FOOTBALL ASSOCIATION APPEAL BOARD

IN THE MATTER OF AN APPEAL FROM
AN INDEPENDENT REGULATORY COMMISSION

THE FOOTBALL ASSOCIATION

Appellant

and

JAKE SPEIGHT

Respondent

WRITTEN REASONS
OF THE APPEAL BOARD

Appeal Board	Graeme McPherson QC (Chairperson) Aisling Byrnes (Independent Legal Panel Member) Tony Agana (Independent Football Panel Member)
Secretary to the Appeal Board	Michael O'Connor (FA Lead Judicial Services Officer)
Date	2 March 2021
Venue	Remote hearing
Appearances	For the FA Rebecca Turner (FA Regulatory Advocate) For Mr Speight Simon Csoka QC (Leading Counsel)

(A) Nature of the Appeal

1) Jake Speight ('***Mr Speight***') is an Intermediary. On 7 January 2020 a Regulatory Commission
   a) Found him guilty of misconduct in relation to a breach of FA Rule E1(b) for breaching Regulations A3, A6 and B1 of the Working with Intermediaries Regulations ('***the Regulations***'), and
   b) Imposed the following sanction on Mr Speight
      i) A fine of £1,000
      ii) A suspension from all Intermediary Activity for a period of 2 months, which period of suspension was suspended in its entirety for a period of 18 months. The Regulatory Commission recorded that the suspension would come into effect immediately if a charge for breach(es) of FA Rule E1(b) (or its equivalent), committed on or before 6 July 2022 was brought by the FA against Mr Speight and subsequently admitted or proven
      iii) A warning as to his future conduct.

2) The FA appealed against the sanction imposed by the Regulatory Commission on Mr Speight. The appeal was brought on a relatively narrow basis:

   a) No criticism was made by the FA
      i) Of the fine or size of fine imposed by the Regulatory Commission,
      ii) Of the fact that Mr Speight was warned as to his future conduct
      iii) Of the fact that Mr Speight was suspended for a period of 2 months from all Intermediary Activity

   b) The FA's case on appeal was to the effect
      i) That no reasonable Regulatory Commission could, on the facts of the case, have determined to suspend the 2 month suspension from Intermediary Activity imposed on Mr Speight, and
      ii) That by suspending the 2 month suspension from Intermediary Activity the overall 'package' of sanctions imposed on Mr Speight was so unduly lenient as to be unreasonable.

3) That was the scope of the appeal that came before us at a remote hearing on 2 March 2021. Having received written submissions and having heard oral submissions on behalf of the FA and Mr Speight, and having considered the same, we informed the parties that the appeal was dismissed, with written reasons to follow. These are those Written Reasons. In preparing these Written Reasons we have considered the entirety of the materials that the parties put before us. If we do not explicitly refer to a particular point, document or submission, it should not be inferred that we have overlooked or ignored it; as we say, we have considered the entirety of the materials put before us.

(B) Background

4) The background to the misconduct on the part of Mr Speight as found by the Regulatory Commission can be stated relatively shortly. It had at its heart the registration of Matthew Read ('***the Player***') to Boreham Wood FC ('***the Club***') on 20 February 2020 ('***the Transaction***'). It was common ground that in the Transaction
   a) Mr Speight had acted as Intermediary for the Player, and
   b) Mr Speight had been paid the sum of £1,000 plus VAT by the Club.

5) However

   a) At the time of the Transaction Mr Speight did not have a valid written Representation Contract with the Player lodged with the FA. While
      i) The Player had been a client of Mr Speight for a number of years prior to 2020, and
      ii) Mr Speight had previously filed 2 year Representation Contracts with the FA dated 16 April 2015 and 23 April 2017

      the last of those written Representation Contracts had expired on 23 April 2019 and no further written Representation Contract had been filed with the FA prior to 20 February 2020

   b) The Transaction documents made no reference to Mr Speight having been involved in the Transaction:

      i) The Player Contract signed by the Club and lodged with the FA made no reference to Mr Speight or his involvement in the Transaction:
         (1) Schedule Part 2 of the Player Contract contained the following Declaration:

'***Intermediary Declaration***
Did player use the services of an intermediary ?
If yes, name of intermediary _____
Signature of intermediary _____

(2) The question was answered '*No*', and Mr Speight's name and signature were not inserted onto the Player Contract

ii) Form G2 '*Registration of a Player under a Written Contract*' signed on behalf of the Player and the Club and lodged with the FA contained the following questions:

'*Did the Club use the services of an Intermediary ? If yes, name of Intermediary(ies) involved* _____
Did the Player use the services of an Intermediary ? If yes, name of party for whom Intermediary(ies) acted _____'

Each question was answered '*No*' and Mr Speight was not identified as having been involved in the Transaction

iii) A Form IM1/NR '*FA Regulations on Working with Intermediaries* ***Intermediary Declaration Form – Nil Return***' was completed and lodged with the FA:

(1) That Form IM1/NR begins

'*In accordance with the FA Regulations on Working with Intermediaries ('the Regulations') this form must be completed in respect of any Transaction involving a Registration Event with a Club where an Intermediary has NOT been involved on behalf of any of the parties. If any Intermediaries have been used (irrespective of whether or not they will receive a fee for their services) please complete Form IM1 ...*'

(2) The Form IM1/NR included declarations, signed by the Player and on behalf of the Club, that neither had used the services of an Intermediary in relation to the Transaction and neither had made, or would make, any payments to any Intermediaries in relation to the Transaction, either directly or indirectly.

6) It was against that background that the FA charged Mr Speight with misconduct contrary to Rule E1(b) by reason of breaches of Regulations A3, A6 and B1 of the Regulations:

a) Regulation A3 provides

'*A Club, Player, Intermediary or other Participant must not so arrange matters as to conceal or misrepresent the reality and/or substance of any matter in relation to a Transaction*'.

The FA contended that the filing of the above documents with the FA in relation to the Transaction meant that Mr Speight had concealed or misrepresented the reality of the Transaction, '*namely that the Transaction involved the use of an Intermediary and that [Mr Speight had] carried out that Intermediary Activity on behalf of the Player*'

b) Regulation A6 provides

'*An Intermediary, Club and Player must ensure that all relevant contracts and documents contain the name, signature and registration number of each and every Intermediary carrying out any Intermediary Activity in relation to a Transaction (whether directly or indirectly), as well as any other information as may be required by the Association from time to time …*'.

The FA contended that the filing of the above documents with the FA in relation to the Transaction meant that Mr Speight had failed to declare that he had carried out Intermediary Activity on behalf of the Player in the Transaction

c) Regulation B1 provides

'*An Intermediary and a Player or a Club (as applicable) must have entered into a validly executed written Representation Contract prior to that Intermediary carrying out any Intermediary Activity on his or its behalf*'.

The FA contended that Mr Speight had carried out Intermediary Activity on behalf of the Player without having entered into a validly executed written Representation Contract prior to carrying out that Intermediary Activity.

7) Such breaches, the FA alleged, amounted to misconduct and a breach of FA Rule E1(b).

8) Mr Speight denied the Charge:

a) In a witness statement served in response to the Charge he explained
   i) That he had not realised that his Representation Contract with the Player had expired prior to the Transaction; the fact that there was no Representation Contract in place at that time of the Transaction was thus the result of oversight on his part
   ii) That he had relied on the Club to properly complete, and lodge with the FA, the correct 'paperwork' in relation to the Transaction; he had not checked the Form G2,

the Form IM1/NR or Schedule Part 2 to the Player Contract before the Club had sent the same to the FA

iii) That he had expected the Club to disclose his role in the Transaction to the FA by providing to the FA a copy of the Club's letter to him in which it had confirmed '*the arrangement*' with regards to the payment of an agency fee to him

b) In written submissions made on his behalf it was asserted

i) That responsibility for compliance with Regulation A3 and Regulation A6 rested with the Club, that culpability for any lack of notification of Mr Speight's involvement in the Transaction lay with the Club alone and that Mr Speight was reasonably entitled to believe that the Club would make correct declarations on the documents to be submitted (and in fact submitted) to the FA

ii) That the absence of a written Representation Contract was the result of a genuine, innocent mistake and, because no '*mischief'* had occurred as a result of that mistake and no prejudice had been caused, the non-compliance with Regulation B1 was not so serious as to amount to misconduct.

(C) The Decision of the Regulatory Commission: Breach

9) The Regulatory Commission considered the Charge on 7 January 2021 at a remote hearing at which

a) It heard oral evidence from Mr Speight, and

b) It heard submissions on behalf of the FA and Mr Speight.

