

**IN THE MATTER OF A FOOTBALL ASSOCIATION**  
**INDEPENDENT REGULATORY COMMISSION**

**B E T W E E N :-**

**THE FOOTBALL ASSOCIATION**

**and**

**MR HARRY TOFFOLO**

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**DECISION AND WRITTEN REASONS**  
**OF THE INDEPENDENT REGULATORY COMMISSION**

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**Regulatory Commission:** Graeme McPherson KC (Chairperson)  
Dominic Adamson KC  
Stuart Ripley

**Secretary to Commission:** Michael O'Connor (Judicial Services Assistant Manager)

**Date:** 12 September 2023

**Venue:** Wembley Stadium

**Appearances:** For the FA:  
Yousif Elagab – FA Senior Regulatory Advocate  
Madeleine Deasy - Observer

For the Respondent:  
Harry Toffolo – Respondent  
Nick De Marco KC – Advocate  
Stefano Toffolo – Observer  
Susan Toffolo – Observer  
Tamas Byrne - Observer

## **(A) Introduction**

- 1) On 11 July 2023 the FA charged Harry Toffolo (***HT***) with Misconduct under FA Rule E1(b) in respect of 375 bets placed on football matches between 22 January 2014 and 18 March 2017 in breach of FA Rule E8<sup>1</sup> (***the Charge***).
  
- 2) The bets that underpin the Charge span the 2013/14, 2014/15, 2015/16 and 2016/17 seasons. During those seasons
  - a) HT was contracted to Norwich City FC (***NCFC***), but
  - b) HT spent time on loan to a number of other clubs:
    - i) HT was on loan to Swindon Town FC (***STFC***) between October 2014 and May 2015
    - ii) HT was on loan to Rotherham United FC (***RUFC***) between October 2015 and January 2016
    - iii) HT was on loan to Peterborough United FC (***PUFC***) between January 2016 and May 2016
    - iv) HT was on loan to Scunthorpe United FC (***SUFC***) between August 2016 and May 2017.
  
- 3) With the Charge the FA served
  - a) A witness statement from Tom Astley, an Integrity and Intelligence Analyst employed by the FA, and
  - b) Exhibits to Mr Astley’s statement – in particular
    - i) **TA/1** – a schedule of all 375 bets on football matches said to have been placed by HT
    - ii) **TA/2, TA/3, TA/4 and TA/5** – schedules of bets on football matches said to have been placed by HT
      - (1) in the 2013/14 season (76 bets)
      - (2) in the 2014/15 season (212 bets)
      - (3) in the 2015/16 season (82 bets)
      - (4) in the 2016/17 season (5 bets)

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<sup>1</sup> The wording of FA Rule E8 (and the scope of betting activity from which Participants were/are forbidden from undertaking) was changed after the 2013/14 season. In these Written Reasons a reference to FA Rule E8 should be taken as being the relevant FA Rule E8 that was in force at the that the relevant bets were placed.

- iii) **TA/6** – a schedule of 202 bets said to have been placed by HT during the relevant seasons on football matches in competitions in which HT’s clubs were participating/had participated during the relevant season
  - iv) **TA/7** – a schedule of 2 spot bets said to have been placed by HT on events involving HT himself
  - v) **TA/8** – a schedule of 26 spot bets said to have been placed by HT on events not involving HT. Within those 26 bets, 9 bets (identified in **TA/9**) were spot bets said to have been placed by HT on events involving HT’s own clubs
  - vi) **TA/10** – a schedule of 40 bets said to have been placed by HT during the relevant seasons on his own clubs in football matches. Within those 40 bets
    - (1) 15 bets (identified in **TA/11**) were bets said to have been placed by HT during the various seasons against his own clubs in football matches
    - (2) 26<sup>2</sup> bets (identified in **TA/12**) were bets said to have been placed by HT during the various seasons not against his own clubs in football matches.
- 4) The FA also served (as **TA/20**) the transcript of an interview conducted by Mr Astley and Mr Matthews of the FA on 17 May 2023 with HT, HT’s legal representative, Nick De Marco KC and HT’s licensed intermediary, Tam Byrne. We return to what was said in that interview below.
- 5) HT responded to the Charge by a ‘*Disciplinary Proceedings: Reply Form*’ dated 25 July 2023. HT
- a) Admitted the Charge in full
  - b) Asked for the opportunity to address the Regulatory Commission at a personal hearing
  - c) Provided details of net total weekly football income.
- 6) With his Reply Form HT served
- a) A written ‘*Formal Response to Charge*’ drafted by Mr De Marco KC. In that Response Mr De Marco KC set out submissions on sanction on behalf of HT
  - b) A witness statement from HT himself

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<sup>2</sup> The apparent discrepancy in the numbers in **TA/10**, **TA/11** and **TA/12** appears to arise because 1 bet – Bet 367 identified in the Exhibits to Mr Astley’s statement – was a multiple bet involving bets against and not against HT’s clubs.

