IN THE MATTER OF A REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

-and-

IVAN TONEY

Regulatory Commission:

David Casement K.C. (Chairperson) – Independent Specialist Panel Member

Abdul Shaffaq Iqbal K.C. – Independent Legal Panel Member

Stuart Ripley – Independent Football Panel Member

Paddy McCormack – Judicial Services Manager – Secretary

Ivan Toney – Player

Nick De Marco K.C. – Counsel for the Player

Paul Fletcher – Solicitor for the Player

James Menon – Solicitor for the Player

Martin Williams – Representative of Mr Toney

Phil Giles – Director of Football at Brentford Football Club

Ivan Toney Snr – Player's Father

Lisa Shaw – Player's Mother

Dr Philip Hopley – Psychiatry Expert (by video call)

Brian O'Neill K.C. - Counsel for The Football Association

Amina Graham – Head of Regulatory Legal

Rebecca Turner – Regulatory Advocate

Tom Astley – Betting Integrity Investigator

Chris Hall – Integrity Investigator

WRITTEN DECISION OF THE REGULATORY COMMISSION

Introduction

1. This case is concerned with a substantial number of breaches of The Football Association Rules in respect of a Participant's betting on football and one count of providing inside information. Mr Ivan Toney has admitted to 232 breaches of FA Rule E8, the general prohibition on betting on football by a Participant, over five seasons from 25 February 2017 to 23 January 2021.

2. Although the Regulatory Commission is concerned only with the issue of sanction in respect of those admitted breaches, there were a number of factual matters that were disputed between the parties and which are highly relevant to sanction. During the course of a lengthy sanction hearing on 16 May 2023 the Commission heard detailed submissions by leading counsel for each party in respect of the voluminous documents and authorities cited. Testimony was given by Mr Toney and expert evidence was also heard from Dr Philip Hopley, a distinguished consultant psychiatrist. The oral evidence of the witnesses was tested in cross-examination.

3. The decision in respect of sanction was issued to the Player on 17 May 2023, the day after the hearing. This document sets out the reasons for that decision.

Background

4. By way of summary background Mr Toney is a professional football player who joined Brentford Football Club ("Brentford") from Peterborough United Football Club ("Peterborough") on 1 September 2020 and is now 27 years of age. The player had been registered with Peterborough since 8 August 2018. Prior to being registered with Peterborough, Mr Toney was registered with Newcastle United Football Club ("Newcastle") from August 2015 to August 2018.

5. While at Newcastle the player spent periods on loan with Barnsley Football Club ("Barnsley"), Shrewsbury Town Football Club ("Shrewsbury"), Scunthorpe United Football Club ("Scunthorpe") and Wigan Athletic Football Club ("Wigan").

6. Prior to joining Newcastle Mr Toney was registered with Northampton Town Football Club ("Northampton") from 2012 to 2015. He has therefore been a Participant and subject to The FA Rules for more than ten years.

The Charges

7. Mr Toney was charged on 16 November 2022 with Misconduct under FA Rule E1(b) in respect of 232 breaches of FA Rule E8. He was further charged on 20 December 2022 under the same provisions in respect of an additional 30 breaches giving a total of 262 charges. On 17 February the player indicated that he admitted 190 of the 262 alleged breaches and disputed the remaining 72. On 17 March 2023 The FA indicated that of the 72 breaches disputed, 30 would be withdrawn and the remaining 42 would be pursued. On 21 April 2023 Mr Toney responded admitting the outstanding 42 breaches.

8. The 232 breaches of FA Rule E8 that were admitted by Mr Toney included the following bets which are of particular relevance to the sanction exercise and which can be divided as follows (with the Guidelines range in parentheses):

    8.1 126 bets were in respect of matches in a competition in which Mr Toney's club had participated in or were eligible to participate in that particular season (Column 2 of the Guidelines with no sports sanction where the Participant has no connection with the Club bet on);

    8.2 Of those 126 bets, 29 bets or instructions to bet were in respect of the club that Mr Toney was registered with or on loan with at the time (Column 3 of the Guidelines with a sports sanction range of 0-6 months suspension);

8.3 Of those 29 bets there were 16 bets on Mr Toney's own team to win 15 different matches. Mr Toney played in 11 of these games and was an unused substitute in another game. (Column 3 of the Guidelines with a sports sanction range of 0-6 months suspension);

