BEFORE A REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION

IN THE MATTER OF:

THE FOOTBALL ASSOCIATION

The Association

- and -

(1) MR. PHIL SMITH
(2) WYCOMBE WANDERERS FOOTBALL CLUB

The Participants

WRITTEN REASONS FOR THE DECISION
OF THE REGULATORY COMMISSION
FOLLOWING THE HEARING ON
9TH AND 10TH APRIL 2014

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1. BACKGROUND

1.1 On 31st August 2010, the registration of Matthew Phillips ("MP") was transferred from Wycombe Wanderers FC ("the Club") to Blackpool FC for a basic fee of £325,000, plus VAT. The Club engaged an Agent, Phil Smith ("PS"), to represent them in the transfer negotiations. The terms of the transfer are set out in a written Transfer Agreement between the Club and Blackpool dated 31st August 2010.

The Transfer Agreement

1.2 On behalf of the Club, PS negotiated a contract between it and Blackpool FC for the transfer of MP. The Transfer Agreement included the following provision:

> *"9. **IT IS FURTHER AGREED** that [the Club] shall receive a sum equivalent to 25% of any future transfer amount received by [Blackpool] for [MP] over and above any amounts previously paid to [the Club]. Any amounts that become payable under this clause will be paid within seven days of receipt by [Blackpool]."*

This contingent entitlement on the part of the Club to receive further monies from Blackpool upon any future transfer of MP by them has become known and understood as a 'sell on'. For the Club, it represented a potentially valuable future source of income.

1.3 The Transfer Agreement for MP between the Club and Blackpool is dated 31st August 2010 and was signed on that date.

The First Representation Contract

1.4 Also on 31st August 2010, the Club submitted a Representation Contract to The FA, setting out the terms of PS's engagement by the Club ("the 1stRC"). That document is said to have been made on 1st July 2010, but was in fact signed by PS and the Club (acting through its then Club Secretary, Keith Allen (KA)) on 20th August 2010.

1.5 The 1stRC contained a remuneration clause (clause 5) which provided as follows:

> "5. *In consideration for the provision of the Services, the Club shall pay to the Authorised Agent a fee in accordance with the requirements of the Agents Regulations and the terms of this Representation Contract as follows:*
>
> *In the agreement between the Club and PHIL SMITH in respect of the transfer registration from Wycombe Wanderers of MATTHEW PHILLIPS as follows:*
>
> *A percentage of the guaranteed element of any transfer fee over and above £350,000, PLUS a percentage of any additional clauses, as detailed below.*
>
> *Guaranteed Transfer Fee:*
> *£350,000 - £500,000, 3% if for any club other than Bristol City, nothing if it is Bristol City at this level.*
> *£501,000 - £750,000, 5%*

£751,000 - £1,000,000 and above, 10%

Additional clauses
10% of any additional clauses, for example sell on percentages, monies based on appearances. For the avoidance of all doubt a 30% sell on in favour of the Club will entitle the Agent to 10% of that sell on, i.e. 3%.

The above sums being exclusive of any Value Added Tax that may be payable."

1.6 As has been shown, clause 9 of the Transfer Agreement between the Club and Blackpool specified that the Club would receive 25% of any transfer fee received by Blackpool following a 'sell on' of the Player (after deducting the original transfer fee of £325,00). Clause 5 of the 1stRC therefore entitled PS to 2.5% of any net 'sell on' fee (*i.e.* 10% of 25%).

1.7 However, when the 1stRC was submitted for approval, clause 5 was rejected by The FA. In a letter to PS, dated 14th September 2010, The FA stated that such an arrangement was prohibited by Regulation H11 of The FA Agents Regulations ("the Regulations"), which states:

"An authorised Agent, or an Authorised Agent's Organisation, must not have, either directly or indirectly, any interest of any nature whatsoever in relation to a Registration Right, whether actual or potential, vested or contingent. This includes, but is not limited to, owning any interest in any transfer fee or future sale value of a Player."

1.8 A copy of the letter from The FA rejecting clause 5 was sent to KA, care of the Club.

The document dated 1st October 2010

1.9 A key document in the case is one dated Friday 1st October 2010, which is headed ***"AGREED VERBALLY BETWEEN PHIL SMITH AND STEPEHEN HAYES 12TH OCTOBER 2010"*** ("the AGREED VERBALLY document"). Chronologically, it is the next document in time. It includes the following:

> *"The clause that the Football Association were unable to accept involved First Artists entitlement to 10% of the agreed 25% sell on clause, in the event of the player being transferred by Blackpool FC for a sum over and above any sums previously received.*
>
> *Wycombe Wanderers FC accept they made the original representation agreement with First Artists in good faith and does not wish to deviate from that agreement.*
>
> *As such the Club are pleased to agree that in the event of the player being transferred by Blackpool FC for a sum over and above payments already received, First Artists will received (sic) the agreed 10% of the 25% such fee, that is payable by Blackpool FC, which for the avoidance of all doubt 2.5% (sic) of the sell on fee received."*

This highly significant document will be returned to in due course.

The Second Representation Contract

1.10 Following the rejection of clause 5 of the 1stRC by The FA, a second written Representation Contract ("2nd RC") was prepared by the Club, omitting the offending provision and replacing it with an alternative mechanism by which PS might receive remuneration for the services that he had provided ("the 2nd RC").

1.11 PS and KA signed the 2ndRC on or around 15th October 2010 (by re-signing it), although it was dated 20th August 2010 in order to tie in with other paperwork relating to MP's transfer.

1.12 The 2nd RC was submitted to The FA on 15th October 2010, and accepted. In summary, the substituted clause 5 provided that Mr. Smith would receive remuneration of £9,000 plus VAT from the Club, conditional upon the fulfilment of certain contingencies, namely:

(i) Blackpool retaining its status as a Member of The Premier League at the end of the 2010/11 season and the Player completing 1530 minutes of Premier League play during that season (emphasis added); or

(ii) In the event of Blackpool being relegated from The Premier League at the end of the 2010/11 season, then on the next occasion that it achieved promotion back to The Premier League, provided that the Player completed 2,070 minutes of Premier League play for Blackpool during the season (emphasis added).

1.13 Neither of those contingencies was guaranteed to occur and, in the event, neither of them did:

(i) Blackpool were relegated from The Premier League to The Championship at the end of the 2010/11 season, thereby preventing the fulfilment of the first of the requirements specified in the substituted clause 5(a).

(ii) Blackpool has remained in The Championship for the three seasons that have followed its relegation. MP left Blackpool during the summer transfer window of 2013, and so even if Blackpool should return to The Premier League at some point in the future, the second limb of the contingencies specified in the substituted clause 5(b) is not capable of being satisfied.

1.14 It follows that PS has not, and never will be, entitled to recover any monies from the Club pursuant to the terms of the Second Representation Contract.

The letter of 22nd October 2010

1.14 KA prepared and signed what has come to be known as "the Comfort Letter" from the Club to PS of 22nd October 2010. Together with the *"AGREED VERBALLY"* document and an e-mail from PS to DW of 13th November 2012 (to which detailed reference will be made in due course), it is one of the three central documents in the case.

