations are however untested, and those third parties have been given no opportunity to respond to them. In such circumstances it would be wrong for us to detail such matters in these Written Reasons.

¹ Although we accept the FA’s point that (1) SK in fact placed more bets on LOFC to win than to lose, and so (2) only limited weight should be given to the ‘innocent motivation’ – a desire to see LOFC suffer – that SK attributes to certain of his bets. In each case the primary motivation behind SK’s bets is likely to have been a desire on his part to win the bet and make a financial profit. We also note (see below) that SK started placing bets before his difficulties began at LOFC. SK cannot therefore blame the treatment that he received at LOFC for his betting activities *per se*.

We again confirm however that we have read such evidence with care and taken it fully into account when determining sanction.

31) That said, we note

- a) That SK's evidence is to the effect that it was only shortly after the appointment of Fabio Liverani as first team manager at LOFC in December 2014 that he (SK) first appreciated that his position at LOFC was untenable, but
- b) That the betting activity which forms the subject of the Charge began in September 2014; indeed, by December 2014 SK had placed about 30 bets, albeit that none of those bets had been
 - i) On LOFC, or
 - ii) In competitions in which LOFC was participating.

It is therefore wrong to suggest that SK's despair at his position at LOFC was the cause of all bets which are the subject matter of the Charge.

v) Previous record

32) Aside from the bets that form the subject matter of the Charge, SK has not committed any other breaches of the FA's Betting Rules

vi) Experience of SK

33) SA's evidence is to the effect that

- a) When he first joined LOFC he was unaware that he was unable to bet on football matches, whether involving LOFC or otherwise, and before joining WWFC he had received no formal education, instruction or training on ethical conduct or the FA Betting Rules. While that may seem unlikely in this day and age, we accept that that was in fact the case for SK:
 - i) SK joined LOFC in late 2013
 - ii) SK joined LOFC part-way through the 2013/14 season. He therefore missed whatever education might have been given about the FA Betting Rules within LOFC at the start of that season
 - iii) SK had an unusual path into English league football. He was never at a Club academy. His background was originally in Futsal, and his first formal connection with an English league club came when he joined LOFC.

We therefore accept that SK was wholly ignorant of the FA Betting Rules when he first joined LOFC;

- b) It was only during the 2015/16 season that he learned – as a result of a conversation with a teammate – that he was prohibited from betting on competitions in which LOFC was a participant and/or on LOFC itself. That was why
 - i) Prior to that time his bets had covered the wide spectrum of competitions and clubs described above, but
 - ii) After that time
 - (1) he ceased betting on competitions in which LOFC was a participant (and ceased betting on LOFC), and
 - (2) he bet only on competitions in which LOFC was not a participant
- c) It was only after he joined WWFC – and so during the 2016/17 season – that he learned that he was prohibited from betting on football matches *per se*. From that date SK has not bet on football matches at all.

34) We accept SK's evidence in that regard, and it is to his credit that he ceased placing particular types of bet once he had learned that those types of bet were prohibited. However, in our view that evidence only assists SK's mitigation to a limited degree:

- a) First, ignorance as to the existence of a Rule and/or that the Rule prohibits conduct is no defence to a breach of that Rule. Ignorance of the relevant Rule is thus not really a mitigating factor; rather, awareness of a Rule (and in a case such as this, of the absolute prohibition on betting on football matches) would be an aggravating feature if present in a case. It is thus more accurate to say that such aggravating feature is absent in this case than is to say that such feature is a mitigating factor
- b) Secondly, every Participant has a responsibility to familiarise himself with the Rules and Regulations. SK appears to have made no efforts to do so in the years that he was at LOFC or when he first joined WWFC

- c) Thirdly, we found it surprising that when SK was told by a team mate during the 2015/16 season that he should not be betting on competitions in which LOFC was participating
 - i) SK apparently made no effort to find out exactly what the FA's Betting Rules were, or what was permitted and prohibited, and
 - ii) SK did not reveal the fact that he had in fact (as he would by then have known) committed numerous breaches of the FA Betting Rules in the previous months.

35) We do of course accept that SK was young when he placed this bets; the vast majority were placed when he was 18 or 19 years old.

vii) Other factors

36) In his Reply Mr De Marco QC identified a number of additional mitigating factors to which he invited us to have regard when determining sanction. We have considered each of those factors and given them appropriate weight. We placed particular weight on the following:

- a) The fact that these bets were made some considerable time ago, and that SK has placed no bets on football matches for well over 3 years. We accept that SK is genuinely remorseful for having placed the bets as he did while at LOFC
- b) The fact that SK bet openly, through his own accounts and in his own name; SK did not conceal that the bets that he was placing were 'his' bets
- c) The fact that SK has 'turned things around' to an admirable degree since leaving LOFC. His playing career appears back on track. The personal issues that impacted his career at LOFC are hopefully behind him
- d) The fact that SK admitted the Charge at the first opportunity and (even before he received the Charge) was open about his betting and provided assistance and co-operation to the FA
- e) The fact that SK has no previous disciplinary record.

