

IN THE MATTER OF A FOOTBALL ASSOCIATION
INDEPENDENT REGULATORY COMMISSION

BETWEEN:

THE FOOTBALL ASSOCIATION

The Association

- and -

LEWIS SMITH

The Participant

WRITTEN REASONS OF
THE INDEPENDENT REGULATORY COMMISSION
FOLLOWING THE HEARING
ON 2ND MARCH 2016

1. BACKGROUND

- 1.1 By letter dated 14th December 2015, The Football Association (“The FA”) charged Lewis Smith (“LS”) with 28 breaches of FA Rules relating to betting activity.
- 1.2 The charges, which are summarised below, were brought following a Gambling Commission investigation which revealed that LS was repeatedly placing bets, many of which involved significant sums of money, in contravention of FA Rules, principally Rule E(8)(b)(i)(A).
- 1.3 LS was registered to play for AFC Hornchurch for the 2011/12 and 2012/13 seasons. In the 2011/12 season, AFC Hornchurch participated in the Isthmian League Premier Division, The FA Trophy, and The FA Cup. In 2012/13, they competed in the Conference South, The FA Trophy, and The FA Cup.

2. CHARGES

2.1 The charges may be briefly summarised as follows:

Charge 1

7th April 2012 - Single bet on competition in which LS's Club was participating.

Charge 2

30th October 2012 - Single bet on own team to lose a match in which he played.

Charges 3-6

29th November 2012 - 2 bets on own team to win a match in which he played.

13th March 2013 - 2 bets on own team to win a match in which he played.

Charges 7-21

1st October 2012 to 23rd April 2013 - 15 bets on competitions in which his Club was participating.

Charges 22-27

10th March 2013 to 13th March 2013 - 6 bets on his team to win a match in which he played, but which were all voided.

Charge 28

1st December 2012 - Single bet on his team to win a match in which he played, but which was voided.

2.2 It follows that over the course of the two seasons in question, LS successfully placed a total of 21 bets on identified accounts, and a further 7 attempted bets, all of which were in breach of FA Rules. As for the latter (Charges 22 to 28 inclusive), he was prevented from doing so by the betting operator for exceeding stake limits.

2.3 Further, LS's betting activities reveal the following facts and matters:

- (i) The betting activity took place for a period of just over one year, from 7th April 2012 to 23rd April 2013;
- (ii) Bets were placed using accounts with Victor Chandler, Bet 365, BetVictor and Tote;
- (iii) The individual stakes ranged from £25 up to £500 per bet;
- (iv) The highest recorded return on a single bet was £5,250;
- (v) Of the 21 bets that were successfully placed, 16 were successful and only five were unsuccessful;
- (vi) LS participated in five of the 21 matches in respect of which he placed bets. The match in which he played, and where he bet on his own team to lose, is dealt with more fully below;
- (vii) He staked a total of £4,586.50. His total returns amounted to £22,863.67, producing an overall net profit of £18,277.17.

2.4 On 13th November 2014, LS attended an interview with The FA, during which the following pertinent facts and matters emerged:

- (i) He was the only person who had access to the devices that were used to place/attempt to place the bets;
- (ii) He was the only person who possessed the log-in and password details to his betting accounts;
- (iii) He admitted placing all of the bets in question;
- (iv) He admitted that he now knew that the bets breached FA Rules and Regulations, but claimed that at the time when he placed them he was not fully aware of the Rules.
- (v) He said that he only knew that players were not allowed to bet on their own team to lose. He thought that betting on his own team to win was not against the rules as he always tried to win the games that he played in;

- (vi) LS recalled becoming aware of the rules at a team meeting which his Club Chairman that took place towards the end of the 2012/13 season. He said that this was the point when he stopped betting on games in his league. This meeting took place after The FA issued guidance notice to all clubs in the Football Conference Southern Division after concerns were raised about suspicious betting patterns relating to certain games;
- (vii) He was asked whether he had used any information based on his position in football to which he replied: *"No, well, not from what I can remember"*; and
- (viii) When he was shown information identifying bettors with whom he was associated and who had placed identical bets to him, LS said that he was open with his activity. He denied advising anyone to place the same bets, or that he had passed on any 'inside information'.