> *"Dear Phil,*
>
> *Many thanks for your involvement on behalf of [the Club] in the transfer negotiations regarding [MP] who as you are aware was eventually transferred to Blackpool Football Club.*
>
> *As part of the registration paperwork, a Club/Agent Representation Agreement had to be completed and registered with the Football Association, which was duly done.*
>
> *Wycombe Wanderers FC accept that the original representation agreement with First Artists dated 1st July 2010 was made in good faith and does not wish to deviate from that agreement.*
>
> *I hope that this assurance meets with your approval and that we will be able to do business together on some future occasion.*
>
> *Yours sincerely*
>
> *Keith Allen"*

2. SUBSEQUENT EVENTS

2.1 In or around August 2012, a group headed by Don Woodward (DW) took over the ownership and control of the Club from its previous owner, Stephen Hayes (SH).

2.2 On 13th November 2012, PS contacted DW by e-mail. The lengthy message contained the following passages:

"Two years ago I was instructed by the [Club] with an official mandate to sell Matt Phillips which executed to Blackpool FC (sic). Because of the FA regulations the sell on commission of 10% which our company was offered by [the Club] was not able (sic) to be put into an official agreement but I have a covering letter from the then owner Steve Hayes making it clear that our company would be paid such a sum for our services as and when [the Club] got paid the 25% sell on fee from Blackpool should the [Player] be sold, which was also negotiated by me on behalf of [the Club].

Once Steve left [the Club] I felt it prudent to contact Andy Pelley to make sure that any future deal would be honoured by [the Club] especially as we have not been paid at all to date any of the monies that have been received by [the Club] and the fruits of our labour will only be seen by us upon any resale … our agency who set up the deal would not see a penny until a potential larger amount would be earnt (sic) by [the Club]"

I met up with Andy a couple of weeks ago and, in anticipation of any deal that might happen starting with the upcoming winter transfer window I wanted to make sure that the deal would be honoured and of course having taken legal advice that even if the football league would not originally sanction the 10% sell on that was presented to them in contract form between [the Club} and ourselves."

2.3 On 4th December 2012, DW responded to PS by e-mail. The e-mail alludes to a telephone call that PS made to him between 13th November and 4th December. In the e-mail, DW said this:

"This is a very tricky situation, the deal you mentioned was not given as part of our [Due Diligence] when we bought [the Club].

As mentioned the proceeds of any on sale formed part of our agreement with Steve Hayes, and as such any deal relating to these proceeds would need to be agreed with you and him otherwise there would be a potentially ridiculous (sic) negative situation for [the Club].

Perhaps we should all see if there is a deal.

I am glad that you have confirmed your understanding that [the Player] will be sold for in excess of £5.5m in January, that would be very good for him and indirectly [the Club]."

2.4 In the event, MP was not sold during the January transfer window in 2013 and following DW's e-mail to PS of 4th December 2012, there was no further contact between them until August of 2013.

2.5 On or around 6th August 2013, the Club agreed to sell its entitlement under clause 9 of the Transfer Agreement to Blackpool for the sum of £200,000. Within a matter of weeks, Blackpool had sold the Player to Queen's Park Rangers FC ("QPR") for a fee of £6 million.

2.6 After relinquishing its rights under clause 9 of the Transfer Agreement, it followed that the Club had no claim to 25% percent of the net sell-on transfer fee received by Blackpool for MP. Had it retained such an entitlement, the Club would have received just under £1.5 million plus VAT (*i.e.* [£6,000,000 - £325,000] x 25%). PS's commission from the Club, in accordance with the "*additional clauses*" provisions of clause 5 of the 1stRC, would have been almost £142,000 (£141,875 to be precise), plus VAT (*i.e.* £2.5% of £5,675,000).

2.7 In August 2013, PS contacted DW again, initially by telephone. Between 22nd August and 4th September, DW recorded five messages that PS had left on his voice messaging service.

2.8 In the messages, PS forcibly expressed his entitlement to be paid for the services that he had provided in the transfer of the Player from the Club. He also stated, in forceful and unambiguous terms, the steps that he was prepared to take in order to recover what he considered he was owed (with emphasis added):

> *"I was the guy who did [the Player] deal originally and that's got a sell-on through the Club. I hope there won't be any repercussions to this, other than being very honourable."*
>
> *"I have reason to believe that you may not be wanting to honour the payment due to us."*
>
> *"The fact is that your football club employed me and then promised that they would pay me in whatever way they could, which was doubled up by both the Club Secretary at the time and your owner."*
>
> *"I will give you the hardest time you've ever had if you don't honour an agreement with us. Its as simple as that. You'll be hearing back from our lawyers. … I will really go for you and you personally as well Okay? Don't take it as a threat, that's a promise."*
>
> *"I will make sure it gets looked into if you don't honour the agreement. Okay, loud and clear?"*
>
> *"Secondly, the fact that you registered to try and pay us in a way that was not compliant, doesn't mean – does not mean, that you don't pay us for a job that is already done and that's what we will be suing you for, as much as anything else."*

2.9 Around the same time, PS instructed a Solicitor, John Ireland (JI), to act on his behalf. The involvement of JI will be addressed in detail in due course. Suffice to say for the purposes of the chronology that JI wrote to DW on 27th August 2013 and there then followed an exchange of e-mails between them.

2.10 The matter was referred to The FA's attention by DW. During October 2013, The FA's Financial Regulation Department conducted formal tape-recorded interviews of PS, DW and KA. SH declined to be interviewed, although it appears that his unwillingness to do so may have been related to matters unconnected with any involvement on his part in the matters that were under investigation.

3. THE CHARGES

3.1 In a letter dated 19th December 2013, The FA charged PS with three alleged breaches of its Regulations as follows:

(i) *H9*

It is alleged that on a date on or after 31st August 2010, and for at least five days thereafter, you failed to disclose to The Association in writing a contractual or customary arrangement that existed between you and Wycombe Wanderers FC whereby money was paid by the Club to you in the event that the Player Matthew Phillips was sold on by Blackpool FC.

(ii) *H11*

It is alleged that, between 31st August 2010 and a date on or around 6th August 2013, you had a direct or indirect interest in relation to a Registration Right, in particular an interest in the transfer fee and/or future sale value of the Player Matthew Phillips in the event of his onward sale from Blackpool FC.

(iii) C2

It is alleged that, on or after 31st August 2010, you arranged matters, namely by:

(a) Verbally agreeing with Wycombe Wanderers FC that the Club would pay you a sum of money in the event that the Player Matthew Phillips was sold on from Blackpool FC; and

(b) Not including this agreement within the Representation Contract (stated as made on 20th August 20100 submitted to The Association,

So as to conceal or misrepresent the reality and/or substance of that agreement, which related to a Transaction and/or Contract Negotiation.

3.2 There then followed a section in the charge letter entitled ***"Evidence"*** in which The FA set out the evidence that it intended to rely upon in support of the charges. Insofar as it is material to our decision, it is referred to below.

