PRE/19/0001

BEFORE AN INDEPENDENT REGULATORY COMMISSION OF THE FOOTBALL ASSOCIATION

THE FOOTBALL ASSOCIATION

-v-

[redacted]

DECISION OF THE REGULATORY COMMISSION

Introduction

1. [redacted] was registered as a player with Bury FC (the "Club") when he gave an out-of-competition urine sample on 31st January 2019. At that point, he was [redacted] years of age.

2. Analysis of the urine sample, in due course, established that it contained the prohibited substances [redacted] are classified [redacted] in the 2019 Prohibited List of the World Anti-Doping Code. As such, it constituted an Adverse Analytical Finding (AAF).

3. As a consequence, [redacted] was charged with misconduct pursuant to FA Rule E(1)(b) and in accordance with FA Rule E25 with an alleged breach of Regulation 3(a) covering the presence of a Prohibited Substance or its Metabolite or Markers in a Player's Sample pursuant to the FA's Anti-Doping Regulations 2019 (ADR).

4. That Notice of Charge was not, in fact, issued until 15th November 2019 but the delay between the provision of the sample and the Notice of Charge was not the result of any fault on the part of [redacted] and is sufficiently explained in the Summary of Facts below.

5. That an Anti-Doping Rule Violation ("ADRV") has been committed is not in issue. Indeed, [redacted] admitted it from the outset. However, the issues that we have to decide are:

(i) Whether the ADRV was or was not intentional;

(ii) If not intentional, whether the ADRV was committed in circumstances in which [redacted] was not significantly at fault or negligent.

(iii) Whether [redacted] has provided "*substantial assistance*" with the consequences following as regards suspending any part of a period of suspension pursuant to ADR Regulation 70(a) and 70(b).

(iv) To what extent, if any, the principles of proportionality are relevant to the sanction imposed.

(v) Whether any suspension should be backdated and, if so, whether that should be to the date of sample collection.

6. From the summary of the facts which follows, it will be apparent that we consider this to be a truly exceptional case. In the course of submissions, the parties drew our attention to a number of decided cases to which we shall make brief reference. However, the reality is that this case, probably like each of those cited, has a unique set of facts. Whilst the consistent application of principle is important and the analysis of principle in those cases is obviously useful, one must always be cautious before comparing an application of principle in one case with its application in another case with a very different set of facts.

A Summary of the Facts

7. At the hearing the factual issues between the parties were relatively narrow and the task of the Regulatory Commission was greatly assisted by the parties' cooperation in preparing a document entitled "*Chronology and Agreed Facts*". We shall only highlight the main elements of what is truly an extraordinary history.

8. [redacted] In June that year (2018) he consulted his General Practitioner about various health issues as a consequence of which it was recommended that he underwent blood tests.

9. It is not necessary to identify the precise medical condition that was diagnosed. [redacted] evidence, which we accept, was that he straightaway informed Bury's Sports Therapist, Mr Tom Walsh,

and the Club Manager, Mr Ryan Lowe that he was seeking medical advice. That was necessary so that he could be given time off training for further blood tests.

10. Following a consultation with his GP, [redacted] was referred to a specialist who explained that his particular condition would require medical treatment, probably in the long term. It is also unnecessary for us to identify by name the treatment which was prescribed. [redacted].

11. By October 2018, then, the position is that [redacted] was being actively treated by a Specialist [redacted] and by a Clinical Nurse Specialist, and under the general supervision of his General Practitioner. He commenced the programme of medication on or around 11th October 2018 and, within a week, [redacted] informed Mr Walsh at Bury about the treatment plan. Mr Walsh, in turn, advised that [redacted] should speak to the Club Doctor, Dr Andrew Johnson who worked as a part-time medical consultant to Bury and provided match day cover (as well as providing medical services elsewhere in football).