2.5 LS pleaded guilty to all 28 charges and requested a personal hearing before a Regulatory Commission.

3. DISPUTED FACTUAL ISSUE

3.1 There was a disputed factual issue between the Parties which the Commission was required to resolve before proceeding to impose sanctions. It related to a bet which LS placed on 30th October 2012 (Charge 2/bet 4). On that date, he staked £25.50 on a 'Four-Fold' accumulator based on the full-time result of four matches. They included a match between AFC Hornchurch and Chelmsford, in which LS played for Hornchurch. His bet selection was for Chelmsford to win, which they did. The FA contended that this represented a serious aggravating feature of the case. LS claimed that he had placed the bet using his mobile phone and had selected Chelmsford to win in error.

3.2 The Commission conducted a so-called 'Newton' hearing and LS gave evidence to us on oath. His case was that he knew at the time that the betting activity in question took place that it was wrong to bet on his own team to lose.

3.3 LS reiterated that at the material time he did not think there was anything wrong with betting on his own team to win. He told us that the 'home' and 'away' selection options on the Bet 365 App on his mobile phone were above one another. He claimed to have inadvertently pressed the away selection before moving on to make his next selection in the accumulator.

3.4 In our judgment, the burden of proof on this issue rested with LS. The established and agreed fact was that he had backed his own team to lose. It was therefore incumbent upon him to satisfy us that he had done so in error, and not for The FA to prove the contrary proposition. We applied the civil standard of proof to the evidential burden which LS bore on this issue.

3.5 There were two matters in particular that LS relied upon in support of his claim that he had innocently bet on his own team to lose:

- (i) Of the 28 bets which are the subject-matter of the misconduct charges against him, it was the only occasion when he had bet on his own team to lose; and
- (ii) Between 10th and 13th March 2013, he placed 11 bets on the reverse league fixture when Chelmsford entertained AFC Hornchurch (see bets 17 to 27 inclusive). Six of those bets were voided for diverse reasons, including exceeding the maximum stake permitted for the bet type, but he selected Hornchurch to win in the case of all 11 bets/attempted bets.

3.6 There were, though, contrary considerations which militated against LS's case on this issue:

- (i) We found him to be an unimpressive and unreliable witness. In particular, his recollection of the configuration of the Bet 365 mobile App was poor and unconvincing. We found his shaky recollection surprising, having regard to his extensive use of it, albeit several years ago.

- (ii) The Commission was able to view the current Bet 365 mobile website and noted that the 'home' and 'away' selections were separated by a 'draw' option, arranged horizontally across the screen. If the lay-out of the App had been the same in October 2012, it is difficult to see how a thumb or finger could have inadvertently selected 'away' instead of 'home', and yet bypassed the 'draw' option separating them. It is conceivable that LS could have selected 'away' and mistakenly overlooked the fact that it was Hornchurch who were playing at home, but that was not his case. He did not provide us with any other evidence to corroborate his recollection that in October 2012 the 'home' and 'away' selection options on the Bet 365 mobile App were arranged directly above/below one another to make good his claim that it was simply a case of an innocent slip of the thumb when he bet on his own team to lose.
- (iii) The second specific feature of this particular bet that perplexed us was the respective odds being offered for 'home' and 'away' wins respectively. At the time, Hornchurch were in the lower reaches of the Conference South league table and were ultimately relegated. Chelmsford were higher up the division, around mid-table according to LS, and finished the season in a top 5 position. The Commission was helpfully provided with details of the various odds for the match in question, namely 3/1 for a home (Hornchurch) win, 5/2 for a draw, and 8/11 for an away (Chelmsford) win. Chelmsford were therefore clear favourites to win the match, despite playing away, and that the return for placing a successful bet on them to win was much lower than if Hornchurch had been backed and had won. When LS selected Chelmsford to win it is difficult to see how he could have overlooked the disparity in the odds that were being offered.

(iv) Thirdly, at the end of the betting process on a mobile phone or any other device, LS would have had an opportunity to review the selections that he had made before confirming the transaction. Although it was an accumulator-type bet, involving three other matches, this provided him with a further opportunity to correct any error(s) that he may have made.

3.7 After weighing the competing factors, the Commission concluded that LS had failed to discharge the evidential burden on him, on the balance of probabilities. It follows that we reject his claim that he mistakenly backed the opposing side to win in one of the matches in which he played. There is no suggestion that he did not play to the best of his ability, or that he did, or did not do, anything untoward that influenced the outcome of the game, which Chelmsford won. There is also no evidence and no suggestion that the outcome of the match was otherwise tainted in any way. However, the appearance that such a bet creates in the minds of right-minded observers, and the inevitable erosion of trust and confidence in a fair and impartial result, is why it is properly regarded as a serious aggravating feature in a betting case of this kind.