3.3 The Club was also charged with the same three charges.

The Responses

3.4 The Club pleaded guilty to the charges.

3.5 PS filed a Response denying all of the charges. His case may be summarised succinctly as follows. He had done a lot of work in relation to the sale of the Player to Blackpool for which he had not been paid. Although both he and his former Solicitor demanded payment of a fee from the Club following the sale of MP to QPR, he had no legal entitlement to any such payment. He says that he did not appreciate this when the demands were made. The only thing that he might have hoped for in the future was to undertake further unconnected work for the Club which might compensate him for the losses he had sustained in relation to the Player.

3.6 It is further PS's case that for the purposes of all three Charges, The FA must prove that he had contractual right to remuneration upon a sale of the Player by Blackpool. He claims to have had no such entitlement.

3.7 It was common ground between the Parties that the first and foremost issue for the Commission to decide is whether, as a matter of fact, a verbal agreement was concluded between the Club and PS which gave PS an entitlement to part of future transfer fees arising out of an onward sale of MP by Blackpool.

4. PROCEDURAL ISSUE

4.1 Before going on to consider the oral evidence that was presented, a procedural point arose on the first day of the hearing that the Commission indicated it would address in its written reasons.

4.2 In his Response, PS asserted that the Charges against him were insufficiently clear to enable him to respond effectively to them. He also claimed that it was unclear what evidence The FA intended to rely upon in order to prove its case. At paragraph 9, it was argued that there was no evidence to directly support the case that there was an agreement between PS and the Club, and that much of the "*evidence*" positively contradicted such a contention. Reference was also made to the witnesses who were interviewed, specifically DW who, it was said, had actively denied the existence of such an agreement.

4.3 The FA replied in detail to PS's Response on 7th February 2014, addressing the alleged deficiencies in the charges and the evidence that it intended to rely upon in support of them. At paragraph 8 of the Reply, Mr. Baines identified the evidence relied upon to prove the existence of a verbal agreement between PS and the Club. A further document dated 1st October 2010 was also served, which The FA intended to rely upon (although it had previously been provided to those witnesses who had been interviewed).

4.4 The FA's Reply went on to specify the evidence which The FA intended to rely upon in support of each of the three charges, and to assert that it had clearly identified, in the Charge Letter, the evidence that it intended to rely upon. At paragraph 30 of the Reply, there is a summary of the form of that evidence, followed by a statement that:

> *"There will only be a requirement for any individual to give oral evidence to a Commission if [PS] indicates that he disputes any part of the evidence provided by that individual."*

4.5 Upon considering PS's Response, paragraph 31 of The FA's Reply set out certain further material by way of disclosure.

4.6 The Parties agreed a date for the mutual exchange of witness statements in February 2014. A very brief statement was obtained by The FA from DW, which he signed on 21st February 2012. In it, he confirms the fact of the messages that were left on his voicemail, that he complained to The FA and agreed to be interviewed, and that the answers he gave in interview represented a true account of events.

4.7 It is against that backdrop that the substantive hearing took place. At an early stage, Mr. Baines indicated his intention to call DW to give evidence and that he wished to conduct an examination-in-chief. Objection to that course was taken by Mr. De Marco on behalf of PS. Mr. Baines was invited by the Commission to identify the areas that he wished to cover with DW. An indication was given by the Commission of the position that it would adopt in relation to any supplementary questions not covered by witness statements and at that juncture Mr. Baines proceeded to open The FA's case.

4.8 The question was revisited and argued towards the end of his opening. A further invitation was extended by the Commission for Counsel to discuss the areas that Mr. Baines wished to cover with DW in examination-in-chief. However, having considered the matter over the short adjournment on the first day of the hearing, Mr. Baines elected not to ask any supplementary questions of DW, citing that it had been his intention to proceed on the basis of a full examination in chief, as was his custom.

4.9 It is the view of this particular Commission that achieving fairness and justice demands that the Parties to any dispute are placed on an equal footing. This requires, amongst other things, each Party to identify what its case and evidence is in advance of a hearing so that the other party knows what it has to meet and to prepare its case, including cross-examination. This basic principle holds good, irrespective of the nature of the proceedings, or the forum, including a disciplinary tribunal of a sport's governing body where strict rules of evidence may not apply.

4.10 By indicating that "*one or two*" additional questions could be asked of a witness in their evidence-in-chief, and that any supplementary questions should be kept "*on a tight leash*", the Commission did not deny to either Party the right to a fair and just hearing as contemplated by the relevant General Provisions relating to the conduct of Regulatory Commissions (see Regs. 1.1, 2.1 and 6.8). Neither does such control of the evidence to be given offend basic principles of natural justice. Indeed, the paramount objective of being just and fair to all parties is precisely what underpins this Commission's approach to this issue.

4.11 In the present proceedings, the opportunity was provided to both Parties to articulate in their witness statements the evidence of witnesses upon whom they intended to rely.

4.12 It was therefore open to The FA to expand upon and/or clarify the evidence that DW had given in interview in a witness statement, and to respond to anything said by PS in his statement, which had already been disclosed. Any additional points could have been made in that document. Instead, the brevity of DW's witness statement suggested that he would simply be tendered for cross-examination on those parts of his interview with which PS had taken issue in his statement.

5. THE WITNESSES

5.1 The Commission heard oral evidence from four witnesses: DW (who was called by The FA); PS, together with MH and KA (who were called on behalf of PS). There were also a number of documents, including e-mails, contained in a bundle that had been prepared. The key ones have been referred to, although others are important.

5.2 The Commission formed the following impression of the witnesses who gave live evidence, in the order in which they appeared before us.

(i) Don Woodward (DW)

(a) The overall impression of DW that we formed is that he gave his evidence in an honest and straightforward manner. We were satisfied that he did his best to assist the Commission.

(b) It was DW who brought the matter to the attention of The FA. We have no reason to doubt that PS's demands in August 2013 came as both a surprise and a worry to him, having had no indication that any such claim existed when he conducted due diligence before acquiring the Club. It would be understandable if, as KA claims, DW had been agitated when the latter contacted him to try and establish whether there was any substance to PS's claims.

(c) Although the Commission was not left with a complete or firm understanding as to the reason(s) why the Club's right to a percentage of any sell-on of the Player had been relinquished so cheaply, that issue is not materially relevant to the questions that we have to decide.

(d) Moreover, whether the Club has, or has not, breached other FA Regulations arising out of its arrangements for the repayment of its debt to SH is not for this Commission to decide. It was not suggested during his evidence that DW's evidence before us was connected, or influenced in any way, with any treatment that either he, or the Club, might hope or expect to receive from The FA in connection with any infringement of Rules and/or Regulations prohibiting third party interests in players.

(e) DW's evidence relates principally to his dealings with PS which took place some considerable time after the agreement that The FA contends for is said to have been made. The messages that PS left on DW's voicemail were recorded and transcribed. Their contents are irrefutable as a matter of fact, it is simply the interpretation of them that is in issue. Likewise, the two e-mails that he produced during the course of his oral evidence, and which neither The FA nor PS's advisors appeared to have previously seen.

