

IN THE MATTER OF AN INDEPENDENT REGULATORY COMMISSION  
OF THE FOOTBALL ASSOCIATION

BETWEEN:

THE FOOTBALL ASSOCIATION

The Association

- and -

NICHOLAS BUNYARD

The Participant

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WRITTEN REASONS FOR THE DECISION OF THE  
INDEPENDENT REGULATORY COMMISSION  
FOLLOWING THE HEARING ON 8<sup>TH</sup> NOVEMBER 2016

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**1. BACKGROUND**

- 1.1 The Participant, Nicholas Bunyard (“NB”), is now aged 36. He is a former professional/semi-professional footballer and commenced his managerial career as Assistant Manager of Paulton Rovers FC during the 2011/12 season. Paulton play in the South & West Division of the Southern League. NB then became Paulton’s Manager for three seasons, before being appointed Manager of Frome Town FC in September 2015. Frome Town competes in the Southern League Premier Division.
- 1.2 In the Spring of 2016, The FA became aware of NB’s betting activities. Initially, it appeared that between 1<sup>st</sup> April and 5<sup>th</sup> April 2016, he had placed seven single bets and one four-game accumulator bet on the outcome of football matches. Three of the bets involved a Southern Premier League fixture between Weymouth FC and Frome Town on 2<sup>nd</sup> April 2016. All three bets were for Frome Town to lose and in one of them NB backed his own team to lose by more than 1.5 goals. Weymouth won the match 2-0. The three successful bets generated a return of £1,600 for a stake of £800.

- 1.3 On 8<sup>th</sup> April 2016, The FA contacted Frome Town regarding NB's betting activities. That evening, he was informed by the Chairman of his Club of the investigation by The FA and that he was temporarily suspended as the Frome Town manager, pending its outcome. The same day, The FA issued an application for an Interim Suspension Order against NB.
- 1.4 On 9<sup>th</sup> April 2016, NB placed further multiple bets on Frome Town to lose its match against Stratford Town that day.
- 1.5 On 19<sup>th</sup> April 2016, an Interim Suspension Order ("ISO") was imposed on NB, suspending him from all football and football activity. By the latter date, evidence of more extensive betting activity on his part had come to light. The ISO was subsequently extended on three occasions.
- 1.6 NB was formally interviewed by The FA on 16<sup>th</sup> May 2016.

### **The Principal Charges**

- 1.7 By letter dated 24<sup>th</sup> June 2016, The Football Association ("The FA") charged NB, with misconduct in relation to 98 alleged breaches of FA Rule E8(1)(a)(i). The charges relate to NB's betting activity between 13<sup>th</sup> September 2014 and 9<sup>th</sup> April 2016. Of the 98 bets, it was alleged that:
- (i) 90 concerned the result and/or progress and/or conduct and/or any other aspect of a football match in which NB was participating; and
  - (ii) 8 were placed on the result and/or progress and/or conduct and/or any other aspect of a football match or competition.
- 1.8 In his Reply, dated 26<sup>th</sup> June 2016, NB admitted the charges and requested a personal hearing. Following formal charge, the temporary suspension against him continued pending the outcome of a substantive hearing of the Principal Charges before a Regulatory Commission.

- 1.9 Shortly before the hearing was due to take place in September 2016, further evidence came to light which indicated that NB may have breached his temporary suspension. The FA applied for the hearing to be adjourned to enable it to conduct further investigations. The application was granted.
- 1.10 The number of breaches was subsequently reduced by The FA from 98 to 97, of which 73 related to bets that NB had placed on the outcome of matches involving Frome Town or Paulton Rovers. Of those 73 bets, 45 were backed for the team that he was managing at the time to lose. He staked a total of £5,450.24 on the 73 bets, generating winnings of £4,038.77 and a net profit of £1,924.29 after lost stake money and losing bets are taken into account. NB's total investment for the 97 bets was £6,888.24, producing a net profit of £2,612.74.