- c) Further witness statements from
  - i) An individual who we identify as X. X's identity, and the reason why X's identity is to be kept confidential, is set out in the confidential Appendix 1 to these Written Reasons. That Appendix 1 shall be provided only to the parties to the Charge and shall not be published as part of these Written Reasons
  - ii) Ricky Martin. Mr Martin had been employed by NCFC in various capacities while HT had been at NCFC
  - iii) Steve Cooper. Mr Cooper is the manager of Nottingham Forest FC (*'NFFC'*). NFFC is HTFC's current club; he joined (from Huddersfield Town FC) in July 2022
  - iv) A further individual who we identify as Y. Y is a professional footballer who played with HT during a period relevant to the Charge
  - v) Carlos Corberan. Mr Corberan was the manager of Huddersfield Town TC (*'HTFC'*) when HT played for that between July 2020 and July 2022.
  
- 7) On 5 September 2023 the FA served a document titled Submissions on Sanction.
  
- 8) On 12 September 2023 a hearing was held at Wembley Stadium. Since
  - a) The Charge was admitted by HT, and
  - b) We accepted HT's admission of the Chargethe only issue for us to determine was the sanction that should be imposed on HT. To that end we heard evidence from HT and oral submissions on behalf of HT and on behalf of the FA. We were assisted by that evidence and those oral submissions, as we were by the Response served on behalf of HT and the Submissions on Sanction served on behalf of the FA.
  
- 9) At the conclusion of the hearing we informed the parties of our Decision on Sanction. We indicated that Written Reasons would follow. This document now confirms our Decision and sets out the Written Reasons for our Decision.
  
- 10) These Written Reasons are necessarily a summary of our views. However, we confirm that in reaching our Decision we considered all of the written material that was before us, including each of the witness statements and appendices, as well as the oral evidence and

submissions that we heard. The fact that specific reference is not made herein to some part or aspect of the same does not mean that we did not consider it or give it due weight.

**(B) The relevant Rules and Sanctions Guidelines**

11) Throughout the time with which we are concerned HT was a professional footballer and was bound by the FA Rules; HT was a Participant for the purpose of the FA Rules. Part E of the FA Rules is titled ‘*Conduct*’. By FA Rule 1 the FA may act against a Participant in respect of any ‘*Misconduct*’, which includes a breach of *inter alia* FA Rule E8.

12) FA Rule E8 is concerned with betting. In very general terms it prohibits Participants

- a) From betting on football matches, and
- b) From various other activities.<sup>3</sup>

In this Decision and Written Reasons we refer to FA Rule 8 as ‘*the FA Betting Rules*’.

13) The FA publishes Sanction Guidelines which identify for various categories of betting Misconduct

- a) An indicative Financial Entry Point for any fine to be imposed for various categories of breach of FA Rule E8
- b) An indicative Sports Sanction range to be imposed for certain categories of breach of FA Rule E8
- c) Factors to be considered in relation to any increase/decrease from entry point.

We append those Sanction Guidelines as Appendix 2 to these Written Reasons.

14) However, the Explanatory Notes to the Sanction Guidelines state

*‘The guidelines are not intended to override the discretion of Regulatory Commissions to impose such sanctions as they consider appropriate having regard to the particular facts and circumstances of a case. However, in the interests of consistency it is anticipated that the guidelines will be applied unless the applicable case has some particular characteristic(s) which justifies a greater or lesser sanction outside the guidelines.*

*The assessment of the seriousness of the offence will need to take account of the factors set out above [in the Sanction Guidelines]. A key aspect is whether the offence creates the perception that the result or any other element of the match may have*

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<sup>3</sup> Although as we have already referenced above, in the 2013/2014 season FA Rule E8(b) was less extensive in scope than subsequent iterations of FA Rule E8.