(f) With regard to both the Club's position regarding its arrangements with PS over any onward sale of MP (*i.e.* the subject-matter of the current disciplinary proceedings) and the potential third party interest issue that has been raised more recently, the fact that DW is an Accountant by profession provides a plausible explanation for him being less acquainted with relevant Rules and Regulations than others. He had nothing to gain by bringing the issue between the Club and PS to the attention of The FA. On the contrary, it has resulted in the Club being charged with misconduct, and pleading guilty. We gained no sense that his evidence was coloured by an attempt to limit the Club's culpability.

(g) Returning to his involvement in events, we find that DW and PS spoke either once or twice following the latter's initiating e-mail of 13th November 2012. In DW's e-mail of 4th December 2012 to PS the former thanked the latter for his "*note*" and "*subsequent phone call*". There are two notable references in DW's e-mail, which has been set out in full above:

> "*This is a very tricky situation,* ***the deal*** *you mentioned was not given as part of our [due diligence] when we bought the club. …*
>
> *I am glad that* ***you have confirmed your understanding that [MP] will be sold for in excess of £5.5m in January****. That would be very good for him and indirectly [the Club]"* (emphasis added).

The reference to "*deal*" is consistent with the contents of the e-mail from PS himself of 13th November 2012. The context in which it appears is an arrangement that DW was unaware of when he took the Club over. The second passage cited above suggests that the indication that MP would be sold in the January 2013 transfer window came from PS. But whether it came from him or DW, the words "*confirmed your understanding*" leave us in no doubt that PS was aware of an impending sale of MP for a substantial transfer fee.

(h) Further, we accept the evidence of DW that the owner of Blackpool, Karl Oyston, contacted him with a view to establishing why PS had contacted him in connection with MP. The reason is clear: PS was taking an active and close interest in any impending sale of MP.

(i) DW told us that his clear understanding of the 13th November 2012 e-mail was that PS was relying on an agreement that entitled him to part of the proceeds of a sell-on of MP. That impression was, we find, perfectly reasonable. Indeed, it is very difficult, if not impossible, to interpret the e-mail any other way.

(j) During a telephone conversation between them around this time (*i.e.* between 13th November 2012 and 4th December 2012), DW says that PS told him that he (PS) said that the Club did not owe him any money. This contradicts the demand in the e-mail from PS of the former date. PS now relies on this aspect of DW's evidence to show what PS's true understanding of his position was. He further relies on the fact that DW spoke in turn to SH who indicated that there was: "*no contract with [PS], no deal and no claim.*" As both of these points appear to assist PS (at least at face value), it supports our impression of DW as a credible witness who was prepared to concede points appropriately. We attach very little weight to this aspect of the evidence:

(aa) The concession that PS is said to have made to DW when they spoke 2012 was entirely inconsistent with the terms of PS's recent e-mail. It is also at odds with the terms of DW's e-mail of 4th December 2012 in which he refers to a "*tricky situation*" and "*a deal*" that PS had mentioned. There is no suggestion in DW's e-mail that PS had relented from his position in the e-mail of 13th November. Accordingly, any concession that PS may have made during a telephone conversation was sandwiched between two contradictory e-mails some three weeks apart.

(bb) Furthermore, by the following August, PS was re-asserting his entitlement to payment, and this time in much more forceful terms.

(cc) We also reject SH's denial as to the existence of a "*contract, deal or claim*" involving the Club and PS, for reasons that will be elaborated upon later.

(k) DW also claimed that during this period (*i.e.* November/December 2012), PS made a demand of £200,000 against the Club relating to the transfer of MP. PS denied this, saying it was "*preposterous.*" The sum in question is identical to the amount which the Club received from Blackpool for relinquishing its rights under the sell-on clause in the Transfer Agreement. There are two possibilities:

(aa) That DW may have conflated the two issues; or

(bb) That both the demand and the figure of £200,000 did emanate from PS.

As between them, we have no hesitation in preferring the evidence of DW.

(l) DW did not have any further contact with PS until August 2013, when the latter left the series of messages on his voicemail. DW understood PS to be re-stating his case that the Club should honour its agreement with him. Again, he was right to form that view.

(m) DW received a letter from JI dated 27th August 2013, around the same period that the voicemails were left by PS, demanding payment on terms that reflected those set out in PS's e-mail of 13th November 2012 and clause 5 of the 1stRC (*i.e.* that PS would receive 10% of 25% of the fee from the onward sale of MP).

(n) DW also referred to a telephone conversation that he had with KA around August 2013 regarding the "*AGREED VERBALLY*" document which DW had retrieved from the file for MP that KA had maintained. According to DW, during that discussion KA suggested there had been a "*side-deal*" between SH and PS. We find that such a suggestion was made for reasons that will follow. DW only saw the Comfort Letter of 22nd October 2010 for the first time in September 2013. In his view, it added some validity to PS's claim, as it appeared to make the Club a party to an agreement.

(ii) Phil Smith

(a) We found PS to be an unconvincing and unreliable witness. His evidence on key issues was inconsistent and contradictory. He also had a tendency to obfuscate when asked difficult questions. The striking feature of the cross-examination of him was the frequency with which he was forced to attempt to distance himself from clear and obvious anomalies in his case by attributing them to "*mistakes.*"

(b) According to KA in interview, PS and SH were *"very, very close"* and spoke frequently throughout September 2010. PS strenuously denied any agreement with SH, as did the latter. Both denials are flatly contradicted by the *"AGREED VERBALLY"* that KA prepared, based on what SH told him of his (SH's) discussions with PS.

(c) PS's case is that he received the letter from KA of 22nd October 2010, but that it had been unsolicited and he did not agree with its terms. Instead, the letter reflected SH's thinking that *"if it ever gets to this and we've got money in hand, we would look to be fair with you."* The *"AGREED VERBALLY"* document that KA had prepared was much more specific about how and when PS would be paid, but PS says he did not see it until The FA commenced its investigation in October 2013.

(d) However, in his e-mail of 13th November 2012 (see above), PS set out the precise basis upon which he understood he was entitled to remuneration. That claim was based on clause 5 of the First Representation Contract when read in conjunction with clause 9 of the Transfer Agreement. In very precise terms, the e-mail sets out the arrangement that he reached with the Club in 2010, and does so by reference to the Comfort Letter of 22nd October 2010. To reiterate:

(aa) *"I was the guy who did the Matt Phillips deal originally and that's got* ***a sell on*** *through the Club."*

(bb) *"Because of the FA regulations* ***the sell on commission of 10%*** *which our company was offered by the Club was not able to be put into an official agreement, but* ***I have a covering letter from the then owner [SH] making it clear that our company would be paid such a sum for our services as and when [the Club] got paid the sell-on fee from Blackpool should [MP] be sold****. ..."*

(cc) *"The fact is that your football club employed me and then* ***promised that they would pay me*** *in whatever way they could,* ***which was doubled by both the Club Secretary at the time and your owner****… I will give you the hardest time you've ever had if you don't honour* ***an agreement with us****"* (emphasis added).

(dd) *"The way you're conducting yourself is a disgrace and I will make sure it gets looked into* ***if you don't honour the agreement****. Ok? Loud and clear. Thank you"* (emphasis added).

