

IN THE MATTER OF AN APPEAL BEFORE THE FOOTBALL ASSOCIATION

BETWEEN

DR ERKUT SOGUT

And

THE FOOTBALL ASSOCIATION

WRITTEN DECISION OF THE APPEAL BOARD

Aisling Byrnes (Chairperson) - Independent Specialist Legal Panel Member

Evans Amoah-Nyamekye - Independent Legal Panel Member

Richard Cooper - Independent Football Panel Member

Nathan Greenslade (Secretary) - Football Association Judicial Services

Overview

1. This is an appeal against the decision of the Regulatory Commission (“the Commission”) on 30 June 2023 that the Appellant had breached rule E1.2 of the Regulations of the Football Association by breaching certain of the FA’s Working With Intermediaries Regulations.
2. Following a careful review of the papers which were before the Commission, the Notice of Appeal, the Response to the Appeal and the relevant Regulations, this Appeal Board allowed the appeal to a limited extent and varied the sanction imposed on the Appellant to one of 6 weeks’ suspension from all intermediary activity and a fine of £700.

The Facts

3. The Appellant is an FA registered Intermediary and, according to his email signature. A “Sports Lawyer and Sports Agent”¹. At the material time, he was the principal of an agency called Football and Family, through which he conducted intermediary activity.
4. In the summer of 2022, the Appellant took on an “intern” called [REDACTED]. Between 26 October 2022 and 8 November 2022, whilst still an intern at Football and Family, [REDACTED] made a number of approaches to a player under the age of 18 with a view to representing him. In doing so, [REDACTED] indicated that he was a “junior agent” with football and Family and made it plain via numerous references that this was the agency under whose auspices he was making the approaches. [REDACTED] did not obtain the consent of the player’s parents.
5. The player’s club was concerned about [REDACTED]’s approaches and referred the matter to the FA, which contacted the Appellant for his comments.
6. The Appellant responded on 9 December 2022 that “[REDACTED] is an intern with us and does some scouting around the UK but this appears to have been an independent scouting activity carried out without my knowledge.”² Further, on 27 February 2023, the Appellant wrote “[REDACTED] took on his internship role in helping with this education role as well as helping me with research, database information, digital scouting and networking on the agency side.” and “This was an in person internship which lasted the summer of 2021 but [REDACTED] has continued to help digitally thereafter and began scouting further after I had moved to the US...”³

¹ See for example email dated 15 June 2023 in response to charge p12 of Appeal Bundle

² P86

³ P91-2

7. The Appellant subsequently provided the FA with the terms of ■'s internship⁴, in advance of the Regulatory Commission. In relevant part, they outlined ■'s role as being primarily assisting the Appellant with his social media output and educational material. At paragraph 5, the terms read: *"You must not engage in any communication with other sports industry professionals, journalists, agents, under 18s, parents or players regarding anything other than "agent education"*". These terms were not signed by any party.

8. On 14 June 2023 the Appellant was charged with a breach of Rule E1.2 on the basis that he had:
"Failed to ensure that ■ an employee/contractor, agent of Family and Football, not registered as an intermediary with the FA, was prohibited from making an approach to [the player in question], a minor Player in relation to a Representation Contract, contrary to Regulations B8(b)(i) and G2(b) of the FA's Working with Intermediaries Regulations."

9. The following day, the Appellant returned the Reply Form indicating that he accepted the charge and requested a paper hearing. In an attached email, the Appellant stated that *"It is with great sadness that I must accept the charge against me and for my responsibility in failing to prevent an intern of mine committing the offence..."*. He reiterated that ■'s actions had been without his knowledge and made it plain that he was in fact very familiar with the rules about *"the protection of minors"*.⁵

