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## CLARIFYING THE FA'S PROHIBITION ON BETTING ACTIVITIES: THE NICK BUNYARD DECISION ANALYSED

### INTRODUCTION

The application and interpretation of The Football Association's ("The FA's") rules prohibiting betting activities, contained in Rule E8 of the Rules of The FA, is a slowly developing field. Decisions are rare; only two sets of written reasons concerning betting offences have been released this season. The FA's [online records](#) show that there have been 17 in total since the 2009/10 season.

On 14 November 2016 an Independent Regulatory Commission of The FA ("the Commission") released its [written reasons](#) in proceedings brought by The FA against Nick Bunyard, a former professional and semi-professional footballer and later manager of Paulton Rovers FC and Frome Town FC. The proceedings concerned breaches of The FA's prohibition on betting activities (Rule E8), and an alleged breach of an interim suspension order (Rule E1).

The decision is particularly interesting in how the Commission approached the issue of what sanction should be imposed for the breaches in question. This article examines the Commission's decision and related lessons for those regulated under the Rules of The FA. Specifically it looks at:

- The Bunyard Decision
- The Commission's Powers
- Comment and tips for regulated individuals

### THE BUNYARD DECISION: FACTS

Mr Bunyard was a former professional and semi-professional footballer who began his management career as Assistant Manager of Paulton Rovers FC during the 2011/12 season. He became Manager of Frome Town FC from September 2015 onwards.

In the spring of 2016 The FA became aware that Mr Bunyard had been placing bets on the outcome of football matches, including those involving his team, Frome Town. The FA proceeded to investigate. In April Mr Bunyard was temporarily suspended as manager of Frome Town pending the outcome of the investigation. The FA also sought, and was granted, an Interim Suspension Order ("ISO") prohibiting Mr Bunyard from all football and football activity.

On 24 June 2016 The FA charged Mr Bunyard with misconduct concerning 98 alleged breaches of The FA's Rule E8(1)(a)(i) between September 2014 and April 2016. The number was subsequently reduced to 97, of which 73 related to bets placed on the outcome of matches involving Frome Town or Paulton Rovers. Of those 73 bets, 45 were placed upon the team which he was managing at the time to lose. The total money staked was £6,888.24 with a net profit of £2,612.74.

Mr Bunyard admitted the charges and requested a hearing. In the interim he was charged with a further offence relating to an alleged breach of the ISO. It was



alleged that, after the ISO had been imposed, Mr Bunyard had “engaged in football activity” by exchanging text messages with the player of another team with a view to that player moving to Frome Town.

### THE ISSUES TO BE DETERMINED

The following issues fell to be determined by the Commission:

- Whether there had been a breach of the ISO;
- The sanction to be imposed for the (admitted) betting charges and, if upheld, the breach of the ISO.

### DECISION

The Commission began with considering whether Mr Bunyard had breached the ISO by texting a player whilst he was suspended from engaging in “football activity”. It had heard evidence on this issue during the hearing from Mr Bunyard and his friend, a Mr Josh Jeffries. They said that Mr Bunyard had left his phone with Mr Jeffries whilst he was out of the country and that Mr Jeffries had sent the texts when he was trying to source a goalkeeper before the start of the season. The FA alleged that it was in fact Mr Bunyard who had sent the texts, and pointed to various inconsistencies in the evidence.

The starting point for the Commission was that as Mr Bunyard had admitted he owned the phone and in the absence of anything to show that someone else sent the texts, it could reasonably infer that Mr Bunyard was the author of them. It went on to consider whether there was any evidence capable of either supporting or rebutting that presumption.

The majority view of the Commission was that Mr Bunyard and Mr Jeffries’ evidence had a counter-balancing effect to that presumption. The purported inconsistencies highlighted by The FA were not sufficiently troubling to cause the Commission to reject the witnesses’ evidence. It was for The FA to prove the charge, and it had failed to do so, including because it had not obtained evidence from a potentially relevant witness. The charge was therefore dismissed. The minority of the Commission would have upheld the ISO charge.