### **The Further Charge**

- 1.11 The further evidence which caused the hearing in September to be adjourned consisted primarily of text messages that had been sent from/received to NB's mobile phone on 3<sup>rd</sup> and 4<sup>th</sup> August 2016. The subject-matter of the messages was an approach to one of Paulton Rovers' players ("EB"). There was also evidence to suggest that NB had attended a Frome Town match as a spectator and that he had been communicating by mobile phone with a Frome Town official about "*the playing situation*".
- 1.12 On 12<sup>th</sup> September 2016, The FA conducted an interview of NB relating to the matters referred to in the preceding paragraph. The following day, The FA interviewed Mr. Josh Jeffries ("JJ"), NB's close friend, and the acting Manager of Frome Town in NB's absence through suspension.
- 1.13 By letter dated 23<sup>rd</sup> September 2016, The FA charged NB under Rule E1(f) for an alleged breach of the ISO against him. The main allegation is that he engaged in football activity by exchanging text messages with the player of another team (EB) with a view to the latter moving to Frome Town.

1.14 In his Reply, dated 26<sup>th</sup> September 2016, NB denied the Further Charge and requested a personal hearing.

## **2. THE REGULATORY FRAMEWORK**

### **The Rules**

2.1 Section E of the Rules of the FA deals with Conduct (see p.112 of the Handbook for the 2016/17 season). Rule E8(2) imposes the following prohibitions on betting activity:

- (a) *A Participant shall not bet, either directly or indirectly, or instruct, permit, cause or enable any person to bet on –*
  - (i) *the result, progress of conduct of a match or competition:*
    - (A) *in which the Participant is participating, or has participated in that season;*  
*or*
    - (B) *in which the Participant has any influence, either direct or indirect; or*
  - (ii) *any other matter concerning or related to any Club participating in any league Competition, as defined in Rule A2, that the Participant is participating in or has participated in during that season, including, for example and without limitation, the transfer of players, employment of managers, team selection or disciplinary matters.*

*For these purposes, without limitation to the application of this Rule to other circumstances, all Employees of a Club are deemed to participate in every match played by that Club while they are so employed; ..."*

2.2 Rule E1(f) provides as follows:

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

*...*

*(f) an order, requirement, direction or instruction of The Association."*

### **The sanction guidelines in betting cases**

2.3 The Football Regulatory Authority of The FA issues guidelines each season to assist FA Regulatory Commissions in determining the appropriate sanctions to be applied in betting cases charged under FA Rule E8(b) (“the Guidelines”). They include, but are not limited to, the following guidance:

**(i) Bet placed on own team to win**

*Guidance:*

- (a) The financial entry point is a fine to include, as a minimum, any financial gain made from the bets;
- (b) The range of sporting sanctions is a suspension for a period of 0-6 months to be determined by the factors set out below.

**(ii) Bet placed on own team to lose**

*Guidance:*

- (a) A fine (as above);
- (b) The range of sporting sanctions is a suspension from 6 months to life, again depending on the factors set out below.

2.4 The factors to be taken into account, as set out in the Guidelines, are as follows:

- *Overall perception of impact of bet(s) on fixture/game integrity;*
- *Player played or did not play;*
- *Number of bets;*
- *Size of bets;*
- *Facts and circumstances surrounding pattern of betting;*
- *Actual stake and amount possible to win;*
- *Personal circumstances;*
- *Previous record – (any 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.*

2.5 The explanatory footnotes to the Guidelines then add this:

*“The Guidelines are not intended to override the discretion of a Regulatory Commission 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 of 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 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 placed.*

*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. 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.”*  
[emphasis added]

2.6 Accordingly, the Guidelines should be taken into account by a Regulatory Commission when considering what penalty to impose for betting offences. They do not override a Commission’s discretion, but it is envisaged that the guidance will be applied unless there is good reason to depart from it.