The Decision of the Regulatory Commission

10. The Regulatory Commission convened to consider the decision on 30 June 2023.

⁴ Pp95-96

⁵ p99

11. In Written Reasons dated 3 July 2023, the Commission set out the facts and evidence upon which the charge was based⁶. It also set out certain of the Working With Intermediary regulations, including those which are engaged in this matter.⁷
12. At paragraph 25 of the reasons, the Commission noted that *“As ES had admitted the Charge, it was for the Commission to reach an appropriate sanction after consideration of any aggravating and mitigating factors present”*.
13. The Commission then listed the aggravating factors it found⁸, but did not set out any mitigating factors, before reaching a conclusion in relation to sanction.
14. The Appellant was fined the sum of £1400 and suspended from all Intermediary Activity for six months with immediate effect.⁹

The Grounds of Appeal

15. The Appellant appealed against the Commission’s decision to find the charge proved and/or against the sanction imposed¹⁰.
16. The thrust of the appeal was that the Appellant’s admission notwithstanding, the Commission was obliged to make a finding as to whether the charge was in fact proved and, in the event, came to the wrong decision.

⁶ P106 et seq

⁷ Written Reasons paras 20-24

⁸ Paras 26-29

⁹ Para 30

¹⁰ Grounds of Appeal dated 18 July 2023

17. This, said the Appellant, was because the evidence suggested that ■ was not an employee, contractor or indeed an agent of the Appellant. In those circumstances, the Commission erred in finding that:

a. The Appellant had breached Regulation B8(b)(i) because he had not himself made any approaches to minor players and because ■ had not done so with his knowledge and/or consent; and

b. The Appellant had breached Regulation G2(b) because ■ was not his employee contractor or agent at the material time and so the Appellant did not bear the relevant responsibility for prohibiting ■ from approaching minor players.

18. The Appellant relied upon the Appellant's repeated assertions in response both to the investigation and to the charge itself that ■ had been a summer intern with limited duties, was not authorised to approach players and was expressly told not to approach those under the age of 18.

19. As to sanction, the Appellant's position was that no sanction should have followed because the charge was not in fact proved. In the alternative, the Appellant contended that the Commission erred in:

a. Failing to identify the factual basis for the sanction;

b. Failing to consider whether to suspend the sanction;

c. Failing to identify mitigating factors including the Appellant's early admission and clean record; and

d. "Double counting" certain factors said to have aggravated the matter.

20. The Appellant also relied on the Commission's inclusion in its reasons the terms of Appendix II, paragraph 3.1 of the Working With Intermediaries Regulations. He argued

that this indicated that the Commission had impermissibly found a further breach of the regulations in this regard with which he had not in fact been charged.

21. These various alleged failings of the Commission as summarised above were variously categorised in the terms required under the Disciplinary Regulations as
- a. The Commission misinterpreted the Rules and/or Regulations relevant to the decision;
 - b. The Commission failed to give the Appellant a fair hearing;
 - c. The Commission came to a decision to which no reasonable such body could have come; and/or
 - d. The Commission imposed a penalty, award or sanction that was excessive.
22. Finally, the Appellant applied to adduce new evidence in the form of a letter from Jono Santry which indicated the high esteem in which he, the National Head of Player Development and England Boys U18s Manager, holds the Appellant.

The Response to Appeal

23. The FA's response to the Appellant's Grounds of Appeal can be summarised as follows:
- a. It is accepted that there were difficulties in relation to the Commission's finding that the Appellant had breached Regulation B8(b)(i) because there was evidence before it that the Appellant had not approached the player and had not been aware that ■ had approached him. In the absence of reasons for the finding of this aspect of the breach, the FA conceded that the part of the appeal had merit;
 - b. As to the actions of ■, since the Appellant had unequivocally admitted the charge and had not previously taken issue with the contention that ■ was an employee

contractor or agent whose actions engaged Regulation G2(b), he should not now be permitted to dispute that fact. Issues taken for the first time on appeal cause prejudice for respondents because of the delay, cost and lack of certainty in proceedings. In this regard the FA relied on the previous Appeal Board decision of *The FA v Imran Louza 18 November 2022*¹¹.

