

IN THE MATTER OF BLACKPOOL FOOTBALL CLUB

AND IN THE MATTER OF THE ENGLISH FOOTBALL LEAGUE LIMITED

OPINION

Introduction

1. I am asked to advise the Blackpool Supporters Trust as to the application of the Owners' and Directors' Test contained within the governing Regulations of the English Football League Limited ("the EFL").
2. The ultimate majority shareholder of Blackpool Football Club ("the Club") is Mr Owen Oyston, who holds a majority shareholding in its parent company, Blackpool Football Club (Properties) Limited. Mr Oyston is a controversial figure among supporters of the Club. In 1996 he was convicted of (among other offences) rape and sentenced to six years' imprisonment.

Summary - the questions and my answers

3. I am asked to advise on the position adopted by the EFL as to the application of the Owners' and Directors' Test to Mr Oyston, and, specifically:
 - a. Whether Mr Oyston's unspent rape conviction should cause the EFL to view him as being subject to a 'disqualifying condition' on the ground that he has served a custodial sentence of at least 12 months; and
 - b. Whether the EFL should also view him as being subject to a 'disqualifying condition' on the ground that he is a "Registered Offender".
4. In my view the answers to these questions are:

- a. Yes; and
- b. Yes.

Discussion

5. The preamble to Appendix 3 of the EFL Regulations, which deals with the Owners' and Directors' Test, states:

The intention behind this Appendix 3 is to protect the image and integrity of The League and its competitions, the well-being of the Clubs, and the interests of all of the stakeholders in those Clubs, by preventing anyone who is subject to a 'Disqualifying Condition' being involved in or influencing the management or administration of a Club.

6. The document goes on to say that Appendix 3:

(1.b) requires a person who was already a Relevant Person before the Disqualifying Condition arose to stop being a Relevant Person for so long as the Disqualifying Condition subsists; and

(1.c) requires each Club not to permit any person who is subject to a Disqualifying Condition either become a Relevant Person or (if he was already a Relevant Person before the Disqualifying Condition arose) to continue to be a Relevant Person for the Club, for so long as the Disqualifying Condition subsists.

Appendix 3 also imposes reporting requirements on Clubs and on individuals who are or propose to be Relevant Persons of Clubs, to facilitate The League's policing and enforcement of these restrictions. For the avoidance of doubt individuals applying under this test will become subject to the League's Regulations at the point of submission of the Declaration.

7. Among the definitions in Appendix 3 are:

'Conviction' means a formal finding made by a court of competent jurisdiction that a person is guilty beyond reasonable doubt of a criminal offence, whether that finding was made before or after these Rules came into effect, and whether or not that finding is considered to be final pending resolution of any appeal against that finding. The word 'Convicted' shall be construed accordingly.

'Disqualifying Condition' means all or any of the following:
... Criminal matters:

(1.h) having an Unspent Conviction by a court of competent jurisdiction anywhere in the world (including any attempt and/or any conspiracy to commit the same) that results in a sentence of at least 12 months' imprisonment but for the avoidance

of doubt, not a suspended jail sentence unless that sentence is subsequently activated for a period of at least 12 months for whatever reason;

...

(1.k) being a Registered Offender (as defined in this Appendix 3);

...

'Registered Offender' means any person who is required to notify personal information to the police in accordance with Part 2 of the Sexual Offences Act 2003.

'Relevant Person' means in respect of any Club any individual Person (and not any Entity) operating the powers that are usually associated with the powers of a director of a company incorporated under the 2006 Act (as a Company limited by shares or by guarantee)....

8. Appendix 3 goes on to provide:

"2 Reporting Requirements

2.1 Clubs promoted into The League from the National League and those relegated into The League from the Premier League shall submit a duly completed Declaration in respect of each of its Relevant Persons to The League within 14 days of becoming a member of The League. All other Clubs shall submit a duly completed Declaration in respect of each of its Relevant Persons to The League no later than 14 days before the commencement of each Season. In all cases, the Declaration must be signed by both the Relevant Person and an Authorised Signatory (who must not be the same person).

...

3.4 A Club must not permit any person who is subject to a Disqualifying Condition either to become a Relevant Person or (if he was already a Relevant Person before the Disqualifying Condition arose) to continue to be a Relevant Person for the Club, for so long as the Disqualifying Condition subsists."

9. Mr Oyston is a Registered Offender: see s 81(1) and (3) of the Sexual Offences Act 2003.
10. The EFL has suggested that the reason that Mr Oyston has not been found to fail the Owners' and Directors' Test is that it cannot be applied 'retrospectively'. In my view this is a wrong-headed analysis of the meaning of the Regulations.
11. I have read the transcript of the meeting of 20 March 2018 attended by Mr Shaun Harvey, the Chief Executive of the EFL. I confess that I find Mr Harvey's case as to why Mr Oyston does not fail the Owners' and Directors' Test to be incoherent. As Mr Harvey accepted at

that meeting, "There is an annual re-certification". He accepted also that the test was an 'ongoing test'. He suggested that 'because [Mr Oyston's conviction] occurred before June 2004, it is not recognised under our owners and directors test. And [that] is simply why Owen Oyston is not banned under our test'. That does not seem to me to be in accordance with the proper construction of the EFL Regulations. Moreover, as Mr Fielding pointed out at the meeting, the rules "also ban anybody who is a registered sex offender...". The same point is made in Ms Seddon's email of 25 April 2018.

12. I find the EFL's letter of 20 April 2018 no more convincing than Mr Harvey's presentation at the meeting. That letter recites the history of the instigation of the original "Fit and Proper Person Test". However, after one season there was a review of the Regulations. The letter goes on to explain that the EFL Regulations constitute a contract between the EFL, its member clubs and the individuals subject to the Regulations. That may be so, but the question is what do the Regulations, as they now stand, actually mean? How are they properly to be applied to Mr Oyston?
13. The letter refers to advice that was obtained by the EFL when considering changing the Regulations, but then acknowledges that the EFL "went on to extend the disqualifying conditions to also include convictions for offences resulting in a sentence of imprisonment of at least 12 months, and individuals who were noted as registered sex offenders, notwithstanding the advice it received at the time."
14. The letter acknowledges that the new Regulations "would apply to existing Directors with effect from their entry into force *i.e. for conduct occurring after implementation*" (my italics). In my view the italicised words simply do not follow from the terms of the Regulations. In my view it is plain and obvious that, once the new Regulations came into force, a relevant individual who was, for example, a registered sex offender would, *henceforth*, fail the Owners' and Directors' test. That does not involve any sort of retrospective application of the Regulations: it is simply the application of (amended) Regulations to existing facts such that someone who on day X-1 complied with the old Regulations does not comply with the new Regulations on day X. In my opinion that is the position of Mr Oyston.
15. I should add that it seems to me that the EFL Regulations are no more or less 'retrospective' than the FA Premier League Rules: see F1.5 and F1.13 of the latter, which

are to the like effect as the EFL Regulations. Hence, when the Club was (briefly) in the Premier League Mr Oyston was found to be, rightly in my view, non-compliant with the Premier League's Rules.

16. It follows that in my view the very clear answers to the questions set out at paragraph 3 above are:

- a. Yes; and
- b. Yes.

17. If I can assist further please let me know. I can always be contacted at alanmaclean@blackstonechambers.com

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