10) Having done so, the Regulatory Commission found that Mr Speight had committed breaches of each of Regulation A3, Regulation A6 and Regulation B1:

a) It rejected the submission that Regulation A3 and Regulation A6 applied only to the Club; each of those Regulations applied also to Mr Speight

b) In relation to Regulation A3 it found

i) That the documents that had been provided to the FA in relation to the Transaction did not disclose Mr Speight's role in the Transaction, and so (because Mr Speight had in fact been involved in the Transaction as the Player's Intermediary) were wrong and misleading, and

ii) That the erroneous and misleading nature of the documents had the effect of concealing or misrepresenting the reality or true state of affairs of the Transaction, namely that Mr Speight had in fact been involved as the Player's Intermediary

c) In relation to Regulation A6 it found that Mr Speight had failed to comply with the positive duty on him to ensure that the relevant documents lodged with the FA included the correct, relevant information about him, an Intermediary, carrying out Intermediary Activity in relation to the Transaction

d) It found that the proven breaches of Regulation A3 and Regulation A6 amounted to misconduct for the purpose of Rule E1(b)

e) In relation to Regulation B1 it found
   i) that the very fact that there was no written Representation Contract in place between the Player and Mr Speight at the time of the Transaction breached that Regulation, and
   ii) that such breach amounted to misconduct for the purpose of Rule E1(b).

11) In making those findings the Regulatory Commission stressed that it had not concluded that Mr Speight had acted so as to intentionally attempt to conceal his involvement in the Transaction; rather it accepted
   a) That the expiry of the Representation Contract between Mr Speight and the Player had simply been overlooked by Mr Speight at the time of the Transaction
   b) That the lack of a valid Representation Contract had not been the reason why Mr Speight's role in the Transaction had not been recorded in the documentation submitted to the FA
   c) That Mr Speight had erroneously relied on the Club to file the correct, and correctly-completed, documentation with the FA, and had not reviewed the documentation himself, due to a combination of him working under pressure and in a fast-moving situation in which he was seeking to complete the Transaction under significant time-pressure. There had been no intention on his part to mislead or misrepresent to the FA the true position as to his role in the Transaction.

12) However, that is not to say that the Regulatory Commission was not critical of Mr Speight's conduct; it was. It concluded that

a) The reason that Mr Speight had overlooked the expiry of the Representation Contract was partly down to deficient procedures adopted within Mr Speight's business, further compounded by the fact that Mr Speight's longstanding friendship with the Player had resulted in even less rigorous checks being implemented

b) Mr Speight's failure to review the relevant documentation that was being prepared and that was to be filed by the Club with the FA went beyond '*mere inadvertence*' and was instead '*negligent*', particularly given that the Club had indicated to Mr Speight that it was unfamiliar with the processes to be followed

c) (With respect to each of the breaches of the Regulations) Mr Speight had '*failed to take reasonable care in all the circumstances and was negligent*'.

(D) The Decision of the Regulatory Commission: Sanction

13) Having found the Charge proven on the above factual basis, the Regulatory Commission turned to the question of the sanction to be imposed on Mr Speight. It was to this part of the Regulatory Commission's Decision that this appeal related and on which the parties focussed in their submissions before us. We therefore set out the Regulatory Commission's findings on sanction in full:

> *42. There are no standard sanctions or sanctioning guidelines, nor a minimum sanction. Sanction is matter for the Commission by application of the powers and principles in paragraphs 40-53 of The FA's Disciplinary Regulations 2020/2021 and by reference to factors relevant to an assessment of the seriousness of breaches of the Intermediary Regulations.*
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> *43. At the hearing, we were referred to the case of The Football Association v Arsenal Football Club and Alan Middleton. The core feature in that case was the issue of 'fronting', a feature not present in this case. It also involved greater sums of money. We therefore found it of limited assistance.*
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> *44. This was a serious case of misconduct. It involved multiple breaches of the regulations, which led the FA to being misled to JS's involvement in the transaction 12 and exposing MR to the risk of potential breaches of the Regulations. JS is an experienced Intermediary. It is already clear that we consider him to have been careless and negligent in not having reviewed the documentation, particularly in light of the Club's inexperience in dealing with such matters nor having proper systems in*

place to have ensured he had a validly executed written representation contract with MR, which had not been in place for some time. Care in relation to the rules are owed to players, to other intermediaries who abide by the rules and to the wider football community. Despite the mitigating factors set out below, we find that JS fell short by some distance of the high standards reasonably expected of him in his dealings in connection with the transaction.