8.4 Of those 29 bets, there were 13 bets on Mr Toney's own team to lose in 7 different matches between 22 August 2017 and 3 March 2018. Mr Toney did not play in any of those matches where he placed bets against his loan club as he was not in the match squad or against his parent club as he was on loan. Of the 13 bets 11 were against Newcastle whilst Mr Toney was on loan at another club. The other 2 bets related to a game between Wigan v Aston Villa whilst the player was on loan at Wigan but he was not part of the squad. (Column 4 of the Guidelines with a sports sanction range of 6 months to life suspension);

8.5 A further 15 of the 126 bets or instructions to bet were placed by Mr Toney to score in 9 different matches all of which he played in. All of those 15 bets or instructions to bet were initiated by Mr Toney at a time when it would not have been public knowledge that he was starting or playing in the fixture. (Column 6 of the Guidelines with a sports sanction range of 6 months to life suspension);

8.6 In addition there were 6 bets on particular occurrences during a match not involving Mr Toney. (Column 5 of the Guidelines with a sports sanction range of nought to 12 months suspension).

It was contended on behalf of The FA that the breaches in respect of the 50 bets in 8.3 to 8.6 above are the most serious of the 232 breaches.

9. There was also a breach of FA Rule E8.2 namely an inside information charge whereby on 29 March 2018 Mr Toney informed a friend he would be starting in his club's next match. The circumstances in which this information was provided are unclear. It is said on behalf of the player not to really amount to inside information because everyone would have known he was likely to play. However Mr Toney has accepted it as a breach.

The FA Betting Rules and the Guidelines for Sanction

10. The relevant part of The Football Association Rules ("the Rules") are as follows:

    Rule E8.1 (formerly Rule E8(1)(a)):

    A Participant shall not bet, either directly or indirectly, or instruct. permit, cause or enable any person to bet on –

    E8.1.1 the result, progress, conduct or any other aspect of, or occurrence in or in connection with, a football match or competition.

    Rule E8.2 (formerly Rule E8(1)(b)):

    Where a Participant provides to any other person any information relating to football which the Participant has obtained by virtue of his or her position within the game and which is not publicly available at that time, the Participant shall be in breach of this Rule where any of that information is used by that other person for, or in relation to, betting.

11. The Guidelines in respect of breaches of the prohibition on betting and related offences were published in 2014. The Guidelines are not intended to override the discretion of Regulatory Commissions to impose such sanctions as they consider appropriate having regard to the relevant facts and circumstances of the 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 of the Guidelines. A key aspect of the seriousness of the offence is whether it 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. A copy of the Guidelines is attached at Appendix 1.

Procedural History

12. Mr Toney was contacted by The FA for interview on 10 May 2022. Following requests for information prior to interview and communications in respect of available dates, the first interview took place on 20 July 2022 at which time, upon request, Mr Toney handed over his mobile phone which was then imaged.

13. On 26 July 2022 The FA wrote to Mr Toney's legal representatives requesting various datasets including his full bank statements. On 16 September 2022 The FA was provided with redacted bank statements for one of Mr Toney's bank accounts. This was followed on 4 October 2022 with the provision of redacted bank statements in respect of a second bank account held by Mr Toney.

14. A second interview was held on 10 October 2022 on which date a request was also made by The FA for unredacted copies of the bank statements previously provided. The unredacted copies of the statements for the two accounts were provided on behalf of Mr Toney on 12 October 2022. On 26 October 2022 it was confirmed on behalf of the player that there was a third bank account. An extension was agreed with the FA for the provision of those statements.

15. On 16 November 2022 The FA issued the first charge letter. Then on 20 December 2022 The FA issued a second charge letter. The FA also requested observations from Mr Toney in respect of a second mobile phone and disclosure of the third bank account referred to above.

16. The player was granted extensions of time for the service of his reply to the charge letters. The reply documentation was received by The FA on 17 February 2023 to which The FA responded on 17 March 2023 together with new evidence it proposed to rely on. Mr Toney served his response on 21 April 2023.