The Commission also considered an alternative argument advanced by Mr Bunyard in relation to the ISO charge. The ISO restricted Mr Bunyard from engaging in “football activity” for its duration. Mr Bunyard argued that, as the phrase “football activity” was not defined by the ISO or The FA’s Rules, it should be defined against The FA as the draftsperson seeking to rely upon it. There was nothing in the texts which constituted “football activity”, within the meaning of a regulated activity, and which could not have been asked by a football supporter. The Commission unanimously rejected this. What does or does not amount to a “football activity” is not capable of being set out in any kind of exhaustive list and must be given its natural and ordinary meaning, and judged on a case-by-case basis. The texts clearly did amount to “football activity”, as they were the active pursuit of a player by the manager of another club, who had authority to do so.

The Commission then moved on to the question of sanctions. It referred to previous Commission decisions in the betting cases of *Heys* and *Pilkington*. In *Heys*, there had been 735 instances of betting by an administrator of Accrington



Stanley FC, 14% of which had been bets on that club to lose. He was suspended from football and football-related activity for 21 months, with a fine of £1,000. In *Pilkington* the individual was a footballer at Ashton United who had placed 831 bets, 33% of which had been on his own team to lose. He was suspended for four years, with the final 12 months suspended for two years, plus a fine of £75.

The Commission considered the following factors:

- **Overall perception of the impact of the bets on the fixture / game integrity:** Mr Bunyard had placed 61% of his 73 bets on his own teams to lose. This was an extremely serious aggravating feature. The bets gave rise to a clear and significant conflict of interests. In the eyes of an objective bystander they would create a very serious adverse perception concerning the genuineness of the outcome of the match, and undermine the integrity of the game.
- **Player played or did not play:** Although this factor was not strictly engaged, as manager, Mr Bunyard was in a position where he could influence the outcome of matches.
- **Number of bets / actual stake and amount possible to win:** Although the numbers were not as high as those in *Heys* and *Pilkington*, Mr Bunyard had placed a higher proportion of bets on his own teams to lose.
- **Size of bets:** Mr Bunyard invested a total of £6,888.24 across 97 bets, which was “not an insignificant figure”.
- **Facts and circumstances surrounding the pattern of betting:** Initially Mr Bunyard said that he was unaware of the betting prohibition, but changed this during the hearing to having been aware of it “by osmosis” rather than by any formal direction or instruction. He claimed that his bets had not been placed in order to profit from the outcome of matches, but to soften the blow of defeat in matches. The Commission found that it in fact disclosed “a serious case of insider dealing which gave him a material advantage in the betting market”. This was a serious aggravating factor.
- **Personal circumstances:** Mr Bunyard had extremely difficult personal circumstances which represented a substantial mitigating factor.
- **Previous record:** Mr Bunyard had no previous record relating to betting.
- **Experience:** The Commission was satisfied that during the period of Mr Bunyard’s betting activities he was aware of The FA’s prohibition on betting.
- **Assistance to the process and acceptance of the charge:** Mr Bunyard had co-operated with The FA and admitted the principal charges without qualification. The Commission gave him credit for this.

The Commission considered that only a substantial sporting sanction was warranted. Taking into account all of the relevant factors, it held that Mr Bunyard should be suspended from all football and football-related activity for four seasons, together with a ground ban prohibiting him from attending Frome Town matches. The Commission then reduced that by one quarter, to three full football seasons, in order to take into account credit for mitigating factors. It also



imposed a financial penalty of £3,000, and ordered a contribution of £1,500 towards the costs of the Commission.

### COMMENT AND TIPS FOR CLUBS, MANAGERS AND PLAYERS

A number of interesting points arise from the Commission's decision in the Bunyard case which bear wider consideration. Some of those issues are discussed further below.

