

BEFORE A PLAYER RELATED DISPUTE COMMISSION

CONVENED PURSUANT TO EFL REGULATIONS 73 & 89

BETWEEN:

PLAYER B

Claimant/Player

-and-

CLUB A

Respondent/Club

DECISION

The Parties

1. The Claimant, Player B ("Player B" or the "Player") is a professional footballer. At all material times he was a player employed by the Respondent. As will be developed below, the Player's [REDACTED] with the Club ended on 30 June 2020 and, as from 15 September 2020, the Player plays for [REDACTED].
2. The Respondent, Club A, owns and operates Club A (the "Club" or the "Respondent"), a football club participating in the [REDACTED] of the English Football League. The Club's address is [REDACTED].

The Terms of the Employment

3. The Player's employment by the Club is governed by the Employment Rights Act 1996 and the various particular contractual terms as agreed between the parties to be

found in an array of documents: (a) (according to the Club) a contract entered into on 24 January 2014 (the “2014 Contract”); (b) a contract entered into on 4 August 2016 (the “2016 Contract”); (c) the Code of Practice and Notes on Contract (the “Code of Practice”); and (d) the “Club Rules” issued by the Club.

The 2014 Contract

4. By its terms, the 2014 Contract was due to come to an end on 30 June 2017. In the event, however, a new contract was negotiated in mid-2016 (the 2016 Contract) and the 2014 Contract was superseded.
5. Nevertheless, the Club relies on the 2014 Contract for the following provision (at clause 14.4 of Schedule 2 to the contract):

“The player is required to live within a 30 mile radius of [REDACTED] or [REDACTED] Training Ground. In fulfilment of this provision the Club will pay the actual reasonable expenses incurred including Estate Agents fees, Solicitors costs, removal costs, stamp duty and hotel/rental costs incurred up to a maximum of £8,000 on production of receipts.”

The 2016 Contract

6. The 2016 Contract is dated 4 August 2016. It is in the standard Premier League Contract form. By the 2016 Contract, it was noted (in Schedule 2) that the Player’s employment with the Club began on 24 January 2014 and that the date of termination of the contract was 30 June 2020.
7. The following terms of the 2016 Contract are to be noted:

“3. Duties and Obligations of the Player

3.1 The Player agrees:

...

3.1.2 to play to the best of his skill and ability at all times;

3.1.3 except to the extent prevented by injury or illness to maintain a high standard of physical fitness at all times ...;

...

3.1.10 to submit promptly to such medical ... examinations as the Club may reasonably require and to undergo ... such treatment as may be prescribed by the medical ... advisers of the Club ...;

3.2 The Player agrees that he shall not:

...

3.2.3 except to the extent specifically agreed in writing between the Club and the Player prior to the signing of this contract use as his regular place of residence any place which the Club reasonably deems unsuitable for the performance by the Player of his duties other than temporarily pending relocation;

...

7. Injury and Illness

7.1 Any injury to or illness of the Player shall be reported by him or on his behalf to the Club immediately in the club shall keep a record of any such injury or illness.

...

9. Disciplinary Procedure

Except in any case where the Club terminates the Player's employment pursuant to the provisions of clause 10 ... the Club shall operate the disciplinary procedure set out in Part 1 of Schedule 1 hereto in relation to any breach or failure to observe the terms of this contract or of the Rules.

...

20. Miscellaneous

20.1 This contract and the documents referred to herein constitute the entire agreement between the Club and the Player and supersede any and all preceding agreements between the Club and the Player.

...

21. Jurisdiction and Law

This contract shall be governed by and construed in accordance with English law and the parties submit to the non exclusive jurisdiction of the English Courts."

8. Part 1 of Schedule 1 to the 2016 Contract provides in relevant part as follows:

"1 Introduction

The disciplinary procedure aims to ensure that the Club behaves fairly in investigating and dealing with allegations of unacceptable conduct with a view to helping and encouraging all employees of the Club to

achieve and maintain appropriate standards of conduct and performance. The Club nevertheless reserves the right to depart from the precise requirements of its disciplinary procedure where the Club considers it expedient to do so and where the Player's resulting treatment is no less fair.

...

3 The Procedure

The following steps will be taken as appropriate in all cases of disciplinary action:

3.1 Investigation

No action will be taken before a proper investigation has been undertaken by the Club into the matter complained of...

3.2 Disciplinary Hearing

3.2.1 If the Club decides to hold a disciplinary hearing about the matter complained of, the Player will be given full details in writing of the complaint against him and reasonable notice of the date and time of the hearing. At the hearing the Player will be given an opportunity to state his case either personally or through his representative as provided for in clause 13 of this contract.

3.2.2 Subject as provided in paragraph 3.2.3 no disciplinary penalty will be imposed without first giving the Player the opportunity to state his case to the manager or if the Player so requests to a director of the Club and where the Club considers it appropriate or whether Player requests the same without a disciplinary hearing.

...

3.3 Appeals

3.3.1 The Player shall have a right of appeal to the Board against any disciplinary decision. The Player should inform the Board in writing of his wish to appeal within 14 days of the date of notification to him of the decision which forms the subject of such appeal. The Board will conduct an appeal hearing as soon as possible thereafter at which the Player will be given a further opportunity to state his case. The decision of the Board will be notified to the Player in writing within seven days and subject to paragraph 3.3.2 will be finding final and binding under this procedure.