17. The sanction hearing was set for 16 May 2023. The FA served its opening note for the hearing and written submissions on sanction on 5 May 2023 and Mr Toney served his written submissions on 11 May 2023.

The Issues at the Sanction Hearing

18. Notwithstanding that Mr Toney pleaded guilty to the 232 breaches for which he falls to be sanctioned, there were a number of factual matters that remained in dispute. Those matters were clearly relevant to sanction as was acknowledged by both parties and required determination following consideration of all of the evidence including the testimony of Mr Toney.

19. The main issues for determination on the balance of probabilities (the burden being borne by The FA in respect of each factual determination save for the final point in respect of mental health issues where the burden rests with the player) were as follows:

    (1) Whether the player knew at the time the breaches were committed that his conduct amounted to a breach of The FA Rules on betting;
    (2) Whether the player knowingly gave false and misleading responses when he was interviewed by The FA by denying that he had ever bet on football or that he used the betting accounts of other people to place bets on football;
    (3) Whether the player bet through third parties as a means of concealing his football betting from The FA or only to conceal that football betting from his own parents;
    (4) Whether the player sought to conceal his identity when he set up his own betting account in 2017;
    (5) Whether the player deleted relevant messages from his mobile phone prior to providing it to The FA at interview to conceal messages about placing football bets through a third party;
    (6) Whether the player had another mobile phone other than the one provided to The FA;
    (7) Whether the player has a gambling addiction as opined by Dr Philip Hopley.

Issue (1) Whether the player knew at the time the breaches were committed that his conduct amounted to a breach of The FA Betting Rules

20. It was contended on behalf of Mr Toney that The FA suggestion namely that the player used third parties to conceal betting on football because he knew it was against the rules should be rejected partly because the player did not properly appreciate the rules until after he registered with Brentford. This contention was reflected in the first witness statement of the player at paragraph 27: "*I do remember watching this video and at that point [at Brentford] I began to appreciate that there was an issue with the bets I had previously been placing on football matches*."

21. The Commission is firmly of the view that Mr Toney was aware since at least his time playing for Peterborough that it was a breach of The FA Rules for him to bet on football. In his first interview he was asked:

> *TA: Okay. And then the last thing that we'll touch on, just in the general sense before we go into any of the specifics, is just around your knowledge of The FA's betting rules, and inside information rules. Can you just tell The FA what you understand about the FA's betting rules please, Ivan.*
>
> *IT: Can't bet on football.*
>
> *TA: Yes, alright. And is that something that you've known, sorry, can you remember when it was you first became aware of that?*
>
> *IT: Yes, you guys used to come at Peterborough when I was there to say you can't bet on football.*

In response to further questions, the player said the following:

> *TA: Okay. But definitely then, since you've been playing at Peterborough, you joined them in August 2018 you can remember, probably someone from The FA coming in to make you aware that there are betting rules in place and you weren't allowed to bet on football.*
>
> *IT: Yes.*

TA: Okay, can you recall continuing to receive education on those betting rules prior to the start of every season when you were at Peterborough and then at Brentford?

IT: Yes, yes, I'm sure that they come.

22. In cross-examination during the hearing Mr Toney was asked whether at Peterborough he had received education from The FA that told him that because he was a footballer he could not bet on football. The player's answer was:

"*It wasn't from The FA it was from [Person A], I'm not too sure if he's from The FA. But he was -- he did come in and, like I said, he mentioned his experience on gambling and after that he did say yes, you can't, you can't bet on football but I'm not too sure on where he was from."* (T120/4)

It is clear from the account given in cross-examination as well as interview that Mr Toney was aware there was a complete prohibition on him betting on football since at least when he was registered at Peterborough in the 2018/19 season.

23. Further, Mr Toney's cousin is Person B who himself was charged with a breach of The FA betting rules in 2017. In interview and in cross-examination Mr Toney said he was aware of the charges against Person B and that they related to betting on football (T117/13).

24. The Commission is accordingly satisfied that the player was aware from 2017 by knowing of the experiences of his own cousin that The FA Rules prohibited a player from placing bets on football. He would also have been reminded of that in 2018 by the education he received at Peterborough.