### **3. DECISIONS**

#### **The Further Charge**

- 3.1 As our decision in relation to the contested Further Charge was potentially relevant to the question of sanctions, it was dealt with first during the hearing on 8<sup>th</sup> November 2016.
- 3.2 The Further Charge Bundle included screenshots of the texts and transcripts of the interviews of NB and JJ. The FA relied on that documentary evidence, together with the statement of David Matthews, FA Senior Investigations Manager, dated 21<sup>st</sup> September 2016.
- 3.3 The Commission heard live oral evidence from NB and JJ who both took an affirmation to tell the truth. JJ was not present in the hearing room when NB gave his evidence. In addition to their interviews, they had each made very brief statements in relation to the Further Charge. Although certain aspects of their evidence-in-chief had not been set out in their brief witness statements, no objection was taken to the further evidence that was given. It included the history of their friendship, their desk and facilities-sharing arrangements at one of JJ's offices from which he operates his lettings business, and the arrangements for their shared use of NB's iPhone for football-related matters.
- 3.4 For economies of scale, it is not proposed to set out in detail the oral evidence given by NB and JJ to the Commission. A key assertion made by NB, and which JJ supported, was that NB had been abroad in Marrakech on 3<sup>rd</sup>/4<sup>th</sup> August 2016, and had left his iPhone with JJ while he was away. He said that he had two mobile phones, namely the iPhone in question and a Blackberry, neither of which had security codes. He used his iPhone for football business. His children also used it. He used the Blackberry for his own business. The iPhone had an extensive address book which included the details and contact numbers of numerous players.

3.5 NB referred to a recent holiday in Morocco during his interview on 12<sup>th</sup> September, but had not specified dates. He also said that he had been on a trip to Uganda, although this was shown to have pre-dated the text messages. The evidence given to the Commission was that JJ had used the iPhone on 3<sup>rd</sup> and 4<sup>th</sup> August to try and source a goalkeeper before the start of the season. He took the phone home with him on the evening of 3<sup>rd</sup> August, hence the exchange of messages that took place either side of midnight on the two dates.

3.6 NB and JJ were cross-examined at length on their evidence. The material aspects of it are set out in the summary of Mr. Elagab's submissions which follows. Suffice to say that he put to NB and JJ that their accounts were untrue and had been contrived to meet the case against NB.

3.7 The Commission asked questions of NB and JJ.

3.8 The FA's case relied principally on the fact that the iPhone from which the messages were sent/received was owned by NB and that the name "*NICK BUNYARD*" appeared at the top of the screen when the messages were received by EB. Additionally, Mr. Elagab pointed to several facts and matters which, he submitted, undermined the evidence given by NB and JJ as to who had sent the texts in question:

(i) If the text messages had been sent by JJ from NB's iPhone, one would have expected JJ to have signed them off. Otherwise, the clear impression that the recipient of the texts would have been left with is that he was communicating with NB.

(ii) There was a vagueness to the evidence of NB and JJ, and inconsistencies:



- (a) JJ said that did not have any knowledge of the mobile phone tariff for his mobile phones. This, it was submitted, was improbable;
  - (b) JJ stated in his oral evidence that since April 2016, if not before, he received a £10 per month contribution from Frome Town towards his mobile phone bill. NB had been given the same allowance, albeit that he had declined to take it. One of the reasons that had been given by NB for JJ's use of his (NB's) iPhone was that JJ already had an "astronomical" bill for the two mobile phones that he owned. If JJ was entitled to claim the same allowance as NB, this aspect of his case did not stand up to scrutiny;
  - (c) The evidence given by NB and JJ about the practical arrangements for their shared use of NB's iPhone was unconvincing. In particular, the procedure for taking calls/messages and whether the phone would be handed to JJ if NB realised that they related to football activity. Additionally, the claim that the iPhone in question had no security protection was surprising. It was also an easy claim to make, but difficult to verify. To that end, NB had not provided any evidence from his mobile phone provider, or any evidence to confirm that he had been in Morocco on 3<sup>rd</sup> and 4<sup>th</sup> August 2016; and
  - (d) There was an inconsistency between NB and JJ about whether the latter used the former's iPhone for texts only, or for texts and calls.
- (iii) The Commission's attention was also drawn to aspects of NB's evidence relating to the Principal Charges, which he said undermined the credibility of his defence to the Further Charge. They included the impression that he initially gave The FA of his limited betting activity on Frome Town to lose, when it was more substantial (see the e-mail of 12<sup>th</sup> April 2016; p.39 of the Principal Charges Bundle). Mr. Elagab said that NB had given conflicting accounts about his knowledge of the prohibition on football betting during the period referred to in the charge letter.