45. In considering the penalty for JS, we take into account his clean disciplinary record. We also have well in mind that JS did not deliberately intend to mislead the FA and the findings we make at paragraphs 37 to 40. We accept that there was no advantage conferred to JS nor was there any malice or inappropriate objective on his part. We have in mind what we were told would be the significant and grave impact of any suspension on JS and that it would end Fifteen Eleven Management's intermediary business. Further, that JS intended to strengthen his business practices to ensure that such a breach will not happen again.

46. JS has pleaded not guilty and has fought this charge to the end. That is his entitlement. It is not to be held against him and does not increase the penalty, though obviously he has forgone any potential credit for admitting the breach.

47. The Commission was invited to impose a financial penalty only on JS. In view of the serious nature of the breaches, we are unable to accede to that submission. A significant financial penalty together with a suspension is proportionate, albeit one that does not have immediate effect unless he commits a further breach of the Regulations within a specified period. The financial penalty reflects the benefit that JS received in connection with the transaction. As to the suspension, it reflects JS's culpability in this case; that we found the case involved negligent rather than dishonest breaches of the FA Regulations with no discernible inappropriate objective.

48. The Commission therefore imposes the following sanction on JS:
a. A fine of £1000;
b. A suspension from all Intermediary Activity for a period of 2 months, which period of suspension is suspended in its entirety for a period of 18 months. The suspension will come into effect immediately if a charge for breach(es) of FA Rule E1 (b) (or its equivalent), committed on or before 6 July 2022 is brought by The FA against JS and subsequently admitted or proven.
c. A warning as to his future conduct.
d. We determined that he should pay the full costs of the Commission and so ordered.'

(E) A preliminary point

14) It will be apparent from the above that the Regulatory Commission suspended the entirety of the 2 month suspension that it imposed on Mr Speight. That caused us to raise with the parties a preliminary matter at the outset of the appeal.

15) Save in one important respect, Paragraph 42 of the Disciplinary Regulations reads as follows in both the 2019/2020 Disciplinary Regulations and the 2020/2021 Disciplinary Regulations:

'*Save where any Rule or regulation expressly requires an immediate penalty to be imposed … the Regulatory Commission may order that a penalty imposed is suspended for a specified period or until a specified event and on such terms and conditions as it considers appropriate…*'

16) The important respect (for present purposes) in which the 2019/2020 Disciplinary Regulations and the 2020/2021 Disciplinary Regulations differ is that in Paragraph 42 of the 2019/2020 Disciplinary Regulations

a) The Regulatory Commission's power to suspend a penalty is expressly stated to be '*subject to paragraph 43 … below*'

b) Paragraph 43 of the 2019/2020 Disciplinary Regulations provides:

'Where the penalty to be imposed is to be suspended, no more than three-quarters of any such penalty may be suspended …'

17) There is no equivalent paragraph in the 2020/2021 Disciplinary Regulations to paragraph 43 of the 2019/2020 Disciplinary Regulations. A Regulatory Commission operating under the 2020/2021 Disciplinary Regulations thus can permissibly suspend more than three-quarters of a penalty if it considers that to be appropriate.

18) In light of (1) paragraph 42 of its Written Reasons and (2) the fact that it suspended the entirety of the 2 month suspension imposed on Mr Speight, it would appear that the Regulatory Commission in this case proceeded on the basis that

a) The Disciplinary Regulations applicable to its determination of the Charge were the 2020/2021 Disciplinary Regulations,

b) The 'old' Paragraph 43 of the 2019/2020 Disciplinary Regulations did not apply, and so

c) There was nothing in the Disciplinary Regulations to prevent it from suspending the entirety of the suspension if it considered that to be appropriate.

19) We queried with the parties whether, in light of the fact that

a) The conduct underlying the Charge had occurred in February 2020 (when the 2019/2020 Rules and Regulations were in force), and

b) The Charge letter itself made reference to both the 2019/2020 Disciplinary Regulations and the 2020/2021 Disciplinary Regulations

the approach apparently taken by the Regulatory Commission was correct. If it was not, and in fact the Regulatory Commission ought to have approached sanction in accordance with the 2019/2020 Disciplinary Regulations, then Paragraph 43 of the 2019/2020 would have operated to prevent the Regulatory Commission from suspending any more than three-quarters of the 2 months suspension imposed on Mr Speight.

20) In the event we did not have to reach a final conclusion on the matter. After a short adjournment to consider its position the FA informed us that it did not seek to contend

a) That the 2019/2020 Disciplinary Regulations applied to these proceedings (or ought to have been applied by the Regulatory Commission), or

b) That Paragraph 43 of the 2019/2020 Disciplinary Regulations was thus of any application.