Issue (2) Whether the player knowingly gave false and misleading responses when he was interviewed by The FA by denying that he had ever bet on football or that he used the betting accounts of other people to place bets on football

25. During the course of the first interview Mr Toney was asked about specific football bets that had been placed using the accounts of other individuals following an exchange of messages and the transfer of payments by the player to those individuals. He

maintained on a number of occasions "*I don't bet on football*." That position was maintained in the second interview also. Those answers were clearly false as Mr Toney accepted in cross-examination:

"Mr O'Neill*: Do you accept that you repeatedly lied during your interview on 10 October and you told The FA time after time you did not bet on football?*

Mr Toney*: Yes*"

26. On a number of occasions in interview Mr Toney denied using the accounts of other people in order to place any bets. He did not say he was unsure given for example the lapse of time. He was firm in his denials. In cross-examination Mr Toney was shown a text message asking Person C "*what was that app I gambled on your phone this time?*". Later in that conversation Mr Toney said "*Can't have one of them in my name*." Given the evidence, of which this is only one example, together with the admissions to the charges it is not surprising when challenged in cross-examination that Mr Toney's explanation for his account in interview was less than persuasive:

"Mr Toney*: I believe at the time I couldn't think of none but then when they come to – come to a realisation that there clearly was.*

Mr O'Neill*: You did use other people's betting accounts, didn't you?*

Mr Toney*: That's correct*"

27. Given the clearly false answers that were knowingly given by Mr Toney during The FA interviews, the remainder of his evidence must be approached with some caution. However just because Mr Toney gave knowingly false information during interview on certain issues does not mean there is any presumption that he should be disbelieved in respect of other matters. The relevant evidence of each matter in issue must be considered separately.

Issue (3) Whether the player bet through third parties as a means of concealing his football betting from The FA or only to conceal that football betting from his own parents

28. This is an important feature of the present case. The FA contend the present case is more serious than all of the other cases referred to during the hearing as a result of the number of aggravated bets but also because the player used other people including other Participants in a sophisticated system to place bets on his behalf over a long period of time. At times he used a third party as a buffer between him and the person who placed the bet. It is said by The FA that this was deliberately to conceal his football betting from The FA.

29. The player contends that there was no intention to conceal his football betting from The FA but rather his actions were to reduce the amount of betting that was visible on his own bank statements that were delivered to his house and which could possibly have been opened by his parents thereby causing them concern.

30. The Commission does not accept the player's explanation for using third parties and their accounts in order to place football bets. The Commission finds that the reason for using third parties and their betting accounts was to conceal football betting from The FA in case there was ever an investigation. The reasons for that finding are as follows:

    30.1 Mr Toney was a prolific gambler generally and in respect of football in particular, however he knew at all material times that his actions were a breach of The FA Rules.

    30.2 In order to reduce the possibility of his football betting being discovered he decided to transfer money to other people and to use their accounts to place such bets. The conversation with Person C above is clear evidence of that, when Mr Toney said he could not have the app in his own name.

    30.3 The explanation suggested by Mr Toney that he simply wanted to reduce gambling appearing on his bank statements or correspondence coming to his

house is not persuasive at all. His bank statements that were delivered to his parents' house showed significant non-football betting, there was no evidence that his parents ever opened his bank statements, and if there was a genuine concern about them seeing his football betting or betting generally he could have requested his bank statements or other correspondence to be made available on-line only.

Issue (4) Whether the player sought to conceal his identity when he set up his own betting account in 2017

31. Mr Toney opened a betting account with William Hill on 27 February 2017 and closed it the same day. He submitted four bets using that account. The FA contend that he tried to conceal his identity by using a false date of birth and mobile telephone number.

32. The Commission does not accept that submission by The FA. The account was opened by the player in his own name, with his own bank details and giving the correct post code. That does not suggest an intention to conceal identity. Certainly The FA has not established to the requisite standard that Mr Toney sought to conceal his identity in this regard.

Issue (5) Whether the player deleted relevant messages from his mobile phone prior to providing it to The FA at interview to conceal messages about placing football bets through a third party

33. It was contended on behalf of The FA that Mr Toney was aware prior to his interview that one of the areas that would be considered would be a generic statement from a well-known betting company setting out how the "ThreatMetrix" system operated. Mr Toney was therefore on notice that bets placed with that betting company were under investigation. On that basis Mr Toney knew that text message conversations with Person D would be particularly relevant because the latter placed bets for Mr Toney with that betting company. However when Mr Toney's phone was handed over to The FA at interview, while there were messages between the two men between 24 June 2018 and

6 October 2019, there were no one-to-one messages after this date. It is contended by The FA that messages were deleted prior to interview contrary to The FA instruction not to do so.