3.9 Mr. Weston's submissions on behalf of NB may be summarised as follows:

- (i) In order to find the charge proved, the Commission would have to conclude that both NB and JJ had lied "*through their teeth*" and had conspired together to give false evidence. There was nothing external to the evidence they had given to challenge what they had said about their use of NB's iPhone and which explained why and how the text messages had been sent by JJ, not NB.
- (ii) The first time NB was made aware of the nature of the alleged breach of his ISO was when he attended the interview on 12<sup>th</sup> September. It was not open to The FA to now accuse NB of being imprecise and vague. NB had co-operated fully with The FA. Any initial under-estimate of the number of bets that he had placed on his team to lose was not wilful. He had provided details of all his betting accounts to assist The FA in its investigations.
- (iii) The Commission should not take an overly formal view of the arrangements for the use of NB's iPhone. JJ had taken on the role of interim Manager from his friend, the pair shared an office, and the phone in question had a large number of football contacts on it. With the benefit of hindsight, it would have been better if JJ had signed off messages that he sent on NB's phone, but that would be demanding a level of formality which the situation at the time did not deserve. It was not surprising that JJ did not know what tariffs his two mobile phones were on, or that he did not claim the £10 monthly allowance from his Club.
- (vi) It would have been "*interesting*" to hear from EB, but no evidence had been obtained from him by The FA. It was for The FA to prove its case, not for NB to disprove it.

### Decision

3.10 The starting point for our deliberations was that NB's admitted ownership of the iPhone in question, and the absence of anything in the messages themselves to indicate that they were sent by any other person. This enabled us to reasonably infer, without more, that NB was the author of them. The next question, therefore, was whether there was any evidence or other matters capable of either supporting that presumption, alternatively to rebut it?

### The majority view

3.11 The view held by two of the members of the Commission was that whilst the points made by Mr. Elagab cumulatively had some force, the contrary evidence had a counter-balancing effect. The explanation given by NB as to who sent the texts, and which JJ corroborated, lay at the heart of the charge and was pivotal to the outcome. In view of the positive assertions made by them, there was no room for mistaken recollections; if we were to find that NB did send the texts, it would follow that not only he, but also JJ, had lied to us. The inconsistencies between their accounts were not sufficiently troubling to cause us to reject their evidence as untruthful. We were cognisant of the fact that JJ was clearly not an independent witness. The very close nature of their friendship raises the possibility that he might consciously, or subconsciously, assist NB. That possibility was, however, militated against somewhat by the fact that JJ himself observed during his interview that his support of NB as to who had been the author of the texts might get him (JJ) into trouble with The FA (for making an illegal approach to a player). Overall, the prevailing view was that their accounts were not shaken materially by the detailed cross-examination of them.

3.12 Evidence from EB may, or may not, have assisted. It depends on what EB's understanding was of whom he was communicating with, when the texts were sent/received by him, and whether there were any other dealings that identified the other person to him as someone other than NB. Mobile phone records may also have assisted, as would evidence of NB's holiday to Morocco.

3.13 Ultimately, though, it was for The FA to prove the charge, as Mr. Elagab acknowledged in his closing submissions. That case relied heavily on the initial rebuttable presumption, and the points set out above which tend to cast doubt on NB's explanation. The majority view of the Members of the Regulatory Commission is that when weighed in the scales, those matters were insufficient to enable us to conclude, on the balance of probabilities, that the contrary evidence of not only NB, but also JJ, was untruthful and choreographed.

3.14 The Further Charge is therefore dismissed.

*The minority view*

3.15 The view held by the other Member of the Regulatory Commission is that NB's explanation, as supported by JJ, was improbable and should be rejected. The initial presumption, coupled with the points advanced by The FA, outweigh the evidence of NB and JJ that the latter sent the fateful texts. Further, although it was for The FA to prove the charge against him, it was open to NB to have produced evidence to confirm that he was abroad on the dates in question, together with mobile phone records which may have shown whether the texts in question were sent from within the UK or from abroad. Instead, when he gave oral evidence, it was the first time that he positively asserted that his holiday in Morocco coincided with the dates upon which the texts were sent. Even if he was taken by surprise when he was interviewed, he had the opportunity to serve a detailed witness statement setting out his case. For whatever reason(s), he failed to do so.