3.3.2 In the event of any sanction being imposed or confirmed in excess of an oral warning, the Player may by notice in writing served on the Club and the League within fourteen days of

receipt by the Player of written notification of the decision of the Board give notice of appeal against it to the League who will determine the matter in accordance with the League Rules.

3.3.3 If the Player exercises any right of appeal as aforesaid, any sanction imposed by the Club upon the Player shall not take effect until the appropriate appeal has been determined and the sanction confirmed varied or revoked as the case may be.

4 Disciplinary Penalties

4.1 At a discretionary hearing or on an appeal against a disciplinary decision, the Club may dismiss the allegation or if it is proved to the Club's satisfaction may:

4.1.1 give an oral warning a formal written warning or after a previous warning or warnings a final written warning to the Player;

4.1.2 impose a fine not exceeding the amount of the Player's basic wage for a period of up to two weeks for a first offence ... and up to four weeks for subsequent offences in any consecutive period of 12 months but only in accordance with the provisions of the Code of Practice.

..."

9. By way of definitions (per clause 1 of the 2016 Contract):

- a. The "Board" means the board of directors of the Club.
- b. The "Code of Practice" is a reference to that code in force from time to time *"produced jointly by the Football Association Premier League Limited and the PFA in conjunction with the FA"*.
- c. The "Club Rules" means the rules or regulations in force and published by the Club.
- d. The "League Rules" means the EFL Regulations. Regulation 73 of the EFL Regulations provides that a dispute of this nature shall be referred to a Player Related Dispute Commission for consideration and adjudication.

The Code of Practice

10. The Code of Practice provides in relevant part as follows:

“Introduction

Although the relationship between a Contract Player (“Player”) and a Club is in law regarded as one of normal employment, in practice it has many special features. The normal rules of employment law apply and the framework of the relationship between the players and the FA Premier League (the “League”) is set out in the standard form of contract (“the Contract”) The Contract has been drawn up jointly by the League and the Professional Footballers’ Association and is approved by the Football Association (“FA”).

The Contract provides that both the Player and the Club should observe “the Rules” which means not only the rules of FIFA, UEFA, FA and the League but includes this Code of Practice and, but only to the extent that they do not conflict with or seek to vary the Contract, the Club Rules. This Code of Practice ... should therefore be read in conjunction with the Contract. The Second Schedule of the Contract sets out the employment and special terms including wages, bonuses etc which apply to the individual Player.

... The following clause numbers all refer to the corresponding numbering in the Contract.

Clause 2 -- Duration of the Contract

Whatever the date when it is entered into, the Contract must be dated to expire on a 30th June ...

Clause 3 – Duties of the Player

The Contract sets out the basic duties of the Player and covers both what the Player agrees to do and what he agrees not to do.

Clause 3.1.3 and 3.2.1

The Player has to ensure that he maintains a high standard of fitness at all times. He should therefore avoid so far as possible special exposure to risk, and should not indulge in any activity which might endanger that fitness or inhibit his playing ability. ...

Clause 3.2.3

It will normally be expected that the Player lives within a reasonable travelling distance of the Club. If the Club agrees to pay allowances or make provision in respect of travelling or housing, it is essential that details of these are set out in the Contract Schedule. It is good practice for the Club to let the Player know its housing policy before he signs for the Club, particularly if the Player is going to have to move.

Clause 7 Injury and Illness

Clause 7.1

Any injury or illness should be reported promptly by the Player to the Club and the Club should keep proper records of all injuries, illnesses and treatment.

Clause 12 and Schedule 1 Part 2 -- Grievance Procedure

Where a player feels that the club has not treated him fairly, he is able to make use of the grievance procedure ...

Clause 14 Holidays

The Player is entitled to take a total of five weeks paid holiday each year, as determined and agreed by the Club, but so that, subject to the Club's First Team and international commitments, the Club is expected to permit the Player to take three of those weeks consecutively, usually during the close season. ..."

The Club Rules

11. Salient provisions of the Club Rules are as follows:

"1. Club Rules

...

(c) You are reminded that you must abide by the terms and conditions of your Playing Contract, and applicable Code of Conduct of Practice, in addition to [these] Rules.

...

(e) Any player who fails to comply with any of these Rules or any other term of his contract ... may be subject to disciplinary action in accordance with Rule 10 and the Playing Contract.

2. Training

...

(c) Permission for Absence

During the season you must not travel abroad or leave your place of residence for a weekend without first obtaining the permission of the Manager.

...

3. Medical

...

- (e) *Should you be taken ill or sustain injury whilst not at work, arrangements should be made to notify the Club Physiotherapist and Club Doctor immediately by telephone or in their absence the Club Secretary. You must then see your own GP or if requested by the Club report to the Club Physiotherapist or the Club Doctor without delay.*

...

- (g) *You must inform, and update the Club of any known medical conditions or addictions.*

...

5. Treatment of Injuries

- (a) *You must inform the Club Physiotherapist or Club Doctor immediately of any injury received so that treatment can be given at the earliest opportunity.*
- (b) *Any new injury must be reported to the Club Physiotherapist by 9:00 am and all injured players unable to train must report for 9:15 am. Failure to do so will result in a fine.*
- (c) *Players able to train are to report at 9:45 AM for assessment of minor injuries prior to training.*

...

10. Club Discipline

...