34. The Commission does not accept that the allegation of deletion of messages prior to the interview is established by The FA to the requisite standard. If Mr Toney wished to erase references to football betting from his mobile phone to conceal matters prior to interview, he would most likely have deleted all of the messages that related to football betting. In actual fact the mobile phone contained a substantial amount of conversations including group conversations about football betting between Mr Toney and other Participants that have formed the bases for other investigations and charges. Further, no evidence was adduced by The FA as to the date of deletion of the supposed messages regarding football betting. Leading counsel for The FA accepted that his suggestion that it is not possible to identify a date of deletion was merely submission and not evidence.

Issue (6) Whether the player had another mobile phone other than the one provided to The FA

35. The FA submitted that there was a further area of concealment namely that Mr Toney had another mobile phone, one which had not been handed over to The FA for imaging. The player denied having another phone although he admitted using Person E's phone to place bets at times. During the course of the hearing it became apparent that it was being suggested by The FA that there was a third phone, other than Mr Toney's phone that he delivered up and Person E's phone. This was based upon a text conversation in 2019 with Person C in which he asked if Mr Toney's other phone was still active and was told "*On now and then*." In cross-examination Mr Toney maintained this was a reference to Person E's phone.

36. The case advanced by The FA was vague, for example it was not clear if it was said this other phone was a phone Mr Toney had temporary or permanent access to and for what period. The conversation relied upon was in 2019 and there was no evidence Mr

Toney had access to or control over any other phone at the time the investigation commenced.

37. The Commission does not find that The FA has established its case on the balance of probabilities that Mr Toney concealed the existence of another mobile phone. There is no evidence that he failed to deliver up any mobile phone over which he had control when requested to do so at the time of interview.

Issue (7) Whether the player has a gambling addiction as opined by Dr Philip Hopley

38. The Commission had the benefit of a report from Dr Philip Hopley dated 2 February 2023 who also attended the hearing by video conference to answer questions. Dr Hopley had interviewed Mr Toney on two occasions and concluded in his report that Mr Toney has a clear history of gambling addiction. There is no need to set out the details of the report in these reasons. It was Dr Hopley's conclusion that Mr Toney needs professional help in respect of his addiction.

39. Leading counsel for The FA cross-examined Dr Hopley on the basis that he did not have the full factual picture in respect of the player's betting such as certain periods when there is no evidence that he did bet or the distinction between his football betting and non-football betting. This, it was suggested, meant Mr Toney must have significant control over his betting practices. Dr Hopley maintained his conclusion and confirmed that Mr Toney had an impulsive/compulsive disorder.

40. The FA submitted that Dr Hopley's conclusions were undermined to some extent by reliance upon the "Trace Data Science" ("TDS") report from Zunaira Arshad, Head of Psychology. Dr Hopley maintained after cross-examination his conclusion even though that TDS report was not prepared in respect of these charges, there had been no interview of Mr Toney by TDS, the author of the TDS report had not met Mr Toney, and Dr Hopley was unaware of the author's qualifications. It has since the hearing been established that the author is a qualified psychologist.

41. Dr Hopley is a highly qualified and experienced psychiatric expert who interviewed Mr Toney on two occasions and who formed a clear opinion as to his gambling addiction. His evidence is well reasoned and highly persuasive and there is no reason for the Commission not to accept that evidence. Accordingly the Commission accepted the findings of Dr Hopley on this issue.

Analysis

42. The prohibition on football betting by Participants is necessary to protect the integrity of the game and to maintain public confidence in football. The perception of the impact of football betting on the integrity of the game is a key consideration when deciding sanction. One important concern is that there is or might be some contrivance in the game being played in which case the integrity of the game generally is undermined. By way of example there is a difference in the Guidelines between betting on one's own team to win (0-6 months suspension) and betting on a particular occurrence in which the player is involved, an example of which is a bet that the player himself will score (6 months – life suspension). A bet on one's team to lose is deemed as more serious than a bet on one's team to win with a very different range suggested in the Guidelines.