3.16 The minority view, therefore, is that The FA had discharged the burden on it, and would have found the Further Charge proved.

### **Football Activity**

- 3.17 In addition to the factual dispute which the Further Charge gave rise to, Mr. Weston advanced a legal point which he relied upon in the event that NB's factual case was rejected. We deal with it here for the sake of completeness and in the event of an appeal. The argument was that the meaning of 'football activity' was not defined by either the terms of the ISO or The FA's Disciplinary Rules and Regulations. One must first establish what 'football activity' means. If it is not properly defined then the *contra proferentem* rule applies (*i.e.* a term of a contract or document which, if unclear in its meaning, should be interpreted and applied against the draftsman seeking to rely upon it). An 'activity' is something that only those who are regulated by The FA can perform (*e.g.* negotiating or entering into a contract, making managerial decisions, *etc.*).
- 3.18 Mr. Weston argued that there was nothing in the exchange of texts in this that could not have been asked by a football supporter. They were in the nature of mere inquiries, or what he characterised as "*normal chit-chat*". In the absence of a clear definition, they could not be said to have amounted to the type of more formal 'football activity' referred to above, or which could be the subject of a prohibition/sanction for breach of FA Rules and Regulations.
- 3.19 The Commission would have unanimously rejected those arguments had we not dismissed the Further Charge on factual grounds.
- 3.20 Firstly, what does or does not amount to 'football activity' is not capable of being set out in any kind of exhaustive list. That is no doubt why it is not defined in the FA's Rules and Regulations. We accept Mr. Elagab's submission that 'football activity' should be given its natural and ordinary meaning and judged on a case-by-case basis.

3.21 Secondly, in our judgment the text messages in question clearly do amount to football activity; their theme is the active pursuit of a player by the manager of another club who has authority to do so:

*“We need a keeper for Saturday? What’s your situation at Paulton?”* (3<sup>rd</sup> August at 11.46am)

Initial inquiries of that type are an essential first step in the transfer process; they are the precursor to negotiations and a contract. Each step in that process is a football activity, in our judgment. It is immaterial that such initial inquiries, if they go no further, do not give rise to any contractual obligations. There is a material difference between a manager making preliminary inquiries of a player about his availability, and a fan of the club who speculates over a drink with his friends that the player would be a good signing to make.

3.22 We further note that Rule E8(2)(a)(ii) set out above, expressly prohibits a Participant from engaging in betting activity in relation to *“the transfer of players”*, amongst other things. If a manager makes inquiries of a player who indicates that he is, or may be, interested in a transfer, the manager would be in *prima facie* breach of this Regulation by then placing a bet on such a transfer taking place. That betting activity would be facilitated by the initial football activity which discloses to the manager significant knowledge and information (and which others may not be privy to).

### **The Principal Charges**

3.23 In addition to the Sanction Guidelines set out above, the Regulatory Commission was referred to the previous betting cases of *Heys* and *Pilkington*.

(i) Heys

(a) The participant (H) admitted 735 breaches of FA betting rules over an 8½ year period between February 2004 and October 2012.

- (b) H was employed by Accrington Stanley FC from 2002, initially as an Administrator. In 2006 he was appointed as Chief Executive of the club and in 2012 was made its Managing Director.
- (c) Of the 735 football bets that he placed over a period of in excess of eight years, 231 were made on matches involving Accrington Stanley, of which 33 bets were placed on the club to lose and 141 to win.
- (d) The Regulatory Commission in H had in mind a suspension for a period of two years, but gave the participant credit for his co-operation with The FA's investigation, his good disciplinary record, and his admittance of the charge (albeit that he may have had little alternative having regard to the weight of the evidence against him). It reduced the sanction to a suspension from all football and football-related activity for 21 months - a reduction of 12.5% - together with a fine of £1,000. An Appeal Board declined to interfere with those sanctions.