- (a) *Automatic fines will be imposed in respect of breaches of discipline both on and off the field. The scale of fines for various offences will be as detailed below or, in exceptional circumstances, at the discretion of the Board/Manager. The player consents that such fines will be deducted from his wage.*

...

In all cases the actual level of the fine imposed will depend on the severity of the breach and only the most severe will attract the maximum fine."

The EFL Regulations

12. By EFL Regulation 73.1, "Any dispute or difference not otherwise expressly provided for in these Regulations between a Club and any Player shall be referred in writing to a Player Related Dispute Commission for consideration and adjudication." In turn, by Section 1, Regulation 1, "Player Related Dispute Commission" is defined to mean a

commission constituted in the same manner as a Disciplinary Commission and Regulations 89 to 92 inclusive and Appendix 2 shall apply *mutatis mutandis*.

13. Regulations 89 to 92 make detailed provision for the commencement and conduct of disciplinary proceedings and, by dint of the definition just noted, of proceedings before a Player Related Dispute Commission.
14. Regulations 89 to 92 provide in relevant part as follows (amended so as to apply to a Player Related Dispute Commission):

“Commencement of Player Related Dispute Commission Proceedings

89.1 Disciplinary proceedings shall be commenced by complaint which shall:

89.1.1 describe the nature of complaint; and

89.1.2 identify the Regulation(s) alleged to have been breached or the Misconduct alleged to have taken place; and

89.1.3 a brief summary of the facts relied upon in support of the complaint; and

89.1.4 have annexed to it copies of any documents relied upon by the Claimant.

89.2 The Claimant shall send the complaint to each Respondent

89.3 A Respondent shall, within 14 days of receipt of the complaint ... confirm receipt of the same and shall:

89.3.1 where the complaint is admitted, provide a statement setting out its mitigation; and/or

89.3.2 where any aspect of the complaint is denied, provide a brief summary of any defence(s),

and in each case attaching thereto any documents relied upon by the Respondent.

...

91 Conduct of the Player Related Dispute Commission Proceedings

...

91.4 If the complaint is not admitted the matter will be referred to the Player Related Dispute Commission for it to conduct a full hearing in respect of the complaint. The Procedural Rules set out in Appendix 2 shall apply but in the event of any conflict between this Section and the Procedural Rules, this Section of the Regulations shall prevail.

...

92 *Decisions*

92.1 *The Player Related Dispute Commission may at any time make a decision, and may make more than one decision at different times on different aspects of the matters to be determined.*

92.2 *A decision may:*

92.2.1 *order a party to do or refrain from doing anything;*

92.2.2 *order a specific performance;*

92.2.3 *make a declaration on any matter to be determined;*

92.2.4 *issue a reprimand or warning as to the future conduct of a party;*

92.2.5 *order the payment of compensation to The League, any Club, any other club, Player or other person;*

92.2.6 *order a suspension of membership of The League;*

92.2.7 *order a deduction of points;*

92.2.8 *impose a financial penalty payable to The League;*

92.2.9 *recommend expulsion from membership of The League;*

92.2.10 *order a withdrawal or loss of benefit otherwise available to members of The League e.g. basic award or ladder payment;*

92.2.11 *impose an embargo on registration of Players;*

92.2.12 *order any other sanction as the Player Related Dispute Commission may think fit; and*

92.2.13 *order that interest be payable on any sums awarded under this Regulation for such period and at such rates as the Player Related Dispute Commission thinks fit.*

92.3 *These sanctions may be imposed immediately or may be deferred or suspended for such period and on such terms as the Player Related Dispute Commission shall decide.*

92.4 *At any time a Player Related Dispute Commission may determine (either of its own accord or as a result of representations from a person, Club or club and in any event in its sole discretion) that if the complaint is upheld, it may wish to exercise the power under Regulation 92.2.5 to award compensation. ...*

92.5 *The Player Related Dispute Commission shall have the power to abridge the time period set out in Regulation 94.3 (time limits for appeal) if there is a compelling reason why the appeal (if any) needs to be concluded expeditiously.*

92.6 *Any financial sanction and any order for costs shall be paid to The League within 14 days of the date on which the sanction or costs were imposed. Any compensation shall be paid in accordance with the order of the Player Related Dispute Commission."*

The Notice of Charge

15. In a letter from [REDACTED], the Club's Chief Executive, dated 10 June 2020, the Club laid disciplinary charges against the Player. This letter represents the Club's 'Notice of Charge'. It was in the following terms:

"I refer to your current situation and write to inform you that we will be holding a disciplinary meeting at 9.30 am Thursday 11 June 2020 at the Training Ground to discuss:

1. On 10th May you told [REDACTED] that you could not run because of pain in your feet but you indicated that there was no point telling the medical team as there was nothing you could do as you were in [REDACTED]. You had, without notifying us, moved from your home at [REDACTED] to the [REDACTED] area and, as a result, were unable to access medical treatment when required during lockdown. This is in breach of your contractual duty to maintain a high standard of personal fitness and also live within 30 miles of the Training Ground.

2. On Friday 5th June you stated you were unavailable to train due to injury and so unable to play a training game on 6th June, this was repeated on 8th June. You again deemed yourself unfit to train this morning. This is despite our training staff having seen no evidence of any injury. Given you have stated that you will not play beyond 30th June, in any event, we have reached the conclusion that you are not genuinely injured but feigning injury to avoid playing any further for our club.

I will conduct the meeting and you may be accompanied by your PFA representative or another work colleague."