12. [redacted] says in paragraph 22 of his Witness Statement (and it is not challenged) that his GP, the Specialist and the Clinical Nurse Specialist were aware at all material times that he was a professional footballer. Nevertheless, none of them had warned him that he should ensure that he had a Therapeutic Use Exemption ("TUE") in place before taking his prescribed medication.

13. However, it was not long before that need for a TUE did become apparent to [redacted] an email from [redacted] to his Clinical Nurse Specialist, on 19th October 2018, makes it clear that, by that stage at least, [redacted] knew that he needed a TUE, albeit he had already begun the course of prescribed medication.

14. No one – and particularly not Dr Johnson – told him that he should stop taking the medication until such time as the TUE was in place. In fact, [redacted] says (at paragraph 24 of his Witness Statement) that he recalls "*speaking to Dr Johnson though on 27th November 2018 after a home match in the physiotherapy room at the Club, however this was to ask if I needed to do anything else in relation to the TUE Application following our previous conversation about it on 23rd October 2018*".

15. It is necessarily implicit in that part of the history that, when he spoke to Dr Johnson in those terms in late November 2018, [redacted] did not know whether the TUE Application had actually succeeded. On the other hand, we also accept that Dr Johnson in reply told [redacted] that nothing

further needed to be done because the TUE was in fact in place. Indeed, his evidence is that Dr Johnson used words to the effect of '*don't worry it's sorted'*.

16. What Dr Johnson said was completely untrue. He had not, in fact, submitted a TUE for [redacted] and, in an interview with the FA on 25th June 2019, Dr Johnson said that he had simply forgotten to do so.

17. In the meantime, [redacted] continued to train with his Club and to take his medication. [redacted].

18. Just over two months later the out-of-competition doping control test at Bury FC took place on 31st January 2019. Consistently with the complete openness with which [redacted] conducted himself throughout this history, he declared precisely what medication he was taking on the Doping Control Form ("DCF").

19. To complete the history, and to explain the delay between provision of the sample and the Notice of Charge, we note that [redacted] continued with his treatment, [redacted]. Coincidentally, the day after [redacted] had begun treatment [redacted], UK Anti-Doping (UKAD) notified the FA on 14th March 2019 that [redacted] had declared the particular form of medication on the DCF, noting that the initial analysis of the sample had been reported as negative on 28th February 2019. It was also noted that no TUE was in place for that medication.

20. On 15th March 2019, UKAD requested further analysis of the sample. The FA explained that this followed a trigger on its ADAMS system [redacted]. We accept that the AAF which was identified on such further testing may have been the result of that triggering process as opposed to information coming exclusively from [redacted] DCF.

21. Also in March 2019, [redacted] informed Bury's doctor, Dr Johnson, about a change in his treatment [redacted]. Dr Johnson advised him that he would need a letter from his Consultant explaining why it had changed in order to prepare what, on the face of it, would be a further TUE Application.

22. There was then a series of exchanges between [redacted] and Dr Johnson, at the end of which Dr Johnson sent a text to [redacted] saying that he had "*done the forms*" for the TUE Application and that [redacted] needed to fill in one bit. [redacted] therefore arranged with Dr Johnson to call at his surgery in Stockport to get the forms.

23. On 22nd March 2019, the FA contacted Dr Johnson directly by telephone and later by email. They asked why [redacted] was using the particular medication identified on the DCF in the absence of a TUE. During the telephone call, Dr Johnson falsely claimed that a TUE Application had previously been submitted in December of the previous year and that, if it had not been received, it must have been lost in the post. The FA advised Dr Johnson that he would therefore need to make an application for a retroactive TUE on [redacted] behalf.

24. That same day (22nd March 2019), [redacted] therefore attended Dr Johnson's surgery to sign a TUE Application and on 28th March 2019, the Application for Treatment [redacted] was submitted to UKAD.

25. At some stage between 22nd March 2019 and 5th April 2019 Dr Johnson completed a TUE Application form for the use of the original medication. This he later falsely backdated to 1st December 2018 (which would be consistent with him having sent in the application which he claimed had gone missing on that date). He also drafted two supporting letters, one in his own name and one in [redacted], the overall effect of which amounted to an attempt by Dr Johnson to mislead UKAD and the FA into thinking that a proper TUE Application had indeed been made in December 2018.