*been affected by the bet, for example because the Participant has bet against himself or his club or on the contrivance of a particular occurrence within the match. Such conduct will be a serious aggravating factor in all cases. A further serious aggravating factor will be where the Participant played or was involved in the match on which the bet was made.*

*Betting offences are separate and distinct from charges under FA Rule E5 which concerns match fixing. It should be noted that save in exceptional circumstances a Participant found to have engaged in fixing the outcome or conduct of a match would be subject to a lifetime ban from the game. Where it can be proved that a bet has actually affected a result or occurrence within the match then such conduct will be specifically charged rather than treating the incident as a betting offence.”*

### **(C) Approach to sanction and factors relevant to sanction in this case**

#### *i) The starting point*

15) While we acknowledge that we retain a discretion to impose such sanctions as we consider appropriate having regard to the particular facts and circumstances of this case, the appropriate starting point nonetheless remains the Sanction Guidelines themselves.

16) Applying the Sanction Guidelines, the starting point for a breach of FA Rule E8 involving the majority of the bets of the type placed by HT is a financial penalty alone. However, a small but significant number of the bets placed by HT<sup>4</sup> have as their starting point

- a) A financial penalty, and
- b) A sporting sanction of 0-6 months, 0-12 months or 6 months–life.

Consequently the FA submitted (and HT did not disagree) that strict application of the Sanction Guidelines requires a sporting sanction in this case.

17) That said, as has been clear in many previous cases, the Sanction Guidelines are just that – guidelines – and the sanction appropriate in each case will always depend on the facts of that case. We therefore begin by considering the facts of this case that in our view are relevant to the question of sanction and the particular factors identified in the Sanction Guidelines.

#### *ii) The nature, number and size of the bets*

18) The bets placed by HT break down as follows:

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<sup>4</sup> In particular (1) those bets placed by HT on his own team to win or lose, and (2) bets placed by HT on particular occurrences (spot bets).

#### 2013/14 season

- a) HT placed 76 bets in total on football matches. All of those bets were placed on matches and competitions in which HT/HT's clubs were participating:
- i) He staked a total of £237.30
  - ii) His return was £7.50
  - iii) HT therefore lost £229.80

#### 2014/15 season

- b) HT placed 212 bets in total on football matches. 64 of those bets were placed on matches and competitions in which HT/HT's clubs were participating. 148 of those bets were placed on matches and competitions in which HT/HT's clubs were not participating
- i) He staked a total of £739.84
  - ii) His return was £544.07
  - iii) HT therefore lost £195.77

#### 2015/16 season

- c) HT placed 82 bets in total on football matches. 59 of those bets were placed on matches and competitions in which HT/HT's clubs were participating. 23 of those bets were placed on matches and competitions in which HT/HT's clubs were not participating
- i) He staked a total of £327.69
  - ii) His return was £292.28
  - iii) HT therefore lost £35.41

#### 2016/17 season

- d) HT placed 5 bets on football matches. 3 of those bets were placed on matches and competitions in which HT/HT's clubs were participating. 2 of those bets were placed on matches and competitions in which HT/HT's clubs were not participating:
- i) He staked a total of £19.10
  - ii) His return was £112.37
  - iii) HTK therefore won £93.27

### Total

- e) HT placed 375 bets on football matches:
  - i) HT staked a total of £1,323.92. HT's average stake was thus £3.53 per bet
  - ii) HT's total return was £956.22
  - iii) HT therefore lost a total of £367.70

19) Given that the Sanction Guidelines provides different Guidelines for different types of bet, we record that the bets summarised above can be broken down into the following categories:

- a) 202 of the 375 bets placed by HT were placed on football matches in competitions in which HT's clubs participated in the relevant seasons. The remaining (173 of the 375) bets placed by HT were placed on football matches in competitions in which HT's clubs were not participating in the relevant seasons
- b) 40 bets were placed on HT's own clubs:
  - i) 15 bets (involving total stakes of £30.50 and a profit of £125.08) were placed against HT's own clubs. In all but 1 of the matches HT was not in the relevant squad for the match; on 1 occasion he came on as a substitute in the relevant match. The majority of those bets were accumulators
  - ii) 26 bets (involving total stakes of £201.25 and a loss of £201.25) were placed on, not against, HT's clubs. In the majority of the matches HT was not in the relevant squad. On 4 occasions he played the full match and on one occasion he was an unused substitute in the relevant match. All of those bets were accumulators
- c) 2 bets was placed on a particular occurrence(s) involving HT. Those bets
  - i) were each for a 25p stake
  - ii) were for HT to be first/last goal scorer in the relevant match
  - iii) related to the League One playoff final at Wembley on 24 May 2015.HT explained, and we accept, that those bets were placed in excitement at the thought of playing and scoring at the national stadium in what was at that time one of the biggest matches of his career