The Club's Disciplinary Process

16. In the event, the disciplinary hearing was convened at 12:00pm on 12 June 2020. The hearing was conducted by [REDACTED]. The Player attended with [REDACTED] [REDACTED], a PFA delegate. At the conclusion of the hearing, the Player was informed that he would be fined two weeks' wages for each of the charges against him and was "ordered not

to attend any of the club premises between now and 30th June 2020". [REDACTED] told the Player that "We do not want you here for training. ... You do not want to play in June or July and we have people who want to play for us and our staff will focus all their efforts on those players."

17. On 17 June 2020, the Player's then solicitors notified the Club of his intention to appeal, reiterated on 25 June 2020. It is common ground that the Player's notice was within the time period afforded by Schedule 1, paragraph 3.3.1. of the 2016 Contract.
18. On 6 July 2020, the Club deducted the fine of four-weeks' wages from the Player's monthly salary payment, totalling [REDACTED]. The Player asked if the sum would be held by the PFA, pending the outcome of the appeal, and was told by the Club Secretary: *"I don't think that the PFA can hold the fine, you can confirm that with [REDACTED] of the PFA]. We will hold the [fine] pending the outcome and return anything once the outcome is known."* In the event, the Club continued to hold the fine.
19. The appeal hearing took place on 8 September 2020. The appeal was heard by the Club's Chairman, [REDACTED]. The Player's appeal was rejected and the sanctions confirmed in writing on 3 November 2020.

The Appeal to The Player Related Dispute Commission

20. Following the appeal to the Club's Board, the Player lodged a complaint pursuant to Regulation 89 of the EFL Regulations (see above), which the Club has not admitted, indeed has denied. The complaint was therefore referred to this Player Related Dispute Commission for it to conduct a full hearing in respect of the Player's complaint.
21. Two things are common ground:
 - a. One, that the complaint is admissible in that the various procedural requirements set forth in the EFL Regulations have been met.

- b. Two, that the matter has properly been referred to this Player Related Dispute Commission and this Player Related Dispute Commission therefore has jurisdiction to hear and determine this matter.
22. There was, however a debate, about the nature of the hearing before this Commission, which should be addressed at the outset.
23. Relying on British Home Stores v Burchell [1978] IRLR 379, a case of unfair dismissal, it was submitted by the Club that the Commission *“should only interfere with the employer employee relationship where there is a manifest error with the employer’s decision and the Panel must not seek to substitute its view for that of the employer”*. It would, it was said, *“be perverse for this Panel when considering an internal disciplinary matter to interfere in the relationship by seeking to impose their view on an employer. The reason for this is that the contract ... merely requires the matter to be proved to the Club’s satisfaction for a sanction to be warranted.”*
24. This dispute is not, of course, concerned with a dismissal, fair or unfair, and it is not at all certain that such principles apply here. Nevertheless, on the assumed basis that the approach to be taken in that context may provide some guidance, in the Commission’s view the starting point is section 98 of Employment Rights Act 1996 Act.
25. Section 98 provides that:
- “(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show (a) the reason (or, if more than one, the principal reason) for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
- (2) A reason falls within this subsection if it ... (b) relates to the conduct of the employee,*
- ...
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) — (a) depends on*

whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case."

26. In summary then, under s98: (a) the employer must show a reason or if more than one a principal reason for the dismissal; (b) that the reason fell within the identified categories – including the conduct of the employee; (c) the employer must have acted reasonably in treating the reason as a sufficient reason to dismiss; and (d) all to be determined in accordance with equity and the substantial merits of the case. The test as to whether the employer acted reasonably in s98(4) is an objective one; i.e., whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted and it is irrelevant whether or not a tribunal would have dismissed the employee if it had been in the employer's shoes: see Iceland Frozen Foods Ltd v Jones [1982] IRLR 439.
27. By analogy here, where it is common ground that the Club has shown its reason(s) for the sanction, and that the reasons relied upon by the Club relate to the conduct of the Player, in order for the sanction to be fair, the Commission must be satisfied that, having regard to all the circumstances, the Club acted reasonably in treating such reason(s) as a sufficient reason for fining the Player, to be assessed objectively in accordance with equity and the substantial merits of the case.
28. In this respect, it was accepted by the Club that, in the consideration of whether the Club acted reasonably, it was a matter for the Club to show (i.e., it accepted the burden) that there had been a breach of contract on the part of the Player. This was accepted by the Club as a fair reading of clause 9 of the 2016 Contract (see above), which provided that *"Except in any case where the Club terminates the Player's employment pursuant to the provisions of clause 10 ... the Club shall operate the disciplinary procedure set out in Part 1 of Schedule 1 hereto in relation to any breach or failure to observe the terms of this Contract or of the Rules"*. In other words, in

order for the disciplinary procedure to be invoked against a player, the Club must be able to show a breach of or failure to observe the contractual terms – and, indeed, the reason(s) relied upon by the Club here were alleged breaches of contract.

29. Accordingly, it is a matter for this Commission to determine, according to equity and the substantial merits of the case, whether these alleged breaches of contract have been made out.