- c. In any event, there was abundant evidence before the Commission that ■ was in fact an employee contractor or agent of the Appellant at the material time. The FA relied principally in this regard on the various associations made by ■ himself to Football and Family at the time he approached the player in question.
- d. As to sanction, the FA accepted that, in the light of its concession in respect of Regulation B8(i)(b), an adjustment would need to be made, although suspension was clearly warranted. There had been no requirement for the Commission to consider suspending any sanction, although the FA accepted that no mention was made of mitigating factors.
- e. The FA did not oppose the Appellant's application to adduce further the evidence from Mr Santry.

Consequences of Appeal

24. Neither party requested that, in the light of a successful appeal, the matter be remitted back to a freshly constituted Regulatory Commission.

The Relevant Regulations

25. The Appellant was alleged to have breached Rule E.1, which provides that:

¹¹ Appeal Board's reasons in that case at p27 of the bundle

E1 The Association may act against a Participant in respect of any Misconduct, which is defined as being a breach of the following:

E1.2 the Rules and regulations of The Association

26. In particular, the Appellant was said to have breached the following parts of the Working with Intermediaries Regulations:

a. **Regulation B8(b)(i)**, which states that:

“Between 1st January of the year of a Player’s sixteenth birthday and the date of his eighteenth birthday, an Intermediary shall not, whether directly or indirectly do any of the following without first obtaining the written consent of the Player’s parent or guardian:

(i) make an approach to a Player to enter into a Representation Contract (including any agreement to enter into a Representation Contract in the future);”

b. **Regulation G2**, which states that:

“An Intermediary (whether an individual or operating through an Organisation) is responsible for ensuring that any of its employees (if applicable), contractors or agents who are not registered as an Intermediary are prohibited from carrying out:

- a. any Intermediary Activity;*
- b. making any approach to or entering into any agreement with a Player in relation to a Representation Contract; or*
- c. entering into a Representation Contract with a Player on behalf of the Intermediary.*

27. As to the deliberations of the Regulatory Commission, Reg 31 of Part B (Non Fast Track Regulations) of the Disciplinary Regulations provides that:

31 The Regulatory Commission will first consider whether or not a Charge is proven. In doing so, it will have regard to any admission of all or part of the Charge made by the Participant Charged. Where a Charge is denied, or where it is admitted but there remains a factual dispute between the Participant Charged and The Association, the Regulatory Commission shall consider the witness and other evidence placed before it together with each party's submissions in order to make findings in respect of any factual dispute(s) in order to determine: (i) whether a Charge is proven; (ii) if so proven or admitted, the factual basis on which the Charge is proven.

28. In relation to the Regulatory Commission's decision on penalty, Regulation 35 provides that:

35 Where a Charge is proven following determination on written submissions, the Regulatory Commission shall then consider the disciplinary record of the Participant together with any mitigation, and any other matters it considers relevant in its consideration of penalty.

29. As to the potential suspension of any sanction, Regulation 43 provides that:

43 Save where any Rule or regulation expressly requires an immediate penalty to be imposed, and subject to paragraphs 44-46 below, 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.

30. The conduct of this Appeal is governed by the Appeals – Non Fast Track Regulations. Regulation 12 provides that:

12 An appeal shall be by way of a review on documents only and shall not involve a rehearing of the evidence considered by the body appealed against. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above.

31. Regulation 10 governs the issue of new evidence on appeal:

10 The Appeal Board shall hear new evidence only where it has given leave that it may be presented. An application for leave to present new evidence must be made in the Notice of Appeal or the Response. Any application must set out the nature and the relevance of the new evidence, and why it was not presented at the original hearing. Save in exceptional circumstances, the Appeal Board shall not grant leave to present new evidence unless satisfied (i) with the reason given as to why it was not, or could not have been, presented at the original hearing and (ii) that such evidence is relevant. The Appeal Board's decision shall be final. Where leave to present new evidence has been granted, in all cases the other party will be given an opportunity to respond.