The FA therefore invited us to proceed on the basis that the 2020/2021 Disciplinary Regulations had governed the powers of the Regulatory Commission to suspend a penalty. Mr Speight was content to proceed on that basis and, given the consensual position of the parties on the matter, it was on that basis that we in fact proceeded to hear the appeal.

(F) Determining whether to suspend a penalty: the correct approach

21) The approach to be applied by a Regulatory Commission when considering and determining whether a penalty should, in whole or in part, be suspended, was recently considered by the Appeal Board in *The Football Association v Sam Stapleton*. At paragraph 48 of that Decision the Appeal Board said this:

'*It is implicit in Regulation 42 and the Disciplinary Regulations read as a whole, that the correct approach is as follows:*

a. Determine the appropriate penalty for the Rule breach, irrespective of any consideration of it being suspended;

b. Consider whether there is good reason/s for suspending that penalty; if so

c. Decide

i the period of the suspension or event until which the penalty will be suspended; and

ii upon what other terms or conditions if any the penalty will be suspended'.

22) We endorse that multi-stage approach; in our view it is the correct one to be taken by any Regulatory Commission that is being asked to suspend, or is asking itself whether it should

suspend, in whole or in part any element or elements of a penalty that is to be imposed on a respondent. Indeed, we would go further. We would strongly encourage every Regulatory Commission that is asked to give consideration, or in fact gives consideration, to suspending in whole or in part any element or elements of a penalty that is to be imposed on a respondent, to clearly set out in its Written Reasons

a) That it has adopted that multi-stage approach,
b) That it has at each stage asked itself the question(s) appropriate to that stage,
c) What factors it has considered when reaching its conclusions at each stage,
d) What conclusions it has reached at each stage, and why it has reached such conclusions at each stage.

23) Thus using 'stage 2' as an example, it is likely to be beneficial for any Regulatory Commission

a) To confirm that it had considered whether there was good reason(s) for suspending the penalty that it had concluded was appropriate for the Rule breach
b) To identify what matters it had considered when asking itself whether there was or was not good reason(s) for suspending the penalty that it had concluded was appropriate for the Rule breach
c) To explain what conclusion it reached in that regard, and why.

That way, not only will the parties be able to see that the correct approach has been adopted, but they will also be able to see (for example) precisely how and why the Regulatory Commission came to conclude that there was or was not 'good reason' to suspend all or a part of the penalty.

(G) What is 'good reason' to suspend all or part of a penalty ?

24) What might or might not amount to 'good reason' to suspend all or part of a penalty will inevitably be fact-sensitive, and we see no benefit in us attempting to define or even describe or provide examples of what might or might not amount to 'good reason'. However, in light of the competing submissions made during this appeal, we do feel that there is benefit in us confirming that we see no good reason why mitigating factors that might already have been relied on by the respondent during stage 1 of the multi-stage process described in *The FA v Stapleton* and set out above (i.e. '*Determine the appropriate penalty for the Rule breach, irrespective of any consideration of it being suspended*') cannot also being relied by a respondent as possible 'good reasons' to justify a suspension

of that penalty during stage 2 of that multi-stage process ('*Consider whether there is good reason/s for suspending that penalty*'). In other words, there is in our view nothing objectionable *per se* in a Regulatory Commission

a) Identifying factors that are relevant to its determination of the appropriate penalty for the Rule breach, irrespective of any consideration of it being suspended, but then
b) Considering whether one or more of those same factors might also provide 'good reason' for suspending that penalty.

25) Of course, whether a factor (whether also a mitigating factor or otherwise) does in fact provide 'good reason' to suspend a penalty will always depend on the particular facts of each case.

(H) The approach adopted by the Regulatory Commission

26) Before us there was much debate as to

a) Whether the Regulatory Commission had in fact approached correctly the question of whether or not all or any of the 2 month suspension that it had concluded was appropriate for the Rule breach should be suspended – in other words, whether the Regulatory Commission had adopted the multi-stage approach in *The FA v Stapleton* – or
b) Whether the Regulatory Commission had instead adopted a different approach.

27) We found that a difficult question to answer. The principal reason for our difficulty came from the fact that paragraphs 42 to 48 of the Written Reasons do not clearly 'separate out'

a) The Regulatory Commission's determination of the appropriate penalty to be imposed on Mr Speight for his breach of Rule E1(b), irrespective of any consideration of that penalty being suspended (i.e. 'stage 1'), and
b) Any subsequent consideration by the Regulatory Commission of whether there were good reasons for suspending that penalty (i.e. 'stage 2').