(ii) Pilkington

- (a) The participant (P) was charged with 831 breaches of FA Rule E8(1)(a)(i) and one breach of Rule E8(1)(b). P's betting activity took place over a period of approximately 9½ months between 9<sup>th</sup> August 2014 and 24<sup>th</sup> May 2015 while he was a player with Ashton United.
- (b) P held accounts with seven betting operators. Of the 831 bets, 48 featured Ashton United, 16 of which involved bets on Ashton to lose. P played in six of the 16 matches where he had backed his own team to lose. An aggravating feature was the passing of inside information to a relative which enabled winning bets to be placed (an initial stake of £200 generated winnings of £875).

- (c) Save for the detail referred to in the preceding paragraph, the written reasons of the Regulatory Commission do not disclose P's overall investment/profit betting on the outcome of football matches, or the bets that he placed on his own team to lose.
- (d) P was suspended from all football and football-related activity for a period of four years, with the final twelve months suspended for a period of two seasons following any recommencement as a participant. He was fined £75 and warned as to his future conduct. The very modest fine was no doubt informed by P's financial circumstances (see para.13 of the written reasons).

3.24 In the present case, we approached each of the factors set out in the Guidelines in the following way:

(i) Overall perception of the impact of bet(s) on fixture/game integrity

- (a) As has been noted, this factor is accorded particular importance in the explanatory notes to the Guidelines. The 45 bets that were placed by NB on the team that he was managing at the time to lose represent an extremely serious aggravating feature. Such bets give rise to a clear and significant conflict of interests on the part of NB. It is not The FA's case that NB was involved in 'fixing' or influencing the outcome of any of the matches in which he placed bets on his own team to lose (or to win). NB said that he always tried "110%" to win the matches and would rather that happen and him to lose the bet. He cited one particular match where his team performed beyond his expectations and he lost money betting on a loss. Nevertheless, in the eyes of an objective bystander, such betting activity by the manager of a team creates a very serious adverse perception regarding the genuineness of the outcome of the matches in question, and undermines the integrity of the game.



(b) NB's betting activity surrounding the Southern Premier League match between Weymouth FC and Frome Town on 2<sup>nd</sup> April 2016 gives rise to the most serious concerns in terms of the perception created by it. At the time, Frome Town had serious problems fielding a goalkeeper (as many as four goalkeepers registered with the Club at the time were unavailable). A dispensation to sign a goalkeeper is said to have been refused by the League and an outfield player had to play in goal. NB placed a total of 19 separate bets with four different Betting Operators. They included a specific bet on Frome Town to lose by more than 1.5 goals. Weymouth won the match 2-0 and scored their second goal in the 89<sup>th</sup> minute. The bets that NB placed on this game alone generated a profit of £1,436.02, for a total stake of £2,201.00.

(ii) Player played or did not play

(a) Although strictly this factor is not engaged, NB's position as Manager placed him in a position of influence and is an important factor that we should take into account. It is debatable whether a Manager, who picks an entire team, decides who will and who will not play, gives tactical instructions, and makes decisions over substitutions and their timing, is more or less influential over the outcome of a game than an individual player on the pitch. There can be no dispute that a Manager of a team plays an extremely important role, and is capable of influencing the outcome of matches.

(iii) Number of bets

(a) The total number of impermissible football bets placed by NB (97) was significantly lower than in the cases of H (735) and P (831). Of more consequence in terms of the appropriate sanction is the fact that NB placed a total of 45 bets on his team to lose, higher than in both H (33) and P (16). P played in six of those 16 matches. On a like-for-like comparison, NB was managing the team that he backed to lose in seven matches of the 18 matches on which he placed bets on his own team, up to and including the Weymouth match on 2<sup>nd</sup> April 2016.

(b) NB placed further bets on Frome Town to lose to Stratford Town the following weekend, although by the time he placed those bets he had been suspended by his Club and replaced by an interim manager.

(iv) Size of bets

(a) The size of the bets/stakes varied, but a noticeable increase in both the number of bets and the amount staked by NB is noticeable from February 2016 onwards. He staked a total of £2,201.00 on Frome Town to lose the match against Weymouth. They included large single bets of £500.00 and £400.00, together with two single bets of £250.00, one of £150.00 and multiple smaller bets. He invested a total of £6,888.24 across 97 bets, at an average stake of £71.00. That is not an insignificant figure.