Discussion

The issue for the Appeal Board

32. This Appeal is conducted by means of a review of the papers. Additional evidence is sought to be relied on by the Appellant pursuant to Regulation 10 and, there being no opposition to that, and having considered the reasons advanced for its omission at first instance, we are content to include that new evidence in our review.

33. We have not been invited by either party to remit the matter to the Commission in the event that any part of the appeal is allowed but instead to substitute our own decisions in that event.

34. It seems to us that the issues to be resolved are these:

- a. Whether the Commission erred in finding that the Appellant was in breach of Regulation B8(i)(b) given that there was evidence before it that the Appellant had not approached the player himself and was unaware that ■ had done so;

- b. Whether the Appellant should be permitted to advance an argument that he did not at first instance, namely whether ■ was an employee, contractor or agent of the Appellant, which would engage Regulation G2 in relation to ■'s conduct;
- c. If so, whether the Commission was correct to conclude that Regulation G2 had been breached;
- d. If there was a breach of the Regulations, whether the sanction imposed was excessive.

35. Before turning to deal with each of these issues in turn we mention the Appellant's criticism of the Commission for including Appendix II, paragraph 3.1 of the Working With Intermediaries Regulations. We do not consider that a fair reading of the Reasons indicates that the Commission found a separate breach there. That part of the Regulations was set out for completeness and there can be no criticism thereof.

Breach of Regulation B8(i)(b)

36. The charge faced by the Appellant was that he breached Rule E1 in two distinct respects, namely by breaching firstly Regulation B8(i)(b) and secondly Regulation G2.

37. The Commission's written Reasons are silent as to the basis upon which it concluded that the Appellant breached the first of these Regulations. As observed by the FA, this was "problematic" because there was no evidence that the Appellant had himself approached the player and his Reply documentation made it plain that he had been unaware of it.

38. The only available basis for their finding was therefore that the Commission concluded that ■'s approach of the player could be imputed to the Appellant. Since Regulation B8(i)(b) does not expressly include any individual other than the Intermediary himself, we consider that the Commission erred in concluding that the Appellant approached the player in breach of that particular Regulation.

The Status of ■: point not taken at First Instance

39. We turn to deal with the question of the breach of Regulation G2.

40. Although in effect the Appellant's contention in relation to Regulation B8(b)(i) was before the Commission, his contention in relation to Regulation G2 (namely that ■ was not an employee, contractor or agent) was not. The FA argue that considerations of fairness to the respondent dictate that it is simply too late for the matter to be litigated now.

41. We have considerable sympathy for this position. Although there is nothing in the Regulations which requires only points raised at first instance to be considered on appeal, we recognise that the consideration of "new" points on appeal can in certain cases give rise to clear prejudice, particularly in cases such as *The FA v Imran Louza*, where the respondent is the participant. Even in cases where, as here, the respondent is the FA, there are obvious policy reasons why points not advanced below should not always be considered on appeal.

42. However each case must be considered on its own facts and we do have some concerns in this case that the issues at play were not properly grasped by the Commission. No reasons were given for the finding that the breach was proved, no factual basis for the breach was identified, and as such, no consideration appears to have been given to the status of ■, which on any view was an important feature of the case.

43. For these reasons we are prepared to consider the "new" submissions. This should not be taken as authority for the proposition that such submissions will always be considered by Appeal Boards.