28) The Regulatory Commission plainly did consider and determine the appropriate penalty to be imposed on Mr Speight for his breach of Rule E1(b), irrespective of any consideration of that penalty being suspended (i.e. 'stage 1'):

a) At paragraphs 42 to 46 of the Written Decision the Regulatory Commission considered the nature and gravity of the breach and such aggravating and mitigating factors as

were, in its view, relevant to the appropriate penalty to be imposed on Mr Speight for that breach irrespective of any consideration of that penalty being suspended

b) At paragraph 47 of the Written Decision the Regulatory Commission concluded (in the second and third sentences)
   i) that a financial penalty alone was insufficient sanction, and
   ii) that a '*significant financial penalty together with a suspension*' was the appropriate sanction to be imposed on Mr Speight for his breach.

29) There is however then no clear indication in the Written Reasons that the Regulatory Commission moved from 'stage 1' to 'stage 2' or
   a) Asked itself whether there were any good reasons for suspending any part of the penalty ('*significant financial penalty together with a suspension*') that it had concluded was appropriate and proportionate to impose, and if so
   b) Identified what such 'good reasons' might be in this case.

   It would have been helpful had such a demarcation between the stages been clear in the Written Reasons, together with the conclusions reached on each stage, and as we have indicated above, we would encourage future Regulatory Commissions to make such a demarcation and set out such conclusions clearly.

30) There is also a degree of ambiguity in the final sentence of paragraph 47 of the Written Reasons which further clouds matters. That sentence reads (with emphasis added) '*<u>As to the suspension</u>, it reflects [Mr Speight's] culpability in this case; that we found the case involved negligently rather than dishonest breaches of the FA Regulations with no discernible inappropriate objective*'. It is unclear whether that reference to '*the suspension*' in the opening words

   a) Was intended to be a reference to the 2 month suspension that the Regulatory Commission had *prima facie* found to be appropriate and proportionate before turning to the question of whether there was good reason to suspend the same (and so was intended to be an explanation as to why a financial penalty alone was insufficient and why a 2 month suspension was also needed as an appropriate and proportionate penalty). That was how the FA submitted we should interpret those words, or

b) Was intended to be a reference to 'the suspension of the 2 months suspension' (and so was intended to be an explanation as to why the Regulatory Commission considered there to be good reason to suspend the 2 month suspension that it had *prima facie* found to be appropriate and proportionate). That was how Mr Speight invited us to interpret those words.

31) Our view was that the reality was likely to be somewhere between those positions:

a) The reference to '*the suspension*' in that final sentence of paragraph 47 was probably intended by the Regulatory Commission to be a reference back to the second sentence of paragraph 47 i.e. to the words '*a suspension ... albeit one that does not have immediate effect unless [Mr Speight] commits a further breach of the Regulations within a specified period*', and so

b) The final sentence of paragraph 47 was therefore most probably intended by the Regulatory Commission to address both matters outlined in paragraph 30 above i.e.

i) to reinforce why a financial penalty alone was insufficient, and why a suspension was also needed, as an appropriate and proportionate penalty, and

ii) to confirm, and to explain why, the Regulatory Commission considered there to be good reason on the facts of the case before it to suspend the suspension that it had *prima facie* found to be appropriate and proportionate.

That interpretation appears to us to best fit both the words used by the Regulatory Commission in paragraph 47 of the Written Reasons and also the broader structure of paragraphs 42 to 48 of the Written Reasons.

(I) Was the Regulatory Commission's decision on sanction unreasonable ?

32) That of course leaves the question that is at the heart of this appeal – in light of the factual findings made and set out in the Written Reasons, could a reasonable Regulatory Commission have concluded that there was in fact any 'good reason' to suspend the 2 month suspension that the Regulatory Commission had concluded was otherwise appropriate and proportionate ?

33) We were quite properly reminded that, when addressing that question, the test is not

a) Whether we might have concluded that was no good reason to suspend the 2 month suspension, or

b) Whether other, differently constituted Regulatory Commissions might have concluded that there was no good reason to suspend the 2 month suspension.

Rather, as the FA put it in its written submissions, the test is whether no reasonable Regulatory Commission could have found 'good reason' to suspend the 2 month suspension based on the facts as the Regulatory Commission had found them to be.