The Factual Background

30. The Player first joined the Club in 2014, under the 2014 Contract. The Player played more than [REDACTED] for the Club and was appointed vice-captain of the First Team at the beginning of the 2019/20 season. While playing for the Club, the Player lived in a rented property adjacent to the Club's training ground. The tenancy on this property was due to expire on 28 April 2020.
31. The 2014 Contract, as noted above, was due to come to an end on 30 June 2017. In the event, a new contract was negotiated in mid-2016 and the 2014 Contract was superseded by the 2016 Contract.
32. The 2016 Contract, by its terms, was due to expire on 30 June 2020. In late 2019/early 2020 there were informal discussions between the Player and the Club about a contract extension but, in the event, no such extension was agreed. The 2019/20 season was due to conclude on 2 May 2020 but, as is notorious, was interrupted by the Covid pandemic.
33. [REDACTED], the Player sustained an injury to [REDACTED] during the first half of a match against [REDACTED]. He left the pitch and was seen then or soon after by a Club doctor, Dr [REDACTED]. Dr [REDACTED] concluded that the Player had suffered a *"marked medial soft tissue injury involving the anterior and posterior proximal superficial components of the medial ligament complex. The deep component appears relatively unaffected."* Dr [REDACTED] notes on the injury were as follows (emphasis added):

*"There is an acute medial soft tissue injury with subcutaneous haemorrhage and marked oedema of the proximal anterior and superficial components of the medial ligament complex. The posterior and anterior superficial components show oedema with probable partial tearing. There is an associated joint effusion. The main deep deltoid ligament component shows minor oedema but no significant disruption. The adjacent tendons show minor reactive fluid within the tendon sheaths but no primary tendon abnormality and the spring ligament is intact. The syndesmosis appears normal and no acute lateral ligament abnormality within the ankle although the ATFL is not clearly defined this may be chronic as no definite acute lateral capsular injury can be identified. The peroneal tendons and peroneal retinaculum appear normal. There is small amount of fluid in the peroneal tendon sheaths which appears to be reactive. No evidence of an acute osteochondral injury in the ankle or hindfoot. Minor chronic appearing chondromalacia of the medial talar dome. The other surrounding tendons appear normal. **Conclusion: Marked medial soft tissue injury involving the anterior and posterior proximal superficial components of the medial ligament complex. The deep component appears relatively unaffected.**"*

34. It is common ground that this was a serious injury. Dr [REDACTED], the Head of Medical at the Club, who subsequently saw the Player, noted that the prognosis for such an injury would normally be *"in the region of minimum 5 weeks and maximum 11 weeks"*. In the period following the injury, the Player underwent treatment at the Club under the supervision of the Club's medical (and other fitness) staff with a view to returning to playing.
35. By an announcement issued on 13 March 2020, the various English professional football leagues, the EFL included, suspended professional football until *"3 April at the earliest"* as a result of the Covid pandemic. This was followed, on 23 March 2020, by the announcement of the national lockdown.
36. During this period, the Player worked to recover from his injury. According to Dr [REDACTED] (in a message dated 30 March 2020): *"Yes [REDACTED]. You have worked very hard through a difficult injury. We are always here to support you if things are not going well but feedback from [REDACTED] and [REDACTED] has been very positive. We have lots of time now."*

37. On 10 April 2020 the Club informed all of its players that the players were “on holiday until May 16”. The message said as follows:

“Further to ongoing discussions with EFL, you will now be on holiday until May 16th. We are in unprecedented and rapidly changing times so in the highly unlikely event that you will be required to return before that date we will endeavour to provide as much notice as possible to facilitate that but in any event this will not be before May 3rd.

As with holidays generally you will be expected to keep a high standard of physical fitness - we will provide you with the normal holiday guidance, programmes and targets to assist you in doing this. The attached programme details the weeks until May 16th.

In these exceptional times and adhering to government advice we would not expect any of our players to be travelling whether domestically or internationally, whether British national or otherwise.

It is quite possible that travelling abroad could result in an increased risk to your own health and or being unable to return to training when required. This would, in light of the clear advice given, be a very serious issue and treated as such by the Club.

We hope that we will get back to playing football as soon as possible and hope that you and your families remain healthy in the coming weeks and that we all support the government advice to Stay Safe.”

38. The ‘attached programme’ referred to in the message was not in evidence but it was explained that each of the players, the Player included, was provided with a fitness programme to assist in maintaining fitness during the lockdown/holidays.
39. Now in lockdown and on holiday, the Player made the decision to move (with his family) to a property he owned in [REDACTED] which was closer to extended family members. He left the [REDACTED] premises on 11 April 2020 (i.e., the day after being told he was on holiday).
40. The Player did not inform the Club that he was going to [REDACTED]. The Club became aware that he had done so at some point in time via social media. At the time, the Club did not take issue with the Player for doing so. According to [REDACTED], the Club had “chosen not to take action in relation to the house move when the Player returned to squad training” but did decide to take action when “the Player had become disenfranchised”.