(e) In the-mail, PS also refers to making contact with a Club Official, Andy Pelley (AP) in anticipation of the forthcoming transfer window:

"... to make sure that ***the deal would be honoured*** *... "* (emphasis added)

His reference to ***"the deal"*** could only have meant one between PS and the Club. There was no other deal relating to MP to which the Club was party. This is reinforced by demands that the Club ***"honour the agreement with us"*** with threatened consequences attached with a failure to do so.

(f) PS accepted when giving evidence to us that when he spoke by telephone with DW following the e-mail that he wanted *"to talk to him about payment"* but denied it included any claim for payment, whether for £200,000 or any other sum. That specific issue has already been considered. Whatever may have been said in the one or two telephone calls that took place, they were 'topped and tailed' by e-mails (one from PS and one from DW) consistent with a claim by PS to be entitled to a payment from the Club arising out of the onward sale of MP.

(g) In view of the contents of DW's e-mail of 4th December 2012, we are also satisfied that PS was aware that MP might be sold during the January 2013 transfer window, and that his claim to the payment of a fee from the Club directly related to such an event.

(h) In cross-examination, PS accepted that his e-mail of 13th November 2012 appeared to show that his understanding of the Comfort Letter of 22nd September 2010 was that he would receive the 10% commission for his services as provided for in the First Representation Contract and that he would get paid when the Club received the sell-on fee. He claimed that this was *"my mistake, factually incorrect"* and that the reference to a *"sell-on"* in his e-mail *"could well give the wrong impression."* But in the first voicemail message that DW recorded around 22nd August 2013 (*i.e.* some nine months after his e-mail), PS referred again to a *"sell on."* In the second message, he referred to *"the payment due to us."* The Commission notes that he has been in the business of being a football agent for 22 years; long enough to know what a *"sell-on"* is and the rudiments of an agreement. Accordingly, we find that his explanation for the contents of the e-mail of 13th November 2012 is simply not credible.

(i) Further, there is a conspicuous lack of support in any of the evidence for the assertion that in his dealings with DW, all he wanted to do was to concentrate his (DW's) mind on *"new opportunities."* On the contrary, PS's e-mail of 13th November 2012, his subsequent voicemail messages, and the letter/e-mails that were sent by JI on his behalf, all consistently maintained an entitlement to receive a payment (either as a percentage of the transfer fee, or on a quantum meruit basis) linked to the onward sale of MP by Blackpool and the Club being placed in funds pursuant to the sell-on clause.

(j) Furthermore, paragraph 18 of PS's own witness statement states his understanding that the Club would provide him with ***"some payment or compensation"*** for the work he had done "***once the Club received money from the sell on of the Player"*** (emphasis added). In other words, an entitlement to payment triggered by the money that the Club would get. It goes on to state:

"The Club was indicating, as I understood it, that it would respect the spirit of the First Agency Agreement even if it could not pay me in those terms, and was willing to make me a payment on that basis."

All of that, PS had to concede in cross-examination, was directly at odds with the way in which his case had been presented to the Commission, namely that on the basis of the Comfort Letter, he held out no more than a hope of getting further work from the Club in the future, unconnected with MP's onward transfer, and which might compensate him for the losses that he had incurred in not being paid for his efforts in negotiating the original transfer.

(k) The account given at paragraph 18 of his witness statement does not assert that the payment to which PS would be entitled was 10% of 25% and, to that extent, represents a limited movement away from the claims contained in his own e-mail and the first letter that JI wrote on his behalf. It still, though, advanced a case that he was entitled to a payment pursuant to an agreement, where the payment was linked to the sell-on funds received by the Club; an agreement had not been disclosed to The FA. When this was put to him, PS attempted to distance himself from his own witness statement by the wholly unconvincing response: "*maybe I was just gabbling a little bit at that point ...*"

Matters pertaining to John Ireland (JI)

(l) As has already been indicated, on 27th August 2013, JI wrote to the Club and made the following claim on behalf of PS:

"[PS] was not paid for his efforts at the time of that transfer as he agreed with your Club that he would receive 10% of the monies you received under the sell on clause. We are now writing to demand payment to our client."

That letter was based on instructions. It is said, though, to have been sent in error, as it pursued a claim based on clause 5 of the 1stRC that had been rejected. PS told us that he saw the draft letter before it was sent (on a Friday before a Bank Holiday weekend). He said that there was an urgency to get something out, but that he subsequently regretted of it. He therefore enquired of JI whether the letter had been sent, but was told that it had.

(m) DW replied by e-mail on 2nd September 2013. In it, he referred to the conversation he had had with PS the previous year during which PS had confirmed that he had no claim against the Club. DW concluded that if PS did not withdraw his claim the Club would pass matters over to the FA compliance team. However, JI responded by e-mail on 4th September, denying that PS had agreed at any time to *"waive"* his fee. The e-mail went on to set out *"the facts"* that had led to PS *"not being paid a single penny"* for the work that he had done. It went on:

> *"Whilst this may be a 'football' matter, the laws of the land apply equally to the FA and there is no doubt that my client is entitled to some fee, even if it is based on the principles of 'quantum meruit'. My client deserves to be paid a fee for his work for your club and he will take all steps necessary to obtain a fair payment. If you refuse to accept this reasonable demand, he will be obliged to take matters further."*

(n) JI sent several further e-mails to DW. The following extracts are relevant:

> 13th September 2013 (15:35)
>
> *"We have already spoken about the arrangements with [AP] who was a Director of the Club at the relevant time.* ***He has confirmed, and will testify to, the agreement that a fee would be paid to my client in the event that [MP] moved on from Blackpool.****"*

In the final sentence of that message, it is right to say that JI also threatened: *"all these matters will be referred to the FA for further investigation."*

18th September 2013 (13:18)

"My client did work for your club and has received no fee; on this basis I am confident of winning if we litigate."

27th September 2013 (14:22)

"Finally, I would like to clear up what might be a fundamental misunderstanding between us. ***My client is not (strictly speaking) claiming anything from the sell on monies as that initial agreement was rejected by the FA. Instead, his (quantum meruit) claim is based on being paid a fair and reasonable fee for the work he carried out for your club****"* (emphasis added).

(o) We did not hear evidence from JI as to his version of events, including the timing of information, documents and instructions from PS. He is said to have misrepresented PS's case and that he was over-zealous in pursuing the quantum meruit claim. The latter represented a departure from the way in which the first letter JI wrote asserting the basis upon which PS should be paid, as well as the e-mail from PS himself the previous November. The *"fair fee"* argument was one that JI maintained at the interview of PS by The FA on 17th October 2013. The statement included the following passage:

"It was ***agreed*** *that if not then, at some later date, [the Club] would* ***pay*** *my client* ***a fair fee****, to be negotiated in good faith, to recognise the work that he had done for which he has had no fee at all, if the Club received from Blackpool at a later date due to the* ***sell on*** *clause."* (emphasis added)

(p) That statement clearly identifies and concedes the existence of an agreement between the Club and PS that he would be paid a fee, and that such a payment was intimately connected with the sell-on clause in the Transfer Agreement. It contradicts the e-mail from JI of 27th September 2013 which rejected - *"strictly speaking"* - PS's entitlement to payment out of the sell-on monies.