(b) In the written reasons of the Regulatory Commission in P, the size of bets is described as "*small but regular*". The written reasons of the Appeal Board in H do not specify the size of the bets.

(v) Facts and circumstances surrounding the pattern of betting

(a) NB initially claimed that he was unaware of the prohibition in betting, although he admitted during the hearing that during the period in question he was aware of the restrictions "*by osmosis*" rather than any formal direction or instruction. His case is that all the bets he has placed on his team to lose have "*... not been done as a calculated way to profit, but based on unavoidable facts about injured, suspended or unavailable players.*" He further claims that any bet that he placed was meant to "*soften the blow*" of defeat that is "*hard to control due to player availability or circumstances.*" He says that when he placed certain larger bets he did so to try and boost his player's end-of-year kitty, and not for any personal gain.

- (b) Whatever his motivation may have been, NB's own case discloses a serious case of insider dealing which gave him a material advantage in the betting market. That advantage was not limited to the superior knowledge that he held over five Betting Operators with whom he held accounts and placed bets; it also extended to match betting against other gamblers (see further below). This represents a serious aggravating feature of NB's betting activity.
- (c) An additional serious aggravating feature of the case is that despite being told by his Club Chairman during the evening of Friday 8<sup>th</sup> April 2016 that The FA were investigating his betting activities, and that he was temporarily suspended from his duties as manager of Frome Town until the conclusion of those investigations, the following day, 9<sup>th</sup> April 2016, NB placed nine bets on Frome Town to lose its match that afternoon against Stratford Town. He says that he only did so because he was drunk at the time and has apologised.

(vi) Actual stake and amount possible to win

The total investment made by NB has already been referred to. An analysis of how much he would have won if all of the bets had been successful has not been performed.

(vii) Personal circumstances

NB provided the Regulatory Commission with a personal statement which sets out the extremely difficult personal circumstances which have befallen him and his family in recent years. We do not propose to repeat them here. There is a medical report and letters in support. Suffice to say that they represent a substantial mitigating factor which we have given credit for. They are not, though, capable of reducing the length of the sporting sanction to just the full 2016/17 playing season, in addition to the temporary suspension that was imposed on 19<sup>th</sup> April 2016 and which prevented NB from having any involvement in the last five matches of the 2015/16 season.

(viii) Previous record

NB has no relevant antecedents relating to betting. A touchline ban is not relevant to the instant case (and was not raised by The FA).

(ix) Experience of the Participant

(a) NB has been a player and, since 2011, involved in management. We are satisfied that during the period of his betting activity relating to the Principal Charges he was aware of The FA's prohibition on betting. He frankly conceded that such activity was rife within the game, but thought that The FA was not interested in what went on at lower league level, and that it "*went under the radar*". In other words, he knew that what he was doing was wrong, but did not think he would be caught.

(x) Assistance to the process and acceptance of the charge

(a) NB has co-operated with The FA. Since the Further Charge was raised, he has complained of a "*witch-hunt*" against him, but that complaint appears to be directed towards others. It does not detract from the co-operation he has given. As has been said, he admitted the Principal Charges, without qualification. Subject to the legal argument which was not raised until shortly before the substantive hearing, it is difficult to see how NB could have maintained a denial of the Principal Charges. We have reflected this in the credit which we give him for his timely admissions and the assistance given. He denied the Further Charge and we have dismissed it.

**Sanctions**

3.25 Although direct comparisons are difficult, there are certain aggravating features of this case which render it more serious than P. They are set out above and are not repeated here. The following points are relevant to the question of the perception of betting activity and the integrity of the game:

(i) As a player, P had direct involvement in matches, although his potential influence was as one of 22 players;

- (ii) A manager is capable of indirectly influencing outcomes, but his/her sphere of influence is potentially greater than that of a player; and
- (iii) H was in much more of an administrative role than P or NB with little, if any, ability to influence the outcome of matches. Apart from an awareness of general form, and publicly disseminated information, any specific knowledge on his part that might be to his advantage in betting (*e.g.* that his Club would play a weakened team in its next match) would have to be acquired.

3.26 Mr. Weston argued that from either a legal standpoint, alternatively for the purposes of determining sanctions, the Commission should look at the number of outcomes on which NB placed bets, and not the number of bets themselves.