43. The present case is not one of match-fixing. If it was the charges would have been pursued under different provisions. There is no evidence that Mr Toney did or was even in a position to influence his own team to lose when he placed bets against them winning – he was not in the squad or eligible to play at the time as explained in paragraph 8.4 above.

44. There is no dispute as to the correct approach to addressing sanction in this type of case. Mr O'Neill K.C. for The FA submitted that the starting point should be identified by reference to the facts of the case and in particular those matters identified in the Guidelines, there is then an appropriate discount given for a guilty plea and finally the sanction may be reduced further by reason of the personal mitigation available to the player. Mr De Marco K.C. did not disagree save to emphasise that the starting point may be outside of the range in the Guidelines depending upon the analysis of the factors

identified. Both parties are agreed that the Guidelines are based upon a player who has pleaded not guilty and therefore after a contested hearing. They therefore do not take into account any credit for a guilty plea which The FA says can be up to one third, although in this case it submits it should not be any higher than 20%, whereas on behalf of the player it is said that it should be the full one third.

45. The FA submitted that the final sanction in this case should be a minimum of 12 months suspension. That in part was based upon a contended higher starting point because of the alleged concealment by deletion of texts and concealing an additional phone, an allowance of only 20% for the guilty pleas because some were not made at the first opportunity, and the assertion that there was inadequate evidence of gambling addiction to warrant any reduction. Those submissions were not accepted by the Commission for the reasons set out above.

46. The most serious of the breaches are the 50 breaches identified above. Placing them in the context of the Guideline ranges: 16 bets for own team to win (0 to 6 months), 13 bets on own team to lose (6 months to life suspension), 15 bets for Mr Toney to score (6 months to life suspension) and 6 bets for others to score (0 to 12 months suspension).

47. Many previous cases were referred to during the course of the hearing. They were of only limited assistance because all cases turn on their own facts. On behalf of Mr Toney much reliance was placed upon the cases of *Sturridge* and *Trippier* where periods of suspension were imposed for breach of the prohibition on the provision of inside information. However the breaches in those cases were for one event, namely transfer information, and covered a short period of time. The breaches in the present case spanned a long period, were bets directly in respect of the game of football as opposed to transfer information, and they were aggravated by a number of matters as noted in these reasons. The Commission did not find the publicly available report by the law firm Level entitled "*Evening the Odds, An Empirical Analysis of Outcomes in FA Betting Cases*" to take the analysis much further.

48. The FA cited *FA -v- Kashke*t, among many other cases, in which a period of suspension of 6 months was imposed but the Commission suspended 4 months of those. This was

before the introduction of the requirement that to suspend a suspension would require "*clear and compelling*" reasons. The Commission in that case referred to there being unusual circumstances. The player was young, did not know of the prohibition on football betting, and none of the aggravated bets were in respect of matches in which he appeared. It is of note that in that case the football betting was done openly and not through third parties. The present case is therefore substantially more serious. That being said, in the present case the Commission finds there is gambling addiction which provides significant mitigation.

49. The factors set out in the Guidelines to identify a starting point are not exhaustive but they assist in identifying a starting point for sanction whether within or outside of the suggested range. There is an overlap between some of the factors and some can be taken together:

49.1 *Overall perception on impact of bet(s) on fixture/game integrity; facts and circumstances surrounding pattern of betting/ personal circumstances*. This is a case where the Commission has found that some allegations of concealment have not been established on the balance of probabilities namely the deletion of messages and the failure to disclose another phone. However the Commission has found that the use of third parties and in particular other Participants to place bets is a serious aggravating factor because the purpose was to conceal football betting from The FA in circumstances where the player was fully aware that his actions were a breach of the prohibition on betting. Another aggravating factor found by the Commission is the persistent denial in interview of making any football bets or using the accounts of others to place bets. That was also part of the concealment. However the ultimate sanction is structured, there is an obvious distinction between an accused who admits openly and fully his or her liability when challenged in FA interview and accepts the subsequent charges immediately, and an accused who knowingly misleads The FA initially but then admits the subsequent charges brought by The FA.