26. On the 8th April 2019, Dr Johnson emailed the now back-dated TUE Application, together with the supporting letters, and asked [redacted] to submit them to UKAD. [redacted] did so on 9th April 2019.

27. Dr Johnson's deception was discovered because he had downloaded and had submitted a 2019 version of the TUE rather than the 2018 version, which would have been the right one had the original application been made, as he claimed, in December 2018. The FA consequently notified both Dr Johnson and [redacted] that it had opened an investigation into potential tampering and both were invited for interview.

28. On 21 May 2019, the further IRMS analysis of [redacted] urine sample reported AAFs [redacted] [redacted]. On 12th June 2019, the FA notified [redacted] of the AAF and provisionally

suspended [redacted] from all football activity. On 19 June 2019, [redacted] provided a letter to the FA setting out his explanation for events and attaching supporting documentation.

29. On 25th June 2019, Dr Johnson attended for interview and provided a written statement. He admitted that he had failed to submit a TUE application form on behalf of [redacted] prior to March 2019. He explained that, when he received the telephone call from the FA on 22nd March, he had panicked and lied about having submitted an application previously and, realising the significant consequences for the Player which might result from his failure to have submitted a TUE application in light of the Player having been subject to doping control in January 2019, he had then devised a scheme to submit falsified documentation in support of the Player's retroactive TUE application. Dr Johnson emphasised that the Player was unaware of both his initial failure to submit a TUE application and of his scheme to submit falsified documentation.

30. On 26 June 2019, [redacted] attended for interview. He confirmed that he was unaware that Dr Johnson had not made a TUE application on his behalf in 2018. He said that he had trusted the doctor to act appropriately, had assumed that a TUE was in place for his use of the prescribed medication at the time of the test on 31 January 2019, and was unaware that the form that the doctor had asked him to sign and submit to UKAD in early April 2019 was no more than part of the doctor's scheme to attempt to deceive the FA and UKAD.

31. On 5th July 2019, [redacted] provided a second letter to the FA providing further information and attaching supporting documentation, notably the text messages and emails between [redacted] and Dr Johnson which corroborate the Player's account. On 17th July 2019, Dr Johnson provided a letter to the FA attaching documentation and then, on 29th July 2019, [redacted] submitted an application to WADA requesting permission to apply for a retroactive TUE on grounds of fairness pursuant to Article 4.3(d) of the WADA International Standard for TUEs.

32. On 12 August 2019, WADA gave permission for the UKAD TUE Committee to consider the TUE application retrospectively but, on 5th September 2019, UKAD's TUE Committee declined the retroactive TUE application in light of, *inter alia*, [redacted]. On 3rd October 2019, [redacted] submitted an appeal against the decision of the UKAD TUE Committee.

33. On 10th October 2019, the FA notified [redacted] that it was not taking any action against him in respect of Tampering. On 17th October 2019, the FA charged Dr Johnson with a breach of Regulation 7(a) of the Anti-Doping Regulations (Tampering).

34. On 31st October 2019, UKAD's TUE Appeal Committee dismissed [redacted] appeal and, consequently, on 12th November 2019, Centrefield, acting for [redacted] informed the FA that [redacted] had requested the FA to continue its results management process.

35. On 15th November 2019, the FA charged [redacted] with a breach of Regulation 3(a) of the Anti-Doping Regulations (Presence).

The Hearing

36. The Regulatory Commission heard this case on 10th December 2019 and we are indebted to both Mr Dario Giovannelli, Regulatory Advocate, who presented the case for the FA, and to Mr Nick De Marco QC who acted for [redacted] for the clarity and care with which they presented their submissions.