(q) In interview, PS stated that the Club had agreed with him that it in the event that if neither of the two conditions were fulfilled in the 2ndRC, it would still pay him a fair fee to recognise the work he had done if the Club received monies from Blackpool at a later date as a result of the sell-on clause. He asserted that he was not claiming a percentage of the sell-on fee, but a *"fair and reasonable"* fee based on a *"quantum meruit"*.

(r) The documents at Tabs 12 and 13 of the bundle are relevant at this juncture. They overlap with the evidence of JI. They were provided by PS to the FA during the course of its investigations and comprise two e-mails that were sent to JI: one from SH and the other from AP.

(aa) The e-mail that SH sent to JI on 3rd October 2013 (17:05) stated:

> *"However, [clause 5 of the First Representation Contract] was unacceptable to the FA so the Club instead* ***agreed*** *that Phil* ***would be paid a reasonable fee if this took place****. We were advised by the then club secretary [KA] and that was correct (sic) and* ***myself as owner at the time agreed to this****."*

When SH gave evidence, he claimed that the contents of the e-mail were sent to him by JI for him to simply endorse and return as if he had composed the message himself. SH pointed out that even the ubiquitous *"Dear John"* may have been written by JI, as the comma was missing after the *"John"*, something that he would not have overlooked. SH said that he simply did as he was asked and returned the message to JI.

(bb) The other e-mail was sent the previous day, 2nd October 2013 (20:30), from AP to JI. It was in similar, although not identical, terms to the one scripted for SH:

> *"The Club had wanted to pay Phil a fee based on a percentage of what it might get in the future if the Player was sold to Blackpool. However, this was declared unacceptable by the FA so* ***the Club agreed*** *instead that Phil* ***would be paid a fair fee if that event ever happened****"* [emphasis added].

(s) The contents of both of those e-mails provide yet further corroboration for the existence of an agreement between the Club and PS in 2010, pursuant to which the Club would make a payment to PS out of the funds that it would receive from an onward sale of MP by Blackpool, if not the precise manner in which the payment would be arrived at.

(t) A plausible explanation of the documents and evidence around this period (*i.e.* between August and October 2013) is that following DW's response to his letter of 27th August 2013 (in which the latter raised the spectre of referring matters to The FA), JI sought to advance an alternative case on behalf of PS that he hoped would achieve two things: (i) to recover a fee for the work he had done on the MP transfer; and (ii) to try and avoid PS falling foul of any Rules and Regulations of The FA. On that analysis, it is conceivable that JI was being 'creative' as a lawyer in the way in which he attempted to argue the claim after 27th August 2013.

(u) It does not therefore follow that JI 'switched' to the quantum meruit argument following his initial letter of 27th August 2013 because PS had 'put him right' and disavowed any entitlement under the 1stRC, or that JI advised PS that there was no legally enforceable claim under that particular agreement.

(v) Significantly, what none of the correspondence from JI asserted was that the Club had simply given PS an assurance that he would receive further work from the Club, unconnected with any onward sale of MP, but to reflect the work that he had done to secure the original transfer from the Club to Blackpool. Instead, the initial demand that was made by JI on 27th August 2013 on instructions from PS was in identical terms to the one that PS himself had stated to be his entitlement on 13th November 2012. In turn, both demands are entirely consistent with the final paragraph of the "*AGREED VERBALLY*" record that KA prepared. The paired down Comfort Letter of 22nd October 2010 is capable of being reasonably construed in the same way, especially when it is read in conjunction with the "*AGREED VERBALLY*" document. In other words, a claim for payment on a basis that The FA had ruled impermissible.

(w) In his evidence to the Commission, PS claimed that the reference to a "*sell-on*" fee in the letter sent to the Club on 27th August 2013 was an error on the part of JI who had only seen the 1stRC at that point in time, erroneously believing that it had been accepted by The FA. PS seeks to make a virtue out of the fact that no reference was made in the subsequent e-mails from JI to a claim based on clause 5 of the 1stRC. PS says that this reflects the fact that he corrected an error and told JI that he had no entitlement under that agreement. But there are a number of difficulties with his case that JI misrepresented the position, both in the initial letter and the subsequent interview of PS:

(aa) PS accepted that he would have sent all of the paperwork to JI, and could not understand how and why he had only received/had regard to the 1stRC when he wrote the letter of 27th August 2013;

(bb) PS also accepted that he had told JI that the 1stRC had been rejected before the letter was sent.

(cc) If JS had believed that the 1stRC had been accepted by The FA, it is highly likely that he would have expressly referred to it in his letter. He did not.

(dd) PS saw the letter before it was sent.

(ee) There would have been no point in trying to press a claim based on the 2nd RC for the reason that has already been given, namely that PS never has, and never will, be entitled to anything under that agreement.

(ff) Even if the letter of 27th August 2013 was based on an misunderstanding between PS and JI, or a unilateral mistake on the part of the latter, the case that JI advanced at interview on behalf of his Client included reference to a sell-on agreement. By mid-October 2013, JI would have been provided with all of the relevant documentation and taken PS's instructions. It is reasonable to assume that the very purpose of making a statement before the interview of PS commenced was to clearly set out his position, and that JI would have obtained his instructions to do so.

(x) Ultimately, JI's involvement in matters raises a number of questions to which there were either no answers, or none that were adequate. What we are not prepared to accept, on the say-so of PS alone, is his submission that certain serious difficulties confronting him in the prosecution of his claim against the Club were created due to errors that were made by JI.

(y) The myriad inconsistencies in his case include PS's response in cross-examination that *"Legally [the Comfort Letter] meant nothing"*, contradicting his claim that he is not a lawyer. It, together with the manner in which he pressed his entitlement to payment from the Club in late 2012, and again in August 2013, also undermines the claim made at paragraph 17 of his witness statement that he *"did not understand"* what was meant by the passage in the Comfort Letter stating *"[the Club] does not wish to deviate from [the First Representation Contract]."* The evidence reveals that he understood very well what that statement meant.

(z) Drawing all of the strands together, we find that PS's claim that all he was doing in reality was engaging in a form of brinkmanship with DW simply does not ring true, even when one makes appropriate allowances for the aggressive business of being a football agent. His case has evolved significantly, and very belatedly, to one where the Club offered him no more than the possibility of further agency work at some unspecified point in the future, unconnected with the transfer of MP apart from compensating him for the money that he had lost/not earned on that transaction. That case flies in the face of all of the key documents in the case, the demands for payment that have been made by him and on his behalf, as well as the credible oral evidence. The changes in his case which he sought to rely upon are, we find, self-induced and self-serving. We note the timing of the last and most fundamental shift in his position, and that it has coincided with the instigation of disciplinary proceedings against him.

(iii) Steve Hayes

(a) SH was a reluctant witness. He sold the Club to a Supporters' Trust consortium in or around May 2012. The first time he was asked to cast his mind back to events that occurred during the period between August and October 2010 was some three years later, in or around October 2013. By then, he had other much more important distractions in his life. He nevertheless wanted to help PS. This explained why he returned the e-mail to JI that he says the latter had scripted for him, but as if he had composed it himself. He said in evidence that it did not represent his view and that there was no agreement with PS. If that is so - and it was put to SH that he had sent something that he knew to be false - it inevitably has an adverse effect on the evidential weight that can reliably be attached to the contents of the e-mail.