49.2 *Number of bets*. There are 50 bets within columns 3, 4, 5 and 6 of the Guidelines. That is a high number and significantly higher than many of other cases that were cited.

49.3 *Size of bets/ Actual stake and amount possible to win*. No particular significance was placed on these factors by the parties and the Commission does not give them any weight either way.

49.4 *Previous record / experience of the Participant / Assistance to the process and acceptance of the charge*. These are matters which will be determined separately as part of the mitigation available to Mr Toney.

50. In the event that the player had not pleaded guilty to the charges, then after a hearing in which he had been found guilty of these 232 charges including the 50 most serious bets, and before taking into account mitigation, the Commission would have imposed a sanction of 15 months suspension. To the Commission that would properly reflect the seriousness of the offences admitted including betting on one's own team to lose, albeit he was not playing, and betting on particular occurrences together with the serious aggravating factor of concealing the betting over a long period of time by systematically using other people to place bets and in particular other Participants. That sets this case apart from all others cited to the Commission.

51. The player pleaded guilty to 232 charges for which he falls to be sanctioned. He maintains that he took a pragmatic view on 42 charges which he initially denied because he doubted he was responsible for them but wanted to draw a line under these proceedings as soon as possible and therefore pleaded guilty to those. In pleading guilty the player has saved substantial time and cost which should be reflected in the credit for his plea. The appropriate reduction is in the order of 25% from the starting point. The resulting sanction is therefore rounded down to 11 months to reflect the guilty pleas entered. The full credit of one third is not appropriate because the player chose to contest important issues to a hearing namely his not knowing of the prohibition in respect of football betting and maintaining that he did not intend to conceal his football

betting by using third parties and their betting accounts. Further, the change of plea in respect of the 42 charges, while entirely reasonable upon advice, means that there must be some reduction in the credit available.

52. It is common ground between the parties that at this stage the sanction should be reduced in respect of the personal mitigation that is available to Mr Toney. This includes his relative youth at the time when the breaches began, his previous good record in respect of anything other than on-field breaches, and his genuine remorse which he expressed in fulsome terms before the Commission. In addition, and of particular importance, the Commission finds that a significant reduction should be made to reflect the diagnosed gambling addiction identified by Dr Hopley. The lack of control the player has in respect of gambling is clearly a reflection of his diagnosed gambling addiction. The position appears to be that Mr Toney has ceased gambling on football although he still gambles on other sports and casino games. He is determined to address his gambling problem with therapy at the conclusion of this season. Taking all of those matters into account the Commission reduces the sanction by 3 months to a suspension of 8 months. There is no clear and compelling reason to suspend any part of that suspension.

Conclusion and Sanction

53. The period of suspension from all football and football-related activity is of 8 months from (and including) 17 May 2023 until 11.59 pm on 16 January 2024. Given the particular requirements for the player to be match-fit by the time the suspension ends, the Commission has ordered that the player be allowed to train with his team from a point four months after the commencement of the suspension period namely from 00.01 am on 17 September 2023. Otherwise, the suspension from all football and football-related activity remains effective for the duration of the 8 month period.

54. The FA invited the Commission to order that the suspension begin at the commencement of next season given the player would not be playing in any event over the summer break and therefore a suspension is meaningless to that extent.

Alternatively The FA contended a period of suspension could be added on to reflect the lack of football activity over the summer. The Commission does not accept the premise behind that submission namely that it is appropriate to tailor a period of suspension around the ability of a player to actually play football. The period of suspension therefore began immediately after the decision was notified.

55. The player is also fined £50,000 and ordered to pay the Commission's costs in a sum to be confirmed by The FA. In deciding the amount of the fine the Commission has taken into account all of the aggravating and mitigating factors set out above.

56. The player is formally warned as to his future conduct.

57. Both parties have the right to appeal pursuant to Disciplinary Regulations C Appeals – Non-Fast Track within the time limits set out in Regulation 5 thereof.

DAVID CASEMENT K.C.