37. We considered those submissions together with the large volume of written evidence submitted and we had the benefit of hearing [redacted] give evidence in person. We found him to be an impressive young man and we unhesitatingly accept both his written and oral account of events. We shall, therefore, address the issues that we identified at the outset in turn.

Intention

38. The prohibited substances [redacted] detected in the Sample are classified [redacted] in WADA's Prohibited List of the WADA Code and are therefore deemed to be 'Non-Specified Substances'. Consequently Regulation 51(a) applies (subject to the provisions set out hereunder of Part 8 'Reduction of Penalties for Exceptional or Specific Circumstances) of the Regulations:

> "*Subject to the relevant provisions of Part Eight of these Regulations, for a violation committed by a Player under Regulation 3 (presence) or Regulation 4 (Use or Attempted Use), or committed by a Player or Player Support Personnel under Regulation 8 (Possession), the following penalties must be imposed:*
>
> *(a) Where the Anti-Doping Rule Violation does not involve a Specified Substance, 4 years' suspension, unless the Player or Player Support Personnel establishes that the violation was not intentional, in which case 2 years' suspension.*"

39. What is meant by the word "*intentional*" in that context is set out in Regulation 50, which provides the following guidance:

> *"The term 'intentional' as used in this Part Six is meant to identify those Participants who cheat. The term therefore requires that the Participant engaged in conduct which*

he knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk […]"

40. As Mr De Marco QC rightly submitted, for a Participant to be acting intentionally, he needs to have known that his conduct was a breach of the Regulations or at least to realise there was a significant risk that such conduct would constitute a breach. The whole point of this particular provision is, as the Guidance recognises, to catch Participants "*who cheat*".

41. The FA very properly identified 'intention' as an issue in the case, without making a positive submission that [redacted] had acted "*intentionally*" as defined. We are entirely satisfied that [redacted] did not act intentionally in that sense. On the contrary, he was taking prescribed medication, as instructed by his medical practitioners, information which he had shared with the Club Doctor and in respect of which he had been assured that a TUE would be, and later had been, obtained for such medication. Consistently with that openness, he later declared that medication on his DCF.

No Significant Fault or Negligence

42. Adopting a realistic approach, it was not suggested on behalf of [redacted] that he had acted without any fault or negligence. Some degree of fault is acknowledged and is what we would have found, mainly because [redacted] embarked on taking the medication without ensuring that a TUE was already in place. Notwithstanding he was consulting medical practitioners at the time and was openly taking only prescribed medication and notwithstanding his age and limited anti-doping education, [redacted] has to accept the ultimate responsibility for any substance that enters his system and for making sure he complies with the critically important rules that are there to ensure a clean sport.

43. Nevertheless, we find that his fault / negligence was not significant because of all the circumstances including the openness with which [redacted] conducted himself and because, as we have said, he was at all times acting in accordance with what appeared to him to be the best available medical advice. Perhaps the best evidence of that openness is to be found in the fact that [redacted] openly declared the use of that medication on his DCF.

44. The FA very properly reminds us that helpful guidance as to the extent to which a player is at fault or negligence in respect of an ADRV is set out in cases such as *Cilic v ITF* (CAS/2013/A/3327 and 3335, paragraphs 69-77 (considering the provisions of the 2009 WADA Code)) and *FIS v Johaug* (CAS/2017/A/5015 and 5110, paragraphs 169 and 208-209).

45. As Mr Giovannelli submitted, the two stage approach which we, as a Regulatory Commission, must therefore take is to determine first, on an objective basis, the degree of fault – that is whether it is light, normal or significant – and then, having answered that first question, which determines the range of sanction, take into account subjective elements which may move the athlete in question up or down within that category or, exceptionally, move him or her into a different category altogether.

46. That is the approach we take whilst acknowledging that it is not possible to completely compartmentalise the two aspects of that analysis. It is common ground that the subjective elements in consideration would include the Participant's youth and / or inexperience, language or environmental problems, the extent of his / her anti-doping education and any number of personal circumstances. But there is also a degree of overlap in that no objective assessment of significance in a case such as this can disregard all the surrounding circumstances.