(D) Decision on Sanction

37) Applying the Sanctions Guidelines, the starting point for a breach of FA Rule E8 involving bets of the type placed by SK is

- a) A financial penalty, and
- b) A sporting sanction.

38) On behalf of SK Mr De Marco QC submitted that on the facts and circumstances of this we should however

- a) Depart from the Sanctions Guidelines, and
- b) Exercise our discretion so as to impose 'only' a financial penalty on SK.

39) We disagree. While there is substantial mitigation available to SK in this case, in our view a sporting sanction

- a) Is a proportionate and reasonable sanction in this case, and
- b) Is necessary in order to reflect the gravity of SK's conduct in placing bets as he did.

40) But for the mitigation available to SK we would have imposed a suspension of not less than 9 months:

a) The Sanctions Guidelines identify

- i) A range of 0-6 months for a bet placed on a participant's own team to win
- ii) A range of 6 months to life for a bet placed on a participant's own team to lose.
Here there were a number of such bets, over a period of time
- iii) A range of 0-12 months for a bet placed on a particular occurrence not involving the player who bet (i.e. a spot bet). Here there was one such bet

b) Such matters – and in particular (ii) and (iii) - undoubtedly create a perception that the result of a match or some element of a match might have been affected by the bet, and are serious aggravating factors. It is primarily for that reason that, absent the matters to which we refer below, we would have imposed a suspension

- i) In excess of the bottom end of the range for placing a bet on one's own team to lose, and
- ii) Towards the top end of the range for placing a spot bet not involving the player who bet.

41) However, as we have said above, we accept

- a) That the gravity of SK's conduct is softened to a degree (albeit a limited degree) by matters such as
 - i) The fact that he did not play in any match on which he bet, and
 - ii) His lack of contact with the first team; and
- b) That there is substantial mitigation available to SK in this case.

42) Taking such matters into account, we concluded that it is appropriate to reduce such suspension to 6 months.² That is accordingly the suspension that we impose on SK.

43) Furthermore, we concluded that it is appropriate to suspend a significant part of that suspension. We therefore suspend 4 months of that 6 month suspension for a period of 18 months. That, it seems to us, is an appropriate way to reflect

- a) That SK came to make these bets while at LOFC in the circumstances that he did,
- b) The fact that SK ceased betting on football more than 3 years ago, and
- c) The manner in which SK has 'turned things around' since leaving LOFC.

Provided SK does not commit any further breach of the FA Betting Rules in the next 18 months, he will therefore serve only a 2 month suspension.

44) We did consider at some length whether it might be perceived that a sanction which (assuming no further breach of the FA Betting Rules is committed by SK) will permit SK to return to playing before the end of this season was too lenient, particularly taking into account the nature of certain of the bets placed by him. However, we concluded that the unusual circumstances of this case justified the duration and terms of the suspension that we have described above.

² We acknowledge that often it is said on behalf of Respondents that an early guilty plea should attract a discount of one-third. In some – even many – cases that might be so. But in a case such as this where (1) the offence is one of strict liability, and (2) a Respondent in SK's position has no real defence, and so no real alternative but to plead guilty once it has been established by the FA (as here) that it is his betting account on which bets have been placed by him, we concluded that it was inappropriate to discount the suspension by one-third to reflect SK's early guilty plea in isolation. Rather, that early guilty plea was one factor of which we took account when arriving at a suspension of 6 months.

45) In addition, we concluded that a financial sanction was proportionate and reasonable in this case:

- a) But for the mitigation available to SK we would have imposed a fine of £3,750
- b) To reflect the mitigation open to SK we reduce that figure to £2,500
- c) To that figure we add the sum of £946.13.³ That figure represents the profit that SK made from betting on LOFC. In our view it is wholly inappropriate
 - i) That SK should be seen as in any way profiting from such conduct, or
 - ii) That SK should retain those profits and so be able to use such profits to meet the financial penalty that we have imposed.

(J) Order

46) We accordingly order that the following sanctions be imposed on Scott Kashket:

- a) He is immediately suspended from all football and football-related activities for a period of 2 months from (and including) 21 January 2020 until 11.59pm on 21 March 2020
- b) In the event that at any time before 21 July 2021 he commits a further breach of the FA Betting Rules, he will be suspended from all football and football-related activities for a further period of 4 months (in addition to any separate penalty imposed for such further breach)
- c) He is fined the sum of £3,446.13
- d) He is warned as to his future conduct

³ We also considered whether we should add the sum of £1,537.89, being the profit made from betting on competitions in which LOFC were participating/had participated. However, we concluded that it was neither necessary nor proportionate for us to do so, particularly when such profits were outweighed by the losses suffered by SK on bets placed on 'other' competitions.

e) He is ordered to pay the costs of the Regulatory Commission, in a sum to be confirmed by the FA.

47) This decision – which is the unanimous decision of the Regulatory Committee – is subject to the relevant Appeal Regulations.

Graeme McPherson QC (Chairperson)

Alison Royston

Stuart Ripley

21 January 2020