- d) 26 further bets (with stakes totalling £60.68) were placed on particular occurrence(s) not involving HT, although
  - i) Of those 26 spot bets, 4 (3 singles and 1 accumulator) involved spot bets against HT's own clubs
  - ii) HT was not in the squad for 3 of those 4 matches. In the other match (where HT had bet on an opposing player scoring first for the opposing team and for the opposing team to win 2-1) HT came on as a 58<sup>th</sup> minute substitute
  - iii) The stakes for those 4 bets totalled £3.25.

20) In addition, analysis of the bets shows

- a) The bets were placed over a long period of time (a little over 3 years). We consider further below the circumstances in which bets came to be placed, and the pattern of HT's betting, during that period
- b) At the time that HT began placing bets he was 18 years old. When he stopped placing bets he was 21 years old
- c) HT's stakes were generally small. The total sum staked by HT was £1,323.93, meaning that HT's average stake was £3.53. The vast majority of HT's bets were for a few pounds; only once did HT ever bet a single stake of £100
- d) HT lost money overall, although he did profit from certain categories of bet
- e) HT has not bet on football since March 2017.

*iii) Football betting was only a part of HT's betting during the relevant period*

21) For obvious reasons the Charge focuses only on HT's football betting. However, during the relevant period HT was also betting on other sports. We reference that because it is relevant to what we say below about why HT bet during the relevant period.

*iv) Perception of impact of bets on game integrity*

22) There is no suggestion in this case

- a) That HT was match fixing, or
- b) That HT was betting with the benefit of any particular inside information; indeed, on many occasions when HT bet on or against his own club he was not a part of the relevant squad (and on occasion, not even a part of that club anymore) or

- c) That there was any suspicious activity or betting patterns around HT's betting. All bets were made in his name; no attempts were made by him to conceal the fact that he was placing the bets.

Rather, HT's betting was unsophisticated and driven principally, if not exclusively, by his own belief as to what the outcome of a particular match or event might be.

23) However, one important factor to be considered is perception. As the Sanction Guidelines make clear

*'A key aspect is whether the offence creates the perception that the result or any other element of the match may have been affected by the bet, for example because the Participant has bet against himself or his club, or on the contrivance of a particular occurrence within the match. Such conduct will be a serious aggravating factor in all cases'.*

24) The reason why such matters are considered to be aggravating factors is because of the perception to which such betting gives rise i.e. how it appears to a third party:

- a) It creates a suspicion of wrongdoing, that something is not right with the match or aspects of it
- b) It creates a suspicion that the gambler has an unfair advantage over the public generally and the organisation taking the bet.

25) It is therefore an aggravating feature in this case

- a) That HT bet against his clubs on multiple occasions, and
- b) That HT 'spot bet' on several occasions on an occurrence within a match in which his clubs (and he) were involved

although we acknowledge that (as set out below) there are factors which mitigate to a degree against the gravity of such matters in this case, including the extremely small sums staked on such bets.

26) Before leaving this section, we also acknowledge (as the FA rightly accepted)

- a) That the majority of the bets which form the subject matter of the Charge do not fall into the above 'aggravating' categories, and
- b) That certain of the bets on/against HT's clubs were part of accumulators and other multiple bets (and so involved matches over whose outcome HT could not conceivably have had any influence).

We therefore acknowledge that different bets within the totality of the bets placed by HT against his clubs potentially give rise to different perceptions in this case. Only a few of the bets placed by HT contain the aggravating feature of having been against HT's clubs.

27) Other than summarised in this sub-section, the FA does not contend that there are any further aggravating features of HT's conduct which ought to be reflected in the sanction to be imposed.

v) Facts and circumstances surrounding the pattern of betting AND personal circumstances

28) We deal with these together since the evidence before us demonstrates that these matters overlap to a considerable degree in this case.