47. In our judgment, and in summary, we accept Mr De Marco QC's submission that the player "*was not at fault or negligent to a significant extent*" (see paragraph 27 of his Written Submissions) in that [redacted] honestly and reasonably relied on his medical professionals and was, as a consequence, unaware that the medication he was taking put him at risk of an ADRV. Whilst he was, as we have said, at fault in not ensuring that the TUE was in place before he began and when he was taking the medication, he did everything he could to obtain such TUE as soon as he was told to do so and had every reason to believe that those who he trusted had acted accordingly.

48. In addition, as we must repeat, he has been conspicuously open in every aspect of his conduct. Further, when one comes to evaluating the subjective elements, it is also important to recognise that he is a relatively young man who had some, but only limited, anti-doping education.

49. Mr De Marco QC cited three authorities in his oral submissions. They were *Canas v ATP* [CAS/2005/A/951], *WADA v USADA, USBSF and Lund* [CAAS/2006/001]; and *Sharapova v ITF* [CAS/2016/A/4643].

50. As we indicated above, those cases are interesting expositions and applications of principle but the facts in each of them are very different from those that arise in the present circumstances.

51. It is sufficient for us to conclude that we find that whereas [redacted] was at fault, his degree of fault was very low. In that case, the starting point for any period of sanction – that is, before considering questions such as substantial assistance – is a suspension of one year.

Substantial Assistance

52. Schedule Two of the ADR provides as follows:

> "*'Substantial Assistance': A person providing substantial assistance must: (1) fully disclose in a signed written statement all information he possesses in relation to ADRVS, and (2) fully cooperate with the investigation and adjudication of any case related to that information, including for example presenting testimony at a hearing if requested to do so by an anti-doping organisation or hearing panel. Moreover, the information provided must be credible and must comprise an important part of any case that is initiated or, if no case is initiated, must have provided a sufficient basis on which a case could have been brought.*"

53. As we have noted already, ADR Regulation 70 entitles us to suspend part of a period of suspension in the event that substantial assistance has been provided which results in the FA discovering or bringing forward an ADRV by another person and the extent to which such suspension may be suspended depends on the seriousness of the ADRV and the significance of the Substantial Assistance provided by the Participant.

54. The FA accepts that [redacted] has fully cooperated, but does not accept that what he has done amounts to "*substantial assistance*".

55. The FA submitted that the most important consideration is the fact that the misconduct of Dr Johnson was discovered not as a result of the assistance provided by [redacted] but because Dr Johnson mistakenly submitted the false TUE application on the 2019 as opposed to the 2018 version of the form. The FA also points out that, when interviewed, Dr Johnson frankly admitted that he had tampered with the TUE Application Form, both in a Witness Statement and in interview.

56. We consider, with due respect to the FA, that that is to address the question of "*substantial assistance*" rather too narrowly. The test involves considering whether the information the athlete has provided is 'credible' (which it clearly was) and whether it was or could have been *'important'* to the case against Dr Johnson – not whether it is the only material which was in fact decisive of the issues in that case.

57. It is perfectly true that the mistake the doctor made in using the form for the wrong year might well have led to him being exposed regardless of [redacted] help. And, as we have said, he has made extensive admissions. However, there can be little doubt that [redacted] full and frank explanation of the circumstances and disclosure of the detailed history of his dealings with Dr Johnson was of considerable importance in explaining the factual circumstances and made the case against him extremely powerful. It would have put those who interviewed Dr Johnson in a very strong

position had he attempted to challenge any part of the case against him. Of course, Dr Johnson may have admitted matters anyway but we can be sure that the same history will still be part of the relevant factual context for future disciplinary proceedings being brought before the FA Regulatory Commission and the General Medical Council (GMC). Accordingly, we are satisfied that [redacted] provided 'substantial assistance' within the meaning of that term as set out in Schedule Two.