Breach of Regulation G2

44. The Appellant now submits that Regulation G2 was never engaged in this matter because ■ was not an “employee, contractor or agent” of the Appellant.
45. It is common ground that ■ was an “intern”. Did that role engage the Appellant’s responsibilities under Regulation G2 because he was “an employee, contractor or agent”?
46. The Working With Intermediaries Regulations does not provide a definition of those terms and neither party has sought to do so. We have therefore used the dictionary definition of “agent” viz “*An individual who is authorised to act on behalf of another individual known as the principal*”. We have also considered the purpose of Regulation G2 and the mischief against which it is aimed.
47. In our view, ■’s role engaged the Appellant’s responsibilities under Regulation G2 because on the available evidence, ■ was, at the material time, an “agent” of the Appellant.
48. The evidence is as follows:
- a. In his email of 9 December 2022, the Appellant stated that “*■ is an intern with us and does some scouting around the UK...*”
 - b. Next, on 27 February 2023, the Appellant wrote “*■ took on his internship role in helping with this education role as well as helping me with research, database information, digital scouting and networking on the agency side.*” and “*This was an in person internship which lasted the summer of 2021 but ■ has continued to help digitally thereafter and began scouting further after I had moved to the US...*”;
 - c. The various assertions made in his correspondence and literature by ■ himself that he worked under the auspices of Family and Football (although the Board accepts that such assertions are of limited assistance because ■ is highly likely to

have inflated his association with the company in order to enhance his prospects of securing contact with the player); and

- d. The clear acceptance by the Appellant at first instance that he had failed in his responsibilities in relation to ■.

49. Although ■'s approach to the player in question was unknown to the Appellant and apparently outside his remit, this does not in our view alter the fact that he was nonetheless at the material time an agent of the Appellant who in turn had a responsibility under Regulation G2 to ensure that he was prohibited from approaching players under the age of 18.

50. We have considered whether or not the terms of ■'s appointment which indicated that he was not permitted to approach such players was sufficient by way of "prohibition" to meet the requirements of Regulation G2. In the circumstances of this case we do not think it was:

- a. There is no evidence that ■ signed or was otherwise made aware of this part of his terms of engagement. Indeed there is no reference to it in ■'s letter to the FA;
- b. There is no evidence that ■ understood that there was such a prohibition, indeed it appears from his letter that he was under the mistaken belief that he was permitted to act in the way that he did;
- c. Finally, it is not a point which is relied on by the Appellant who is himself a "sports lawyer" and who instructed solicitors to settle carefully drafted Grounds of Appeal on his behalf.

51. For these reasons, we do consider, contrary to the Appellant's submissions, that there was evidence before the Commission that the Appellant breached the terms of Regulation G2.

Sanction

52. In the light of the foregoing, we agree that the sanction imposed was excessive. We do not in these circumstances need to resolve the question of whether it was excessive on the basis of the Commission's own findings, although we would observe that there ought to have been a clear factual basis set out together with a list of aggravating and mitigating features.
53. There was no requirement for the Commission to consider suspending the sanction. Regulation 43 makes it plain that that is a matter of discretion for the Commission.
54. The residual position here is that the Appellant, who has a clean record and, by reference to the reference written on his behalf by Mr Santry, a good standing in the world of intermediaries, took on an intern and failed to do as much as he ought to have done to prohibit that enthusiastic and doubtless well meaning young man from approaching under 18 players. The Appellant co-operated with the investigation and admitted the matter at the earliest opportunity.
55. In the circumstances a reasonable and proportionate sanction is one of a suspension of six weeks and a fine of £700.

Conclusion

56. This appeal is therefore allowed on the grounds that
- a. The Commission misinterpreted the Rules and/or Regulations relevant to the decision. This is on the basis of the Commission's failure to set out the factual basis of its decision to find the charge proved and its finding that the Appellant had breached the terms of Rule B8(i)(b); and
 - b. The Commission imposed a penalty, award or sanction that was excessive.

57. The other grounds advanced by the Appellant take the matter no further and are rejected.

Costs

- c. The costs of the Appeal Board should follow the event and be borne by the Football Association.

12 October 2023

AISLING BYRNES (Chair)

EVANS AMOAH-NYAMEKYE

RICHARD COOPER