41. Some time at the end of April (i.e., while he was in [REDACTED]), the Player experienced some pain in his groin. He contacted the Club's head of fitness, [REDACTED], who advised the Player to contact the Club's head physiotherapist, [REDACTED]. The Player did so and was advised to *"take it easy for a few days"*.
42. On 10 May 2020, the Player reported to [REDACTED] that he had *"pain in the bottom of my feet now, probably I will have to stop for a couple of days and see how it goes"*. [REDACTED] asked if it was *"from anything in particular"* and whether he had let [REDACTED] know. The Player responded: *"I don't really know it started a few days back but I just thought it will go but it got worse, I didn't tell him but it's not much he can do at the moment"*. [REDACTED] replied: *"... okay, I will mention it to him just so he is aware. Let us know how you are tomorrow/ Tuesday"*. In the result, these "minor niggles" resolved themselves in a matter of days.
43. On or about 14 May 2020, the Club informed all players, the Player included, that they were required to return to training (at the Club's training ground) on 25 May 2020. On 24 May 2020, the Player arranged to rent a property near the Club's training ground for the period 25 May to 26 June 2020. The Player reported for training on 25 May 2020 and trained with the First Team.
44. In late May 2020, it was announced that the EFL would resume on 20 June 2020 and that the season would conclude at the end of July 2020 (as opposed to the scheduled date of 2 May 2020). This presented an obvious difficulty for the clubs with respect to those players whose contracts had not been renewed post 30 June 2020. Accordingly, after the players had returned to training, [REDACTED] and the First Team's manager, [REDACTED] talked with all of the players who were due to be out of contract, the Player included, to see whether the contract(s) could be extended. The Player was prepared to play through to 30 June 2020 but was not prepared to agree an extension. That, plainly, put the Club in a difficult position.
45. The Player trained on 25 May 2020. According to him, he *"fairly quickly began to experience pain"* in his left ankle (i.e., the one that had been injured in January 2020). He reported this and was examined by Dr [REDACTED] on 28 May 2020. The Club did not

call Dr [REDACTED] but a summary of his notes (prepared 28 June 2020) was in evidence. According to that summary, there were “no abnormal findings” apparent on that examination.

46. Dr [REDACTED] examined the Player again on Thursday 4 June 2020, this time conducting an ultrasound. The summary says this about the examination:

“No abnormal findings. No swelling. Good range of movement with all joints of foot and ankle complex. Player pointing towards site of tissue damage as the site of pain. Examination demonstrated possible slight thickening of this area of the ligament and the capsule but explained to the player that this was completely within the normal healing process after a ligament injury. Advice given to continue to work on remedial exercises and assistance provided by helping lift Reformer¹ into the back of his car for home related work. [REDACTED] informed me that he had pain. I offered anti inflammatory drugs which he declined and I respected that decision. I stated that the only other form of treatment would be injection therapy (which the player declined and I stated that I also did not think there were any signs or symptoms to warrant injection therapy). Therefore I stated that he needed “to push on”.”

47. It is not apparent from the summary but, according to the Player, he and Dr [REDACTED] agreed that the Player “should take some days rest to see if the pain would settle down”. It would appear, at least from the Club’s letter of 10 June 2020 (notifying the charges), that the Player did not train the following day, 5 June 2020.

48. The Player sought further medical assistance on Saturday 6 June 2020 (presumably at the training ground), this time from Dr [REDACTED], also a Club doctor. Dr [REDACTED]’s report says as follows (emphasis added):

*“On examination there was no evidence of erythema (redness) or heat. There was a suggestion of thickening to the capsular area of the anterior aspect of the ankle joint medially but no visual sign of acute inflammation. There was a good range of movement in the ankle and foot. On ultrasound examination there was no evidence of acute soft tissue injury or ankle joint effusion. **However, there was an area of increased Power Doppler signal around the medial aspect of the***

¹ The reference to “Reformer” in the summary is a reference to a Pilates exercise machine. It appears that one was made available to the Player for rehabilitation use at home and [REDACTED] helped the Player put it into the back of his car.

capsule of the anterior ankle joint. The ultrasound findings suggested an area of capsular inflammation to the anterior of the ankle joint which was discussed with [REDACTED] This is something that would be treated symptomatically and would not in itself rule a player out of training or games. Treatment options were discussed with [REDACTED] including a targeted steroid injection, which he declined at this stage. He requested to manage his symptoms via modifying his training load over the forthcoming period."

49. According to the Player, in light of the fact that the first return game was not until 20 June 2020, he declined the steroid injection at that juncture and decided instead to wait a few days to see if the inflammation settled. This was Saturday, 6 June 2020.
50. On the following Monday, 8 June 2020, the Player trained "with the physios", i.e., not with the First Team but under the supervision of the Club physiotherapist staff. It was not made clear whether this was his decision or the Club's.
51. On Tuesday 9 June 2020, there was an away 'friendly' against [REDACTED] According to the Player, which was not challenged, he was not in the squad that was sent to [REDACTED] but he trained at the Club training ground with the other members of the First Team who did not travel to [REDACTED] The Player's evidence was that "my ankle was still sore but I felt that it was improving".
52. According to the Player, on 10 June 2020 he arrived at the training ground ready to train but was told to report to the physiotherapists, which he did, training once again with them.
53. Later the same day, the Club issued its letter of 10 June 2020, the Notice of Charge, and, as noted above, the disciplinary hearing took place on 12 June 2020. The Player was sanctioned and was "ordered not to attend any of the club premises between now and 30th June 2020".
54. On 31 July 2020, the Player consulted (on his own account) a consultant radiologist, Dr [REDACTED]. According to Dr [REDACTED]:

"Findings

Initial imaging demonstrated a small articular body arising from an area of osteophyte production on the anteromedial margin of the tibial plafond and anterior colliculus of the medial malleolus. The body measures 4.2 mm and is adherent to the capsule with some associated chronic scarring and thickening of the anterior tibial attachment of the anteromedial capsular structures. Dynamic imaging demonstrates impingement of the anteromedial fat pad between the talus and the tibial osteophyte/articular body.