29) The content of HT's interview by the FA, the witness statements served on HT's behalf and HT's oral evidence demonstrate – and we accept – that HT had a number of very difficult times in the period between January 2014 and March 2017. In summary<sup>5</sup>

- a) HT enjoyed a successful career as a teenager when at NCFC's academy. He played a number of times for England U18s, U19s and U20s. He was part of the NCFC U18 team that won the FA Youth Cup. On 1 July 2013 (just before his 18<sup>th</sup> birthday) he was given a professional development contract by NCFC and in the 2013/2014 moved up to NCFC's U23 Development squad
- b) In January 2014 HT suffered the twin disappointments of being told
  - i) that he did not feature in the manager's plans at NCFC, but
  - ii) that he could not go out on loan to gain experience.

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<sup>5</sup> What we set out below is a brief summary of certain of the personal difficulties that HT faced during the times relevant to the Charge and the consequences of those difficulties that are described in the witness statements that were provided to us. We have deliberately 'sanitised' the evidence before us in that regard and not set it out in detail in this Decision and Written Reasons. That is for 2 principal reasons. First, we are conscious that the evidence contains material that is sensitive and personal to HT. There is nothing to be gained from publicising that material in detail, particularly when it appears that HT has done an admirable job of moving on from those difficulties. We confirm however that we considered that evidence with care and took it fully into account when determining sanction. Secondly, the evidence contains allegations – including certain serious allegations of bullying corroborated by Y's evidence – about the manner in which HT was treated by a third party at one of the clubs. That evidence and those allegations are however untested, and that third party has been given no opportunity to respond to them. In such circumstances it would be wrong for us to detail such matters in these Written Reasons. We again confirm however that we have read such evidence with care and taken it fully into account when determining sanction.

As a result, he perceived that his future at NCFC (in the U23 Development squad) looked bleak

- c) It was around that time that HT began gambling. He did so partly to alleviate his low mood but principally because he wanted to 'fit in' with players who were claiming to be gambling regularly and successfully. In his own words, he naively believed that if he acted like the first team players, he would have more of a chance of 'making it' as a footballer. With hindsight HT believes that he became addicted to gambling during this period
- d) That remained the position until October 2014. In October 2014 HT was sent on loan to STFC, initially for 1 month and then until the end of the 2014/2015 season. While HT enjoyed success on the pitch, and (as demonstrated by various press articles that were provided to us) made real efforts to establish himself within the team at STFC and the local community, away from the pitch he struggled with his mental health for a variety of reasons. Those struggles led him to gamble with increasing frequency
- e) HT attributed that deterioration in his mental health (which continued for a lengthy period – see below) to him becoming increasingly addicted to gambling. Although there was no medical evidence provided to us to support that position, and so were ultimately in no position to form a definitive view on the question of addiction (i.e. whether or not HT did in fact truly become addicted to gambling), we accept that there appears to have been a link between the state of HT's mental health and his gambling
- f) In October 2015 HT was sent on short-term loan to RUFC. He lived in a hotel, away from his family, and suffered considerably from loneliness. In HT's mind he was not thriving at RUFC and was being criticised from all sides. His mental health struggles continued, as did his gambling
- g) In January 2016 HT was sent out on loan again, this time to PUFC, until the end of the 2015/2016 season. His mental health worsened and he became depressed. By February 2016 the situation had become so bad that HT considered his career in football to be over. As HT's mental health remained poor, his gambling continued

h) In August 2016 HT was sent out on loan again, this time to SUFC. HT thrived far better at SUFC, a fact that he in large part attributes to the fact that his family moved with him to the new club. The frequency of his gambling decreased considerably and, aside from 5 bets placed in February and March 2017, ceased altogether.

30) As well as HT's evidence of the period to March 2017 Mr Martin's witness statement also provided a degree of insight into (1) how HT had been treated while at NCFC, and (2) the attitude of others towards gambling at NCFC at that time. We are grateful for the candour shown by Mr Martin in his evidence.

31) On the basis of the evidence before us we accept that the bets placed by HT during the relevant periods which form the subject matter of this Charge were the result, at least in large part, of the significant mental health challenges that HT endured those periods.