34) That is of course a high hurdle for the FA to clear on this appeal, and as we have already said above, we concluded that the FA did not do so on this occasion. In our view, there are facts and matters in the Written Reasons which a reasonable Regulatory Commission could have concluded amounted to 'good reason' to suspend the 2 month suspension that the Regulatory Commission had concluded was an appropriate and proportionate penalty to impose on Mr Speight. Those facts and matters included

a) The nature of Mr Speight's culpability for the breach of the Regulations, and the fact that
   i) His breaches were not intentional or conscious, and
   ii) He had not acted with the intention of misleading the FA
b) The fact that there had been no financial or other advantage conferred on Mr Speight by his actions
c) The fact that an immediate suspension would have a 'significant and grave impact' on Mr Speight and the wider business that he operates, and would end the company's intermediary business.

35) The FA invited us to conclude that none of those matters could reasonably be considered by any Regulatory Commission as amounting to 'good reason' to suspend a penalty. Mr Speight disagreed; he invited us to conclude

a) That each of those matters could individually have been considered by a reasonable Regulatory Commission on the facts of this case to amount to a 'good reason' to suspend the 2 month penalty imposed on Mr Speight, and
b) That in any event
   i) The proper approach would be for a Regulatory Commission to consider those matters cumulatively, as well as individually, and to ask itself whether cumulatively they could amount to 'good reason' to suspend the penalty, and

ii) Those matters could cumulatively have been considered by a reasonable Regulatory Commission to amount to 'good reason' to suspend the 2 month penalty imposed on Mr Speight.

36) We agree with Mr Speight

a) That a Regulatory Commission would be entitled to look at matters cumulatively, as well as individually, when asking itself whether there was good reason to suspend a penalty that it would otherwise be minded to impose, and

b) That in this case the matters identified by the Regulatory Commission in its Written Reasons were such that, taken together, a reasonable Regulatory Commission could have concluded that they amounted to 'good reason' to suspend the 2 month suspension that the Regulatory Commission had concluded was otherwise appropriate and proportionate to impose. While other Regulatory Commissions might still have concluded that such matters fell short of amounting to 'good reason', as we have said above, that is not the test for us to apply on this appeal.

37) We therefore dismiss the FA's first ground of appeal.

(J) Was the overall sanction unduly lenient ?

38) The FA's second ground of appeal was that when viewed as a whole, the sanction imposed by the Regulatory Commission was unduly and unreasonably lenient. In support of that wider position the FA relied on 2 matters additional to those that we have considered above.

39) First, that the sanction imposed on Mr Speight was 'out of line' with the sanction imposed on the Club. By way of explanation

a) The Club had also been charged by the FA with breaches of Regulation A3 and Regulation A6. The facts relied on by the FA as against the Club in support of those breaches were materially identical to the facts relied on as against Mr Speight in relation to his breaches of those Regulations

b) The Club had also been charged with a breach of Regulation C6 of the Regulations. That breach arose by virtue of the fact that the Club had paid Mr Speight his agency fee directly, and not through the FA

c) The Club had admitted all breaches of the Regulations with which it had been charged. Its explanation for the breaches was that it had been wholly ignorant

i) Of the processes to be adopted when an Intermediary was involved in a transaction, and

ii) Of the need for agency fees to be paid through the FA rather than directly to the Intermediary

d) The Regulatory Commission had concluded that, in light of the aggravating and mitigating factors relevant to the Club and its breach of the Regulations, the appropriate penalty to impose on the Club was a fine of £1,500 and a warning as to its future conduct.

40) At first blush it might seem odd that when 2 respondents charged with similar breaches of the Regulations on similar factual bases are sanctioned

a) The respondent who pleaded guilty (the Club) was fined £1,500 and warned as to future conduct, while

b) The respondent who pleaded not guilty (Mr Speight) but was found guilty was fined £1,000 and warned as to future conduct.