4. SANCTIONS

4.1 The Commission's attention was drawn to the Sanction Guidelines produced by the FA for betting cases charged under Rule E8(b). In our judgment, a sporting sanction is inevitable in this case for the following reasons:

- (i) Our finding that LS placed a bet on the opposing team to win in a match in which he played;
- (ii) LS played in other matches in which he placed bets/attempted to place bets (bet 9 and bets 17 to 27 inclusive) on his side to win;
- (iii) The sheer scale of betting activity over an extended period of time, both in terms of the number of bets placed and their size. It is not an understatement to describe LS's activity as 'prolific';

- (v) His record of success was also remarkable: of the 28 bets that LS placed he lost only five times, losing a mere £250 or so in total stakes of over £4,500, and achieving a total return of just over £22,863;
- (vi) A pattern is discernible of larger bets that were placed on matches involving one particular team, in addition to several other matches where betting activity was flagged as suspicious by betting operators; and
- (iv) The fact that others closely associated with LS placed identical bets on identical outcomes in certain matches. The only reasonable conclusion to reach is that they did so based on information that he provided to them. The suggestion that the associated bets were in some way purely coincidental is fanciful.

4.2 On behalf of The FA, Mr. Ware invited us to consider imposing a sporting sanction of between 12 and 24 months. Taking into account all of the relevant aggravating and mitigating features, as well as the financial penalty that we intend to impose, the Commission unanimously concluded that LS should be suspended with immediate effect from all football and football-related activity until 1st August 2017, a period of just under 17 months. The consequences of the suspension are that he will be unable to play for the remainder of the current season, together with the entire 2016/17 season, but that he will then be eligible to play from the start of the 2017/18 season.

4.3 The other main objective which the Commission sought to achieve through the imposition of sanctions was to ensure that LS did not profit from his betting activities and should repay the returns that he made. We were provided with largely unsubstantiated details of his personal and financial circumstances and told that he had spent - and lost on further gambling - the money that he had made. Nevertheless, we concluded that the minimum sum he should repay is £22,865.00 (*i.e.* the gross returns from his betting activities in contravention of FA Rules, minimally rounded up).

4.4 Although fines have been imposed in previous cases that were much higher, proportionately, than the betting returns, each case must be judged on its own particular facts. Despite the evidence in support of what we were told being virtually non-existent, and not without some hesitation, we have taken into account LS's personal circumstances, his modest basic income, the fact that he has a very young child, and has taken steps to address his gambling addiction (principally by his Partner controlling their joint finances, but also with assistance from the PFA). To impose an additional punitive element to the fine would clearly have an adverse financial effect on others, principally his partner and child. We are also mindful of the fact that LS will not earn anything from football for the duration of the ban. In our judgment, the suspension and fine together represent appropriate and proportionate sanctions that properly reflect the nature and extent of his misconduct, taking into account the factual finding that we have made.

4.5 LS is also warned as to his future conduct.

4.6 We order LS to make a contribution of £1,500 towards the costs of the Regulatory Commission.

4.7 The £100 fee that accompanied the request for a personal hearing is forfeited.

5. ORDER

5.1 We therefore make the following Order:

- (i) LS is suspended from all football and football-related activity with immediate effect until 1st August 2017.
- (ii) LS shall pay a fine of £22,865.00.
- (iii) LS is warned as to his future conduct.
- (iv) LS shall pay a contribution of £1,500 towards the costs of the Regulatory Commission.
- (v) The £100 fee which LS paid for a personal hearing is forfeited.

5.2 Finally, LS must make an application to the Chairman of the Judicial Panel to pay the fine and/or costs by instalments.

9th March 2016

The Independent Regulatory Commission

Craig Moore, Barrister and Chairman of the Independent Regulatory Commission

Stuart Ripley, Member of The Football Association's Judicial Panel

Shaun Turner, Football Association Council Member

Appearances

For The FA

Mr. Christopher Ware of Counsel

Mr. David Newton, FA Investigator

For the Participant

Mr. Richard Jobson, Representative of the Professional Footballer's Association.

Secretary to the Regulatory Commission

Mr. Paddy McCormack, FA Judicial Services Manager