### GUIDANCE ON SANCTIONS

The Commission's decision provides useful guidance as to how to approach the issue of sanctions for betting offences in football. Mr Bunyard placed 73 bets, totalling a stake of £6,888.24 with a net profit of £2,612.74; these might be thought to be relatively small numbers. There was no suggestion of match fixing. However the overriding factors in the Commission's decision were: (1) the insider dealing aspect of Mr Bunyard's betting; (2) the conflict of interest in Mr Bunyard managing a team and simultaneously placing bets on it to lose; and (3) the proportion of bets placed upon the team to lose. The number of bets, total value, and total profits, although undoubtedly factors to be taken into consideration, were not determinative factors where the integrity of the game was at play.

It should be remembered that Mr Bunyard had fully co-operated with The FA investigation. This led to the ban on footballing activities being reduced by one quarter, from four seasons to three seasons. Co-operation with an investigation by The FA may therefore have a demonstrative impact on what sanction is imposed for betting offences.

Mr Bunyard argued that he was unaware of The FA's betting prohibition, or that he was aware of it "by osmosis". The Commission did not place any weight on this. Clubs would therefore be wise to ensure that proper training is given to managers, footballers and all regulated individuals about the restrictions which apply to them in relation to betting activities, and the serious consequences that may arise for breach of those rules. That training should not be limited to the professional leagues; Mr Bunyard was the manager of two teams in the Southern League Premier Division. His argument that he thought that The FA was interested in what went on at lower levels of the game was held to be no mitigating factor. As the Commission held, "*he knew that what he was doing was wrong, but did not think he would be caught.*"

### DEFINITION OF "FOOTBALL ACTIVITY"

The Commission did not place any weight on Mr Bunyard's argument that the phrase "football activity", which appeared in the ISO, was not defined and therefore should be interpreted against The FA. The Commission instead adopted a common sense interpretation. It then proceeded to impose a sanction banning Mr Bunyard from "football or football related activity" for three seasons, without defining what that phrase might mean in practice. Presumably any question as to what particular activities the ban covers would also need to be assessed using a common sense analysis.



It is not apparent from the written reasons whether the Commission was referred to any authorities as to what may constitute "football activity". Guidance may be found in The Court of Arbitration for Sport's ("CAS") decision in Luis Suarez's appeal against a FIFA Disciplinary Committee's decision to ban him from "taking part in any football-related activity (administrative, sporting or of any other kind)" for 4 months after he bit an opponent during the 2014 FIFA World Cup.

As part of their decision the CAS Panel considered what effect the ban would have upon both Suarez and his club. It found that this would mean the following:

- Suarez would be prohibited from training with the team and keep his fitness in order to be ready to start playing for his club, FC Barcelona, after the lifting of the ban.
- The ban would impact Suarez's ability to derive profits from his image as a football player.
- His club, FC Barcelona, would suffer a negative effect on its revenue generating activities, its ability to work with Suarez, promote its brand and activities by exploiting his image and brand, and to train and integrate him with the new season's team.

In effect, therefore, the ban would have longer lasting effects than a mere 4 month period. The CAS Panel found that there was no justification for this, and that it appeared to serve no legitimate purpose. It therefore replaced that sanction with a 4 month match ban. The CAS Panel's findings on this point indicates that what constitutes "football, or football-related activity" is to be interpreted broadly and may cover all manner of ancillary revenue-generating activities.

It remains to be seen whether at some future point The FA will define the phrase "football activity". As the Commission identified, and as apparent from the Suarez case, it is phrase which would be difficult to define with any preciseness. However given that the phrase is routinely used by The FA in ISOs and sanctions, and that a broad interpretation may lead to a suspension having an extremely draconian effect on practising players and managers, it does appear strange that a definition has not been attempted to date. If the further charge had been made out in Mr Bunyard's case, the issue of whether he had engaged in "football activity" would likely have been a fairly straightforward point; the text messages concerned the pursuit of a player by the manager of another club. However other cases may not be so clear cut, and it is surely only a matter of time before this lack of clarity is raised again in Commission proceedings.