(b) Whoever composed the e-mail that SH sent to JI on 3rd October 2013 (and the one from AP a day earlier), its contents identify the existence of an agreement that was reached between the Club and PS in October 2010, albeit one that

would entitle PS to a fair or reasonable fee, as opposed to a specified percentage of the sale proceeds of an onward sale of MP.

(c) Notwithstanding his personal circumstances at the time, the fact that SH was prepared to send, apparently unthinkingly, an e-mail which gave the appearance of being in his own words, but the contents of which he now claims does not represent a true version of his dealings with PS, causes us to look at the rest of his evidence very carefully and with caution.

(d) Moreover, the reliability of SH's evidence was seriously undermined by his denials:

(i) That he had any discussions with PS during September 2010, long or otherwise, about the issue of payment to him (in connection with the work he had done to secure the transfer of MP from the Club to Blackpool); and

(ii) That he had ever told KA about any discussions that he had had with PS (because SH says that they never happened).

The evidence surrounding these crucial issues brought two of PS's own witnesses, SH and KA, into direct conflict with one of another. The reasons why we reject the evidence of SH and prefer that of KA follow.

(e) In his evidence, KA told us that:

> *"I would suspect, looking back, what happened was that Mr. Hayes came in on 1st October – and gave me all this bits of bobs (sic), and then after we looked at it and said that can't be done, I suspect he went back on 12th October and discussed the matter with Mr. Smith."*

(f) It was then put to KA in cross-examination that he had indicated in interview that the "*AGREED VERBALLY*" document was based on an account given to him by SH of a discussion that had taken place between the latter and PS. KA was asked if this was correct, to which he responded:

> "*You are correct in saying that because when it was bounced back, neither {PS] nor [SH] were very happy, so that they would have had a conversation round about that point at which point [SH] came back and gave me a rough idea of what they had said, or [AP], or both of them.*"

KA then agreed that that is what the "*AGREED VERBALLY*" document reflects. SH did not formally dictate instructions to him, but SH's denial of any knowledge of the document, either in terms of its creation or its contents, went considerably further than that. By clear implication, the evidence of SH on this point was that KA's contrary version of events was not true, despite his description of the latter as an honest and loyal employee.

(g) On this particular issue, we prefer instead KA's account that he prepared the document from notes that he had jotted down, based on what SH had told him about discussions that he (SH) had had with PS. The only other explanation, which is not remotely credible, is that this key document was contrived entirely by KA, without any input from SH, and that KA has then gone on to falsely attribute to the latter. And yet that is what SH says must have happened.

(h) In the light of his evidence to us on those two issues, but particularly that relating to the "*AGREED VERBALLY*" document, we find SH's recollection of events relating to matters that happened at the material time, including his dealings with both PS and KA, to be materially defective.

(iv) Keith Allen (KA)

(a) In the witness statement that had been prepared for him, and which he signed on 28th February 2014. KA is clear that having submitted one contract to The FA with a clause that fell foul of the Rules, he was not prepared to allow that to happen again. He also states that no payment could have been made to PS without it going back to The FA for approval. As Club Secretary at the time, he would not have countenanced making any such payment without FA approval. He was not therefore willing to allow any further agreement to be made on behalf of the Club which did not comply with FA Rules.

(b) For the reasons that have already been given, we prefer the evidence of KA to that of SH as to how the "*AGREED VERBALLY*" document came into being and its contents. However, we do not accept on the evidence that its terms reflected discussions between PS and SH that were merely a work in progress, and that SH indicated that he would discuss matters further with PS following the observations made by KA. The "*AGREED VERBALLY*" document, together with the Comfort Letter, are contemporaneous documents. KA pruned the former in order to produce the latter, which SH approved before KA signed it on behalf of the Club. KA's personal view, which he still holds, is that its terms did not offend any FA Rules and Regulations. But what KA may have understood the Comfort Letter to mean, and what he understood the outcome of the discussions between SH and PS to have been, is not the point at issue.

(c) Some time was spent during the hearing exploring the discrepancy between the dates referred to in the "*AGREED VERBALLY*" document. In interview, KA said he did not know why the document was dated 1st October 2010, when it was "*agreed*" on 12th October 2010. It was based on what SH told him of his discussions with PS, which are likely to have taken place after 14th September 2010 (the latter being the date of the letter from The FA rejecting clause 5). It seems likely that an error has occurred in the date of the letter, although

precisely how and when remains is unclear. In our judgment, the substance of the document is more important than any issue over dates.

(d) To the extent that KA's witness statement applies a different gloss by stating that the heading of the "*AGREED VERBALLY*" document may have been "*wishful thinking*" in anticipation of finding a way of making the arrangement between the Club and PS work with The FA, we prefer KA's spontaneous response in interview. The document is perfectly clear on its face. It specifies that the agreement was made verbally, identifies the Parties to it (PS and SH), and states the date when the agreement was made (12th October 2010).

(e) KA cannot have held out any realistic hope that a modified version of the seventh paragraph of the document would ever be acceptable to The FA (*i.e.* a fee to PS based on 10% of 25% of the value of MP's onward sale). KA stressed in his evidence to us that an agreement that included such a payment provision to PS was unacceptable and could never have been allowed to happen. He says he advised the Club accordingly. However, he was unable to explain why, in those circumstances, he had left in the seventh paragraph when he drafted the "*AGREED VERBALLY*" document.

(f) As far as the Comfort Letter is concerned, KA said in interview that it was the Club's way of indicating that it did not want to deviate from the 1stRC, albeit that no payment could have been made to PS without the approval of The FA, and that KA would not have countenanced any such payment while he was at the Club in the absence of such approval.

(g) In his witness statement, KA characterises the Comfort Letter in these terms:

> "*... looked towards the future, without making any promises or proposing any specific agreement.*"

This interpretation of the Comfort Letter (which SH also adopts in his statement) is consistent with the case that PS has belatedly advanced, notwithstanding the demands for payment that he has previously made. It is not consistent with either of the critical October 2010 documents, particularly the "*AGREED VERBALLY*" one. The reference in the final paragraph of the Comfort Letter to the hope that "*this assurance*" would meet with PS's approval by clear implication refers to the previous paragraph which states that the Club "*does not wish to deviate*" from the 1stRC. Neither is the assurance of future unconnected work consistent with any other documents or evidence in the case, up to and including the interviews that were conducted by The FA.

(h) Somewhat tellingly, KA says that PS never replied to the Letter, or agreed to it in any other way. The theory that upon receiving the letter PS metaphorically 'shrugged his shoulders' and quietly resigned himself to the likelihood that he would never get paid for any of the work that he had done in connection with the sale of MP is in stark contrast with the robust character that he has shown himself to be, as demonstrated by his forceful demands for payment. We find it improbable that PS would meekly have accepted the outcome that he now contends for, unless he had a different understanding of the outcome of his discussions with SH.