32) Since leaving PUFC, and in particular since spring 2017, HT's career – and with it, his personal circumstances - have flourished:

a) In July 2018 he moved to Lincoln City FC (*LCFC*). HT established himself as a fixture and a favourite at LCFC. He was chosen as LCFC's PFA Community Champion in the 2018/19 season

b) After 2 successful seasons for LCFC in 2020 HT joined Huddersfield Town FC (*HTFC*). Mr Corberan's witness statement makes clear how HT had developed by the time he joined HTFC. He describes HT as having '*great leadership skills*' and as being a '*great professional*' – '*a real warrior with an unbelievable mentality*'. He also describes the efforts made by HT to interact in positive ways with fans, teammates and the local community. He was chosen as HTFC's PFA Community Champion in the 2020/21 season

c) In July 2022 HT moved to NFFC. Mr Cooper's witness statement describes HT in similar terms to Mr Corberan; a '*true professional*' and family man who has a positive impact on the dressing room and in the wider community

33) Paragraphs 29 and 32 above paint very different pictures of HT in the periods from 2014 to 2017 and then from spring 2017 to date. An obvious question to ask is – what caused things to change ? While we set out a little more detail in the confidential Appendix 1 to these Written Reasons, it was clear from the evidence before us that, with the support of his family and those around him, and with external help from a sports psychologist, HT made huge efforts to ‘turn things around’. That he did so, and did so so successfully, is a credit to him and, we hope, might serve as inspiration to other Participants who might find themselves struggling with mental health issues.

*vi) Previous record*

34) Aside from the bets that form the subject matter of the Charge, HT has not committed any other breaches of the FA’s Betting Rules.

*vii) Experience of HT*

35) HT’s evidence is to the effect that

- a) When he first joined NCFC he was unaware that he was unable to bet on football matches, whether involving his club or otherwise. He received no formal education, instruction or training (at NCFC or at any of the clubs to which he was loaned) on ethical conduct or the FA Betting Rules. While that may seem unlikely in this day and age, we accept that that was in fact the case for HT. The events in question took place several years ago
- b) He did not have any reason to doubt that betting on football was permissible conduct. He witnessed players openly discussed bets that they had placed on football without the fact that such conduct was prohibited ever being raised
- c) It was only on joining LCFC in June 2018 that he learned – as a result of discussions that took place at LCFC concerning the FA’s charging of a former LCFC player with breaches of the FA Betting Rules – that he learned that he was prohibited from betting on football.
- d) From that date HT has not bet on football matches at all.

36) We accept HT's evidence in that regard, and it is to his credit that he has not placed any bets since learning that he was prohibited from betting. However, in our view such matters only assists HT's mitigation to a limited degree:

- a) First, ignorance as to the existence of a Rule and/or that the Rule prohibits conduct is no defence to a breach of that Rule. Ignorance of the relevant Rule is thus not really a mitigating factor; rather, awareness of a Rule, and that conduct was in breach of that Rule, would be an aggravating feature if present in a case. It is thus more accurate to say that such aggravating feature is absent in this case than it is to say that such feature is a mitigating factor
- b) Secondly, every Participant has a responsibility to familiarise himself with the Rules and Regulations. There was no evidence before us that HT ever attempted to do so in the years that he was at NCFC
- c) Thirdly, on his own case HT was aware from June 2018 that for a number of years (since early 2014) he had been betting in breach of the FA Rules. He appears to have told no-one and it appears that the fact of his betting during that period only came to the attention of the FA relatively recently by chance.

37) We do of course accept that HT was young when he placed this bets; the vast majority were placed before he reached the age of 21.

viii) Assistance to the process and acceptance of the Charge

38) HT has at no time sought to deny that the bets were made by him. When first challenged about the bets by the FA – during interview on 17 May 2023 – HT was frank and open about his betting. He admitted the Charge at the earliest opportunity.

39) HT has also assisted the FA in a number of different respects. He identified a number of bets that were not his, and provided evidence to demonstrate that those bets were nothing to do with him. He is assisting the FA in connection with another matter which has arisen as a result of information that emerged during his interview. He has offered to help the FA in its education strategy to prevent other players from gambling as he did and to assist

young players to address mental health issues; we have taken that offer at face value and expect HT to make good on his offer.

*ix) Other factors*

40) In the Response and in his oral submissions Mr De Marco KC identified a number of mitigating factors over and above those to which we have already referred above to which he invited us to have regard when determining sanction. We considered each of those additional factors and given them appropriate weight. We placed particular weight on the following:

- a) The fact that HT began betting in the naïve belief that that would help him ‘fit in’ with more senior players and thus improve his chances of progressing as a professional footballer
- b) The fact that these bets were made some considerable time ago, during a 3 year period when for a number of reasons HT’s mental health was at a very low ebb
- c) That the bets were for low-stakes (both individually and cumulatively) and were unsophisticated. HT made no attempt to conceal that he was placing bets
- d) The fact that HT has placed no bets on football matches for well over 6 years
- e) HT’s genuine remorse at having placed the bets as he did
- f) The fact that HT bet openly, through his own accounts and in his own name; HT did not conceal that the bets that he was placing were ‘his’ bets
- g) The fact that HT has ‘turned things around’ to an admirable degree since leaving NCFC. His playing career is firmly back on track. The personal issues that impacted his career are hopefully behind him
- h) HT’s previous good disciplinary record
- i) HT’s acceptance of his betting and early admission to the Charge.