58. It should also be recognised that [redacted] detailed evidence has not only helped to expose a medical practitioner who was prepared to manipulate paperwork and to lie in a particular case: it also serves to ensure that this particular doctor and others in a position of trust in sports medicine learn the lesson that dishonesty will not be tolerated. If that encourages other doctors connected with football clubs to take their responsibilities more seriously, it may well have the indirect effect of helping in the battle against doping in sport more generally.

59. In those circumstances, we were clear that a significant proportion of the one year period of suspension could and should be suspended. In our view, the appropriate range for such reduction is between half and three quarters of it. Of course, bearing in mind what we say below about backdating the suspension to the collection date, the exercise of our discretion within that range may be purely academic. Nevertheless, we accept the submission of Mr De Marco QC that, on balance, the applicable period of sanction can and should be reduced by three quarters, as per Regulation 70(a) and (c) so that the starting point would be one of a suspension of three months. In doing so, we stood back from and considered the overall fairness and effect of that decision and, to that extent, we applied the principle of Proportionality which was prayed in aid on behalf of [redacted] (and was met by the FA's counter-submission that the concept of Proportionality is inherent within the Code).

60. We do not think it necessary to embark on any detailed discussion of the competing submissions with regards to the principle of Proportionality, finding that it is both appropriate and sufficient that we use Proportionality as a valuable touchstone for an assessment of the nature and consequences of any breach and the overall fairness of the sanction that is to be imposed. In the present case, for example, had we taken what a very literal approach to what amounts to "*substantial assistance*" and found that what [redacted] did fell short of that, we would have been compelled to impose a suspension of one year. The question we would then have to ask ourselves is whether that would be fair and just in all the circumstances. Our answer to that question is that it would not be, for all the reasons we have given.

Backdating the Suspension Period

61. [redacted].

62. The long passage of time between the Notice of Charge and the test is explained in part by the complexity of the case, in part by the nature of the investigation undertaken and in part by the application for a retroactive TUE and appeal against that decision (which appeal failed).

63. In those circumstances, we consider it appropriate to find that any period of suspension imposed shall be deemed to have started at the time the ADRV occurred – that is, on 31st January 2019. We note that, in accordance with paragraph 42 of the FA's submissions, that backdating is not opposed.

Decision

64. We therefore find as follows (incorporating an agreed memorandum[1] submitted by the parties after we gave a short oral exposition of our ruling at the end of the personal hearing):

(i) As he has admitted, [redacted] is guilty of the ADRV alleged;

(ii) By Regulation 51(a), and subject to Part 8 of the Regulations, the Regulatory Commission having found the ADRV was not intentional, the *applicable period of sanction* is a 2 year suspension.

(iii) Part 8 includes the provisions relating to No Significant Fault or Negligence (Reg 69) and Substantial Assistance (Reg 70). Since the Regulatory Commission has decided that [redacted] fault was at the lower end of this range, the "*otherwise applicable period of suspension*" is reduced from 2 years to 12 months pursuant to Regulation 69. Regulation 69 provides that any sanction imposed is "*subject to further reduction or elimination provided in the regulations 70-72*".

(iv) Regulation 73 applies to reduction in sanctions where a Participant establishes an entitlement to a reduction or suspension under two or more provisions of Part 8 (as here).

[1] It was presented to us as an agreed document but the FA later sought to contend that they had made an error in agreeing about the date on which the 'entire applicable period' should end – see (xi) below and footnote 2.

The Regulation provides that the period of suspension may be reduced or suspended, but not below one quarter of the otherwise applicable period of suspension ("OAPoS"). Regulation 73 ADR, when read together with WADA Code Article 10.6.4. (including the commentary thereto and Appendix Two 'Examples of the Application of Article 10') which provides that the OAPoS shall be determined in accordance with Articles 10.2 (intention = Regulations 50-51 ADR), 10.3 (other ADRVs = Regulations 52-56 ADR), 10.4 (no fault = Regulation 66 ADR) and 10.5 (no significant fault = Regulations 67-69 ADR).