(i) KA described his relationship with DW as a "*very good*" one. However, he denied telling DW during their conversation in 2013 that there had been a "*side-deal*" between SH and PS. KA questioned DW's honesty in relation this aspect of his evidence. On balance, we prefer the recollections of DW on the ground that there was greater consistency on his part between what he said in interview and his evidence before us.

(j) Finally, the fact that KA said that for so long as he was Club Secretary he would not have countenanced any payment that offended FA Rules and Regulations is not an impediment to us finding that an agreement was reached

which did so. It is unlikely that the logistics of how a payment might be made to PS were discussed at the time of the discussions he had with SH. The contingency that might trigger a payment was an event that might occur at some point in the future, as was the precise mechanics of paying money from the Club to PS. We note that KA left the Club on 30th August 2011.

5. DECISION

Charge 1 – Regulation H9

The agreement

5.1 Taking into account all of the evidence, we are satisfied on the balance of probabilities that a verbal agreement was reached between the Club (acting through its owner SH) and PS for the payment of a fee to the latter in the event of an onward transfer of MP from Blackpool and that such a fee would be paid out of the net proceeds of sale to which the Club would be entitled pursuant to the sell-on clause in the Transfer Agreement.

5.2 The verbal agreement was concluded following discussions between SH and PS that took place on unspecified date(s) between 14th September 2010 and 12th October 2010. SH informed KA of the terms which the latter recorded in the *"AGREED VERBALLY"* document.

5.3 We are not satisfied on the evidence that further discussions took place between SH and PS between 12th October and 22nd October 2010, following any observations that KA may have made to SH regarding what was being proposed. Even if any such discussions did take place, we do not find that they altered the substance of the verbal agreement that had been reached and recorded by 12th October.

5.4 The key provision of the verbal agreement mirrored clause 5 of the 1stRC that had been rejected by The FA (see paragraph 7 of the "AGREED VERBALLY"

document). In all respects, the verbal agreement reflected the terms of the 1stRC, as evidenced by the Club's expression of desire *"not to deviate"* from it.

5.5 The contents of the Comfort Letter that KA prepared and sent on behalf of the Club on 22nd October 2010 reflected his understanding of the outcome of the discussions between SH and PS, and which KA believed was compliant with relevant FA Rules and Regulations. His understanding, we find, was different to the agreement that had in fact been reached.

5.6 The verbal agreement did not represent a new agreement, the consideration for which was past, and neither was fresh consideration required for it. Its intention and effect was to acknowledge the continuance of the 1stRC and to confirm that both the Club and PS would be bound by its terms.

5.7 Further, the 1stRC was not rendered void on the ground of illegality, or any other basis, by virtue of the fact that clause 5 contravened FA Rules and/or Regulations. It remained a legally enforceable contract (something that JI alluded to), albeit that it exposed both the Club and PS to the risk of disciplinary proceedings - as has happened.

5.8 Accordingly, it follows in our judgment that the 1stRC never fell away, despite not meeting with the approval of The FA. The 2ndRC post-dated the verbal agreement. The latter agreement, for what it may have been worth, ran alongside the potentially much more lucrative 1stRC. If either of the contingencies specified in the 2ndRC had materialised, PS would have been entitled to claim £9,000 under that agreement, in addition to his entitlement under the 1stRC.

5.9 The fact that payment to PS was subject to the occurrence of a future contingency does not take the agreement outside the scope of Regulation H9. In the context in which they appear, the words *"whereby any money **is** paid ..."* in

the Regulation, and particularly the word *"is"* should reasonably be interpreted to mean a payment that may be made at some unspecified point in time in the future. It is a future expectation of that kind, and the potential for players to be unsettled as a consequence, that underpins the prohibition against agents having an interest in registration rights and the requirement to disclose one where it exists.

5.10 Accordingly, the fact that PS has not been paid anything in connection with either the original MP transfer, or his subsequent onward sale, is irrelevant to his liability under this Regulation.

5.11 Ultimately, the verbal agreement that we find was reached, confirming as it did an existing contractual arrangement, was one that is both contemplated and caught by Regulation H9. That is so, irrespective of whether the verbal agreement itself created a discrete legally binding contract, or an agreement in a less formal sense but which reflected the clear understanding of both the Club and PS that the 1stRC was still in place and that its terms would be honoured.

"Customary arrangement"

5.12 In view of our findings that a contractual arrangement existed within the meaning of Regulation H9, it is not necessary for us to consider whether the alternative way in which the Charge is put, namely that the agreement that was reached represented a *"customary arrangement"* between the Club and PS.

Charge 2 – Regulation H11

5.13 Pursuant to the verbal agreement, which confirmed the continued existence of the 1stRC, PS acquired an interest in MP's registration right within the meaning of Regulation H11. Charge 2 is therefore proved.

5.14 Further, we accept the submission made be The FA that the absence of any reference to *"agreement"* in the Regulation is significant. It is also very widely

drawn so as to cover any interest *"of any nature whatsoever"* as well as the nature of the interest, namely *"actual or potential, vested or contingent"*. If an interest had to be contractually binding, such a requirement could easily be circumvented by the careful arrangement of affairs in such a way as to defeat the purpose of the Regulation and the mischief at which it is aimed.

5.15 In this case, PS's conduct was entirely consistent with him having an interest in MP's registration right of a kind contemplated by the Regulation, even if that interest had fallen short of a legally enforceable one.

5.16 If PS had been completely oblivious of any interest on his part in the onward sale of MP - akin to a beneficiary who knows nothing of a bequest that is made to him under the terms of a will - he may well have had an argument that this Regulation requires at the very least constructive, if not actual, knowledge of an interest before liability is capable of attaching. If it were otherwise, an agent who is an ignorant and innocent 'beneficiary' of an interest in the registration right of a player could find himself the subject of disciplinary action.

5.17 We are quite satisfied on the evidence that PS did have actual knowledge of an interest in MP's onward sale and find that Regulation H11 is therefore engaged, irrespective of whether such an interest was, or was not, based on a legally enforceable contract.

5.18 Accordingly, if we had found on the facts that the Club had unilaterally given PS an assurance, promise or undertaking to remunerate him in the event of an onward sale of MP, we would still have found that liability attaches to PS under this particular Regulation.

Charge 3 –Regulation C2

5.19 The failure of PS to disclose the existence of the verbal agreement to The FA, affirming the 1stRC, clause 5 of which had been rejected, places him in breach

of Regulation C2. Both he and the Club were aware by 14th September 2010 that PS was not permitted to have an interest in the onward sale of MP. The 2ndRC that was submitted to The FA for approval failed to disclose the continued existence of such an interest.

6. FURTHER HEARING

6.1 It follows from our liability findings that a further hearing will be required in order to consider sanctions against both PS and the Club. Such a hearing should be arranged as soon as is reasonably practicable.

Craig Moore
Chairman of the Independent Regulatory Commission
26th April 2014

Appearances

For The FA

Max Baines of Counsel

For PS

Nick de Marco of Counsel

The Commission

Craig Moore, Barrister, Independent Chairman
Tom Finn, Member of The FA Judicial Panel
Alan Hardy, Member of The FA Judicial Panel