41) However, that comparison – which is the one that the FA invited us to make – is not an appropriate one. It overlooks 2 important matters:

a) First, Mr Speight was not 'just' fined £1,000 and warned as to future conduct; he also received a 2 month suspension from all Intermediary Activity, albeit that that suspension was suspended for 2 months. The FA attempted to dismiss that limb of the sanction imposed on Mr Speight as being of no practical consequence or significance. However, that is simply not the case. A suspended penalty is still a meaningful penalty, and a suspended period of suspension is no exception. It is therefore wrong for the FA simply to compare the amounts of the fines imposed on Mr Speight and the Club and to suggest that merely because the Club received a '*harsher immediate penalty*' than Mr Speight, it must follow that the overall sanction imposed on Mr Speight was unduly lenient

b) Secondly, any penalty will reflect not only the nature and gravity of the breach committed by the respondent (and any aggravating features), but also the mitigating factors available to the respondent. It is therefore not appropriate, without more

i) To compare the sanction imposed on the Club with that imposed on Mr Speight, and

ii) To conclude that the latter is unduly lenient simply because certain elements of the sanction differ as between the two respondents.

42) We therefore reject the FA's argument in that regard.

43) Secondly, the FA contended that viewed in the round the sanction imposed on Mr Speight failed to serve as an adequate deterrent against conduct of the type that led to Mr Speight's breaches of the Regulations.

44) The question of the extent to which a sanction can and/or should reflect an element of deterrence was considered by the Regulatory Commission in *The Football Association and Paolo Vernazza*. At paragraph 112 of its Written Reasons the Regulatory Commission said this:

> *'... When determining an appropriate sanction any Regulatory Commission should have primary regard to what sanction is necessary to properly punish the individual given the facts of the case. However, there is nothing per se objectionable in a Regulatory Commission also asking itself whether a proposed sanction does achieve a further legitimate aim, namely deterring the individual from further misconduct and deterring others from acting as the individual has acted. Thus there is in our view nothing objectionable per se in a Regulatory Commission imposing a sanction on an individual which properly punishes that individual for the breach under scrutiny which also has an incidental or additional effect of deterring others from committing similar misconduct; a Regulatory Commission is entitled to send a clear message that conduct is unacceptable and that any person committing such misconduct in the future can expect to be sanctioned in a particular way.*

45) A footnote to that paragraph went on:

> *'It would however in our view be objectionable for a Regulatory Commission to sanction an individual for the sole or primary purpose of 'sending a message' to others, or to include an element in any sanction solely or primarily for that purpose. To sanction on that basis would overlook the basic principle that the starting point for any sanction should be what is necessary to properly punish the individual for his/her breach in all the circumstances of the case.*'

46) We endorse the view set out by the Regulatory Commission in that case.

47) In light of that, it follows that the FA's submission on any alleged 'lack of deterrence' in the sanction imposed by the Regulatory Commission on Mr Speight must fail. As we have

set out above, the Regulatory Commission did indeed have primary regard to what sanction was necessary and proportionate to properly punish Mr Speight for his breaches of the Regulations. It was in no way obliged to ask itself whether that that sanction might act as a deterrent (or sufficient deterrent) to others, let alone to reassess the sanction to be imposed on Mr Speight if it concluded that it might not. No criticism is therefore to be made of the Regulatory Commission in that regard, and we reject this basis of the FA's second ground of appeal.

48) In any event, contrary to the concerns expressed by the FA, we would expect the Decision of the Regulatory Commission to act as a warning to Intermediaries as to the consequences that might flow should they breach the Regulations. While the focus of this appeal has been on the fact that the 2 month suspension from Intermediary Activity imposed on Mr Speight was suspended, sight should not be lost of the fact

a) That the Regulatory Commission concluded that the breaches of the Regulations committed by Mr Speight – through carelessness and negligence on his part rather than deliberately or to further any inappropriate objective of his own – could not be adequately reflected by a financial penalty alone, and that a suspension from Intermediary Activity was therefore appropriate and proportionate, and
b) That it was only because the Regulatory Commission concluded on the particular – and perhaps peculiar – facts of this case that there was 'good reason' to suspend the 2 month suspension from Intermediary Activity that Mr Speight escaped an immediate suspension from Intermediary Activity.

Neither the Decision of the Regulatory Commission nor indeed our Decision and Written Reasons should be read as endorsing any general principle that Intermediaries who commit breaches of the Regulations as a result of negligence alone can expect to avoid immediate suspension; indeed, experience suggests that in the vast majority of cases, quite the reverse is likely to be the case.

(K) Summary

49) For the reasons set out above, we dismissed the FA's appeal.

50) Any application for costs must be filed in writing no later than 17.00 on 5 March 2021. Any response thereto must be in writing and filed by 17.00 on 10 March 2021. We will then resolve any application for costs that might be made on the basis of those submissions.

Graeme McPherson QC (Chairperson)

Tony Agana

Aisling Byrnes

3 March 2021