3.27 We reject the legal argument for the first and foremost reason that in his Reply NB admitted all of the original 98 charges (and by implication the reduced number of 97) without qualification. It is not now open for him to say that the number of charges should be reduced to 31, based on the number of outcomes/matches on which he betted, or some other figure lower than 97.

3.28 Secondly, each bet that was placed by NB represents a separate and discrete breach of Rule E8(1)(a)(i). A participant who places 10 bets on the same match at £10 per stake, when he could have placed a single bet of £100, commits 10 breaches. Likewise, for the purposes of mitigation and sanction, each individual bet that NB placed on the same outcome/match, based on inside information known to him, constituted a separate transaction with an unwitting Betting Operator or gambler. If anything, this represents an aggravating rather than a mitigating feature, compared with a single larger bet. The Commission further noted that NB spread his bets across different markets and platforms. For example, he placed 19 bets across four different markets, with four separate Betting Operators, on the Weymouth v Frome Town match on 2<sup>nd</sup> April 2016.

### Sporting sanction

3.29 The Commission concluded that nothing other than a substantial sporting sanction is warranted in this case. Taking into account all of the relevant factors, our starting point was that NB should be suspended from all football and football-related activity for a period of not less than four complete football seasons, together with a ground ban for the period of the suspension prohibiting him from attending on match days at any ground at which Frome Town are playing.

3.30 We then gave NB credit for mitigating factors. These are not capable of precise arithmetical calculation, but cumulatively we judged them to be worth a reduction of one-quarter from our starting point, reducing the suspension to one of three full football seasons.

3.31 We then took into account the fact that NB has been the subject of a temporary suspension order since 19<sup>th</sup> April 2016, the effect of which has been to prevent him from involvement in a handful of largely inconsequential games at the end of the 2015/16 season, and approximately one third of the current season. Taking those factors into consideration, we order that the three-year suspension from all football and football related activity, together with the ground ban referred to above, shall apply to the 2016/17, 2017/18 and 2018/19 football seasons. We do not propose to incorporate any suspended element into the suspension and further order that NB shall be eligible to return to football and football activity with effect from 1<sup>st</sup> July 2019.

### Financial Penalty

3.32 Additionally, there will be a financial penalty of £3,000. Our reference point for the assessment of the fine is the overall net profit which NB derived from his football betting activities.

### Costs of the Regulatory Commission

3.33 We order NB to make a contribution of £1,500 towards the costs of the Regulatory Commission under Rule 8.8(b) of the FA's Disciplinary Procedures. Those costs include the costs associated with the hearing on 19<sup>th</sup> April 2016, the subsequent extensions of the ISO, and the hearing of the Principal Charges on 8<sup>th</sup> November 2016. They significantly exceed the contribution that we order NB to pay. NB requested a personal hearing of both the Principal and Further Charges. A large proportion, if not all, of the costs associated with the lengthy hearing on 8<sup>th</sup> November 2016 would have been incurred in any event even if the Further Charge had not been brought and the hearing been shorter.

3.34 Mr. Weston submitted that NB should not be liable for any of the costs of the Commission and said that unnecessary costs had been incurred by him due to the very late adjournment of the hearing of the Principal Charges in September at the behest of The FA following the emergence of evidence that led to the Further Charge being brought. Rule 8.8(a) of the Disciplinary Procedures provides as follows:

*"Any costs incurred in bringing or defending a Charge will be borne by the party incurring the costs."*

If we were to accede to NB's submission, it would allow any wasted costs that he may have incurred due to the late adjournment of the hearing in September to be set off against the costs of the Commission that he ought properly to pay under Rule 8.8(b). Such a course would be in contravention of Rule 8.8(a).

### Hearing fees

3.35 The fee which NB paid when he requested a personal hearing of the Principal Charges is retained. The fee for the hearing of the Further Charge shall be returned to him.

14<sup>th</sup> November 2016

The Independent Regulatory Commission

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Alan Hardy, Independent Member of The FA's Judicial Panel

Gareth Farrelly, Independent Member of The FA's Judicial Panel

For The FA

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