No tibiotalar joint effusion.

The intended benefits and potential risks of steroid injection were explained to the patient. Informed verbal and written consent obtained. Under local anaesthetic, sterile conditions and ultrasound guidance, the anteromedial fat pad and soft tissues around the articular body underwent infiltration with 40 mg of Kenalog and 1 ml of 0.25% bupivacaine.

No immediate complications.”

The Notice of Charge

55. By the Notice of Charge, the Player is alleged to have committed two acts of misconduct, each of which attracted a fine equal to the loss of two weeks' wages ("Charge One" and "Charge Two").
56. As noted above, and as is accepted by the Club, the Club must show, in respect of each charge, that there has been a breach of contract by the Player.
57. Charge One is in these terms:

On 10th May you told [REDACTED] that you could not run because of pain in your feet but you indicated that there was no point telling the medical team as there was nothing you could do as you were in [REDACTED]. You had, without notifying us, moved from your home at [REDACTED] to the [REDACTED] area and, as a result, were unable to access medical treatment when required during lockdown. This is in breach of your contractual duty to maintain a high standard of personal fitness and also live within 30 miles of the Training Ground.

58. There are two elements to the charge. By moving to the [REDACTED] area without permission during lockdown, the Player:

- a. breached his contractual obligation to live within 30 miles of the Club's training ground; and
 - b. breached his contractual duty to maintain a high standard of personal fitness.
59. Has the Club sustained these alleged breaches? The Club argued that it was "*in effect, two charges in one*". It is unfortunate that it has been expressed in this rolled-up way in that it is difficult to know whether to characterise it as one charge with two elements or two charges. In light of the view taken below, however, nothing turns on this.
60. As to the first, the Club relies on the following contractual provisions:
- a. clause 14.4 of Schedule 2 to the 2014 Contract (see [5] above) which required the Player "*to live within a 30 mile radius of the [REDACTED] or [REDACTED] Training Ground.*"; and
 - b. clause 3.2.3 of the Code of Practice (see [10] above)
61. The Club argues that the 2014 Contract continues to apply despite the Player and the Club having agreed the 2016 Contract. That is a hopeless submission and is rejected. The parties' relationship is governed by the 2016 Contract (and the other materials identified above) and the 2016 Contract makes no reference to the Player being required to live within 30 miles of the Club's training ground. The 2016 Contract does contain an entire agreement clause, stating that the 2016 Contract supersedes any and all preceding agreements between the Club and the Player, not least the 2014 Contract.
62. What of Clause 3.2.3 of the Code of Practice? It is set forth above but it may assist to repeat its terms here. Clause 3.2.3 provides:

It will normally be expected that the Player lives within a reasonable travelling distance of the Club. If the Club agrees to pay allowances or make provision in respect of travelling or housing, it is essential that details of these are set out in the Contract Schedule. It is good practice

for the Club to let the Player know its housing policy before he signs for the Club, particularly if the Player is going to have to move.

63. This clause is of no avail either. Whatever its proper construction, this clause does not give rise to a contractual obligation on the Player to reside within 30 miles of the Club or indeed to live within reasonable travelling distance of the Club. Had the Club wanted to impose such an obligation it could well have done so with clear language, just as it had done in the 2014 Contract. For whatever reason, it did not.
64. The true position is that there was no obligation, either in the 2016 Contract or the Code of Practice, that required the Player to live within 30 miles, or alternatively within a reasonable distance, of the training ground. In any event, it is not at all clear whether, by moving to [REDACTED] during lockdown/declared holidays for a period of six weeks amounts to 'living' in [REDACTED] so as to offend this clause. As was submitted by the Player, the Player was on holiday during the period he was in [REDACTED] and, once the Player was told that he was on holiday, it was for him to choose where he spent it.
65. In the result, this alleged breach of contract must fail.
66. The second element is that, by moving to the [REDACTED] area without permission during lockdown, the Player breached his contractual duty to maintain a high standard of personal fitness.
67. This breach was said to arise by reason of the fact that, because he was in [REDACTED], the Player was not able to call in to the training ground to consult the Club medical staff, either readily because of the distance or at all due to the lockdown.
68. This was said to be in breach of clause 3.1.3 of the 2016 Contract, which, as noted above, provides that: *'The Player agrees except to the extent prevented by injury or illness to maintain a high standard of physical fitness at all times'*
69. There is no evidence at all that the Player did not maintain his level of physical fitness while on lockdown/holiday in [REDACTED]. Indeed, to the contrary, the correspondence with the fitness staff at the Club as to both the injury sustained on [REDACTED]

██████████ and the later “minor niggles” while in lockdown/on holiday tends to suggest that he was paying close attention, with the assistance of the Club’s fitness staff, to his fitness and to his fitness programme.

70. The Club further relies upon Club Rules 3(e), 3(f) and 5(e).

- a. Club Rule 3(e) requires a player to notify the Club if he sustains an injury whilst not at work and to report to the Club physiotherapist or doctor if required. Here, the Player did report his injuries to ██████████ and ██████████, and was not required by either of them to report to the Club. The Player did not breach this rule.
- b. Club Rule 3(f) requires a player to make himself available to attend appointments. At no point was the Player asked to make himself available to attend an appointment and, once again, the Player did not breach this rule.
- c. Club Rule 5(e) requires a player to ‘*continue treatment until fully fit even if this means reporting during the close season*’ and to ‘*report for treatment until deemed fit.*’ There is no complaint that the Player failed to continue treatment until fit, indeed the opposite is true in that it is said that the Player continued treatment even after he was fit as a ruse to avoid playing. Further, the Player was not directed to report at any time and, in any event, the Player did report to the Club fitness staff in relation to his fitness and (minor) injuries. The Player did not breach this rule.