41) Before leaving this section we also make reference once again to HT's good work outside football. While not strictly a mitigating factor, the manner in which he conducts himself with the wider community is an example from which many Participants could learn. Such matters reinforce the view that we formed that, aside from the matters which underpin the Charge, HT is to be viewed as an individual of good character.

#### **(D) Decision on Sanction**

42) The breaches committed by HT were significant; certainly given the number of bets and the nature of certain of the bets, they cannot be described as trivial despite the low stakes involved. As we have set out above, it was common ground between the parties that a strict application of the Sanction Guidelines would require the imposition of a sporting sanction.

43) On behalf of HT Mr De Marco KC submitted that on the facts and circumstances of this case and in the light of the substantial mitigation available to HT in this case, we should, despite the seriousness of the admitted breaches,

- a) Depart from the Sanctions Guidelines, and
- b) Exercise our discretion so as to impose 'only' a financial penalty on HT.

44) Before we consider that broad submission we make reference to the fact that, in addition, in support of his submission that no sporting sanction should be imposed Mr De Marco KC invited us in the Response to have regard to

- a) The timing of the Charge, and so
- b) The timing of any sanction that we impose.

He contended (1) that the FA had been guilty of delay in only charging HT on 11 July 2023 (despite HT having made the admissions that he did in interview on 17 May 2023, and (2) that the uncertainty surrounding HT's fate while the Charge has remained undetermined has prejudiced, or might prejudice, HT's ability to be selected in NFFC's 25 man squad for the first half of the 2023/2024 season.

45) We did not consider that to be a good point. The FA was not guilty of any unreasonable delay. The fact that HT came to be charged shortly before the start of a season, and that

the Charge came before us shortly after the start of that season, is not a matter that has any bearing on the sanction that is to be imposed on HT.

46) Any sanction that we impose must be a proportionate and appropriate response to the offending in question in the circumstances of the case. While we considered Mr De Marco KC's submissions with care, the view that we reached was that a sporting sanction (i.e. a suspension from football activity) was both proportionate and appropriate in this case. While (as set out above and as we return to below) there is substantial mitigation available to HT in this case, a sporting sanction is nonetheless appropriate and proportionate in light of the serious nature of the breaches committed by HT over a lengthy period of time.

47) But for the mitigation available to HT we would have imposed a suspension of 10 months on HT:

a) The Sanctions Guidelines identify

i) A range of 0-6 months for a bet placed on a participant's own team to win. Here there were 26 such bets, over a period of time

ii) A range of 6 months to life for a bet placed on a participant's own team to lose. Here there were 15 such bets, over a period of time

iii) A range of 0-12 months for a bet placed on a particular occurrence not involving the player who bet (i.e. a spot bet). Here there 26 such bets, including 4 against HT's own teams

iv) A range of 6 months to life for a bet placed on a particular occurrence involving the player who bet (i.e. a spot bet involving HT). Here there was 2 such bets

b) As we have said above, such matters – and in particular (ii) and (iv) - undoubtedly create a perception that the result of a match or some element of a match might have been affected by the bet are serious aggravating factors. That said, as once again we have already recorded, there are certain factors which mitigate against the gravity of those factors in this case

- c) It is primarily because of the nature, gravity and number of the breaches committed by HT that, absent the matters to which we refer below, we would have imposed a suspension
  - i) In excess of the bottom end of the ranges for placing a bet on one's own team to lose and for placing a bet on a particular occurrence involving the player who bet, and
  - ii) Above the middle of the range for placing a spot bet not involving the player who bet
  - iii) Above the top end of the range for placing a bet 'only' on one's own team to win.

48) However, as we have said above, we accept

- a) That the gravity of HT's conduct is softened to a degree, and
- b) That there is very substantial mitigation available to HT in this case.