### A SIGN OF THINGS TO COME?

It remains to be seen whether The FA's investigation into Mr Bunyard signals a new crackdown at all levels of football, particularly given that betting was said to be "rife" in the game. This would not be wholly surprising given [well documented recent efforts](#) by sports governing bodies around the world to regulate, monitor and enforce betting offences more vigorously than in the past.

It will also be interesting to see whether the Commission's fairly hard line approach to sanctions will be adopted in future cases involving football betting offences. The Commission considered two other football cases in reaching its





decision as to the appropriate sanction. It is also interesting to consider the Bunyard decision in its broader context by looking at recent decisions by other sports governing bodies, and a further relevant decision in the football context (which was not considered by the Commission). In particular:

- In March 2016, football player Lewis Smith was suspended from football and all football-related activity for 17 months by an Independent Regulatory Commission of The FA, for placing bets on fixtures involving his team, AFC Hornchurch. These included bets on games in which he played, and a bet on his own team to lose. Mr Smith placed bets generating total net profits of £18,277.17, higher than in Mr Bunyard's case.
- In May 2015, rugby union coach Philip Blake was banned from rugby union for 6 months and fined £669 (his total profits) by the Rugby Football Union for placing bets on fixtures involving his team Leicester Tigers, including bets on it to lose.
- In August 2008, tennis player Mathieu Moncourt was suspended for 8 weeks and given a fine of around £8,000 by the Association of Tennis Professionals ("ATP") for betting on other players' matches. This was reduced upon appeal to CAS to a 5 week ban.
- In November 2007 an unnamed tennis player, M, was handed a 9 month suspension and £40,000 fine by the ATP for betting on tennis fixtures. That was subsequently reduced upon appeal to CAS to a 7 month suspension and fine of £18,000.

In light of those decisions, particularly those involving individuals betting upon their own teams to lose, it becomes more difficult to see how a three year suspension was justified in the Bunyard case. The decision appears to be out of line with the types of sanctions imposed by other sports governing bodies for similar offences. The ban of three years imposed upon Mr Bunyard is also considerably higher than that imposed by the Commission in Mr Smith's case. In the absence of express consideration of the Smith case by the Commission, the author would suggest that, had the Commission looked at that case, they would have presumably justified the higher sanction in Mr Bunyard's case on the basis of the high proportion of bets placed by him on his own team to lose matches. That was the basis upon which the *Heys* and *Pilkington* cases were distinguished.

The FA is in a difficult position. It necessarily has to uphold the integrity of the game through enforcement of the betting prohibition, including through investigation and sanctions where necessary. Those who breach those prohibitions must be reprimanded. However, unless The FA's resources are limitless, this should be tempered with a sense of proportionality, especially where the sums involved are relatively low and the individuals involved are not active in football at the higher levels of the game. The difficulty, as ever, is striking a just balance between competing considerations.

When the Commission's written reasons were released, the board of directors of Frome Town issued a [statement](#). The board noted its disappointment in the way that the case had been handled and length of time this had taken, the disparity in how The FA had dealt with the case compared to those cases involving high



profile individuals, the lack of communication from The FA, and the disproportionate nature of the sanction.

By the time that the written reasons were released, Mr Bunyard had retired from football. The board of Frome Town further noted that,

*"At a time where grass roots football is on its knees we cannot help but feel that driving people out of the game serves little purpose other than to "set an example.""*

The author has some sympathy for the club's position, and for the disappointment at the sanction imposed in this case compared to other recent decisions in respect of similar betting offences. However, ultimately, where an individual is a manager of a football club, and is subject to The FA's regulation, it is vital that they are aware of their regulatory duties and obligations. Ignorance, or a perception that the rules do not apply to those involved in those are the lower levels of the game, do not constitute defences.

On 15 December 2016, Frome Town announced that the club had been fined £500 in respect of an illegal approach for a player, and that the new manager, Mr Jeffries, had been fined £300 and received a 3 game stadium ban regarding comments made on social media about Mr Bunyard's case. Nothing further is known at present. It is to be hoped that this marks an end to the sorry set of events, and highlights to clubs and players at all levels the importance of being aware of their regulatory duties and obligations.

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