71. In the result, this element fails and the whole of the first charge fails.

72. Charge Two (see above) is as follows:

“On Friday 5th June you stated you were unavailable to train due to injury and so unable to play a training game on 6th June, this was repeated on 8th June. You again deemed yourself unfit to train this morning. This is despite our training staff having seen no evidence of any injury. Given you have stated that you will not play beyond 30th June, in any event, we have reached the conclusion that you are not

genuinely injured but feigning injury to avoid playing any further for our club.”

73. Has the Club sustained this charge (i.e., has the Club made good its allegation of a breach of contract by the Player in this respect)? As the Player submitted, this is a very serious allegation and as such was required to be proved (on the balance of probabilities) by cogent evidence.
74. As can be seen, there is no identification in the Notice of Charge of which contractual terms were breached and nor was one relied upon in argument. Instead it was put on the basis the Club was *“entitled to reach the conclusion that the Player had, out of pique at the refusal to facilitate a free transfer in January and or as result of fear of any injury, decided to avoid playing for the Club in June 2020. This was a wholly unprofessional approach for any player to take and complete abuse of his contractual obligations to the Club.”*
75. The essence of the charge is that, on the Club’s case, there was no evidence of any injury (or that the Player was not genuinely injured) and that he was malingering.
76. In the Commission’s view, this charge fails on the facts. There was evidence of injury: as was submitted by the Player, three medical professionals noted evidence of an injury upon an examination of the Player:
- a. Dr [REDACTED]: *“Examination demonstrated a possible slight thickening of this area of the ligament and the capsule”.*
 - b. Dr [REDACTED]: *“The ultrasound finding suggested an area of capsular inflammation to the anterior of the ankle joint... .”*
 - c. Dr [REDACTED]: *“Initial imaging demonstrated a small articular body arising from an area of osteophyte production on the anteromedial margin of the tibial plafond and anterior colliculus of the medial malleolus”.*
77. Moreover, both Dr [REDACTED] and Dr [REDACTED] offered the Player steroid injections. It would be hard to imagine any proper basis to do so in the absence of injury.

78. In the Commission's view, the evidence supports the Player's position that he was not feigning injury. On the evidence before the Commission it is impossible to conclude that the Player was not injured but was feigning injury so as to avoid playing. In the Commission's view that notion is inconsistent with the medical evidence and with the fact that the Player reported for training on 25 May 2021 as he was asked to do and trained with the First Team until experiencing difficulty with his ankle injury. It may well be that he was being cautious, perhaps overly so, but that is not the same thing as feigning an injury.
79. In the Commission's view this charge has not been sustained by the Club.

Conclusion

80. For the aforementioned reasons, the Commission finds that neither charge has been made out and that, accordingly, it has not been shown that, having regard to all the circumstances, the Club acted reasonably in treating the reasons set forth in the Notice of Charge as sufficient reasons for fining the Player when assessed in accordance with equity and the substantial merits of the case.
81. Accordingly, the Player's appeal succeeds and the sanctions imposed by the Club are to be set aside. The Club shall return to the Player the sum imposed by way of fine, namely the sum of [REDACTED], within 14 days of the date hereof.
82. The Player also seeks certain consequential relief in relation to interest and costs.
- a. As to interest, the Player seeks an order that the Club pay the Player interest on that sum at the rate of 8% from 6 July 2020 until the date of this Decision. It must follow that the Player is entitled to interest on the sum withheld. In this respect, the Player noted clause 3.3.3 of Schedule 1 to the 2016 Contract which, as set forth above, provided that no sanction was to take effect until *"the appropriate appeal has been determined"*. It was said by the Player, and the Commission agrees, that given this provision the funds should not have been deducted in the first place until the determination of this appeal (if the Club proved successful). There were, however, no submissions by either party

as to the appropriate rate and it occurs to the Commission that 8% is too high and that 2% simple interest is an appropriate rate, which we quantify for the sake of certainty at [REDACTED].

- b. As to costs, it must follow that, as the successful party, the Player is entitled to his reasonable costs and expenses of these proceedings before the Commission and that the Club should bear the costs of this Commission.

Disposition

83. This Commission therefore orders and directs as follows:

- a. The Club shall pay to the Player the sum of [REDACTED] within 14 days of the date hereof.
- b. The Club shall pay to the Player interest in the sum of [REDACTED] within 14 days of the date hereof.
- c. The Club shall pay (i) the Player's reasonable costs and expenses of these proceedings, to be assessed by this Commission if not agreed and (ii) the costs of this Commission.

84. The Commission reserves the right to make a further decision as may be appropriate in respect of outstanding differences between the parties in this dispute, including without limitation as to costs.

Right to Appeal

85. Regulation 74 of the EFL Regulations provides that in the event that either party is aggrieved by this Decision an appeal may be made to the League Appeals Commission. The notice of appeal must be lodged with the company secretary of The League within fourteen (14) days of this Decision.

James Drake QC

Chairman

For the Player Related Dispute Commission

27 April 2021