

## 'HOW DID LIVERPOOL ESCAPE LEAGUE CUP EXPULSION?' - ASHLEY CUKIER ON THE EFL DISCIPLINARY PANEL'S DECISION

The English Football League ("EFL") yesterday announced that Liverpool FC had been found guilty of misconduct and fined £200,000 – of which £100,000 will be suspended until the end of Season 2020/21 – for having breached EFL Rules by fielding an ineligible player in their League Cup third round match against Milton Keynes Dons. The sanction has raised eyebrows in some parts: in 2016 the EFL, in an ostensibly more severe sanction, deducted 3 points from Bury FC for fielding an ineligible player and, as recently as last month, Grays Athletic FC were expelled from the FA Cup for the same offence. In the latest edition of the [Littleton Sports Group's 'Five Things You Need to Know' series](#), [Ashley Cukier](#) considers the sanction handed to Liverpool by the EFL Board.

### 1. Why was the Liverpool player ineligible?

Following a loan spell at the Spanish club Extremadura UD, Pedro Chirivella returned to his parent-club, Liverpool, for the 2019-2020 season. In so doing, he required 'International Clearance' – an assignation under the FIFA-administered player registration system which is required for any player over the age of 10 who is seeking to register for a club in England, and who has previously been registered for a club abroad. Despite the fact that Chirivella at all material times was a Liverpool-owned player, his prior loan spell at Extremadura meant that he needed International Clearance to return to play for Liverpool in 2019-2020. Such International Clearance, it transpired after the game, had not been obtained by Liverpool. This rendered Chirivella ineligible: under rule 43.5 of the EFL Regulations, no player may play in any competition organised by the English Football League "*unless and until his registration has been so approved*". Rule 43.6 further provides that "*it shall be the responsibility of all Clubs playing in any competition organised by The League to ensure that all Players are so registered. Failure to do so constitutes misconduct*".

### 2. What is the sanction for fielding an ineligible player under the EFL Rules?

The sanctions for a breach of 'Conditions of Registration' are set out in Section 44 of the EFL Rules. Whereas §44.2 relates to sanctions for fielding an ineligible player in a League Match, the scope of §44.3 is much broader, relating to "*a match under the auspices of The League*" and accordingly encompasses League Cup games. Pursuant to §44.3, any club fielding an ineligible player "*may have three points deducted from its score and/or be liable to such other penalty as a Disciplinary Commission may decide*". It was pursuant to this broad discretion that the EFL Board decided against expelling Liverpool from the League Cup (albeit to do so would have been within the Board's jurisdiction); instead, the EFL elected to fine Liverpool £200,000, of which £100,000 would be suspended until the end of the 2020/21 season, provided that the club does not field an ineligible player in the League Cup between now and the end of next season.

### 3. How did the EFL reach its decision?

The detailed decision of the EFL Board has not been published (nor, indeed, has the constitution of the disciplinary commission been revealed). The only detail on the decision is contained in the press release published by the EFL on 2 October 2019, in which it was stated:

*"The rules of the Carabao Cup require Clubs to ensure all players are registered and eligible in line with their respective League's rules before they play. The player was always contracted to Liverpool FC during this period, and the reason he was not eligible was because the Club did not have the relevant international clearance following expiry of an earlier loan agreement.*

*The Club's breach was in part due to the challenges it encountered with securing the correct international clearance, and its subsequent ability to include the Player on team sheets despite the lack of clearance. As a result the Board concluded the most appropriate sanction was a financial penalty."*

The EFL's statement also provided the following insight into the Board's reasoning:

*"In particular, the Board noted that the Club had sought the assistance of the Football Association in securing the return of the International Clearance prior to the start of this season, and the Club had been able to include the player on team sheets for Premier League Two matches (under Premier League Rules) and one Leasing.com Trophy match, which resulted in the breach not being identified until the Club reported the issue to the EFL and Premier League following the MK Dons match."*

Absent a published Decision with written reasons, the above constitutes at most an interesting glimpse into Liverpool's (assumed) case in mitigation, which appears to have placed emphasis on the club's prior attempt at securing International Clearance for Chirivella, which attempt was in fact unsuccessful (but which attempt was known to the FA). The statement does not, however, reveal the "*challenges encountered with securing such clearance*" and its reference to a "*subsequent ability to include the Player on team sheets despite the lack of clearance*" is not particularly illuminating, ostensibly citing the club's breach as a reason for reduced punishment. There is, at the very least, a tension between the provisions of EFL rule 43.6 – which places full responsibility for effective registration on the Club in question (and no other entity, whether the FA or otherwise), and a disciplinary decision which appears on its face to give credit for the fact that, in its admitted ignorance of the breach, Liverpool was able to name Chirivella on several team sheets before realising its error. Without the benefit of a published Decision, however, the specifics of what Liverpool said in mitigation, and the nuances of the Board's decision-making, remain inscrutable.

### 4. Is this decision not inconsistent with the Bury and/or Grays decisions?

No. In the case of Bury, their fielding of an ineligible player in the League One fixture against Southend United on 8 May 2016 engaged EFL rule 44.2, which rule expressly states that an EFL Disciplinary Commission "*may*" impose a 3-point deduction on the infringing club. As regards, Grays Athletic, their expulsion from this season's FA Cup was a decision made by an entirely different disciplinary panel, operating under separate rules. Under the FA Disciplinary Regulations (*which govern misconduct in the context of FA competitions*) the FA Regulatory Commission has a wide

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discretion to choose from a range of penalties, including expulsion from an FA Competition. Each of the club's cases will have been considered by the relevant disciplinary panel on its own merits; and given the wide discretion afforded to each of the panels in question when assessing the evidence before them, the decisions, whilst perhaps divergent, are not inconsistent with one another.

##### 5. Are Liverpool susceptible to any further sanction?

This, for the moment, is unclear. The opaque language used by the EFL in its press release alludes to the fact that Liverpool have admitted fielding an ineligible player in this season's Premier League Two ("PL2") competition. What the statement does not disclose, however, is under what circumstances Liverpool were "able to include the player" on the team sheets at the time. If, following an enquiry as to the player's registration status, the club was given an assurance by the Premier League that Chirivella could participate in the PL2 fixtures, it is unlikely that any disciplinary action would be forthcoming. If, conversely, no such assurances were given and, in fact, the club fielded the player in ignorance of his ineligibility, it would conceivably be open to the Premier League to bring parallel disciplinary proceedings against Liverpool, in which proceedings the disciplinary commission appointed would be entitled to impose its own sanction.

**Ashley Cukier** is a member of the Littleton **Sports Law Group** and advises regularly on football and other sporting matters. Littleton has a particular expertise in sports law. It is ranked by both *Chambers & Partners* and *Legal 500* in that practice area with several members of chambers individually ranked by those legal directories.

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