Signed by the Chairperson on behalf of the Regulatory Commission

Dated 23 May 2023

Appendix 1

SANCTION GUIDELINES – BETTING CASES CHARGED UNDER FA RULE E8 (b)

	Bet placed on any aspect of any football match anywhere in the world, but not involving Participant's Club competitions.	**Bet placed on Participant's competition but not involving his Club (including spot bet).**	**Bet placed on own team to win.**	**Bet placed on own team to lose.**	**Bet placed on particular occurrence(s) not involving the player who bet (spot bet).**	**Bet placed on particular occurrence(s) involving the player who bet (spot bet).**
Financial Entry Point – Any fine to include, as a minimum, any financial gain made from the bet(s)	Warning / Fine	Fine	Fine	Fine	Fine	Fine
Sports sanction range	Suspension n/a	Suspension n/a where Participant has no connection with the Club bet on*	0-6 months to be determined by factors below	6 months - life to be determined by factors below	0 – 12 months	6 months - life
Factors to be considered in relation to any increase/decrease from entry point	Factors to be considered when determining appropriate sanctions will include the following: • Overall perception of impact of bet(s) on fixture/game integrity; • Player played or did not play; • Number of Bets; • Size of Bets; • Fact and circumstances surrounding pattern of betting; • Actual stake and amount possible to win; • Personal Circumstances; • Previous record – (any previous breach of betting Rules will be considered as a highly aggravating factor); • Experience of the participant; • Assistance to the process and acceptance of the charge.					

*A suspension equivalent to betting on own team may be appropriate where a Participant has recently been on loan at the Club bet on.

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. 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.

SANCTION GUIDELINES – INSIDE INFORMATION CHARGED UNDER FA RULE E8 (d) OR (e)

	Providing inside information where Participant could not reasonably have known it was likely to be used for betting.	**Providing inside information where Participant should reasonably have known it was likely to be used for betting.**	**Providing inside information knowing it was likely to be used for betting.**	**Using or providing inside information for the purpose of betting.**
Financial Entry Point – Any fine to include, as a minimum, any financial gain made from any bet(s)	NFA / Warning	Fine	Fine	Fine
Sport sanction range	Suspension n/a	0 – 3 months	3 months - life	6 months - life
Factors to be considered in relation to any increase/decrease from entry point	Factors to be considered when determining appropriate sanction will include the following: • Overall perception of conduct on fixture/game integrity; • Player played or did not play in fixture(s) concerned; • Number of Bets; • Size of Bets; • Fact and circumstances surrounding pattern of betting; • Actual stake and amount possible to win; • Personal Circumstances; • Previous record – (any previous breach of betting Rules will be considered as a highly aggravating factor); • Experience of the participant; • Assistance to the process and acceptance of the charge.			

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.

SANCTION GUIDELINES – FAILURE TO REPORT AN OFFENCE UNDER FA RULE E14

	Failure to Report an Offence Under E14 made to the Participant themselves.	**Failure to Report an Offence Under E14 made to a third party which a Participant becomes aware of.**
Financial Entry Point	Fine - to be not less than any financial benefit the Participant accrued in relation to the matter.	Fine - to be not less than any financial benefit the Participant accrued in relation to the matter.
Sports sanction range	[6 months - 5 years]	[0 months - 2 years]
Other sanction considerations	Consideration must be given as to whether a mandatory education order be made.	Consideration must be given as to whether a mandatory education order be made.
Factors to be considered in determining appropriate sanctions	Factors to be considered when determining appropriate sanctions will include, but not necessarily be limited to, the following: • The involvement of the Participant in any actual or potential corrupt activity relating to the offence; • The credibility of the approach made to the Participant; • Assessment of any threats made to personal safety of Participant or any other person should a report be made; • The Participant's personal circumstances; • Participants previous record – (any previous breach of reporting/betting/integrity Rules will be considered as a highly aggravating factor); • Age and/or experience of the Participant; • Assistance to the process and acceptance of the charge; • Overall impact on reputation and integrity of game.	Factors to be considered when determining appropriate sanctions will include, but not necessarily be limited to, the following: • The involvement of the Participant in any actual or potential corrupt activity relating to the offence; • The credibility of the approach made to the third party; • Assessment of any threats made to personal safety of Participant or any other person should a report be made; • The Participant's personal circumstances; • Participants previous record – (any previous breach of reporting/betting/integrity Rules will be considered as a highly aggravating factor); • Age and/or experience of the Participant; • Assistance to the process and acceptance of the charge; • Overall impact on reputation and integrity of game.