(v) The Regulatory Commission has also decided that [redacted] provided "*Substantial Assistance*" pursuant to Regulation 70(a) and, considering Reg 70(b) and (c) suspends the applicable period of sanction by three-quarters, such that the period of sanction to be served would be 3 months, and the suspended period 9 months.

(vi) The OAPoS determined in accordance with those provisions is therefore 1 year and so, taking into account the reduction under Reg 69 and 70 together, but considering Reg 73, the Regulatory Commission imposes a minimum period of 3 months suspension and suspends the remaining 9 months period.

(vii) Regulation 40(b) provides that the period of any Provisional Suspension where adhered to by the Participant "*will count towards the total period of suspension imposed*." [redacted] was subject to a Provisional Suspension from 12 June 2019 until the date of the hearing on 10 December 2019, i.e. 2 days short of 6 months.

(viii) Regulation 41 provides that where the Participant makes a prompt admission (as accepted by The FA) the period of suspension may be deemed to have started at any time from the date the ADRV occurred (e.g. the date of the Sample collection). The Commission decided that the period of suspension shall be deemed to have commenced on 31 January 2019.

(ix) Regulation 41 further provides that a Participant must serve at least one half of the period of the suspension starting from the date the Participant accepted the imposition of the suspension. In this case that would mean that [redacted] must serve at least one and a half months of the suspension from 12 June 2019 (one and a half months being one half of the three months imposed).

(x) [redacted] has already served more than one and a half months suspension since 12 June 2019 because he has served two days less than 6 months. Thus he has already served his full sanction pursuant to Reg. 41.

(xi) The "*suspended*" part of the sanction that was suspended for the Substantial Assistance provided by [redacted] pursuant to Reg 70 read with Reg. 73 was a period of suspension for 9 months. That is suspended until the expiry of the entire applicable period, i.e. 31 January 2020[2].

(xii) As such, [redacted] is free to return to football immediately, but remains subject to a suspended sanction of 9 months until 31 January 2020.

(xiii) [redacted] will be target tested during the remainder of the suspension period.

(xiv) There will be no Order as to the costs of the Commission.

(xv) The parties will bear their own costs of the proceedings before and at the Regulatory Commission.

(xvi) The personal hearing fee will be retained[3] (on the basis that the breach was admitted)

WILLIAM NORRIS QC
(Independent Specialist Panel Member & Chairman)

[2] In an exchange of emails following the presentation of the agreed memorandum the FA contended that the period of suspension should not be limited by reference to time only but should also depend on [redacted] continued co-operation in the proceedings brought against Dr Johnson by the FA and/or GMC. On receipt of that email (13th December 2019: 11:17), this draft was amended to record the Commission's *provisional* view that the fixed date accorded both with our intentions as well as with the agreed memorandum. In circulating this draft, we allow the FA the opportunity to argue the point more fully if it wishes so to do. If the FA chooses not to do so and to leave matters as they are, it would of course be free to argue the point on appeal (if appropriate) or in another case.
Having circulated a draft of this decision including our expression of that provisional view, the FA made further submissions in an email of 6th January 2020 (with authorities relied on). Centrefield responded on 7th January 2020. We are grateful to the parties for their further assistance on this matter and consider it sufficient to indicate that there is nothing in the FA's further submission which causes us to alter our earlier ruling or to depart from such provisional view for the reasons we have given. We emphasise, nevertheless, that the ruling we make here is simply that which we consider appropriate in all the circumstances of the present case and we would not expect it to carry any – or at least any significant – weight in any argument about the appropriate from of order in a different case.

[3] We erroneously told the parties that it would be *returned* when we gave a brief*, ex tempore*, decision at the end of the oral hearing

IFEANYI ODOGWU
(Independent Legal Panel Member)

STUART RIPLEY
(Independent Football Panel Member)

18 December 2019

(decision finalised 16 January 2020)