49) Taking such matters into account, we concluded that it would be appropriate to reduce such suspension to 5 months. That is accordingly the suspension that we impose on HT.

50) Regulation 42 of the FA Disciplinary Regulations provides that

*'Save where any Rule or regulation expressly requires an immediate penalty to be imposed and subject to paragraphs 43-46 below, the Regulatory Commission may order that a penalty imposed is suspended for a specified period or until a specified event and on such terms and conditions as it considers appropriate'*

Regulation 43 provides:

*'When considering imposing a suspended penalty a Regulatory Commission must:*

- a) Determine the appropriate penalty for the breach, irrespective of any consideration of it being suspended, and*
- b) Consider whether there is a clear and compelling reason(s) for suspending that penalty; if so
  - i) Set out what the clear and compelling reason(s) are*
  - ii) Decide the period of the suspension or event until which the penalty will be suspended*
  - iii) Upon what other terms or conditions, if any, the penalty will be suspended'.**

51) Mr De Marco KC submitted that, if contrary to his primary position, we concluded that it was appropriate to impose a sporting sanction on HT, we should exercise our discretion to

suspend that sporting sanction. The FA did not seek to persuade us otherwise; in its written Submission on Sanction it stated ‘... *the FA is not seeking the imposition of an immediate sporting sanction in this matter*’ (emphasis added).

52) In our view this is a case where there are clear and compelling reasons to suspend the entirety of the 5 month suspension that we have imposed above and thus enable HT to continue to undertake football activity. Those reasons include

- a) The circumstances in which HT came to make the bets as he did
- b) The fact that HT ceased betting on football more than 6 years ago
- c) The manner in which HT has worked to ‘turn things around’ since 2018 and the success that he has achieved in that regard
- d) The wider work that HT undertakes within the community.

Imposing an immediate suspension, and thus preventing HT from undertaking any football activity for much of the 2023/2024 season, is unjustified in this case.

53) The period for which we suspend the penalty is the duration of the 2023/2024 and 2024/2025 seasons. Provided that HT does not commit any further breach of the FA Betting Rules in that period (i.e. before the end of the 2024/2025 season), he will not serve any part of the 5 month suspension. However, should he commit a breach of the FA Betting Rules in that period, the 5 month suspension will be automatically triggered.

54) We did consider at some length whether it might be perceived that a sanction which (assuming no further breach of the FA Betting Rules is committed by HT) will permit HT to continue playing was too lenient, particularly taking into account the nature of certain of the bets placed by him and the level at which he now plays. However, we concluded that the particular circumstances of this case justified the nature, duration and terms of the suspension that we have described above.

55) In addition, we concluded that a financial sanction was proportionate and reasonable in this case:

- a) We concluded that HT should pay a fine of £20,000. That figure is appropriate and proportionate taking into HT’s net weekly football income

- b) In addition HT should pay a further sum equivalent to the profits that he made from those bets that he placed that were successful. In our view it is inappropriate
  - i) That HT should be seen as in any way profiting from his breaches of the FA Betting Rules, and so
  - ii) That HT should not retain that profit.That profit totalled £956.22
  
- c) The total financial penalty that we impose on HT is therefore £20,956.22.

**(E) Order**

56) We accordingly order that the following sanctions be imposed on Harry Toffolo:

- a) In the event that at any time the end of the 2024/2025 season he commits a further breach of the FA Betting Rules, he will be suspended from all football and football-related activities for a period of 5 months (in addition to any separate penalty imposed for such further breach) from the date on which he admits or is found to have committed such further breach
  
- b) He is fined the sum of £20,956.22
  
- c) He is warned as to his future conduct.

57) Finally, we order Mr Toffolo to pay the costs of the Regulatory Commission. The amount of those costs will be confirmed by Judicial Services.

**Graeme McPherson KC (Chairperson)**

**Dominic Adamson KC**

**Stuart Ripley**

**14 September 2023**

**Appendix 1 to Decision and Written Reasons**

The following words shall appear in the published version of these Written Reasons:

**Appendix 1 to Decision and Written Reasons**

*This Appendix 1 is confidential to the parties to the Decision i.e. to the FA and Harry Toffolo. The use, publication or disclosure of the paragraphs of this Appendix 1 set out below for any purpose other than the proceedings to which the Charge relates is prohibited without express permission of the Regulatory Commission.*

The following words (which form part of our Written Reasons) shall be redacted from the published version of these Written Reasons:

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